EMPLOYMENT-RELATED SOCIAL SECURITY MEASURES IN ITALY

To deal with employment issues originating in business crises, Italian law calls for various types of employment-related social-security measures aimed at preventing job losses or, in the case of “mobility” schemes, providing dismissed workers with a source of income.

In addition to the four types of employment-related social-security measures listed below, unemployed workers are also entitled to **ordinary unemployment benefits**, which last for a maximum of eight months and provide a benefit of 50-60%, but offer the advantage of applying to all workers (i.e. public- and private-sector) if the requirements are met.

These employment-related social-security measures are:

1) **the ordinary redundancy fund**;
2) **the extraordinary redundancy fund**;
3) **solidarity contracts**; and
4) **the mobility scheme**.

The first three types of measures provide supplemental income to workers who have been suspended or whose hours have been reduced. The mobility scheme, on the other hand, provides dismissed workers with an extension of their salaries for a minimum of one and a maximum of three years.

These benefits are paid by Italy’s social-security agency, referred to below as the INPS.

The ordinary redundancy fund (CIGO)

The ordinary redundancy fund (CIGO) serves the purposes of ensuring that suspended workers have a source of income and temporarily reducing the costs to their employers. Use of the fund is authorized in cases of businesses crises that are considered to be temporary and in which the resumption of production is viewed as certain.

The fund applies to reductions of working hours or suspension from work for the following reasons:

a) temporary and transitory company events not attributable either to the company or its workers and not objectively avoidable (for example, meteorological events that damage the buildings or machinery of a facility);
b) temporary adverse events relating to market performance (e.g. a temporary decline in orders).

It does not apply to events responsibility for which may be attributed to the employer.
All industrial companies, regardless of the number of employees, may access the fund.
Blue-collar workers, specialized workers, white-collar workers and middle managers employed under open-ended, fixed-term, part-time or trial contracts may access the fund. Apprentices, executives, and home-workers are not eligible.
The ordinary salary supplement may normally be received for up to 13 consecutive weeks and may be extended for three-month periods for up to a maximum of 52 weeks in two years. A week of benefits is considered to have been used only when the reduction in working hours applies to the entire week.
Periods of use of ordinary redundancy fund benefits resulting from objectively unavoidable events are not considered when computing this limit (52 weeks in two years).

Workers suspended with ordinary redundancy fund benefits are entitled to 80% of the total wages (including annual items such as the thirteenth-month and other bonuses) that they would have received under normal conditions.
However, the benefit amount may not exceed the monthly maximum, or ceiling.

In 2009, this ceiling was set at a gross sum of **€886.31** for the first bracket and **€1065.26** for the second bracket. In order for second-bracket benefits to apply, gross monthly wages must be €1917.48 or higher.

Workers on maternity leave cannot be suspended with redundancy fund benefits for the entirety of the period in which the dismissal prohibition applies, i.e. from the beginning of gestation to the child's first birthday.
Workers on maternity leave may only be suspended if the activity of the entire company or department (provided that the department is fully autonomous from a functional standpoint) is also suspended.
In this case, the compulsory leave period and associated indemnity prevail over the ordinary redundancy fund.
The amount in question must be paid to coincide with the payment of normal monthly wages.

Periods in which workers receive ordinary redundancy fund benefits are automatically considered to apply towards pension entitlement and pension benefit amounts. Pensions are computed by considering the salary that the worker would have collected for working.

The extraordinary redundancy fund (CIGS)

The extraordinary redundancy fund (CIGS) was introduced in order to handle complex situations that include employment issues and require long-term salary-supplementation measures.
The extraordinary redundancy fund applies to different situations than the ordinary redundancy fund, i.e. those set forth in law no. 223/91: **restructuring, business reorganization and conversion, business crisis, business crisis due to cessation of activity, bankruptcy procedures, and crises due to sudden, unforeseen events**.

