

Law Decree August 14, 2020, n. 104 (so-called "August Decree")

August 17, 2020

On August 15 the Italian government decreed the entry into force of new emergency measures that will support companies until the end of 2020.

One week after its approval by the Council of Ministers, the **Decree-Law no. 104 of August 14, 2020**, (the so-called "**August Decree**") on "Urgent measures to support and relaunch the economy" was finally published in the Official Journal no. 203 of August 14, 2020, and came into force from August 15 (available here).

With the new Decree, the government has allocated a further €25 billion to continue and strengthen the recovery of the national economy from the negative consequences of the COVID-19 epidemic and to support workers, families and businesses, with particular regard to the country's most disadvantaged areas.

To this end, the Decree entrusts a fundamental role to labor regulations.

An **exemption from social security contributions** is introduced for companies that will not apply for the extension of redundancy funds and for those hiring permanent employees.

In addition, some of the measures to support workers launched with the previous emergency measures are extended and strengthened, including:

- **The ordinary redundancy fund, ordinary allowance and redundancy fund are extended, by way of a derogation** provided for the emergency, for **a maximum of a further 18 weeks in total**.
- The **suspension of dismissals is continued**. The start of collective and individual dismissal procedures for justified objective reasons remains precluded to employers who have not fully benefited from social safety nets or from exemption from social security contributions, with the exception of dismissals motivated by the final cessation of the company's activities.
- There is a possibility to renew or extend, for a maximum period of 12 months (without prejudice to the overall limit of 24 months) and for one time, **fixed-term employment agreements**, even in the absence of cause.

Below is a preliminary and general review of the main measures concerning the management of working relationships; further details will be sent on request on specific issues.

1. Social safety nets

Article 1 of the August Decree extends the ordinary redundancy fund, the FIS ordinary allowance and the redundancy fund, by way of a derogation provided for by the so-called "Cura Italia Decree" (Decree Law no. 18 of March 17, 2020, converted, with amendments, by Law no. 27 of April 24, 2020, and subsequent amendments) for a **maximum total of**

18 weeks, to be placed in the **period between July 13, 2020, and December 31, 2020**.

In order to benefit from the new emergency wage subsidies, the rule provides that the **first nine weeks** can be freely used by employers who suspend or reduce their work due to events related to the health emergency, while the **additional nine weeks** are only granted to employers who have already been fully authorized in the previous period.

Employers who wish to avail themselves of the additional nine weeks are required to **pay an additional amount** determined on the basis of a comparison between the company's turnover for the first half of 2020 and the corresponding half of 2019. Such an amount will be equal to:

- a) **9%** of the total remuneration that would have been due to the worker for non-worked hours during the suspension or reduction of work, for employers who had a **reduction in turnover of less than 20%**;
- b) **18%** of the total remuneration that would have been due to the worker for non-worked hours during the suspension or reduction of work, for employers who had **no reduction in turnover**.

The additional amount **is not imposed on** employers who have suffered a **reduction in turnover of 20%** or more and for those who have **started business after January 1, 2019**.

For the purposes of accessing the additional nine weeks conditional on turnover, the employer shall submit an application to the Italian National Social Security Institute (INPS) in which it **self-certifies** the existence of any reduction in turnover. INPS will authorize the above subsidies on the basis of the attached self-certification and only afterwards the necessary checks relating to the existence of the relevant requirements will be carried out.

With reference to the **deadlines for submitting applications for access to subsidies**, applications should be forwarded to INPS, under penalty of forfeiture, by the end of the month following the month in which the period of suspension or reduction of work began. In the first application phase, the deadline for forfeiture is set by the end of the month following the month in which the August Decree came into force (i.e. by September 30, 2020 for the redundancy fund started in July).

In the case of **direct payment** of the benefits by INPS, the employer will be required to send the Institute all the data necessary for the payment or the balance of the wage subsidies by the end of the month following the month of the wage subsidy period, or, if later, within 30 days of the adoption of the granting measure.

It should be pointed out that the wage subsidy periods previously granted pursuant to the Cura Italia Decree, granted after July 12, 2020, **will be allocated –where authorized –during the first nine weeks** of the new provision.

2. Exemption from social security contributions

In order to relaunch the economy, the August Decree introduced new measures to support employment. In particular, the new Decree provides for **exemption from the payment of social security contributions** (i) for companies that do not apply for redundancy funds, (ii) for permanent hiring and (iii) for temporary hiring in the tourism and spa sectors.

A. Exemptions from social security contributions for companies that do not apply for redundancy funds

Pursuant to Article 3 of the August Decree, companies –with the exclusion of the agricultural sector –are **exempt from the payment of their social security contributions** if they:

- **do not apply for the new wage subsidies** provided for by the same Decree, and

- **have already benefited from the wage subsidies** provided for in the Cura Italia Decree in May and June 2020.

The exemption from the payment of social security contributions is granted, without prejudice to the calculation of retirement benefits, for a maximum period of four months. It is available before December 31, 2020, within the limits of double the hours of wage subsidies already paid in the months of May and June 2020, with the exclusion of premiums and contributions due to INAIL, recalculated and applied on a monthly basis.

B. Exemption from social security contributions for permanent hiring

Until December 31, 2020, Article 6 of the August Decree also excludes from the payment of social security contributions –for a **maximum of six months after hiring** – companies **hiring permanent employees** after the entry into force of the Decree (i.e. after August 15, 2020).

Agricultural employers, hiring on an open-ended basis with internship and domestic work agreements, as well as workers having a permanent employment agreement in the six months prior to being hired by the same company, are **excluded from the regulation**.

The total exemption from social security contributions is also granted in cases of **transformation of the fixed-term employment agreement into an open-ended agreement** after August 15, 2020.

