

16 April 2021

New Emergency Measures adopted after the “*Sostegni Decree*”

Below is an update on the most relevant employment law measures adopted after the Decree of March 22, 2021, no. 41 (the so-called “*Sostegni Decree*”) within the framework of the COVID-19 emergency legislation and the on-going vaccination campaign.

Before entering into the details of the new measures, we intend to provide a clarification regarding our previous publication of March 23, 2021¹, with particular reference to the interpretation of the extension of the dismissal ban **in certain sectors** for the period from July 1 until October 31, 2021, pursuant to article 8, paragraph 9, of the *Sostegni Decree*. Based on the wording of the relevant provision of the Decree and the content of the Explanatory Report (*Relazione illustrativa*), it was reasonable to sustain that the extension of the ban applied only to those employers that will actually use the COVID-19 social schemes. On the contrary, the Explanatory Report published on the Senate website along with the documentation package filed for the purpose of the conversion into law of the *Sostegni Decree* supports a different interpretation, whereby the extension of the ban until October 31, 2021 applies to the generality of the employers falling under those sectors, regardless of the actual use of the COVID-19 social schemes. Despite at this stage the latter interpretation seems to prevail, there is a certain degree of uncertainty on the interpretation of the relevant provision of the Decree. This interpretative issue will be likely clarified upon conversion into law of the *Sostegni Decree*.

The Protocols of April 6, 2021 on (x) containing the spread of the COVID-19 virus in the workplace and (y) involving employers in the ongoing vaccination campaign

Since March 2020, the so-called “shared Protocol” between social parties and the Government, signed on March 14, 2020 and subsequently updated on April 24, 2020 (the “**Protocol**”), has been the main document of reference by the Prime Minister Decrees issued over the months to regulate the performance of productive, industrial and commercial activities during the pandemic.

Furthermore, article 29-bis of Decree of April 8, 2020, no. 23 (*Obligations of the employers to ensure protection against the COVID-19 contagion*) (such a provision being introduced by the conversion law of June 5, 2020, no. 40) provides that the employers’ compliance with the Protocol (and its subsequent amendments and integrations) qualifies as compliance with the fundamental **employer’s obligation set forth by article 2087 of the Civil Code** with respect to the protection against the COVID-19 contagion.

The above being clarified, **on April 6, 2021** the Government and social parties **updated the Protocol**, that all employers must adopt and follow to safeguard their personnel health².

By way of example, the updated Protocol confirmed that remote working (so-called “*smart working*” under the Italian legislation terminology) plays a major role in managing employees during the pandemic. Furthermore, some general concepts on business trips have been introduced, such as that employers will liaise with the company doctor and the so-called RSPP (a professional in charge of H&S matters) to make an assessment on the relevant business trips to be carried out.

1 Newsletter available at this [link](#).

2 “Shared protocol updating the measures to contrast and contain the spread of the SARS-CoV-2/COVID-19 virus in workplaces” available at this [link](#).

In parallel with updating the Protocol, on April 6, 2021 the Government and the social parties have also signed a second protocol (*National Protocol for the establishment of vaccination sites against SARS-CoV-2/COVID-19 at workplace*)³, setting forth guidelines to involve employers in the direct vaccination of employees.

The vaccination protocol provides that if employers are available to implement company plans for the extraordinary establishment of vaccination sites, they will propose their respective plan to the local Health Authority (ASL). The costs will be borne by the employer, save for the cost of vaccines and relevant equipment, that will be borne by the Regional Health Service. As an alternative to the direct vaccination, if employers wish to collaborate in the vaccination initiative, they can either sign a specific agreement with private organizations meeting the requirements to vaccines administration, or availing themselves of INAIL (i.e. State agency in charge of employees' health matters) public facilities.

The vaccination protocol, that unlikely the Protocol has no binding effects, clarifies among others that the employees' decision to be vaccinated is voluntary. In this connection, according to a recent provision of law, under the Decree of April 1, 2021, no. 44, the obligation to be vaccinated has been introduced exclusively for doctors and "health-care" personnel. Finally, the vaccination protocol highlights the role of the company doctor over the whole process and points out the need of avoiding any kind of discrimination amongst the employees, as well as to protect data privacy.

³ *"National Protocol for the extraordinary establishment of vaccination sites against SARS-CoV-2/COVID-19 virus in workplaces"* available at this [link](#).

Gianni & Origoni has set up an in-house **Task Force** to constantly monitor the evolution of legislation in the regions affected by the Coronavirus and is at your entire disposal to support you in defining, drafting and implementing the most advisable strategies to limit the impact of the spread of the Coronavirus on the operations of your business and the management of your existing commercial relations.

For any questions, please send a mail to coronavirus@gop.it.

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