



26 MARCH 2021

## NEW EMPLOYMENT LAW PROVISIONS OF THE “SOSTEGNI DECREE”

On March 23<sup>rd</sup>, 2021, Law Decree no. 41/2021 (so-called “*Sostegni Decree*”) came into force, introducing a number of measures in the field of employment law, aimed at addressing the consequences arising from COVID-19 outbreak. Hereunder the main **news**.

### A. EXTENSION OF ORDINARY WAGE GUARANTEE FUND (OWGF), ORDINARY ALLOWANCE AND WAGE GUARANTEE FUND IN DEROGATION (WGFD)

#### *Prior to the “Sostegni Decree” ...*

The so-called 2021 Budget Law, lastly, had introduced the possibility, for employers, to apply for the granting of the Ordinary Wages Guarantee Fund, Ordinary Allowance and Wage Guarantee Fund in derogation provided for by the previous emergency legislation for a maximum duration of (further) 12 weeks, to be used in the period between 1 January 2021 and 31 March 2021 for Ordinary Wage Guarantee Fund treatments and in the period between 1 January 2021 and 30 June 2021, for the Ordinary Allowance and Wage Guarantee Fund in derogation.

**News!** The “*Sostegni Decree*” recognizes the possibility for employers, which suspend or reduce their work activities for events related to the epidemiological emergency from COVID-19, to request the granting of:

- **Ordinary Wages Guarantee Fund** for additional 13 weeks during the period between 1 April and 30 June 2021;
- **Ordinary Allowance** for additional 28 weeks during the period between 1 April and 31 December 2021;
- **Wage Guarantee Fund in derogation** for additional 28 weeks during the period between 1 April and 31 December 2021.

The aforementioned treatments are intended for employees employed as of the entry into force of the “*Sostegni Decree*” (i.e., as of **23 March 2021**).

No additional contribution will be charged.



It should be noted that the 2021 Budget Law had provided the possibility for employers to request the granting of Ordinary Allowance and Wage Guarantee Fund in derogation for a period of 12 weeks to be placed in the period between 1 January 2021 and 30 June 2021.

The Decree does not contain any provisions regarding the regulation of the aforementioned periods in relation to the new periods granted as of 1 April 2021.

A debate of possible overlap between the 12 weeks of Ordinary Allowance or Wage Guarantee Fund in derogation that the employer could use after 31 March 2021 (and until 30 June 2021) provided for by 2021 Budget Law and the 28 weeks of the same treatments that the employer could use from 1 April 2021 provided for by the “*Sostegni Decree*” could exist.

In absence of specific provisions on this point (accumulation or absorption), it can be argued that from April 1<sup>st</sup> employers may use both the 12 weeks provided for by the 2021 Budget Law - if not yet exhausted - and the 28 weeks introduced by the “*Sostegni Decree*”.

On this point, we are waiting to receive clarifications.

## B. EXTENSION OF THE DISMISSAL’S BAN

### *Prior to the “Sostegni Decree” ...*

The previous regulations provided for (i) a ban on individual dismissals for justified objective reasons pursuant to art. 3, Law 604/1966, (ii) a ban on collective dismissals, (iii) the suspension of the ongoing collective dismissals procedures, as well as (iv) the suspension of dismissal procedures for justified objective reasons in progress pursuant to art. 7, Law 604/1966 (i.e., procedures pending before the Territorial Labour Inspectorate) until **31 March 2021**.

**News!** The aforementioned ban on individual and collective dismissals (with suspension of the ongoing procedures) and the suspension of individual dismissal procedures before the Territorial Labour Inspectorate have been extended for all employers until **30 June 2021**.

From **1 July 2021** until **31 October 2021**, the ban of dismissals, both collective and individual, is limited exclusively to employers who benefit of the Ordinary Allowance and of the Wage Guarantee Fund in derogation referred to in paragraph A<sup>1</sup> above and of the Ordinary Allowance for agricultural employees.

On this issue the formulation of the regulation leaves room for a doubtful interpretation: it is not clear whether the ban of dismissals applies to all employers who fall within the scope of the abovementioned lay-offs or only for those that, starting from 30 June 2021, make use of it. Clarifications on this point are awaited.

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<sup>1</sup> Employers not eligible to receive the Ordinary Wages Guarantee Fund.



