

March 30, 2020

The Italian National Social Security Authority (**INPS**) has finally issued the very important **Circular no. 47 of March 28, 2020** (available here), in which it explains the system of wage subsidy measures provided in the "Cura Italia" Decree, which is designed to respond to the temporary layoffs due to the COVID-19 epidemiological emergency. The Circular, issued in agreement with the Ministry of Labor and Social Policies, provides the **first guidelines for the application** of the extraordinary measures introduced by Decree Law no. 18/2020, together with **instructions on the correct management of the granting process** relating to the procedures provided for by Articles 19, 20, 21 and 22 of the Decree, also underlining how they **derogate from the current rules** governing access to the redundancy funds.

Moreover, with a very important clarification, the National Social Security Authority has confirmed that **any outstanding vacation days are not an obstacle to the acceptance of the wage subsidies application** and recalls the principle of prevalence of the redundancy fund over sick pay.

Let's review the highlights of the INPS Circular.

## 1. Ordinary redundancy fund (Cassa integrazione ordinaria, CIGO) - Article 19

For employers who have been forced to suspend or reduce their work activities due to events related to the epidemiological emergency, Article 19 of the "Cura Italia" Decree has introduced a **simplified procedure** for the submission of applications for the ordinary redundancy fund (CIGO).

The application for CIGO shall contain the new "**national COVID-19**" reason and may be submitted for periods from February 23, 2020, to August 31, 2020, for a maximum duration of nine weeks.

Moreover, Circular no. 47/2020 confirms the exceptions provided for by the Emergency Decree with respect to ordinary regulations. In particular:

- **the additional contribution for the CIGO will not be due;**
- **no trade union agreement is necessary**, but employers will still have to carry out the process of information, consultation and joint examination with the trade unions within three days of the prior communication;
- **the duration limits provided for in the ordinary legislation will not be taken into account**, therefore periods with a " national COVID-19 " reasoning will not be counted in the case of subsequent applications for redundancy funds;
- **the technical report shall not be attached to the application**, but only the list of targeted employees. Therefore, the companies will not have to provide any evidence regarding the transience of the event and the resumption of work, nor will they have to prove that the event is not attributable to the entrepreneur or the employees;

- **the requirement of 90 days' seniority of actual work is not required**, but it will be sufficient to be employed by the company on February 23, 2020. Workers hired after that date, however, are not covered by these rules and therefore cannot benefit from wage subsidies;
- **the deadline for the submission of applications** with COVID-19 as a reason is at the end of the fourth month following the month in which the period of suspension or reduction of work began.

With regard to the terms of payment, the **possibility** for the company to **pay the wage subsidies in advance** and to settle the amounts subsequently remains unchanged, as well as, by way of exception, the possibility of **requesting direct payment** by INPS. In the latter case, there is no obligation to submit documentation proving the company's financial difficulties.

Companies that already have an authorization for CIGO or have submitted an application for CIGO that is not yet authorized, for any reason, may still apply for CIGO with the reason "national COVID-19", even for periods already authorized or for periods covered by applications already submitted.

## 2. Applications for the ordinary redundancy fund from companies already drawing from the extraordinary redundancy fund (Cassa integrazione straordinaria, CIGS) - Article 20

Companies that are using the extraordinary redundancy fund (CIGS) on February 23, 2020, may apply for CIGO in a simplified process and with the derogations described above, for a period not exceeding nine weeks. **If these companies do not fall within the scope to apply for CIGO** –as specified in the INPS Circular –**they can apply for the redundancy fund by way of derogation.**

The application for ordinary redundancy funds shall be submitted for the **reason "national COVID-19 - CIGS suspension"**; the subsequent granting of CIGO replaces the extraordinary treatment already in progress.

## 3. Wage Subsidies Fund (Fondo di integrazione salariale, FIS)

Employers with more than five employees, which do not fall within the scope of the redundancy fund –ordinary and extraordinary –and which belong to sectors in which no agreements have been made for the activation of bilateral or alternative bilateral solidarity funds, can apply for the ordinary **allowance guaranteed by the Wage Subsidies Fund (FIS)**, pursuant to Article 19 of Law Decree no. 18/2020.

