

# RESUMING PRODUCTIVE ACTIVITIES

and Company agreements to regulate necessary measures to contain the risk of Covid-19 infection.



Updated with the latest integrations in the Protocol shared between the Government Administration – Employers' Associations and Trade Unions, dated April 24, 2020.

Edited by:  
Labour Department

**APRIL 2020**

The employer is responsible for safeguarding its employees' health and safety under Article 2087 of the Italian Civil Code which requires businesses to adopt the necessary measures to safeguard employees' physical integrity and protect them from mental harm. Focus on the responsibility of the employer is also placed by Legislative Decree no. 81/2008, which - among other things - includes the obligation to assess occupational health and safety risks and identify appropriate measures to prevent and protect from generic and specific risks rooted in work tasks.

The risk of Covid-19 infection – as confirmed in the shared Protocol dated April 24, 2020 - is not a specific risk but a generic risk, generated by an emergency, which requires companies to strictly follow exceptional prevention measures dictated by national and local government authorities. In this framework, there apparently is no margin for a risk assessment that departs from the lines dictated by government emergency acts, since it is inconceivable for employers to adopt actions differing from the ones imposed by the authorities, nor that they may modify the organization guidelines set by the Government Administration together with Employers' Associations and Trade Unions.

In this phase of the health emergency, to contain the diffusion of the Covid-19 virus in workplaces, essential sources of reference for enterprises are the *shared Protocol dated 24/04/2020 (shared Protocol regulating measures to fight and contain the Covid-19 virus infection in workplaces)*, supplementing the

*previous* Protocol dated 14/03/2020 adopted by the employers' association Confindustria with the major Trade Unions, and the Decree of the Presidency of the Council of Ministries (DPCM) dated 11/03/2020.

*According to the shared Protocol dated 04/24/2020, in the phase necessary to adopt or adjust company anti-infection safety policies, businesses may apply income support benefits and smart work. The Provisions expressly set out that the absence of an adequate company policy to offer appropriate levels of protection "triggers the suspension of the business until safety conditions are reintroduced".*

*The shared Protocol also recommends the involvement of internal trade unions or, if there is no works council, local trade unions, and to have recourse to the support of the company or local workers' safety representatives, confirming the desirability of avoiding unilateral decisions, and of signing, instead, anti-contagion policies resulting from a company collective agreement.*

With no pretense of being exhaustive, since the issue is subject to changes and supplements, which will undoubtedly be triggered as the increasing knowledge of Coronavirus 19 develops, the following paragraphs illustrate the most appropriate measures that, in line with the reference sources specified above and their technical and scientific application, companies are required to/may adopt to resume operations and safeguard the health of employees from the risk of Covid-19 infection.

1. HYGIENE AND SANITIZATION OF PREMISES	Before resuming production operations and, thereafter on a regular basis, the company must sanitize work environments.	p. 4
2. DISTANCING	An essential measure to prevent the spread of Covid-19 is distancing workers, implemented in practice with new work shifts, part-time work and alternate use of smart work.	p. 4
3. ACCESS TO COMMON AREAS	To ensure distancing between workers, strict regulations on the use of common areas (cafeterias, toilets, etc.).	p. 5
4. RESTRICTION ON INTERNAL MOVEMENTS AND MEETINGS	With a view to contain risks, the recommendation is to restrict internal movements and meetings to strictly essential situations.	p. 5
5. EXTERNAL SUPPLIERS' AND VISITORS' ACCESS	External suppliers' and visitors' access to and length of stay must be specifically regulated and restricted to strictly essential situations.	p. 5
6. WEARABLE DEVICES FOR COMPLYING WITH SAFETY DISTANCES	Electronic devices and software are useful tools to ensure and check distances between workers on company premises.	p. 6
7. TAKING BODY TEMPERATURE	Under emergency regulations, body temperature must be taken before allowing workers to access the company.	p. 6
8. RAPID SEROLOGICAL TESTS	Using rapid serological tests has the great advantage of identifying asymptomatic carrier of the virus.	p. 6
9. IMMUNI "APP"	The Immuni app, and other applications on the market, allow the tracing of contacts that workers have had with Covid-19 positive persons or persons at risk of exposure to the infection.	p. 7
10. PERSONAL PROTECTIVE EQUIPMENT	PPE must be used (masks, surgical clothes, etc.). PPE will vary depending on the tasks and the industry.	p. 7
11. PERSONAL HYGIENE	Workers are required to cooperate in containing the risk of the infection and to comply with strict regulations on personal hygiene.	p. 7
12. TRAINING/ INFORMATION TO WORKERS	The company is required to inform workers of Covid-19 risks and train them on measures to adopt to prevent contagion.	p. 7
13. INTERNAL POLICY OR COMPANY AGREEMENT?	A collective company agreement is the most effective tool to implement and comply with the set of rules to protect workers' health from the risk of infection.	p. 8