The possibility to proceed with dismissals is confirmed in the following cases:

- definitive termination of the company's activities, resulting from the liquidation of the company without continuation, even partial, of the activities, in cases where during the liquidation process there is no transfer of a group of assets or activities that may constitute a transfer of the company or a part of it pursuant to art. 2112 of the Italian Civil Code;
- company collective agreement stipulated by the most representative trade unions at national level (not, therefore, the so-called “*Rappresentanze sindacali aziendali/Rappresenze Sindacali Unitarie*”) aimed at encouraging to terminate the employment relationship, limited to employees who adhere to the aforementioned agreement (to these employees is, however, recognized the NASpi treatment);
- bankruptcy, when the provisional business continuity of the company is not foreseen, or its termination is ordered (in the event that the provisional business continuity is ordered for a specific part of the company, are excluded from the ban the dismissals concerning the sectors not included in the part of the company).

It must also be confirmed that **the ban of dismissals does not apply** with reference to:

- the individual dismissal of executives<sup>2</sup>;
- termination of the apprenticeship agreement at the end of the training period;
- dismissal due to the exceeding of the so-called “period of grace”;
- dismissal for disciplinary reasons (just cause/justified subjective reason);
- dismissal for failure to pass the probationary period.

### C. EXTENSION AND RENEWAL OF FIXED-TERM AGREEMENTS

#### *Prior to the “Sostegni Decree” ...*

The 2021 Budget Law had provided until **31 March 2021** the possibility of renewal or extension of the fixed term agreements **without any justifying reason**, only once and for a maximum period of 12 months and within the overall limit of 24 months provided for by Legislative Decree no. 81/2015.

**Novità!** The “*Sostegni Decree*” has extended until **31 December 2021** the possibility of renewing or extending fixed-term agreements without any justifying reason imposed by law, only once and for a maximum period of 12 months and without prejudice to the overall limit of 24 months provided for by Legislative Decree 81/2015.

The Decree has specified that renewals and extensions already carried out before the Decree came into force are not taken into account. This means that also fixed-term agreements that

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<sup>2</sup> On this point, however, it should be noted that the Court of Rome, Employment Section, by decision dated 26 February 2021 has (surprisingly) stated that the ban on dismissals for economic reasons, introduced by the emergency legislation, must be considered applicable also to executives.



have already been renewed or extended **during the year 2020 or in the first months of 2021** (even under the derogations provided for by the previous legislative measures issued in the Covid-19 period) may be extended or renewed once again, pursuant to the aforementioned provision of the “*Sostegni Decree*” (as mentioned, only once, for a maximum of 12 months and within the overall limit of 24 months).

The term set on **31 December 2021** does not refer to the expiry of the fixed-term agreement but to the moment in which the agreement is extended or renewed. This means that the relationship may continue into 2022, provided that the extension or renewal of the agreement takes place no later than 31 December 2021.

This measure must also be considered applicable to the **fixed term supply agreement**.

It can be assumed, on the basis of the clarification contained in the note of the Territorial Labour Inspectorate dated 16 September 2020, that any extension without a reason provided for by the “*Sostegni Decree*” should not be counted in the maximum number of the four extensions allowed by law, as well as any renewal may take place without the respect of the so-called period “*cuscinetto*” or “stop and go” that must normally occur between one fixed-term agreement and another (*i.e.* 10 days if the first agreement has a duration of up to 6 months, 20 days if the first contract has a duration of more than 6 months).

#### D. FRAGILE EMPLOYEES

##### *Prior to the “Sostegni Decree”...*

The 2021 Budget Law had extended until 28 February 2021 the application of art. 26, paragraph 2-*bis*, of the so called “*Cura Italia Decree*” which provided for the so-called “*fragili*” employees (*i.e.* those in possession of a recognized disability with a serious nature, pursuant to art. 3, paragraph 3, Law no. 104/1992, or in possession of certification attesting to a risk condition, issued by the competent medical-legal authorities): (i) performance, as a rule, of work activities in Smart Working, even though the assignment to a different task included in the same category or area of classification, as defined by the collective agreements in force, or the performance of specific professional training activities, even in remote; (ii) equal treatment between the absence from work and the employees' hospitalization.

**News!** The “*Sostegni Decree*” has extended the application of the aforementioned measures until **30 June 2021** and has specified that periods of absence from work during the aforesaid period **shall not be taken into account** for the purposes of the grace period.

The applicability of these measures is also envisaged for the period from 1 March 2021 to 23 March 2021 (date on which the “*Sostegni Decree*” came into force).



#### E. ABSENCE OF THE EXEMPTION FROM SOCIAL SECURITY CONTRIBUTIONS FOR COMPANIES THAT DO NOT REQUIRE LAY-OFFS

It should be mentioned that the “*Sostegni Decree*” has not provided exemption from social security contributions for employers that do not require the lay-offs (this measure was first introduced by the so called “*August Decree*” and then reintroduced by the so called “*Ristori Decree*” and the 2021 Budget Law).

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