

COVID-19 AND ITALIAN EMERGENCY LEGISLATION Criminal Law risks for individuals and employers

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- Risk mitigation strategies for employers

INTRODUCTION

Targets:

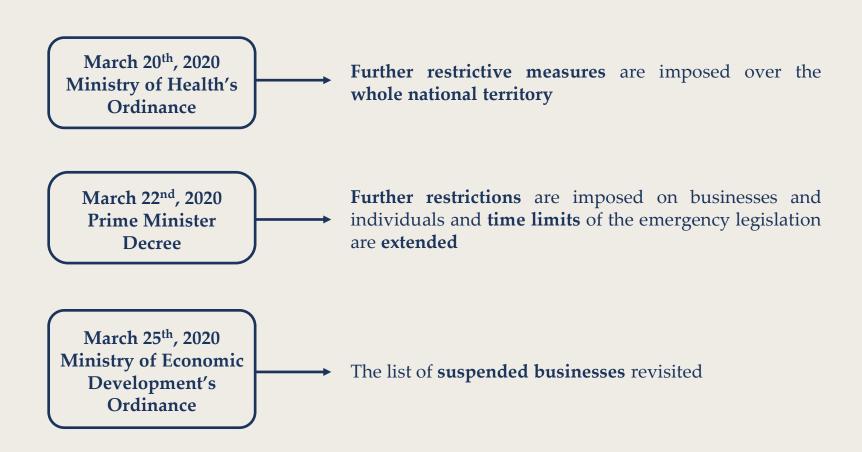
- to provide an overview of the Covid-19 emergency legislation in Italy;
- to describe Criminal Law consequences of violations of the emergency measures;
- to provide some **Criminal Law risk management strategies**.

<u>Disclaimers</u>: these materials have been prepared by Studio Legale Crippa Pistochini for informational purposes and are not a legal advice.

EMERGENCY LEGISLATION

March 8th, 2020 Prime Emergency restrictions are imposed over Lombardia area and 14 other Provinces **Minister Decree** March 9th, 2020 Prime Emergency measures extended to the whole national **Minister Decree** territory Criminal Law sanctions are imposed. March 11th, 2020 Several businesses are suspended over the whole **Prime Minister** national territory Decree

EMERGENCY LEGISLATION



EMERGENCY LEGISLATION

Some Criminal Law sanctions provided for emergency March 25th, 2020 measures' violations are replaced by administrative Decree-Law no. 19 fees April 1st, 2020 Prime Time limits of the emergency legislation are extended **Minister Decree** The framework of restrictions imposed over businesses April 10th, 2020 Prime and individuals is redesigned and time limits of the **Minister Decree** emergency legislation are extended

APPLICABLE RESTRICTIONS FOR INDIVIDUALS

According to applicable emergency legislation, <u>individuals are prohibited from</u>:

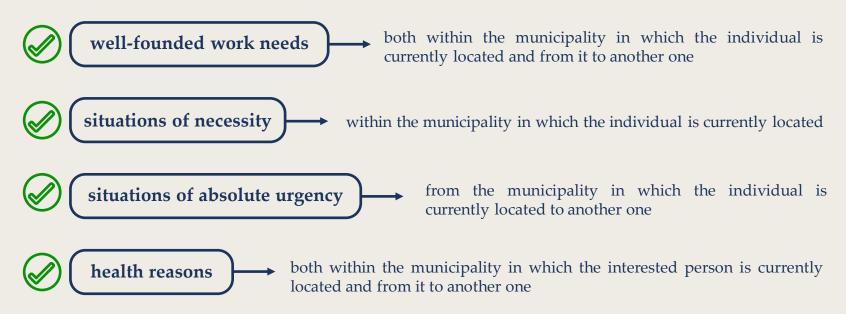
- leaving their place of residence if they are quarantined or virus-positive
- (moving within national territory
- moving to a secondary place of residence
- entering public gardens and parks as well as public playgrounds

UNTIL MAY 3rd, 2020

- moving to a municipality other than the one where they are currently located
- carrying out playful or recreational activities outdoor
- gathering in public places or places opened to the public

APPLICABLE RESTRICTIONS FOR INDIVIDUALS

Individuals are nevertheless allowed to move for:



