

# Overview on the Italian “unemployment benefits” in light of the new rules introduced by the so-called “anti-crisis Decree” (Decreto Legge no. 185 of November 29, 2008 converted into Law no. 2 of January 28, 2009)

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## 1. Preamble

The recently enacted Decreto Legge no. 185 of November 29, 2008 converted into Law no. 2 of January 28, 2009 (hereinafter the “**Decree no. 185/2008**”) introduced a number of measures in favour of certain categories of workers employed by companies experiencing financial/jobs crisis who, due to the lack of certain requirements, would not benefit from the “unemployment benefits” system ordinarily in place in Italy.

In this connection, we point out that it may not be appropriate, in fact, referring to the “Italian unemployment benefits system”, the Italian “unemployment benefits” being actually a number of measures/benefits of different nature established by different laws or specific provisions enacted over the years whose content and interpretation may result unclear when the various laws and provisions are read and combined jointly.

The above being clarified, this newsletter shall first provide a brief overview on the “unemployment benefits” available to Italian companies which need to manage financial/jobs crisis and, then, shall outline the measures just introduced by the Italian Government to deal with the current crisis affecting the global economy and contained in the Decree no. 185/2008 which has been called, for this reason, “anti-crisis Decree”.

## 2. The main “unemployment benefits” available to Italian companies

Below are the most significant “unemployment benefits” provided for by Italian law:

- Ordinary and Extraordinary Wages Guarantee Fund (*Cassa Integrazione Guadagni*)
- Mobility Treatment (*Indennità di Mobilità*)
- Ordinary Unemployment Indemnity (*Indennità Ordinaria di Disoccupazione*)

### *Ordinary (CIG) and Extraordinary (CIGS) Wages Guarantee Fund*

The Wages Guarantee Fund **supplements** employees’ wage which has been reduced as a consequence of temporary **suspension from work** due to difficulties/crisis experienced by the employing company, on the assumption, however, that such a crisis/difficulties shall be successfully overcome within a certain period of time. The Ordinary Wage Guarantee Fund can be used in case of **temporary difficulties** not attributable to the employer, and is mainly available to companies of the **manufacturing sector**, regardless of the number of the employed workers. The Extraordinary Wage Guarantee Fund is, instead, related to severe **crisis**,

**restructuring, insolvency procedures** and usually follows a decision taken by the employer. The CIGS is, in principle, available to companies employing more than 15 employees save for certain exceptions (for example, due to special rules in force, companies belonging to the commercial sector can ask for application of CIGS if they employ more than 50 employees).

#### *Mobility Treatment*

In case of dismissals due to redundancy of personnel ("collective dismissals"), the dismissed employee is entitled to receive, amongst other things and subject to certain conditions, an indemnity (the *Indennità di Mobilità*) paid by INPS (the Italian Social Security Agency). In principle, this financial aid is due to employees hired under an indefinite-term employment agreement, having a certain seniority, and dismissed by a company meeting the requirements to benefit from CIGS (see above). The ordinary length of the Mobility Treatment is 12 months, but can be further extended for those employees exceeding a certain age or resident in certain underdeveloped areas.

#### *The Ordinary Unemployment Indemnity*

The Ordinary Unemployment Indemnity, to be paid by INPS, is a financial aid for unemployed employees, whose legal regime varies depending on the relevant sector. A special regime is established for the Ordinary Unemployment Indemnity due to employees of the agriculture and building industry. As a general rule, the Ordinary Unemployment Indemnity is payable to employees having lost their jobs **involuntarily**, being enrolled at INPS for at least 2 years and having accrued at least 52 weeks social security contributions during the two years preceding the date of termination of the employment relationship. The length of the financial aid at issue may vary: it lasts for 6/7 months up to 12 months in special cases.

### 3. The new measures introduced by Decree no. 185/2008: granting of the Ordinary Unemployment Indemnity to employees suspended from work due to financial/jobs crisis

Decree no. 185/2008 introduced, among others, the right to payment of the Ordinary Unemployment Indemnity (see above) in favour of those employees suspended from work due to financial/jobs crisis who, according to the ordinary rules in place, would not benefit from the Wages Guarantee Fund (see above). In other words, the anti-crisis Decree expanded the scope of the Ordinary Unemployment Indemnity regime in order to include those employees who (i) are **not**, in fact, "unemployed (save for case under letter c, section 19 of the Decree – see below), **they being only temporarily suspended from work due to financial/jobs crisis**, and (ii) would not benefit from any financial aid, they being outside the scope of the Wages Guarantee Fund regime.