# The measures

## 1. HYGIENE AND SANITIZATION OF PREMISES

Before resuming working operations, and after such date on a preset periodic basis, work environments must be sanitized, and consequent sanitary measures implemented. Best practices developed in recent weeks recommend the carrying out of sanitization operations only after cleaning the buildings where production equipment, desks and in general all tools used to carry out work are located.

## 2. DISTANCING

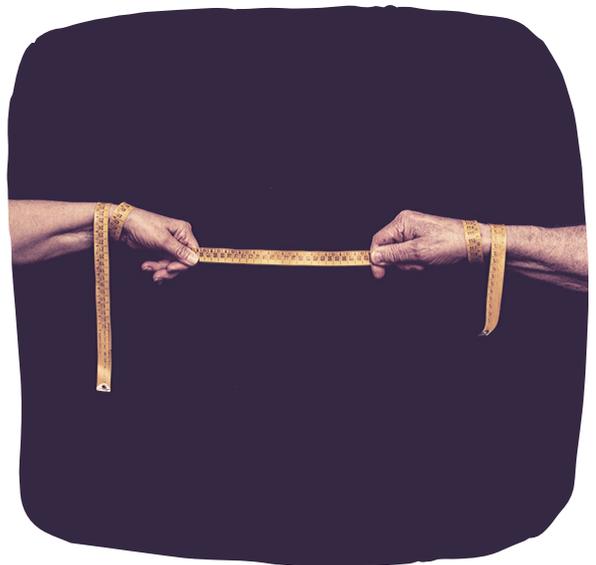
It is essential to launch a thorough reorganization of work so as to effectively ensure a physical distance of one/two meters between employees. To meet this essential distancing requirement, it is useful to allocate work shifts differently, so that people in the same department or office are not present at the same time but take turns.

If, for instance, before the pandemic production activities were concentrated between 08:00 a.m. and 8:00 p.m. from Monday to Friday, to reduce the number of persons present in the same departments and offices, work shifts may be spread over 7 workdays, from 05:00 a.m. to 12:00 a.m.

To the same effect, another possible measure is to arrange the conversion of employment contracts from full-time to part-time, until a vaccine against Covid-19 is found, given that reducing working hours undoubtedly contributes to reducing the numeric concentration of workers in plants or offices.

The provision according to which employees will work half of their hours on company premises and the other half by smart working has the same purpose. By doing so, the presence on company premises of staff whose tasks are compatible with agile work may be halved.

Another measure functional to distancing, in terms of organization of work, is setting up Plexiglas partitions between desks, signals on the floor indicating boundaries, and reserving one or more rooms to health/medical services only, to wait for and receive checkups (taking temperature, serological tests, etc.).



### 3. ACCESS TO COMMON AREAS

An accurate regulation of staff's access to common areas (toilets, cafeteria, parking area, wardrobe, etc.) is required to ensure that, in these places as well, there is no concentration of people capable of causing failure to comply with distancing measures.

Also in this respect, the employer may issue instructions that no more than one or two people may occupy one table at the cafeteria at the same time and that time dedicated to meals is restricted to the minimum strictly necessary to eat the meal (rather than the standard half an hour, for instance, a quarter of an hour).

Likewise, access to toilets may be regulated by arranging for the presence of a member of staff with the role of controlling access or a display which, after entry of a given number of people generates the sign "occupied".

### 4. RESTRICTION ON INTERNAL MOVEMENTS AND MEETINGS

In this case as well, distancing between employees imposes a duty to reduce meetings and training sessions with the physical presence of attendees, which the Protocol requires to be suspended, to the strictly minimum and essential. In this respect, all existing scheduled training sessions are cancelled, including training on health and safety (employees in charge of fire prevention, first aid , etc.).

