

Coronavirus: the employers' duties and rights

The extent of Coronavirus contagion is now well known: the World Health Organization has defined it as a public health emergency of international interest.

As far as labour law is concerned, there are obligations on the employer who, under Article 2087 of the Civil Code, the Constitution and Legislative Decree 81/2008, is bound to take the necessary measures to protect the physical integrity of employees and to prevent (inter alia) exposure to biological risk.

Having a look at the situations a company could find itself to face in this recent scenario and the possible and implementable measures, on the basis of the provisions of the sector, as well as the recently issued rules, we can state the following:

- Generic duty of care: under which employers, in order to take appropriate precautionary measures, may:
 - a) collect useful information from their employees in order to prevent contagion and fully analyse the information in their possession (e.g.: identify those who live in or have contact with the Municipalities in quarantine; ask all staff, in writing, to indicate whether they have booked a trip to China in the next few months, whether they have recently been in China or whether (as far as they know) they have been in contact with someone who has recently been in China or someone who is (possibly) infected by the coronavirus, and so on...);
 - b) ponder, depending on the type of work carried out within your company and the specific risks involved, sufficient and adequate measures to prevent contamination of your staff (we are at your disposal to share any assessment, based on your specific scenario);

c) provide clear and practical guidelines to all employees, highlighting the importance of compliance with the indications provided by the Ministry of Health (Circular 3190/2020 and following);

d) remove the persons at risk of infection from the workplace without delay.

- Management of the employment relationship: as far as possible absences of employees, which may occur, are concerned, below are some management methods:

a) employees or employers who suspend their respective activities by order of the public authorities (i.e. because they are domiciliated or located in the municipalities and/or areas belonging to the so-called "red zone", subject to closure, or because they have entered Italy from an epidemiological risk zone as identified by the WHO, or have had contact with infected persons and so on):

- the employees' right to receive remuneration during the absence from work remains, even in default of service;

- it is possible to request the "smart working" mode (i.e. that the work is carried out "remotely" from home, obviously on condition that the employee is provided with the necessary support such as p.c., connection etc.): it should be noted that the Council of Ministers, with the D.p.c.m. of Sunday, February 23rd, has provided in Article 3 the possibility to deploy the smart working automatically and without prior formal company agreement (not even between the parties, for work relations connected with areas at risk of epidemic), also exceeding the limits of the law. In general, therefore, a written agreement between employer and employee and the communication filed by the employer on the institutional portal of the Ministry of Labour (except for Veneto and Lombardy) will be sufficient. We are at your disposal for any support;

- evaluation of an application for the Cassa Integrazione.

b) workers placed in compulsory quarantine: i.e. placed under observation because they have symptoms attributable to the virus.

It is necessary to check the regulations of the applied CCNL (National Collective Labour Agreement): in general, this absence must be regulated according to the provisions, both legal and contractual, concerning absence due to illness, with the consequent health protection and job security.

c) workers who choose to stay at home (even though they are not obliged to do so, but out of fear of infection): such cases are consistent with unjustified absence from the

workplace. Therefore, the employee must request and be authorized to take leave and vacation permits. The situation that could otherwise arise might be followed by disciplinary measures.

We are at your disposal for any assistance or further investigation.

© Bureau Plattner
www.bureauplattner.com