## 4. Redundancy fund by way of derogation (Cassa integrazione guadagni in deroga, CIGD) - Article 22

These are probably the most keenly awaited and important clarifications. The "Cura Italia" Decree had, in fact, given rise to various interpretative doubts, especially with regard to the **"Redundancy fund by way of derogation" (CIGD)**, governed by Article 22 of Law Decree no. 18/2020. In this respect, the new INPS Circular no. 47/2020 provided further clarifications regarding the scope and the procedure for granting CIGD.

Article 22 of the aforementioned Decree provides that the regions and autonomous provinces may recognize the CIGD treatment for the duration of the suspension of the employment relationship and in any case for a period not exceeding nine weeks, with reference to employers in the private sector including agricultural, fishing and third sector employers, as well as recognized religious bodies, for which the protections provided by the current provisions on suspension or reduction of working hours during the employment relationship do not apply.

In this regard, the INPS reiterates that employers which have the right to access ordinary benefits (CIGO and the ordinary allowance guaranteed by the FIS or bilateral solidarity funds), shall apply for the benefit with a "national

COVID-19" reasoning to their management and will not be able to access the redundancy fund by way of derogation. As a consequence, **companies that, being entitled only to CIGS, cannot have access to an ordinary redundancy fund with a COVID-19 reason, will have access to the redundancy fund by way of derogation.**

With regard to the procedure for the granting CIGD, Article 22 of the Decree Law no. 18/2020 provides that employers with a company size up to five employees are exempted from the agreement, while for companies with more than five employees, CIGD will be authorized by the regions and autonomous provinces **after an agreement**, also reached electronically, between the employers and the main Trade Unions at national level.

On this point, in recent weeks the individual regions have already concluded various framework agreements with the Trade Unions to define the application procedure for CIGD. **However**, in view of the quite different framework agreements, the INPS has provided further clarifications:

- **there is no need for a Trade Union agreement**, since the agreement is considered to have been reached with the finalization of the procedure of information, consultation and joint examination as provided for CIGO (it is important to underline that this provision of the INPS seems to contrast with the letter of Article 22 of the Decree Law, which instead expressly requires the Trade Union agreement, as mentioned above);
- the beneficiaries of CIGD shall be entitled to the **notional contribution** and related ancillary charges (ANF), where applicable;
- **domestic employers** are **excluded** from the application of this rule;
- CIGD also applies to **intermittent employees**, if they are unable to work due to the COVID-19 epidemiological emergency;
- the provisions relating to the **seniority** requirement shall not apply, nor shall the **additional contribution** be due.

**Applications for access** to the redundancy fund by way of derogation shall be submitted exclusively to the regions and autonomous provinces concerned, which will carry out the investigation in the chronological order in which they are submitted. Subsequently, the regions will send the concession decree and the list of beneficiaries to the INPS electronically.

On the other hand, with regard to employers with **production units located in five or more regions or autonomous provinces**, the Circular refers to the Decree no. 3 of March 24, 2020, of the Minister of Labor, which provided that CIGD will be granted by a decree of the same ministry. Therefore, as also specified in the new INPS Circular, **the application for access to CIGD by these companies shall be submitted directly to the Ministry of Labor and Social Policies**, which, **within 30 days** of sending the application by the company, will carry out the investigation and, if the conditions are met, will quantify the expected cost and send it to the INPS.

## 5. Outstanding vacation days, sick leave and redundancy fund

Lastly, the INPS expressly points out that, as already clarified in Message no. 3777/2019, **any outstanding holiday days are not an obstacle to the acceptance of the redundancy fund application**. Therefore, companies will not have to provide data on the holidays still to be taken by the workers interested in the request for wage subsidies.

In addition, the INPS seems to change its interpretation regarding the prevalence of the redundancy fund treatment over sick pay, expressly provided for by Article 3, paragraph 7 of Legislative Decree no. 148/2015.

In fact, with Circular no. 197/2015, the institute in some cases still considered the sick pay to prevail over the redundancy fund. Instead, the new Circular expressly refers to Article 3, paragraph 7, according to which **"wage subsidies replace the daily sick pay in case of illness, as well as the possible contractually agreed subsidies"**.

# Your Key Contacts



**Davide Boffi**

Partner, Milan

D +39 02 726 268 00

M +39 348 23 78 195

[davide.boffi@dentons.com](mailto:davide.boffi@dentons.com)