The same applies to movements inside plants and offices, and organization models that require moving from one area of the company to another, which should be abandoned in favour of the use of electronic devices to communicate between departments.

### 5. EXTERNAL SUPPLIERS' AND VISITORS' ACCESS

The policy must describe entry, transit and exit procedures applicable to suppliers, identifying paths and timing that reduce, insofar as possible, any contact with employees present on the premises. Dedicated toilets must be identified and external suppliers and visitors shall not be permitted to use common areas accessible to employees.

Visitor's access must be reduced to strictly essential situations and contractors' staff (maintenance, cleaning services, etc.) must be informed and trained on anti-infection measures in the company policy. The client must supervise compliance with measures by contractors.



## 6. WEARABLE DEVICES TO DETERMINE THAT SAFETY DISTANCES ARE KEPT

Another very useful measure to ensure that distancing is complied with is the use of wearable devices, meaning electronic bands or other technological devices. These tools have a device that plays an alarm signal when workers do not keep minimum safety distances. For instance, a silicon band is on sale that uses Bluetooth connection technology with other workers in the same plant wearing the same band. This device vibrates and blinks a light when safety distances are not kept.

There is also “Social distancing” software that works by connecting cameras on premises to allow the tracing of a 2D map of the area and draws a circle with a radius of one/two meters around each person. This makes it possible to determine whether distances between persons present on company premises are kept.

## 7. TAKING BODY TEMPERATURE

One of the essential measures introduced to prevent Covid-19 infection is taking the temperature of workers before they enter offices or production areas. Among other things, if workers’ body temperature is equal to or higher than 37.5°C, they cannot have access to the premises.

The employer is required to arrange a room near the entrance to the site where temperature is taken with thermal scanning systems or other body temperature measuring instrument.

In this respect, software exists (“AI Thermometer”) which is connected to thermal cameras and allows, (thanks to artificial intelligence algorithms), the identification of the body shape of individuals, the position of the face and the reading of the subject’s forehead temperature.

## 8. RAPID SEROLOGICAL TESTING

With a view to preventing contagion, rapid serological tests may prove extremely useful. These have the great advantage of identifying asymptomatic virus carriers.

By analyzing a few drops of blood, these tests allow the determination within a few minutes of whether a worker is positive or has contracted the virus in the past.



## 9. THE "IMMUNI" APP

An additional measure that employers could adopt is having employees install a specific app to trace their contacts with people who have tested positive or who could have had contact with the virus. We refer to the "Immuni" application selected by the Italian Government Administration to monitor the evolution of the Covid-19 infection across the national territory. The use of this app, like other applications on the market, as the Prime Minister announced, will not be a mandatory requirement.

Accordingly, if this approach were to be confirmed, the employer could not insist that its employees download such applications on their smartphones or other devices.

## 10. PERSONAL PROTECTIVE EQUIPMENT

Emergency legislation assigns a pivotal role to personal protective equipment that employees are called to wear before starting their work shift.

Which personal protective equipment to use obviously changes depending on working tasks of employees and the industry in which the company operates.

Basically, employers will be required to provide employees with masks, possibly with a low environmental impact, surgical gloves, and, depending on individual cases, protective goggles, head covers, isolation and sterile gowns.

## 11. PERSONAL HYGIENE

The utmost care must be paid to personal hygiene, therefore detergent and disinfectant dispensers must be placed in dedicated company areas that are easily accessible by all workers.

The company will have to define a set of minimum rules that workers are required to comply with, including placing one's hand in front of the mouth when sneezing and no physical contact with coworkers.

## 12. WORKERS' TRAINING/ INFORMATION

Workers must be appropriately informed on Covid-19 risks and on infection protection measures adopted by employers, and on the rules that workers are required to strictly follow from a technical, behavioural and health perspective.

It is useful to arrange a training session on safety and health protection measures adopted by the company, the implementation of which workers are called to cooperate with. The training session needs to place workers in a position to accurately understand what behaviours to adopt in all situations.



