

COVID-19: workplace health and safety

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Introduction

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As Italy is dealing with the COVID-19 pandemic, the national institutions responsible for occupational safety (mainly the National Institute for Insurance against Accidents at Work and the Labour Inspectorate) have issued rules concerning health and safety in the workplace.

Italian companies which have been authorised to reopen (beginning from 4 May 2020) must enforce a strict set of regulations in order to safeguard the health and safety of their employees and anyone who enters their workplace during this transitional Phase 2 period.

Employers' responsibility and liability

Under the Civil Code, employers are responsible and liable for risk evaluations and employees' health and safety. Therefore, employers must prepare:

- a company protocol concerning the prevention measures put in place;
- a mapping of every work activity in order to carry out risk evaluations (and subsequently updating risk assessment documents) and identify and determine which personal protection equipment (PPE) should be used and how; and
- a specific register (hard copy or digital) to record the cleaning and sanitisation activities performed.

In order to comply with these regulations, employers must implement the following measures.

Duty to inform

The regulations provide for employers' obligation to inform employees about the measures being implemented (eg, by displaying the code of regulations in common areas), particularly concerning the hygiene standards and behaviour required to limit the risk of contracting COVID-19, and about the use of PPE.

Employees' and suppliers' access to the workplace

Employees are subject to body temperature checks before they enter the workplace and access must be denied to those whose temperature is above 37.5 degrees Celsius (this data must be processed in compliance with data privacy regulations). Workplace access is also forbidden to employees who, in the past 14 days, have been in contact with other people who have tested positive for COVID-19. Employees must inform their employer if they present flu-like symptoms.

Employees who have previously contracted COVID-19 can enter the workplace only if they provide medical documentation to certify that they have now tested negative for the virus and only after a specific medical examination by the company doctor, regardless of the period of illness (normally a medical examination by the company doctor is required only in the case of an illness lasting longer than 60 days).

Specific measures regarding access to the workplace are also provided for suppliers and visitors.

Cleaning and sanitisation

Employers must ensure daily cleaning and periodical sanitisation of the workplace and record the details of such cleaning in a specific register.

PPE

Employers must provide protective masks (validated by the World Health Organisation or the national health authorities) and employees must use them in common areas. If the working activity

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requires an interpersonal distance of less than one metre, the use of a mask together with other PPE (eg, gloves and glasses) is mandatory.

Common areas and internal movement

With regard to the use of common areas, employers must organise shifts, personal-distancing measures and limit the time that employees can stay in such areas. Physical meetings should be minimised and corporate events must be cancelled or suspended.

Corporate organisation

To reduce the risk of contagion, employers should apply all measures and organisational solutions to avoid gatherings and crowds and reduce the number of employees in the workplace at any one time (eg, temporary closure of some departments or areas, shift working, distancing and separating of workstations using, for instance, plexiglass or furniture). Remote working is highly recommended and should be applied wherever possible. Domestic and international business trips must be cancelled or suspended.

Company doctor

Closer cooperation with the company doctor is expected. Monitoring of employees' health must be rigorous. Company doctors are expected to play a key role in the identification of employees with health issues for whom COVID-19 could be especially dangerous (in this case, preventive or requested medical examinations should be granted to the employees). Company doctors should cooperate with employers on the identification of organisational and prevention measures to be adopted in the workplace.

Works council

A specific works council (composed of trade union and company health and safety representatives) must be set up to monitor the implementation of the abovementioned measures.

Comment

A company's failure to comply with the anti-contagion regulations could lead to penalties and even disqualifying penalties by the competent authorities.

If an employee contracts COVID-19 on the job, their employer could be found liable for the harm caused with the impact on social security.

Thus, it is essential to bear in mind that under Italian law employers are fully responsible for health and safety in the workplace and the adoption of all the security measures provided by the law may be insufficient to exclude liability, as employers have the burden of proving that every necessary precaution was taken and fully implemented.

Even if not provided by the abovementioned regulations, antibody testing of employees could be helpful to identify those who may have come into contact with COVID-19 – therefore ensuring greater chances of identifying specific risks of contagion and putting suitable measures in place – and consequently could reduce the risk of employers' liability in the event that an employee contracts COVID-19 on the job. The Italian Data Protection Authority has stated that antibody testing of employees should be used only if the company doctor has indicated that it would be useful to limit the spread of contagion.

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