

COVID-19 – INAIL Coverage for employees and direct liability of the employer

15 April

Among the provisions issued to reduce the spread of COVID-19 emergency, the Italian legislator extended the protections guaranteed by the National Agency for Insurance against the Risk of Injuries at Work (INAIL) to those employees who contracted the COVID-19 virus - or have been under mandatory quarantine or fiduciary homestay - “*in occasion of work*” (i.e. during the execution of the working activity or while going from home to the workplace and vice-versa: see [article 42 of Legislative Decree no. 18 of 17th March 2020](#) and [INAIL circular no. 13 of 3rd April 2020](#)).

The infection is automatically assumed as occurred “in occasion of work” for medical staff and employees who operate in constant contact with public/users (e.g. front office/cash desk operators, sales/desk staff, non-medical staff operating within hospitals such as technicians, cleaners, support and transport operators, etc.).

Instead, for any other employees, the “occasion of work” must be proved on a case by case basis, as it generally happens in case of accidents at work.

The employee’s absence due to the accident at work caused by COVID-19 infection (i) implies the employer obligation to inform INAIL, and (ii) shall not be counted within the so-called “comporto” (i.e. the period during which the employee is entitled to maintain his/her job even though absent since on sickness leave). Further, the “coronavirus” accident does not impact the so-called Company’s average rate of accidents (“*andamento infortunistico*”).

The above provisions reinforce the employer’s obligation to fully comply with health and safety requirements at workplace – including those lastly introduced by the “*Joint protocol against the spread of COVID-19 in the workplace*” of 14th March 2020 – provided that the occurrence of an accident at work due to COVID-19 infection due to the employer’s breach of such requirements would imply the:

(i) application of the sanctions provided by the Legislative Decree no. 81 of 2008 (regulating health and safety at work) and by the Legislative Decree no. 231 of 2001 (which regulates the administrative liability of legal entities) to the Company; and

(ii) criminal liability of those persons – such as directors and/or executives/supervisors - responsible for the employee injury or death consequent to the COVID-19 infection.

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