# Internal policy or company agreement?

The application of the set of measures summarized above with no pretense of being exhaustive to prevent or contain the risk of Covid-19 infection, raises a material question.

Is it sufficient to adopt an internal policy, distributed to all employees, in which the company lists measures and activities that, in various ways, employees will have to comply with from the moment they enter the workplace to when they leave? Or is a collective company agreement with the internal trade union representatives needed?

**We are of the opinion that some measures for distancing workers and checking their health condition cannot be adopted unilaterally by the employer but impose an obligation to follow the rules in art. 4 and art. 5 of the Workers' Statute.**

Using **wearable** devices to determine that safety distances between workers are kept, just like **software connected to corporate cameras** that define employees' ranges of action, are tools which could trigger the remote control on work.

This is why, as with GPS equipment or the setup of video surveillance systems on the premises where operations are undertaken, wearable devices fall under the scope of application of art. 4 of the Workers' Statute.

It is therefore appropriate, if not perhaps necessary, to seek a preliminary collective agreement with internal trade union representatives with a view to meeting the conditions in art. 4 referred to above, which expressly authorizes these tools provided that a collective agreement is reached.



A similar issue is triggered by **rapid serological tests** and probably also by taking employees' **body temperature** when they enter the site. Art. 5 of the Workers' Statute prevents employers from checking the physical fitness of employees and establishes that these checks may be made only by authorized state agencies.

Making serological tests raises clear issues on compliance with this provision because it is hard to disregard the fact that determining if a worker is or tests positive is a form of ascertaining a health condition.

To overcome this hurdle, technically it would not even be enough to enter into a company collective agreement, because art. 5 does not authorize collective agreements to regulate by introducing exceptions. However, pending any decision by the legislator in this emergency phase, to introduce specific provisions to authorize companies to the serological testing of workers, inserting this control procedure within a collective company agreement, may contribute to protect the company from disputes.



Moreover, certain organization measures are possible only if a collective company agreement exists. The **conversion of full-time employment into part-time**, which the company cannot impose unilaterally on workers, is a case point. We also refer to **spreading shifts** over 7 weekdays and **expanding the working day** by resorting to night hours.

**Regulating working hours**, without prejudice to restrictions in applicable national and EU legislation, is a function of national collective labour agreements and their amendment requires, in this case as well, a second level agreement.

In addition, it is easier for employers to require the application of **workers' personal hygiene** measures and **the limitation of access to common areas** (toilets, cafeteria, wardrobe, etc.) if this is the outcome of a company agreement.

There is no doubt that, in this respect, the company may take unilateral actions, pursuant to emergency legislation introduced by the Government Administration and the Protocol signed by Labour and Management on 14 March 2020.

However, it is also clear that compliance with rules on access to common areas, using personal protective equipment and on hygiene measures has a totally different value if, instead of being the outcome of unilateral actions taken by the employers, is the result of a company agreement. By doing so, any breaches by workers will clearly trigger a disciplinary infringement and allow the employer to take immediate action with no concern for any claims by any non-compliant members of staff.

The shared Protocol dated 04/24/2020 requires the establishment of **Company Committees** within businesses, with the function of supervising the application of anti-infection safety measures. Members of the works council and company trade union representatives must be allowed to take part in the Committee, in addition to the workers' safety representative.

If companies are not in a position to set up a Company Committee, then **a local Committee** must be set up with the involvement, in this case too, of the trade unions, together with the other parties.

This provision confirms the desirability of **defining an internal policy through a company agreement**, because internal works councils or, in their absence, locally present trade unions take part, in any event, in committees that are responsible for supervising the application of the different measures adopted by companies to fight the Covid-19 virus.



**In light of all these considerations, we recommend a company collective agreement as the mechanism to introduce the measures (whether involving hygiene, health, or organization) which, on a case-by-case basis, prove to be necessary to prevent or contain the risk of Covid-19 infection.**



*Do not hesitate to  
contact us for any further  
explanation*

**Giuseppe Bulgarini d'Elci**  
email: [gbulgarini@carnelutti.com](mailto:gbulgarini@carnelutti.com)

**Marco Sartori**  
email: [msartori@carnelutti.com](mailto:msartori@carnelutti.com)

**[www.carnelutti.com](http://www.carnelutti.com)**  
+39 02 655851