

CORONAVIRUS OVERCOMING THE DIFFICULTIES

PHASE no. 2: WHICH SCENARIO FOR EMPLOYERS AS TO THE POST-LOCKDOWN MANAGEMENT OF THE WORKFORCE?

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The Italian Government (**Decree of the Prime Minister of April 26th, 2020**) introduced a number of measures ruling the so-called Phase 2 of the Covid-19 emergency which began on May 4th, 2020.

Firstly the Government widened the number of production sectors authorised to operate as from May 4th, 2020 and clarified that the companies operating in such sectors were permitted to carry out the activities required for the reopening as from April 27th, 2020.

Production sectors authorized to reopen were:

- building sites;
- textile industries, including those active in the clothing and leather goods sector;
- the tobacco industry;
- companies active in the metallurgic sector;
- companies involved in the manufacturing of motor vehicles and other means of transportation;
- companies operating in the advertising and market research sectors.

The above companies must comply with the *"measures to fight and contain the spread of the covid-19 virus in the workplace"* which are contemplated by the **Protocol between the Government and the Trade Unions of April 24th, 2020**. Failure to comply with the above measures may result in an order of the Authorities to *"suspend the activities until safety conditions are restored"*. The smart working pattern is to be fostered, whenever possible.

Basically, the Protocol of April 24th, 2020 reiterates the contents of the Protocol reached by the same Government and Trade Unions on March 14th, 2020. On this matter you can find out more at the following link: <https://www.dejalex.com/2020/03/protocollo-condiviso-con-le-parti-sociali-per-lemergenza-covid-19-negli-ambienti-di-lavoro>.

Nonetheless, the Protocol of April 24th, 2020 embeds some significant suggestions of the Italian National Institute for Workers Compensation and Industrial Accidents Insurance (in Italian “**INAIL**” - **Technical Document of April 23rd, 2020¹**), which may be summarised as follows:

1. Information notice

Employees must be adequately informed about the measures to be observed in the workplace to prevent any possible spread of contagion and, in particular, the correct use of the personal protective equipment (PPE). The information must take into account the duties performed by the employees and the specific work contexts.

2. Employees tested positive for the Covid-19 virus coming back to work

Employees tested positive for the Covid-19 virus may come back to work provided however that they submit a medical certificate issued by the territorial prevention department stating that the last swab was “*negative*”.

3. Sanitisation of the work environment

When reopening companies operating in the most endemic geographical areas as well as companies with former Covid-19 suspected cases must provide an extraordinary sanitisation of all environments, workstations and common areas.

4. Personal hygiene precautions and PPE

Companies must make hand cleansers available to all employees, also through dispensers easily identifiable and accessible to all employees.

Depending on the kind of activities carried out within each company and the risks associated with them, the use of additional PPE may be envisaged. In any case, all employees sharing common areas must use the surgical mask.

5. Work Organisation

Companies may also ensure social distancing through:

- i. rethinking the layout and/or workspaces (e.g. by the introducing separation barriers or by positioning employees who do not need particular tools/equipment in unused offices or meeting rooms); and
- ii. staggering the working time, so as to reduce the number of employees at work at the same time.

Companies should also encourage the use of private means of transportation or company shuttles to ensure the social distancing of employees when travelling to the workplace.

6. Healthcare Surveillance

At the reopening of the production activities, the employers may involve the company doctor in order to:

- i. identify who are the most “*vulnerable employees*”² ;and

¹ Which is “*aimed at providing technical elements in order to support the political decision making process as to the production activities that could gradually be reactivated, ensuring safe working conditions for employees as well as the overall sustainability of policies to combat the Covid-19 epidemic*”.

² Meaning, according to INAIL, employees older than 55 and employees younger than 55 who consider themselves more vulnerable due to pathological conditions.

- ii. assess "*specific risk profiles*" with reference to employees coming back to work after contracting Covid-19 infection (see §2. above).

The company doctor may also "*suggest the adoption of any diagnostic means that may be deemed to be useful in order to contain the spread of the Covid-19 virus and for the employees' health*".

With regard to §6. above, INAIL suggested that even those employers which do not involve a company doctor in normal circumstances should either appoint an *ad hoc* company doctor for the emergency period, or involve the competent public territorial structures (including the territorial offices of INAIL). In fact, in INAIL's opinion company doctors should play a central role in these emergency circumstances: in particular, they should be given the task of: (i) identifying those employees who are "*temporary unable*" to work or with a limited ability to work after contracting Covid-19 virus, with a view to assigning them to duties other than those normally performed; and (ii) implementing the monitoring of the body temperature on employees before giving them access to the workplace.

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Il presente articolo ha esclusivamente finalità informative e non costituisce parere legale.

This article is exclusively for information purposes, and should not be considered as legal advice.




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