

January 13, 2022

Shutdown of business activities

The new Trade-Union procedure pursuant to article 1, paragraphs 224-238, law no. 234/2021

Law no. 234/2021 (Budget Law 2022), art. 1, paragraphs 224 - 238, introduced, among many other new provisions, a procedure for prior information and consultation, both at trade union and political/ministerial level, aimed at "*guaranteeing occupational and productive protection*" in the event of closure and definitive shutdown of business activity in Italy.

A. Communication

Employers who have employed an average of at least 250 employees¹ in the previous year and who are willing to "*proceed with the closure of an office, plant, branch, or autonomous business unit or department based in the national territory [Italy], with the definitive shutdown of the relevant activity and with the dismissal of at least 50 employees*" (paragraph 224) will be required to give **prior written notice** to the following recipients:

- work councils;
- local offices of the trade unions comparatively more representative on a national level;
- Regions involved;
- Ministry of Labour and Social Affairs;
- Ministry of Economic Development;
- ANPAL (i.e., National Agency for Active Employment Politics).

This communication, which can also be made by the employer through its employer's association, must be forwarded to the abovementioned recipients **at least 90 days before starting the collective dismissal procedure** as per article 4 of Law 223/1991 (paragraph 227).

Therefore, as a concrete example, if the employer, in view of shutting down its business in Italy, is willing to start a collective dismissal on September 1, 2022, the communication must be sent no later than June 3, 2022 (or, vice versa, once the communication has been sent, the collective dismissal procedure cannot be started before 90 days have passed).

The communication must provide, as required by law, the following information:

- economic, financial, technical or organizational reasons of the shutdown;
- the number of employees and their professional profiles;
- the envisaged shutdown date.

Individual dismissals for objective reasons and collective dismissals made without this communication or before the expiry of the 90-day term are null and void (paragraph 227).

¹ Including apprentices and executives.

Employers with a financial or economic imbalance that makes it probable that they will be in crisis or insolvent, and who can access the negotiated settlement procedure for resolving business crises pursuant to Law Decree no. 118/2021, are excluded from the application of the regulations at issue.

B. The company plan

Afterwards, i.e., **within 60 days from the communication, the employer must develop a plan** aimed at "**limiting the occupational and economic consequences resulting from the closure**", which shall define (paragraph 228):

- **actions aimed at safeguarding employment levels and measures to reduce the social impact of the redundancies** (e.g. lay-off schemes, outplacement to another employer, leaving incentives);
- **actions aimed at the re-employment or self-employment of the employees affected** (e.g. training and professional requalification), which can also be co-financed by the Regions;
- **possibilities for the transfer of the company or a branch of it** (aimed at the continuation of the company's activity), also by means of transfer to the employees or employees' cooperatives;
- possible **projects of conversion of the productive site**, also for social-cultural purposes in favor of the involved territory;
- implementation **timing (the plan cannot, in any case, last more than 12 months) and methods**.

C. Examination of the company plan and completion of the procedure

The plan must be presented to the same recipients as those of the communication and **discussed and examined within 30 days of its submission** (paragraph 231).

Then, the procedure shall conclude as follows:

1. Reaching a union agreement:

- **the parties sign the action plan** following which the employer shall implement the actions and measures provided therein according to the relevant schedule and methods;
- the employer is required to **notify the recipients on a monthly basis about the status of implementation** of the plan;
- the employees involved in the plan can benefit from the "*Cassa Integrazione Guadagni Straordinaria*" (i.e., **Extraordinary Redundancy Fund**) for a maximum of 12 months in total, pursuant to article 22 ter of Legislative Decree no. 148/2015 (introduced by the Budget Law itself²), as well as the "**Guarantee for Employees Employability**" program ("*Garanzia di Occupabilità dei Lavoratori - GOL*")³;
- if, at the end of the plan, the employer starts the collective dismissal procedure, the redundancy fee

² Article 22 ter of Legislative Decree no. 148/2015, entitled "Occupational Transition Agreement", provides in fact that "In order to support occupational transitions at the end of the extraordinary lay-off scheme for the reasons referred to in Article 21, paragraph 1, letters a) and b) [i.e. company reorganization and company crisis], **employers who employ more than fifteen employees may be granted**, by way of derogation from articles 4 and 22 [and therefore by way of derogation from the limits of the maximum duration of the extraordinary lay-off scheme], **a further extraordinary lay-off scheme aimed at restoring the employment of employees risking to be redundant, equal to a maximum of twelve months in total that cannot be further extended**".

In order to grant this lay-off scheme, "during the trade union consultation procedure pursuant to Article 24 [of Legislative Decree 148/2015], actions aimed at reemployment or self-employment, such as training and professional requalification, also by resorting to interprofessional funds, have to be defined by a trade union agreement [...]".

This additional law-off treatment, therefore, may be granted either as part of the new procedure relating to the closure and definitive cessation of the business activity, in favor of the employees involved in the company plan or, in general, at the end of the extraordinary lay-off scheme required for company reorganization or crisis, under the achievement of a trade union agreement that identifies the actions aimed at ensuring the occupational transition.

³ The program, set forth in L. 324/2020, is aimed, in short, at the re-employment, collective re-employment, upskilling, reskilling, and inclusion of the employees.

(so-called "dismissal ticket ") will be due in the ordinary amount and, therefore, up to approximately 10,000 euros per employee.

The provision specifies, then, that "Before the completion of the examination of the plan and its eventual signing, the employer may not either start the collective dismissal procedure pursuant to Law no. 223 of July 23, 1991, or serve dismissals for objective reasons" (paragraph 233).

2. Failure to reach union agreement:

- once the 90-day procedure has expired, the employer **may proceed with individual and collective dismissals;**
- **if** the employer begins the **collective dismissal** procedure provided for in Law 223/1991, **it will be exempted from the relevant 45-day trade union phase** of the information and consultation procedure (having already carried out similar information and negotiation activities), **but it should still carry out the following 30-day administrative phase of said procedure;**
- the employer will be required to pay a "dismissal ticket" increased by 50% and, hence, up to approximately EUR 15,000 per employee.

However, if the employer subsequently initiates the collective redundancy procedure, it will not be required to pay the redundancy fee.

D. Procedural breaches - sanctions

Without prejudice to the nullity of dismissals for objective reasons or collective dismissals notified prior to the expiry of 90 days, in case of

1. non-submission of the company plan;
2. if the plan does not contain the elements referred to in paragraph B. above⁴;
3. if the employer, through its sole responsibility, is in breach of its commitments, the timeframe and the method of implementing the plan;

the employer will be required to pay double "dismissal ticket" and, therefore, up to about EUR 20,000 per employee.

However, if the employer subsequently initiates the collective redundancy procedure, it will not be required to pay the redundancy contribution.

⁴ The examination of the subsistence in the submitted plan of the elements set forth in paragraph 228 is carried out by the Company Crisis Structure ("Struttura per la Crisi di Impresa", in Italian legal parlance) which operates, according to art. 1, paragraph 852, law no. 296 of 27 December 2006, in order to guarantee, in a form of organic cooperation between the Ministry of Economic Development and the Ministry of Labour and Social Policies, the measures on business crisis situations.

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