Without prejudice to the rate of calculation of retirement benefits and with the exclusion of premiums and contributions due to INAIL, the exemption pursuant to the aforementioned Article 6 is granted up to a maximum exemption amount of €8,060 on an annual basis, recalculated and applied on a monthly basis.

C. Exemption from social security contributions for temporary hiring in the tourism and spa sectors

Finally, the exemption from social security contributions referred to in point B above is also granted in the same manner and over the same period of time, limited to the period of the concluded agreements and in any case up to a maximum of three months, for **hiring on fixed-term** or **seasonal employment agreements** in the tourism and spa sectors.

3. Extension of the ban on dismissal

The most anticipated and controversial provision of the August Decree is contained in Article 14: the **extension of the provisions on collective and individual dismissals** for justified objective reasons.

In particular, **the possibility of starting collective dismissal procedures** (as per Articles 4, 5 and 24 of Law no. 223/1991), as well as **the right to proceed with individual dismissals for justified objective reasons** (pursuant to Article 3 of Law no. 604/1966), **remains precluded to employers who have not fully benefited from the emergency wage subsidies** introduced by the August Decree or from the **exemption of social security contributions granted for not having requested the aforementioned subsidies** (pursuant to Article 3 of the same decree).

In the above cases, pending collective dismissal procedures started after February 23, 2020, as well as individual dismissal procedures pursuant to Article 7 of Law no. 604/1966 currently in progress, remain **suspended**.

It should be noted that Article 14 of the new Decree has introduced several exceptions to the ban on dismissal. In particular, the aforementioned foreclosures and suspensions do not apply in these cases:

- Staff who are collectively dismissed who had been previously employed in the supply service agreement and are

then **rehired following the takeover of a new contractor**, as required by law, collective agreement or clause of the supply service agreement;

- **Dismissals motivated by the final cessation of the company's activity**, following the winding up of the company without continuation, even partial, of the activity, in the event that during the winding up there is no assignment of a set of assets or activities that could constitute a transfer of the business or a branch of it pursuant to Article 2112 of the Italian Civil Code;
- A **collective bargaining agreement**, entered into by the trade unions that are comparatively more representative at national level, as **an incentive to terminate the employment relationship**, limited to workers who adhere to the said agreement (such workers are in any case entitled to the NASpl);
- **Dismissal orders in the event of bankruptcy**, when the company's provisional exercise is not contemplated, or when its cessation is ordered (in the event that provisional exercise is ordered for a specific business branch, dismissals concerning sectors not included therein are excluded from the ban).

Finally, the August Decree also includes the regularization of procedures, provided for in the previous measures, in which employers withdrew their employment agreement for a justified objective reason in 2020. This withdrawal may be **revoked at any time**, provided that the employer simultaneously applies for the redundancy fund referred to in the Cura Italia Decree.

The new provision on the ban on dismissals undoubtedly appears, at first analysis, very **complex and controversial**. First of all, because the emergency legislator –by political rather than legal choice –has decided not to name a final date for the ban on dismissals but has preferred to introduce a rolling date, i.e. variable and dependent on the contingent company situation, making the end of the ban conditional on the full use of the granted social safety nets. In fact, therefore, only companies that have **already used all the social safety nets and all the granted wage subsidy measures, and despite this are not able to continue their normal work activities**, will be able to access the first window of opportunity (i.e., presumably, in the second half of November). This latter situation is decidedly limited, considering that many companies have deliberately not fully accessed the social safety nets (even though they had the need to do so), because of the reduction in the income it would mean for their employees, and the difficulties and delays, in some cases, in direct payment by INPS.

In light thereof, the rule as conceived by the emergency legislator after months of debate seems in fact to penalize the vast majority of companies, as it forces them –though it is not stated openly –to postpone any dismissal for organizational and economic reasons until 2021.

4. Extension or renewal of fixed-term agreements without cause

In order to guarantee the continuity of fixed-term employment relationships, Article 8 of the August Decree also extends the possibility of renewing or extending fixed-term employment agreements **even in the absence of the conditions** laid down in Article 19 of Legislative Decree no. 81 of June 15, 2015.

This exemption –introduced by Article 93 of the so-called "Relaunch Decree" (Decree-Law no. 34 of May 19, 2020, converted, with amendments, by Law no. 77 of July 17, 2020) and originally provided for until August 30, 2020 –has been extended **until December 31, 2020**.

Therefore, until that date, without prejudice to the maximum total duration of 24 months, it will be possible to renew or extend fixed-term employment agreements for **a maximum period of 12 months and for one time only**, even in the

absence of the grounds introduced by Law Decree no. 87/2018 (the so-called "Dignity Decree").

It should also be noted that the new Decree **repealed** paragraph 1-bis of Article 93 of the Relaunch Decree, which provided for the much-discussed **automatic extension of fixed-term agreements** for a duration equal to the period of suspension of work. In other words, the emergency legislator abrogated a rule –which it had introduced only a few weeks ago –which, as well as being clearly harmful, had raised a considerable number of implementation problems for companies.

5. New allowances

Finally, the August Decree introduces **new allowances** for certain categories of workers. Among these, in particular, there is an allowance of €1,000 for seasonal workers in tourism, spa and entertainment sectors damaged by the COVID-19 emergency and for other categories of workers (members of the Entertainment Workers' Pension Fund who meet certain requirements, seasonal employees belonging to other sectors, intermittents and home sales agents), as well as an allowance of €600 for seafarers and seasonal sports workers.

Your Key Contacts



Davide Boffi

Partner, Milan

D +39 02 726 268 00

M +39 348 23 78 195

davide.boffi@dentons.com