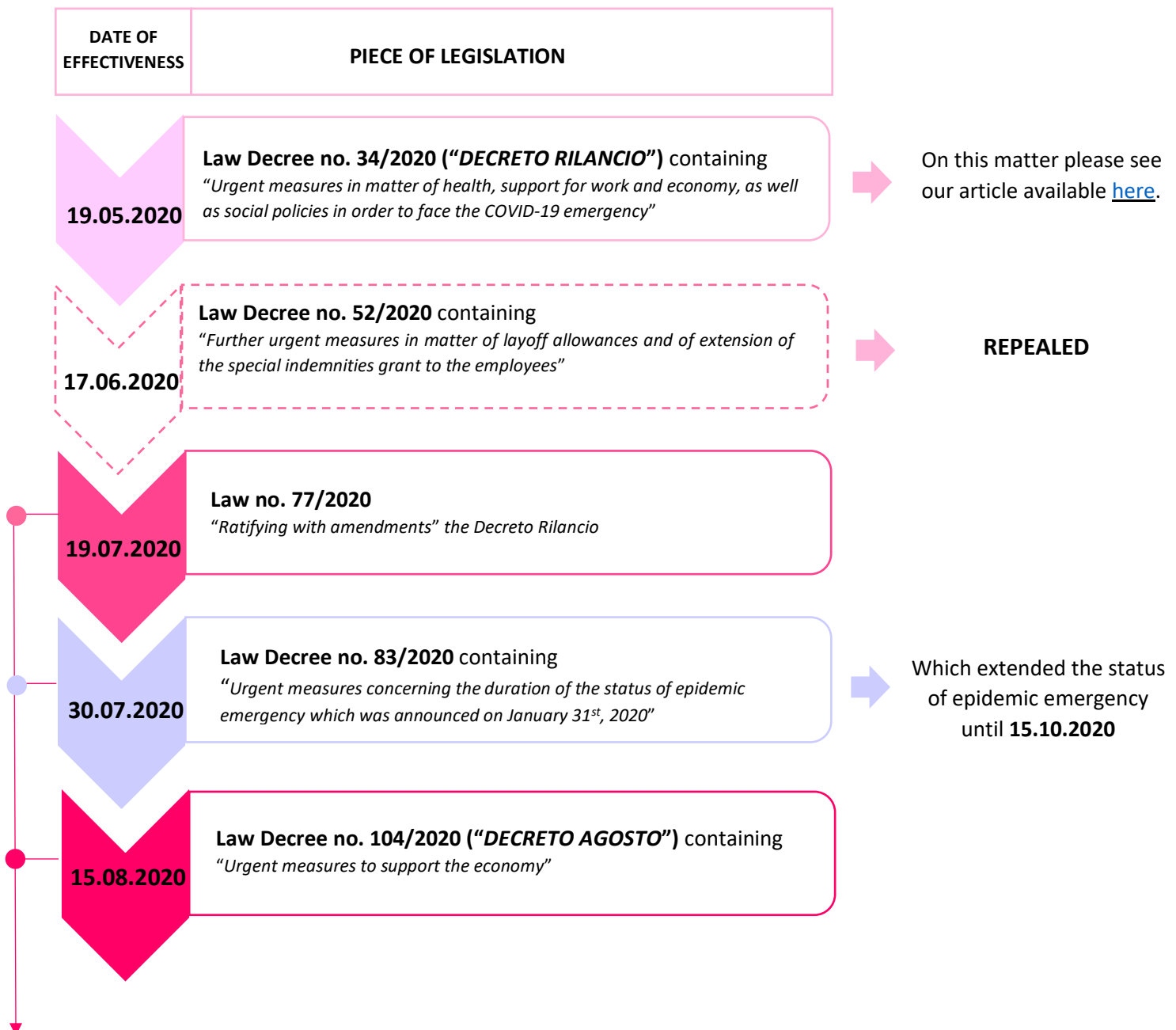








CORONAVIRUS OVERCOMING THE DIFFICULTIES

THE RATIFICATION OF LAW DECREE NO. 34/2020 (“*DECRETO RILANCIO*”) AND LAW DECREE NO. 104/2020 (“*DECRETO AGOSTO*”): MEASURES IN MATTER OF EMPLOYMENT

