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FLASH REPORT

Country:	Italy
Title:	A first intervention aimed at providing economic support to families to address the increasing need of care due to lockdown measures implemented to tackle the spread of COVID-19
Date:	07 April 2020
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<u>Context</u>	
Issue at stake:	Parental leave – smart working
Grounds of discrimination:	Gender
Field of application:	Family leave
Source:	National legislation
Applicable law:	Decree No. 18 of 17 March 2020

Content

On 11 March 2020, the Prime Minister Giuseppe Conte ordered the population to stay at home and seek permission only for essential travel (health, work and for reasons of urgency/necessity). A general suspension of many working activities, save essential services, together with a recommendation to use smart working as much as possible, both in the private and in the public sector, have also been implemented to limit the spread of the new COVID-19.

As schools had already been closed since 24 February 2020, many working parents are dealing with an increasing need to care for their children. In the meantime, these restrictive measures have an impact on assistance to the elderly and to persons with a disability.

To mitigate this, Decree No. 18/2020 promptly provided, for both the private and the public sector, the strengthening of the right to parental leave and economic support for families with care duties, including the right for those assisting a disabled relative to carry out their work through smart working.

Key points of analysis: In light of the order that all schools must be closed, Articles 23 and 25 of Decree 18/2020 provide for an additional leave period of 15 days, which can either be taken continuously or split. This special leave can be taken from 5 March onwards by the mother or father of children up to 12 years old, for a total amount of 15 days. No age limit applies in case the assisted child suffers from a certified serious disability and s/he was attending school or was under the charge of a daytime centre of assistance before the suspension of these activities. An allowance of 50 % of the parent's wages is granted and any ordinary parental leave which had been taken before the Decree came into force is automatically converted into this new kind of leave. The whole period is covered by figurative contributions. Self-employed and quasi-subordinated workers are also entitled to this leave, which is paid by INPS (the National Institute for Social Security) at 50 % of

their respective conventional remuneration to be calculated for the ordinary parental leave allowance under Act No. 151/2001 on the Protection of Motherhood and Fatherhood.

Article 23 and 25 also provide for unpaid leave, which can be taken for the whole period during which school activities are suspended by employees taking care of children aged between 12 and 16. Parents who take this kind of leave are not entitled to wage compensation, but they do have the right to keep their employment and employers are banned from dismissing anyone during this period.

As an alternative to the measures mentioned above, a voucher for babysitting services of up to EUR 600, paid by INPS, has been provided for working parents (employed, self-employed or quasi-subordinated ones) of children aged 12 years or younger from 5 March. The amount of the allowance can be raised to up to EUR 1 000 for workers of the health services, including doctors, nurses, technicians of medical laboratories or radiology, social health operators, personnel of the defence and public rescue sector assigned to operations implemented to address the COVID-19 emergency.

Parents are not entitled to the above types of leave if they asked for the voucher for babysitting services as an alternative measure, or if one of them does not work, is unemployed or receives unemployment benefits.

Under Article 24 of Decree 18/2020, a further 12 days of leave, to be taken in March and April, will be added to the ordinary three days a month time off which are provided by Article 33 of Act No. 104/1990 to workers of both private and public sector to assist a relative with a disability of certified seriousness. This leave is fully paid and covered by notional contributions. In the health sector, a request to benefit from this additional leave can be rejected on the basis of the organisational needs of the enterprise.

Article 39 also provides for workers' right to accede to smart working (provided that the job can be performed in this way), in case the worker's family unit includes a person with a disability of certified seriousness. Under Article 87, smart working in the public sector becomes the ordinary way to work (provided the job can be performed in this way).

No specific protection from negative consequences resulting from taking up the paid leave mentioned above is provided by the Decree. Nevertheless, general rules on gender discrimination could be applied by way of interpretation. In fact, under Article 25 of Decree No. 198/2006, less favourable treatment or dismissal related to pregnancy, motherhood or fatherhood (also adoptive), including in relation to taking up parental leave, is regarded as direct sex discrimination. Moreover, as regards dismissals, the special remedy of reinstatement provided by Article 18 of the Worker's Statute is enforceable (Article 54 Decree No. 151/2001).

In any case, Article 46 of Decree No. 18/2020 also provides a general ban on setting up redundancy procedures and implements a suspension of ongoing procedures. This applied from 23 February 2020, and for 60 days from 17 March 2020. Moreover, the same article provides a ban on individual dismissals for organisational reasons for the same period. Although this is a gender-neutral provision, it is aimed at preventing unfair behaviour from employers, which are very likely to impact on weaker categories in particular, such as working women.

Internet link source: Decree No. 18 of 17th March 2020, on measures aimed at strengthening the Health National System, giving economical sustain to families, workers and enterprises in the struggle against COVID-19, published on Official Journal, extraordinary edition No. 70 of 17th March 2020, at <https://www.gazzettaufficiale.it/eli/id/2020/03/17/20G00034/sq>; Decree N. 151 of 26 March 2001 on the Sustain of Motherhood and Fatherhood, published in OJ N. 96 of 26 April 2001,

https://www.normattiva.it/atto/caricaDettaglioAtto?atto.dataPubblicazioneGazzetta=2001-04-26&atto.codiceRedazionale=001G0200&queryString=%3FmeseProvvedimento%3D%26formType%3Dricerca_semplice%26numeroArticolo%3D%26numeroProvvedimento%3D151%26testo%3D%26annoProvvedimento%3D2001%26giornoProvvedimento%3D¤tPage=1;

Decree n. 198 of 11 April 2006, The Code for Equal Opportunities between men and women, published in OJ N. 125 of 31 May 2006, o.s. n. 133,

https://www.normattiva.it/atto/caricaDettaglioAtto?atto.dataPubblicazioneGazzetta=2006-05-31&atto.codiceRedazionale=006G0216&queryString=%3FmeseProvvedimento%3D%26formType%3Dricerca_semplice%26numeroArticolo%3D%26numeroProvvedimento%3D198%26testo%3D%26annoProvvedimento%3D2006%26giornoProvvedimento%3D¤tPage=1.