

COVID-19

The importance of a corporate Smart Working policy with a view to Phase 2 of the emergency

With the dual objective of tackling the COVID-19 emergency and ensuring business continuity, the Government has encouraged the use of Smart Working activities from the outset, allowing companies to unilaterally implement this form of work without the prior employee-employer agreement required by Law no. 81 of 22 May 2017.

According to official sources and the media, in the Phase 2 of the emergency Smart Working will be essential to continue to carry out work activities, especially in the larger organizations.

Smart Working activities (initially regulated by Law 81/2017) are carried out partly at the company's premises and partly at a different location, without specifying the place where the employee will be working.

It is therefore only reasonable to believe that – on the assumption that Smart Working will continue to play a key role during the gradual resumption of activities after the end of the first phase of the emergency – only well-regulated work conditions will ensure both compliance with contractual obligations and the regular operation of business organizations: appropriate actions to prevent and/or contain the risk of individual or collective litigations resulting from an unregulated implementation of Smart Working processes by many companies after the measures introduced since 23 February 2020 (Decree-Law no. 6/2020 and Italian Prime Minister Decree of 23 February 2020).

To this effect, it may be helpful to prepare a **Smart Working policy** which companies may issue and implement forthwith, before the next stage during which activities will be resumed. The policy will regulate key issues such as, for instance:

- ◆ how the employer will exercise its supervisory powers, to avoid individual and collective disputes for violation of the prohibition to control employees;
- ◆ working hours, the hours during which employees have to be available and the resting periods, to protect the employees' "right to disconnect" and avoid claims for damages in connection with stress from overwork and/or other indirect damage;
- ◆ the use of IT instruments;
- ◆ the management and sharing of Smart Working costs to prevent complaints from workers regarding any additional expenses borne by them from in this connection;

- ◆ specifying the places where work may be carried out, consistently with the rules issued in connection with the COVID-19 emergency;
- ◆ specifying the conducts that are relevant for disciplinary proceedings if engaged in by employees while working outside the company's premises and the related disciplinary penalties (which may be imposed only if previously known by the employee).

These conditions are already provided for by current rules in connection with Smart Working activities, regardless of the emergency legislation.

It is therefore essential that employers identify the operating measures to be implemented in this regard, and regulate them appropriately.

For additional information, please contact:

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