
COVID-19 and Labour Law: Republic of San Marino

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Abstract

The Republic of San Marino, one of the smallest Countries in the world, introduced several emergency measures to contrast virus spread, supporting subordinate workers and families. The regular labour law measures have not been altered, with the exception of the employment retention schemes and income reductions.

Keywords: Covid-19; Labour Law; Telework; Employment retention scheme; Cross-border workers.

1. General framework

Since the first Italian case of COVID-19, the Republic of San Marino introduced several emergency measures to contrast virus spread. Due to its geographical position, being a landlocked enclave surrounded by Italy, the Republic of San Marino has been one of the first Countries in Europe to adopt lockdown measures and labour law restrictions. The intense diplomatic and economic connection with Italy, the cultural closeness and the geographical position could easily explain the similarity in terms of contents and timing of the measures adopted by the Republic of San Marino.

2. Measures enacted in the Republic of San Marino in order to prevent and to control the spread of disease COVID-19

On the 8th of March, a Decree on urgent containment measures was adopted. The decree stipulated that, during the emergency, public and private employers should evaluate the possibility to enable employees to perform activities outside their premises (work on distance and work from home)¹. Telework arrangements, viable only for subordinate workers, could be stipulated with an agreement between employer and employee notified to the social partners. This provision stressed the fact that this arrangement is only

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¹ Law Decree no. 44, 8 March 2020, Art. 1(e). Decrees and provisions referred in this national report can be downloaded, in Italian, at the link: <https://www.consigliograndeegenerale.sm/on-line/home/archivio-leggi-decreti-e-regolamenti.html>

temporary and limited to the emergency period, in order to avoid abuses. Workers enabled to telework are excluded by employment retention schemes.

Employers that are not technically able to promote teleworking are obliged to promote, among their workers, the fruition of paid leaves. In terms of leaves, a more stringent provision applied to Public Employment with the possibility to use non-paid leaves for workers that already used the paid ones during 2020.

The same Decree imposed social distancing, a 1-meter distance among people and in employers' premises, and the obligation to avoid any unnecessary movement in or out the Republic of San Marino. This situation was possible only for necessity reasons (health or caregiving) and proven working reasons, in clear continuity with the Italian provisions.

The first follow-up provision, imposing severe restrictions, was adopted on the 20th of March, with the Decree no. 52². These measures were aimed first of all at reiterating social distances, seen as one of the most effective way to reduce virus spread. For this purpose, schools, the university, sporting events³ and leisure activities were suspended. In addition, art. 2, suspended activities such as cafeteria, restaurants, barbers, tattoo shops, unnecessary craftworking activities and all construction activities: a general lockdown of business activities not considered as essential.

Art. 6(c) of the Decree no. 52 imposed to employers to reorganize the production process. The reorganization must reduce the presence of workers in the enterprise by at least 50% through the application of turnovers and, after, a sanitization of the workplace⁴. The reorganization should be organized on a rotation basis. However, this provision did not apply to enterprise with 1 employee or to activities considered as essentials (groceries, pharmacies, chemical and pharmaceutical enterprises). In case of voluntary request made by the employee, he/she can be exempted from the alternance in the reorganized working hours and its inclusion in Employment retention schemes, as disposed by art. 7 Decree no. 52.

3. Employment retention schemes and income reduction in public sector

Art. 7 of Decree no. 52 provided extraordinary employment retention schemes applicable in response to the suspension of working activities expressed by art. 6. Traditional and generic employment retention schemes in San Marino's Labour Law was disposed by Law. No. 73/2010 (art. 11) and only applicable for three possible causes:

- Exceptional and unpredictable events in the Republic of San Marino which prevent the carrying out of activities;

²Law Decree no. 52, 20 March 2020.

³ Sporting activities, such as training of professional athletes, were not prohibited in the Decree no. 44. According to art. 1(d) of the Decree no. 52, any sport activity is suspended, even if performed by Professional athletes registered to national Federations. This provision is in line with International Olympic Committee announcement of Tokyo Olympics Games postponement.

⁴ Art. 6(2) of Decree no. 52 allowed enterprises to request an exemption from the reorganization of working hours. The exemption would be evaluated by Economic Activities Offices on the basis of economic and strategic reasons and on the supplementary health and safety measures adopted by the employer.

- Suspension of the activities due to economic and market reasons;
- Professional retraining and reorganization of the business activity.