In particular, section 19, paragraph 1, letters a), b) and c) of Decree no. 185/2008 sets forth **three cases** where, **in case of suspension from work due to financial/jobs crisis** (which does not entail the termination of the employment relationship), the suspended employees benefit from payment of the Ordinary Unemployment Indemnity:

- **Payment of the "entire" Ordinary Unemployment Indemnity** (section 19, paragraph 1, lett. a), subject to the following requirements to be met by the employee suspended from work: (i) being enrolled at INPS for at least 2 years and (ii) having accrued at least 52 weeks social security contributions during the two years preceding the date of suspension from work. The length of the financial aid at issue does **not** exceed **90** days of Indemnity.
- **Payment of the "reduced" Ordinary Unemployment** (section 19, paragraph 1, lett. b), subject to the following requirements to be met by the employee suspended from work: (i) being enrolled at INPS for at least 2 years and (ii) having worked at least 78 days in the preceding year. The length of the financial aid at issue does **not** exceed **90** days of Indemnity.

- Special measures for apprentices (section 19, paragraph 1, lett. c), introduced for years 2009-2011 in favour of apprentices suspended from work due to financial/jobs crisis or terminated by the company, having at least three months seniority. Such a measures consist of payment of the "entire" Ordinary Unemployment Indemnity. The length of the financial aid at issue does not exceed 90 days of Indemnity.

In all three cases mentioned above, payment of the Indemnity (by INPS) is "subject to" a contribution equal to at least 20% of the Indemnity to be paid by **the "Paritarian Institutions" (Enti Bilaterali)** established by the collective agreement of the relevant sector. In other words, the Government pays the Indemnity (through INPS) provided that a quota of such payment is borne by the relevant Paritarian Institutions. This rule is confirmed by paragraph 7 of section 19. The Paritarian Institutions are required to contribute to payment of the Indemnity at issue within the funds available (paragraph 7 of section 19 of Decree no. 185/2008). It is worth noting, however, that the provisions contained in section 19, paragraph 1, lett. a) and b) – as amended by Law 2/2009 converting the anti-crisis Decree into law – establish that, for the time being and until the adoption of a further Decree providing for more detailed rules on this matter, the relevant Indemnity can be paid **even without the supplemental contribution from the Paritarian Institution.**

From a procedural standpoint, paragraph 1-*bis* of section 19 provides that the financial aids at issue are granted once the employer notified to certain labour offices (*Servizi per L'Impiego*) and to INPS the suspension of the activity and the reasons grounding the suspension, as well as the names of the employees involved.

#### 4. Further measures introduced by Decree no. 185/2008: (i) special aids in favour of consultants working on the basis of "Contratti a progetto" (section 19, paragraph 2)

Consultants working on the basis of "*Contratti a progetto*" are eligible to financial aids equal to a **lump-sum payment of 10%** of the income earned in the preceding year. The financial aid at issue – which is available for years 2009-2011 and only in case of "end of work" – is subject to certain requirements to be met by the consultant such as, by way of example, having accrued a certain number of social security contributions or having reached a certain level of income. The provisions ruling on this special measure are very broad and, according to commentators, need to be clarified and supplemented by additional rules that have not yet been enacted.

#### 5. (ii) Extension of "unemployment benefits" already applied in special circumstances according to exceptional provisions

Among others, the anti-crisis Decree confirmed the extension of "unemployment benefits" to sectors ordinarily excluded from the scope of such benefits. For example, the Decree provides that the Extraordinary Wages Guarantee Fund and the Mobility Treatment can be granted to commercial enterprises employing more than 50 employees, to travel agencies and tourism operators employing **more than 50** employees, and to companies rendering security services employing **more than 15** employees. Such special regime applies for 2009 only within the budget of 45 million Euros.

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## 6. (iii) Financial aids equivalent to Mobility Treatment

Paragraph 10-*bis* of section 19 provides that terminated employees excluded from the Mobility Treatment (see under paragraph 2, above) can benefit from equivalent aids subject to availability of the funds allocated by the Government to "unemployment benefits" for 2009. Eligibility to such financial aids is in principle unrelated to the specific sector (manufacturing, commercial, etc.) to which the terminated employee belongs and to the seniority/social security contributions requirements ordinarily established by the rules on Mobility Treatment.

## 7. Conclusions

This brief overview shows how much complex and, to certain extent, confused is the Italian "system" of "unemployment benefits" and how many problems and issues Italian companies are required to face in managing redundancies while experiencing financial/jobs crisis. Italian companies must, however, be aware that State financial aids are available to manage such crisis from the human resources standpoint and that a number of tools exist aimed at supplementing the employees' wage in case of companies' crisis. The anti-crisis Decree, adopted by the Government to face the current global economic and financial crisis, confirms the approach of the Italian system to make available to employers (and to expand the scope of) "unemployment benefits", although at this stage the recent provisions just enacted are very broad and need additional rules to make the new measures fully effective.