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1. LAYOFF ALLOWANCES ON THE GROUND OF THE “COVID-19 EMERGENCY”

In addition to the 9 weeks of subsidised layoff as formerly provided by the Italian legislation at the very beginning of the Covid-19 emergency, the *Decreto Rilancio* introduced 5 weeks of subsidised layoff, with a possible extension of 4 weeks. As a result, the overall length of the subsidised layoff as initially contemplated by the Italian legislation was 18 weeks.

Formerly, the above 4-week extension of the subsidised layoff had to be used after September 1st, 2020 only. Law no. 77/2020, however, allowed the employers to benefit from such 4-week layoff extension even before September 1st, 2020, provided that they had already benefitted from all the above 14-week (9+5) layoff. In other words, employers were permitted to seamlessly benefit from the entire 18-week subsidised layoff up to and until October 31st, 2020.

Thereafter, the *Decreto Agosto* granted further **18 weeks (9 + 9 weeks)** of subsidised layoff on the ground of the “Covid-19 emergency”, **to be used as from July 13th, 2020 up to December 31st, 2020**. The *Decreto Agosto* specified that the weeks of layoff on the ground of the “Covid-19 emergency” used after July 12th, 2020, even if contemplated by the preceding legislation, would count against the first 9-week tranche of layoff contemplated by the same *Decreto Agosto*.

Employers may benefit from the **second 9-week tranche** of subsidised layoff upon the condition that they have already benefitted from the first 9-week tranche. To this end employers are required to pay a **duty** equal to:

- 1.1. **9%** of the remuneration of each suspended employee for the period of the layoff, for those employers which incurred a shortfall in their turnover for the first six-month period of year 2020 lower than 20% of their turnover for the first six-month period of year 2019;

- 1.2. **18%** of the remuneration of each suspended employee for the period of the layoff, for those employers which did not incur shortfalls in their turnover.

No duty is to be paid by those employers which: **(i)** in the first six-month period of year 2020 incurred a shortfall in their turnover of 20% or more of their turnover for the first six-month period of year 2019; and/or **(ii)** started their activity after January 1st, 2019.

Relevant **application** is to be submitted to the Italian National Institute for Social Security (“INPS”) **by the end of the month following that of beginning of the layoff**. In order for the employer to benefit from the second 9-week tranche of layoff, a self-certification of the employer attesting the shortfall in its turnover is to be attached. In case of failure of the employer to attach such self-certification, a duty at a 18% rate would automatically apply.

2. EXEMPTION FROM THE OBLIGATION TO PAY SOCIAL SECURITY CONTRIBUTIONS

According to the *Decreto Agosto*:

- 2.1. those employers (not operating in the agricultural sector) which: **(i)** will decide not to benefit from the subsidised layoff under §1. above; and **(ii)** in May and June 2020 benefitted from the subsidised layoff contemplated by the preceding legislation; will be exempted from the obligation to pay the social security contributions due by them for a period of time equal to twice as much the period of subsidised layoff they benefitted from, in any case expiring on December 31st, 2020, with a cap of 4 months;
- 2.2. those employers (not operating in the agricultural sector) which in the period August 15th, 2020 through December 31st, 2020 will hire new employees under open-ended employment contracts will be entirely exempted from the obligation to pay the social security contributions for these employees for a 6-month period following the hiring date and with an annual cap of € 8,060 per each of them.

The exemption under this §2.2. does not apply to:

- 2.2.1. employees hired under an apprenticeship contract;
- 2.2.2. household workers; and
- 2.2.3. employees hired during the previous 6 months under an open-ended employment contract and then re-hired by the same employer.

While, the exemption under this §2.2. does apply to:

- 2.2.4. employees hired under a fixed-term employment contract then transformed into an open-ended employment contract after August 15th, 2020.

The above exemptions will be in addition to exemptions and/or reductions of the social security contributions rates as otherwise contemplated by the existing legislation.