During COVID-19 emergency, these three reasons are suspended, and a fourth reason is added to the art. 11 of Law no. 73/2010: “reduction of operation determined by risk of contagion from COVID-19 and repercussions due to its spread”⁵.

The economic indemnity disposed by art. 7 is less generous compared to the Italian one. In fact, a subordinate worker under an employment retention scheme receives 30% of its salary for the first week, 45% for the second week and 60% for the third and subsequent weeks. For part-time workers, the indemnity is based on working hours disposed by the employment contract. However, every economic indemnity cannot be lower than 500 euros per month in order to guarantee personal dignity and sufficient resources⁶.

In order to apply for the economic retention scheme, subordinate workers must use, in advance, every paid-leave or holiday accrued in 2019 or in the first three months of 2020. The rationale under this provision is to decrease the economic impact on enterprises and government resources. Many critiques were made to the comma no. 17 of the art. 7 of the Decree no. 52 for the provision regarding newly stipulated employment contracts. In fact, in case of employment contract stipulated less than 15 days before this Decree, the worker shall be precluded from the provisions regarding employment retention schemes.

In public employment, due to the reduction of the activities and to align workers to those belonging to the private sector, the art. 11 of the Decree 52 disposed an income reduction during the lockdown period. For public civil servants it is envisaged a reduced remuneration that is equal to 30% of the salary for the first week, 45% for the second and 60% for the subsequent period. This provision, evaluated with the one treating the private sector, has the purpose to avoid discrimination between the two sectors and among workers, sharing the burden of the economic impact related to COVID-19. Obviously, this provision will not be applied to healthcare personnel. In conclusion, the economic advantage produced by the civil servants’ income reduction will be used to finance healthcare measures to contrast COVID-19, as envisaged by art. 20 of the Decree no. 52.

4. Measures for family and self-employed workers

The Government of the Republic of San Marino has been very keen on supporting families during the COVID-19 emergency. The Decree no. 55 of the 29 March is directly addressed to support families, enterprises and self-employed workers. The art. 1 provides the suspension of mortgages and loans repayment until March 31, 2021, including interests. Moreover, loans and mortgages are guaranteed by the Central Bank, in order to avoid a domestic financial instability. In fact, almost the totality of mortgages and loans contracted by citizens of San Marino are owned by private banks operating only in the Republic. For self-employed workers, highly affected by COVID-19 and not included in the employment

⁵ Art. 7, comma 2, of Decree no. 52, 20 March 2020.

⁶ This provision will not apply for employment contract where the original income is lower than 500 euros per month.

retention scheme, they can request a suspension from loans payment if they suffered a decrease in income higher than 15% or if they are included in the list of business activities not considered as essential (consultants, agencies workers, real estate agencies and so on).

Families have been supported also in terms of maternity leave provisions. According to art. 5 of the Decree 52, pregnant women are obliged to be in a situation of mandatory abstention from work, even if not in the traditional maternity leave period. This provision applies also to self-employed workers. The indemnity is equal to the 100% of the salary or the income (in case of self-employed). However, in case of end of the emergency prior to the traditional maternity leave period, the pregnant worker will be reinserted in the working premises or could restart to work as self-employed.

4. Cross-border workers

In 2019, a third of the entire workforce was composed by Italian cross-border workers. More than 6000 Italian workers are normally employed, as subordinate or self-employed workers, in the economic activities of the Republic of San Marino. The high level of economic interconnection of the Republic of San Marino with the Italian territory is straightforward. Due to this connection, San Marino's authorities, in agreement with Italian Government, decided to give the possibility to Italian cross-border workers to perform their activities, according to the provisions already anticipated. Checkpoints have been established in the entry routes to the Republic to check Italian workers before their entrance in the territory. Public authorities check the working reason for their entrance and their health situation. Furthermore, in order to be accepted in the Republic of San Marino, cross-border workers must certify their employment relation with the last paycheck or the effective reason for their intervention in case of self-employed workers.

Telework is also possible for cross-border workers. However, due to this situation, provisions about accident at work (in this case at home) are disposed by home Country in substitution to the host Country, as envisaged by the 1975 Bilateral Convention on Social Security System (Italy/San Marino), namely art. 23⁷.

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⁷ Art. 23, 1975 Bilateral Convention on Social Security between Republic of Italy and Republic of San Marino: https://www.inps.it/docallegatiNP/Mig/Allegati/448Repubblica_di_San_Marino_Convenzione.pdf