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**N. R.G. 886/2020**



**ORDINARY TRIBUNAL of FLORENCE**

Work Section

The Judge Dr. Tommaso Maria Gualano, read the precautionary appeal *ante causam*, has pronounced the following

**DECREE**

**A)** The judge considers that the conditions exist for the issue of the alleged precautionary decree *unheard of by the other party*:

# Fumus Boni Iuris

1. The applicant is enrolled in the platform of Just Eat Italy s.r.l. and carries out in favor of the same activity of so-called "*rider*", consisting in the delivery of food and take-away food on behalf of affiliated businesses of the company in favor of customers of the platform (doc. 4).

Signed by: GUALANO TOMMASO MARIA Issued by: ARUBAPEC S.P.A. NG CA 3 Serial#: 6a68348b45443b403669333d7133d727

1. Although qualifiable as autonomous, the employment relationship in *question* seems to be related to those governed by art. 2 Legislative Decree 81/2015, for which, "*in a perspective of both prevention and "remedy", the discipline of the employment relationship applies when the employee's service is exclusively personal, is carried out continuously over time and the manner of performance of the service, including in relation to time and place of work, are organized by the client*" (Cassation, 1663/2020).

In addition, to the type of relationship under examination, for the manner in which it is conducted (cf, docc. 2, 4, 6), may refer to the discipline of Chapter V-bis of Legislative Decree 81/2015 (Protection of work through digital platforms), aimed at establishing "*minimum levels of protection for self-employed workers who carry out activities of delivery of goods on behalf of others, in urban areas and with the help of velocipedes or motor vehicles referred to in Article 47, paragraph 2, letter a), of the Highway Code, referred to in Legislative Decree 30 April 1992, n. 285, through platforms also digital*" (art. 47-bis, paragraph 1, Legislative Decree 81/2015); in particular, it is provided that the client using the platform also digital is required "towards the *workers referred to in paragraph 1, at his own care and expense, to comply with Legislative Decree 9 April 2008, n. 81*". (art. 47-septies, comma 3, D.Lgs. cit.) and,

therefore, also in compliance with the provisions of art. 71 of the aforementioned Legislative Decree 81/2008,

1. It has been attached that the defendant, despite the requests in this sense of the worker (doc. 6-bis), has not made available to the same individual protective equipment against the risk COVID-19 (gloves, gels and backpack cleaning products), whose use (as for gloves and mask) has been recommended by the defendant for the performance of the work in this period of known epidemiological emergency (doc. 8).

# Periculum in arrears

There is an imminent and irreparable damage, since the continuation of the work activity in the absence of the aforementioned individual protection devices could expose the applicant, during the time required for a ruling on the merits, to prejudice, even irreparable, the right to health.

The nature of the law involved and the current risk of possible contagion from COVID-19 during the performance of the work activity are such that the summons of the counterparty could jeopardize the implementation of the measure; therefore, in accordance with art. 669-sexies *of the Italian Criminal* Code, the measure invoked must be available to the *other party*.

**B)** The present proceedings are not affected by the suspension *pursuant* to art. 83, paragraph 1, D.L.

18/2020, since they fall within the exceptions expressly provided for by Article 83, paragraph 3, letter a) ("*precautionary proceedings having as their object the protection of fundamental rights of the person*").

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Recalled the provision of art. 83, paragraph 5, D.L. 18/2020 and noted that the President of the Court of Florence, in accordance with the provisions of that provision, has ordered that for work and social security procedures is adopted the mode of written treatment referred to in art. 83, paragraph 7, letter h), D.L. 8/2020, with authorization to file written notes and replies and subsequent adoption outside the hearing of the court order (see point d), p. 3, of Decree No 45/2020 of 24.3.2020), it is assigned here the deadline (in compliance with the timing referred to in art. 669sexies c.p.c.) for the constitution of the defendant by filing a memorandum, reserving to the outcome - with subsequent provision - the assignment to the parties of the respective deadlines for the filing of written notes and replies, which will be followed by the adoption of the order of the court of confirmation, amendment or revocation of the decree *unheard of the other party*. **P.Q.M.**

1. orders to Just Eat Italy s.r.l. the delivery to the applicant Yiftalem Parigi of the following personal protective equipment: protective mask, disposable gloves, disinfectant gel and alcohol-based products for backpack cleaning;
2. assigns a deadline up to 7.4.2020 for the notification of the appeal and the present decree to the plaintiff, ordering that the plaintiff will be summoned to appear in court by filing a statement of defence by 15.4.2020; reserves the right to grant the parties, by separate provision, time limits for the filing of written notes and reply, the expiration of which will be followed by the adoption of the order confirming, amending or revoking the decree issued *unheard of by the other party*

Signed by: GUALANO TOMMASO MARIA Issued by: ARUBAPEC S.P.A. NG CA 3 Serial#: 6a68348b45443b403669333d7133d727

Florence, April 1, 2020

 The Judge

 Dr. Tommaso Maria Gualano