Premiums to be paid to the National Insurance Against Industrial Accidents (“INAIL”) are not included in the above exemptions.

3. FIXED-TERM CONTRACTS

- 3.1. According to *Decreto Agosto*, **until December 31st, 2020 employers may renew fixed-term employment contracts as well as postpone their term for a maximum of 12 months and for one time only**, without being required to indicate any of the grounds set

by Law Decree no. 87/2018 (*Decreto Dignità*) to this end. Under no circumstances the duration of the above contracts may exceed 24 months.

- 3.2.** For apprentices and fixed-term workers (including those supplied by a temporary work agency) whose work was suspended due to the Covid-19 emergency, Law no. 77/2020 extended the term of their contracts for a period of time equal to that of the suspension. By operation of *Decreto Agosto*, however, the above applies only to contracts the term of which expired in the period July 19th, 2020 through August 14th, 2020.

4. DISMISSAL PROHIBITION

As from August 18th, 2020:

- 4.1. employers benefitting from the subsidised layoff under §1.** above must not make employees redundant (both on an individual or a collective basis) until the end of the 18-week period of layoff;
- 4.2. employers exempted from the obligation to pay social security contributions according to §2.1.** above must not make employees redundant (both on an individual or a collective basis) until the end of the exemption period¹. Thus, the duration of the period of prohibition of the dismissal varies in accordance with the length of the subsidised layoff used by the employer in the months of May and June 2020, with a cap of 4 months;
- 4.3. employers which did not entirely use the subsidised layoff under §1. above, or did not benefit from the exemption under §2.1 above,** will not be permitted to make employees redundant (both on an individual or a collective basis) until December 31st, 2020².

Dismissals are allowed in the event of:

- 4.4.** closing down of the company without continuation of its activity, provided, however, that the closing down is not the result of a transfer of a going concern;
- 4.5.** entering into of a collective bargaining agreement at a company level contemplating the payment of an incentive to leave to those employees volunteering for terminating their employment contracts;
- 4.6.** bankruptcy, without continuation of the operation of the company;
- 4.7.** employees being hired by a new employer which a contract for works or services was assigned to.

The *Decreto Agosto* confirmed that individual dismissals for redundancy made in year 2020 may be revoked at any time and replaced with a subsidised layoff for the Covid-19 emergency without penalties for the employer.

¹ In case of breach of such obligation, the employer (i) may retroactively lose the benefit under §2.1. above; and (ii) may be denied access to the layoff allowances under §1. above.

² Clarifications on this topic should be released by the Italian employment Authorities.

5. SMART WORKING

The **right** to work on a smart working pattern is granted:

- 5.1. throughout the duration of the Covid-19 emergency, *i.e.* **until October 15th, 2020**³, to those **employees who are exposed to a high risk of contamination** due to: **(i)** age; **or (ii)** health factors (such as immune-depression, oncological pathologies, life-saving therapies, comorbidities). The high risk of contamination is to be assessed by the company doctor;
- 5.2. **until September 14th, 2020**, to those **employees with at least one child under 14 years old**, provided that none of the parents benefits from income supports or voluntarily is not working; and
- 5.3. **until October 15th, 2020**, to those **employees with serious disabilities or caring for a disabled person** of their family.

However, the working activity discharged by the above employees is to be compatible with a smart working pattern.

As to employees not meeting the above conditions, until October 15th, 2020 employers may impose a smart working pattern on them even without a previous agreement. If so, employers must provide the employees concerned with an information in matter of health and safety at work by using a form made available by INAIL.

6. PARENTAL LEAVES

Law no. 77/2020 extended up to August 31st, 2020⁴ the term until which employees with children no older than 12 may use the 30-day parental leave period contemplated by the *Decreto Rilancio*. Such parental leave is to be alternately used by either parent, on a daily or hourly basis. During the parental leave employees will be paid 50% of their remuneration.

August 27th, 2020

³ This is as of today's date.

⁴ The former deadline was July 31st, 2020.

Il presente articolo ha esclusivamente finalità informative e non costituisce parere legale.

This article is exclusively for information purposes, and should not be considered as legal advice.



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