



## •ALERT•

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# The news of the Green Pass Decree

The Italian Council of Ministers, in its session of September 16, 2021, approved a Law Decree that introduces, among others, some urgent measures to ensure the safe performance of public and private work through the application of the COVID-19 green certification (so-called "Green Pass"). Below are the main innovations regarding private work.

### **GREEN PASS OBLIGATION: WHEN?**

From October 15, 2021 until December 31, 2021.

### **TO WHOM DOES IT APPLY?**

To all employees who perform, for any reason, working activities - including training or volunteering - in private workplaces, both under employment contract and other forms of contract: for example, self-employed employees, collaborators (including occasional workers), temporary employees, interns, agents, employees of external contractors, etc...

Access to workplaces in the absence of Green Pass is allowed only to those who are exempt from the vaccination campaign according to appropriate medical certification issued under the criteria defined by the Ministry of Health. Applicable regulations for schools, higher education, health care, and RSA operators remain unchanged.

### **WHO PERFORMS THE CONTROLS?**

Employers are required to provide for - by October 15, 2021 - appropriate internal procedures/protocols for the organization of rules on Green Pass control activities, under penalty of specific sanctions (as below indicated).

By way of example, such procedures/protocols must specify:

- the company premises where the controls will be carried out;
- the time when the controls will be carried out (if possible, at the entrance, with the option of spot checks during the working day);



- the people in charge of carrying out the controls;
- the procedures to be followed in case of absence of the Green Pass or refusal to show it.

In addition, employers will have to formalize, in a specific written document, the appointment of one or more individuals to be responsible for verifying the validity of the Green Pass. These individuals may be company employees or external parties (for example, security officers, receptionists, etc.). The appointment document must contain the necessary instructions on the control activity, also possibly accompanied by practical training activities.

The obligation to verify Green Passes also operates in the context of contracts: in such case, the employer (contractor) shall have to ensure that its employees who move to third parties (principals) are in possession of the Green Pass. In turn, the principal where the working activity is performed shall have to verify the authenticity, validity and integrity of the Green Pass of the contractor's employees.

### **HOW ARE THE CONTROLS PERFORMED?**

The Green Passes must be controlled, in accordance with the provisions of the Prime Ministerial Decree ("DPCM") of June 17, 2021, by scanning the QR-code, using only the app "VerificaC19".

The authorized personnel will be entitled to ask the holder of the Green Pass to show a valid identity document to verify the authenticity, validity and integrity of the certification.



On the other hand, it will not be possible to ask the holder for a copy of the Green Pass to be filed (the activity of controlling the certifications does not involve the collection of the holder's data).

The authorized personnel in charge of the verification will have to transmit to the Prefect all documents relating to any violations ascertained.

### **ABSENCE OR REFUSAL OF THE GREEN PASS: WHICH ARE THE CONSEQUENCES?**

Employees who inform the company that they are not in possession of the Green Pass (before entering the workplace) or who are found not to be in possession of the Green Pass at the time of entering the workplace:

- are suspended from work, with no right to remuneration or other compensation/fees;
- are entitled to the preservation of their employment relationship (and therefore cannot be dismissed);
- cannot be subject to disciplinary consequences since they do not have a Green Pass. This means that the employee cannot be subject to disciplinary sanctions due to the mere fact of not having obtained the Green Pass. If, however, the employee was to enter the workplace without a Green Pass (e.g. bypassing controls, showing a false certificate, etc.) disciplinary action may be taken against them.

The suspension is immediately notified to the employee (even with a simple written communication) and is effective until the presentation of the Green Pass and, in any case, not beyond December 31, 2021.

In companies with less than fifteen employees, after the fifth day of failure to present the Green Pass, the employer

may suspend the employee for the duration corresponding to that of the employment contract entered into for the replacement, in any case for a period not exceeding 10 days, and not beyond the aforementioned deadline of December 31, 2021 (the regulation does not clarify whether the suspension can only take place in the event of effective replacement of the employee without a Green Pass and what happens once 10 days have elapsed since the suspension).

### **EMPLOYEE WITHOUT A GREEN PASS: CAN HE/ SHE WORK IN REMOTE WORKING?**

The issue of the employee without a Green Pass who asks to be able to work in remote working is still in progress. The Decree does not provide anything in this regard: we therefore believe that the silence on this point is relevant, since the Decree not only does not require - but not even simply suggests - the employer to allow the employee without a Green Pass to work in remote working. In the light of the above, we believe that such issue must be evaluated on a case-by-case basis, as it is not possible to give a unique answer.

In particular, it will be important to consider certain elements, including whether:

- the working activity of the employee is compatible with remote working;
- the company has already adopted - as of October 15, 2021 or before - a policy of return to the company (with partial, progressive or total return);
- whether other employees performing the same (or similar) duties as the employee without the Green Pass will continue to work in remote working after October 15, 2021.

## **VIOLATION OF THE GREEN PASS OBLIGATION: SANCTIONS FOR...**

- **Employers** who do not set out company procedures/ protocols regarding Green Pass control activities and/ or who do not carry out controls → administrative sanctions from Euros 400 to Euros 1000 (increased in the case of repeated violations). Given the purpose of the regulation, it cannot be excluded that further disputes may be raised against employers regarding the violation of health and safety regulations in the workplace.
- **Employees** who have gained access by violating the Green Pass obligation (for example, by bypassing controls or by showing false certificates) → administrative sanction from Euros 600 to Euros 1500. In addition, such behavior may be subject to disciplinary action by the employer.

The above sanctions shall be issued by the Prefect.

### CONTACTS

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