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Italy: Wage guarantee in case of insolvency

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Italy

Phase:

Management

Type:

Wage guarantee in case of insolvency

Last modified: 11 February, 2021

Native name:

Decreto Legislativo 27 gennaio 1992, n. 80, Attuazione della direttiva 80/2987/CE in materia di tutela dei lavoratori subordinati in caso di insolvenza del datore di lavoro

English name:

Legislative Decree 27 January 1992, no. 80, Implementation of Directive 80/2987/EC concerning employees' protection in case of employer's insolvency

Article

1-5

Description

An employer is considered insolvent if the management of the company is handed over to a liquidator.

In the case of the employer's insolvency, the law protects all workers irrespective of the duration of the employment relationship, including part-time and fixed-term workers, workers of public companies as well as working partners of a cooperative. However, it does not protect workers employed in private households and fisherpeople.

A Guarantee Fund (Fondo di Garanzia) pays workers' claims. All claims related to income (including sickness, pregnancy, and holidays) and some payments related to the termination of the employment contract are eligible. All claims arisen during the previous three months of the employment relationship and within the last 12 months before application are covered. The Guarantee Fund covers a maximum of three times the monthly amount of the short-time allowance (Cassa Integrazione Guadagni) net of social security contributions.

The fund was established within the National Institute of Social Security (Istituto Nazionale della Previdenza Sociale, [INPS](#)) by Law 29 May 1982, no. 297. Pursuant to Legislative Decree 27 January 1992, no. 80, in addition to replacing the insolvent employer in the payment of the severance pay (Trattamento di Fine Rapporto, TFR) to the worker, it protects the latter also in relation to claims other than TFR, arising from the employment contracts. In this case, requirements to access the Guarantee Fund are set out in article 2 of the aforementioned law. There are some situations governed by this norm that allow for the modification of the date when the obligation to pay claims arises. For instance, if the worker has terminated the employment relationship before the beginning of the insolvency procedure, the date of filing, before the court, of the first appeal that initiated the insolvency procedure is taken as a reference date. On the other hand, if the termination of the employment relationship has occurred during the continuation of business activities, the 12-month period is calculated from the date of dismissal or resignation of the worker. This provision can be applied only to those workers who have actually worked after the beginning of the insolvency procedure.

Workers whose claims are guaranteed by another fund (such as the Wages Guarantee Fund – Cassa Integrazione Guadagni, CIG) are excluded.

Employees shall register their claims during the insolvency procedure, in which they have a privileged position. Yet, the fund applies only upon termination of the employment contracts, and claims cannot be accepted if the company eventually prosecutes activities keeping claimants at work.

The application shall be submitted within 15 days after the publication of the insolvency decision.

The INPS administers the Guarantee Fund which is financed through employers' contributions (0.2% of monthly payrolls).

The payments from the Guarantee Fund are guaranteed to workers event if the employers has failed to pay the related contributions.

The Guarantee Fund covers also the cases of companies operating in two EU Member States, established according to the law of another country, if the worker has regularly worked in Italy.

Comments

A judgement by the Court of Cassation (no. 7473 of 14 May 2012) clarified some points of this set of rules. In particular, the court provided details on the payment, by an employer, of salaries and social security contributions in the case of temporary operation of the company declared bankrupt or of cessation of business. This ruling is based on the assumption that a company that has been declared bankrupt does not cease to exist, but it just shifts from an operational condition aimed at production (which is likely to continue or be resumed) to a setting aimed at its liquidation.

Furthermore, the Court of Cassation tried to harmonise the rules governing the effects of bankruptcy on the employment contract in the framework of article 36 of the Italian Constitution and of article 2119, paragraph 2 of the Italian Civil Code.

The Court of Cassation ruled that, owing to the absence of an employment relationship, there is no obligation upon the employer to pay social security contributions.

Cost covered by

Companies

Involved actors other than national government

Other

Involvement others

National Institute for Social Provisions

Thresholds

No, applicable in all circumstances

Sources

-  [National law database](#)
-  [Legislative Decree 27 January 1992, no. 80](#)
-  [Fondi di garanzia](#)
-  [ERM Support Instrument Database](#)
-  [Court of Cassation, 14 May 2012 no. 7473](#)

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