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MEASURES IMPLEMENTED IN ITALY TO FIGHT THE PANDEMIC

In the *Financial Times* on 25 March 2020 the former President of the European Central Bank, Mario Draghi, published a highly influential article about the socio-economic effects of the Covid-19 pandemic in all the countries of the world: « The coronavirus pandemic is a human tragedy of potentially biblical proportions. Many today are living in fear of their lives or mourning their loved ones. The actions being taken by governments to prevent our health systems from being overwhelmed are brave and necessary. They must be supported »¹.

Italy was one of the countries most affected in the early stages of the pandemic, and starting from the end of February 2020 the Italian Government adopted measures to contain Covid-19 and prevent contagion also in the workplace, in particular by intervening with several Prime Ministerial Decrees and with Legislative Decrees.

Over the last six months, coinciding with the lock-down and the gradual recovery of socio-economic activities, the main measures were three: the « Cura Italia » Decree of March-April (Decree Law no. 18/2020, converted into Act no. 27/2020), the « Rilancio » Decree of May-July (Decree Law no. 34/2020 converted into Act no. 77/2020) and the « Ferragosto » Decree (Decree Law no. 104/2020) that in general have served to deal with the epidemiological emergency with the aim of reducing the negative impact on employment and promoting economic and productive recovery.

Two employment measures in particular are attracting the attention of labour law experts and the general public: the use of « agile work » or distance working, and the prohibition of dismissals.

The first concerns the internal flexibility of the employment relationship (I), whereas the second concerns the flexibility of the termination of employment (II).

¹ M. Draghi, « We face a war against coronavirus and must mobilise accordingly », *Financial Times*, 25 March 2020.

I - THE FLEXIBILITY OF THE EMPLOYMENT RELATIONSHIP

Agile work is a mode of employment established by Act no. 81/2017, though it is not in itself an employment contract. It is characterized by the absence of constraints on time and physical space and an organization of work that takes place by means of phases, cycles and objectives enabling workers to work remotely from the office or workplace using a range of technological devices. A specific agreement has to be concluded between the employer and the employee, but at the beginning of the emergency it was provided that agile work can take place even in the absence of such an agreement, by unilateral decision of the employer (among the first measures, Prime Ministerial Decree, 1 March 2020).

Recently it was reported that before the Covid-19 emergency about 500,000 employees were working remotely, while in the weeks after the lockdown was introduced it was estimated that there were about eight million agile workers, both in the public and the private sectors. In concrete terms, it was mainly work taking place outside the company and offices and it could be seen as the introduction of a form of outsourcing in the homes of employees.

It has been argued that this unusual form of outsourcing was useful in the acute phase of the emergency to avoid physical contact and social gatherings, but it has not resulted in innovation in work performance, except in companies already particularly advanced from the technological point of view. Instead, agile work introduced by the emergency measures has made management control more problematic and less consistent, in some cases with negative consequences for the lives of families, especially for women in terms of work-life balance, as: they have to reconcile the needs of remote working with the care of children at home and with distance learning due to school closures².

However, five lessons have been highlighted by experts in digital innovation and transformation:

- 1) the ability to work at a distance is an essential condition for the resilience of the system in using digital resources;
- 2) the forced adoption of distance working has shown that a different way of working is possible and effective;
- 3) the use and development of digital skills has been accelerated, and this would have taken years in the absence of the pandemic;
- 4) more attention should be given to objectives and responsibility rather than to working hours and fulfillment in the workplace;
- 5) the expansion and development of new and more sustainable models of living and urbanization is needed³.

The latest measures provide that among the measures aimed at countering the spread of Covid-19, agile working is a method to be recommended for the performance of work that can be carried out from home or in another manner at a distance (President of the Council of Ministers Decree, 7 August 2020). The state

2 T. Treu, « E' la nuova normalità, ora niente vincoli », *Il Sole 24 Ore*, 26 August 2020.

3 M. Corso, « Cinque lezioni da memorizzare per il futuro », *Il Sole 24 Ore*, 26 August 2020.

of epidemiological emergency in Italy was declared on 31 January 2020 and has since been extended until 15 October 2020 (Decree Law no. 83/2020). Provision is made for the extension of the simplified regulation of agile work concerning the notifications that the employer is required to provide and the categories of workers involved in distance working (for example, immunodepressed workers).

II - THE FLEXIBILITY OF THE TERMINATION OF EMPLOYMENT

The other measure attracting attention is the prohibition of dismissals during the various phases to deal with Covid-19. The « Cura Italia » Decree (Article 46) initially laid down the prohibition of dismissals for economic reasons, both for individual and collective dismissals, until 18 May 2020. The prohibition has since been extended until 31 December 2020 (Article 14 « Ferragosto » Decree), with certain exceptions. The rule of the prohibition of dismissal raises some doubts about constitutionality concerning the freedom of economic initiative (Article 41 Italian Constitution), also because of the doubts arising from the extension of the prohibition of dismissal. In the emergency phase, the prohibition was general, regardless of the use of social safety net measures, in particular, income support measures.

Now the legislation provides that the prohibition of dismissals ceases when the social safety net measures are adopted, and the exemption from social security contributions established by law is terminated (Article 3 of « Ferragosto » Decree). The trade-off between the prohibition of dismissals and income support measures is now more flexible and is linked to the effective use of income support measures or exemption from social security contributions⁴.

In addition, there are three cases in which it is allowed to proceed with collective and individual dismissals for economic reasons⁵. The first exception to the prohibition allows dismissals motivated by the definitive cessation of company activity, following the liquidation of the company without even partial continuation of activity. The second exception concerns the presence of a collective agreement to encourage the termination of employment: the company is allowed to dismiss workers in cases in which there is a collective company-level agreement that provides an incentive for the employee to terminate the employment contract, allowing the employer and the employee to negotiate a consensual termination of the relationship allowing the worker to receive monthly unemployment benefit (Naspi). It has been noted that from the juridical point of view this is a new type of collective agreement that can be classified as an authorizing collective agreement.

It allows the employer to circumvent the regulations on dismissal with a consensual termination while at the same time safeguarding the worker's right to receive unemployment benefits. The company-level collective agreement is the prerequisite for obtaining social safety net measures: the collective agreement, which specifies the date of termination and the economic incentive for the worker, also makes provision for consent to the termination of the employment contract. As

4 F. Scarpelli, « Proroga del blocco dei licenziamenti. Per favore diamone interpretazioni ragionevoli », *Comma 2. Lavoro è dignità* : www.comma2.it (20 August 2020).

5 C. Tucci, « Da oggi licenziamenti possibili in sei casi », *Il Sole 24 Ore*, 18 August 2020.

a result, it is a complex case that terminates the employment contract while granting the right to receive social safety net measures⁶. The third exception is in the case of bankruptcy without the continuation of the company's business: it is therefore possible to dismiss workers in case of bankruptcy when there is no provision for the provisional exercise of the company and the company is placed in liquidation. In conclusion, the rationale of this legislation is to encourage companies not to dismiss their workers, at least until they have the opportunity to obtain social safety net measures, and subject to the exceptions to the prohibition of dismissal established by law⁷.

6 A. Perulli, « Rapporto di lavoro sciolto se si firma l'accordo sindacale », *Il Sole 24 Ore*, 28 August 2020.

7 F. Scarpelli, « Proroga del blocco dei licenziamenti. Per favore diamone interpretazioni ragionevoli », *op. cit.*