The following are eligible for extraordinary redundancy fund benefits: blue-collar workers, specialized workers, white-collar workers and middle managers. Apprentices and executives are not eligible.
The companies to which the extraordinary redundancy fund applies are industrial firms with more than 15 employees, artisanal companies with more than 15 employees that make over 50% of their sales to a single client currently receiving extraordinary redundancy fund benefits, and cleaning service contractors whose client is receiving extraordinary redundancy fund benefits.

Before suspending workers, companies must give advance notice thereof to labor union representatives, or, absent such representatives, the workers' industry labor union. A meeting to review the company's situation must be scheduled within three days. The entire consultation procedure concludes within the following 25 days (ten days for companies with fewer than 50 employees).
Employees are suspended on a rotating basis. Companies that decide not to employ a rotation scheme for technical or organizational reasons must provide a statement of justification to the Ministry of Labor. If the Ministry finds that this justification is insufficient, it attempts to reconcile the parties. If reconciliation fails, the Ministry then issues an order establishing the rotation scheme.

Without prejudice to the varying eligibility periods for each type of extraordinary redundancy fund, a single production unit may not receive extraordinary redundancy fund benefits for more than 36 months over a period of five years.
Periods in which ordinary redundancy fund benefits and solidarity contracts apply are also considered towards the limit of 36 months.
The amount of the extraordinary salary supplement is 80% of the total salary to which the suspended workers would have been entitled for the hours in which they did not render service. The ceiling discussed above in the context of the ordinary redundancy fund also applies to the

extraordinary redundancy fund. In 2009, this ceiling was set at a gross sum of **€886.31** for the first bracket and **€1065.26** for the second bracket. In order for second-bracket benefits to apply, gross monthly wages must be €1917.48 or higher.

Extraordinary redundancy fund benefits may either be paid directly to workers by the INPS or advanced by the employer with settlement of the balance due by the INPS (in which case company agreements generally require that benefits be advanced from one month to the next even before approval is received).

The law prohibits companies from suspending workers with extraordinary redundancy fund benefits from the beginning of their pregnancies until their children's first birthday. Clearly, if the entire department (provided that the department is functionally autonomous) or company is receiving extraordinary redundancy fund benefits, workers on maternity leave may also be suspended until the beginning of their compulsory absence. Accordingly, the worker's extraordinary redundancy fund benefits are suspended, and the worker is entitled to maternity benefits, from the beginning of the period of compulsory leave until the end of said period.

Workers placed in the extraordinary redundancy fund scheme may work, provided that they have fixed-term contracts (if they are employees) or their work is occasional in nature (if they are self-employed). In either case, workers forfeit entitlement to the supplement for days on which they work. Workers must give advance notice thereof to the INPS, specifying when they begin work and indicating the term for readmission to benefits, on pain of forfeiture of the indemnity.

Solidarity contracts (CDS)

Solidarity contracts, i.e. reduced hours with salary supplementation, are another measure aimed at alleviating employment issues arising from business crises.

The law that established solidarity contracts governs two different types of such contracts:
- the "**defensive**" type set forth in art. 1 of law no. 863/84, aimed at maintaining employment by reducing working hours "*in order to avoid, in whole or in part, the reduction or declaration of personnel to be redundant*";
- The other "**expansive**" type, aimed at achieving a permanent reduction of working hours in order to expand the workforce.

In the first case, the reduction of working hours is used to avoid dismissals and spread the consequences of excess labor over a wider group of workers.
The salary loss arising from the reduction of working hours is partly offset by the INPS using a mechanism that functions similarly to the extraordinary redundancy fund. In short, solidarity contracts aim to soften the impact of business crises by redistributing the negative consequences across all parties involved (company, workers, government).

In the second case, the reduction of working hours is aimed at increasing employment.

There is a third type of solidarity contract governed by special rules. This type of solidarity contract is aimed at companies that are not entitled to redundancy funds and companies with fewer than 15 employees.

Defensive contracts:
All companies that meet the requirements for eligibility for the extraordinary redundancy fund may use defensive contracts.
All employees (including part-time employees), except for executives and apprentices, are eligible.
The company is required to reach an agreement with labor unions.

Working hours may be reduced at the daily, weekly or monthly level. The conditions of the reduction may differ for various departments and groups of workers and the reduction may be applied to some workers but not the entire workforce. Solidarity contracts may call for periods of full-time work and periods of reduced hours.

The minimum length is 12 months and the maximum 24. Further extensions are possible in special circumstances.
The solidarity contract period is added to the period of use of the ordinary and extraordinary redundancy funds when computing the maximum **three years** of use of employment-related social-security measures in each five-year period.
Relief is also provided for companies.

Solidarity contracts provide 60% (or 80%) of the wages lost due to the reduction in working hours.
The wage supplement is not subject to the application of the maximums (ceilings) provided for the other forms of wage supplementation (ordinary and extraordinary redundancy funds).
Workers are entitled to 60% (or 80%) of the wages "lost due to the reduction in working hours." This means that if a worker normally works shifts the wage increase for the shifts must be considered when calculating lost wages.
Workers are also entitled to receive 60% (or 80%) of annual wage items, which are paid when they would otherwise fall due.

Mobility

Mobility applies if, when a company is in a situation in which *labor is reduced or transformed*, the company has used the extraordinary redundancy fund for a time but no longer believes that *it will be able to guarantee the return to service of all suspended workers and will not be able to make use of alternative measures*.
Companies that meet the requirements for the extraordinary redundancy fund (more than 15 employees) are eligible for mobility.
The second numerical requirement is that there must be at least five workers affected by the workforce reduction. The law expressly states that companies may apply the mobility scheme to redundant blue-collar workers, white-collar workers, specialized workers, and middle managers. Executives, apprentices, fixed-term workers and trial-period workers are not eligible to be placed in the mobility scheme.

The mobility procedure is initiated by the employer by sending a written notice to labor union representatives and the respective trade associations.
Labor unions representatives and their respective labor unions are entitled to request a joint review of the workforce redundancy situation, with a particular focus on the reasons that have caused that situation and the possibility of a differing use of the workforce. This joint review must begin within **seven days** of the date of receipt of the request.
The length of the consultation period is **45 days**. If fewer than ten workers are affected by the mobility scheme, the term (of 45 days) is reduced by half.
At the end of the consultation phase, the employer is required to give written notice of the outcome of consultation and the grounds for a negative outcome (where applicable) to the regional office, which, in the event of failure to reach an agreement, is in turn required to convene the parties for a joint review.
This subsequent consultation phase lasts **30 days**. If less than ten workers are affected, the term is reduced by half.

If an agreement is not reached, once the overall deadline has lapsed (75 days for redundancies of at least ten workers and half for redundancies of less than ten workers), the employer may dismiss

the workers declared redundant. It should be noted that this is a legitimate, yet unilateral course of action by the employer that may result in equally legitimate opposition at the union level.

The law specifies the “legal” criteria by which to identify the workers to be placed in the mobility scheme. On the basis of the company’s technical, production-related and organizational requirements, the workers to be placed in the mobility scheme are to be identified in accordance with the following criteria:

a) household dependents;
b) seniority;
c) technical and organizational requirements.

The parties may agree to different criteria.

The law also provides for forms of protection for disabled workers, female workers, workers on maternity leave, and workers who have been married for less than one year.

When a company places an employee in the mobility scheme, the company pays to the INPS:

- **three months** of the extraordinary redundancy benefit fund equivalent for each worker if an agreement has been reached with the labor union;
- from **six to nine months** if an agreement has not been reached.

The amount of the benefit is 100% of the extraordinary redundancy benefit that the workers collected or would have been entitled to collect during the period immediately prior to their being placed in the mobility scheme. This benefit falls to 80% of the extraordinary redundancy benefit for months 13 to 36.

Workers may remain in the mobility scheme for 12 months, or 24 if they are 40 years of age when placed in the mobility scheme, and 36 months for those who are 50 years of age.

The mobility benefit is incompatible with pension benefits and, of course, other forms of employment.

Companies that engage workers placed in the mobility scheme by another company are guaranteed reductions in their social-security contributions and an incentive given to the company in the amount of 50% of the mobility benefit that the worker would have collected.