Circumstances allowing individuals to move <u>shall be justified by means of self-declaration</u>

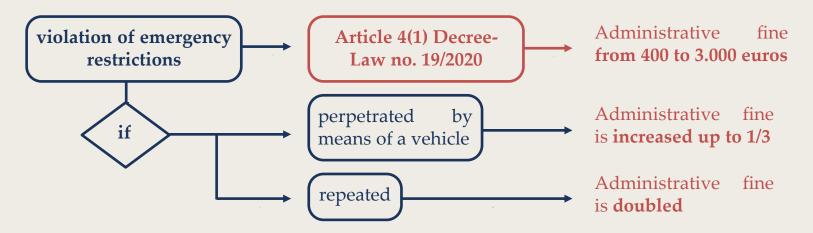
APPLICABLE RESTRICTIONS FOR INDIVIDUALS

Prime Minister Decree dated April 10th, 2020 provides a specific set of rules for <u>individuals entering Italian national territory</u>, who are <u>obliged to</u>:

- release self-declaration with regard to their personal identity and the circumstances allowing them to move to Italy;
- inform Italian Authorities in the case they start showing Covid-19's symptoms;
- undergo quarantine and health surveillance for 14 days starting from the day they entered Italian national territory (exceptions are provided for the cases of mere passage and stay under 72 hours)

SANCTIONS FOR INDIVIDUALS

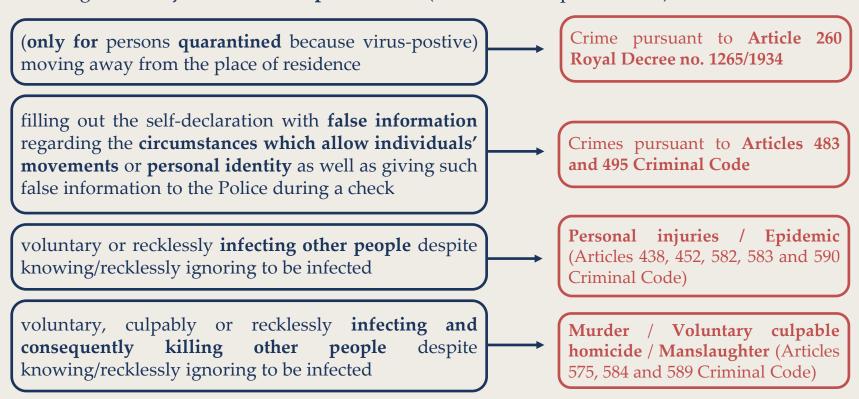
Downstream of Decree-Law no. 19/2020, <u>violating emergency restrictions is not per se a crime anymore</u>. Conversely, the mere violation of emergency restrictions is punished with an administrative fine.



Pursuant to Decree-Law no. 19/2020, <u>violations perpetrated prior to March 26th, 2020</u> (previously criminally relevant), <u>are converted into administrative infringements and punished with a 200 euros administrative fine</u>

SANCTIONS FOR INDIVIDUALS

Though the mere violation of emergency restrictions is not a crime, there are some behavior that might be **subject to criminal prosecution** (fine and/or imprisonment):



RISK MITIGATION STRATEGIES FOR INDIVIDUALS

Move only if one of the circumstances set forth by emergency legislation is recurring

Print and fill out the self-declaration before leaving place of residence (if you do not have a self-declaration, its form shall be provided to you by the Police at the time of the check)

If you are about undergoing a Police's check and your movement is not justified by any of the circumstances set forth by emergency legislation, refrain from providing the Police with false information and limit yourself to declare you cannot justify you from moving from your place of residence

If you have typical symptoms of COVID-19, consult your family doctor, minimize social contacts and refrain from moving when not strictly needed and falling under the circumstances set forth by emergency legislation

Fill out your self-declaration only certifying facts which are suitable to be ascertained as true and, if possible, save documentation which can demonstrate your movement was permitted pursuant to emergency legislation (e.g., medical certificate, certificate of attendance issued by the employer)

EMERGENCY SHUTDOWN MEASURES

NON-ESSENTIAL BUSINESSES





UNTIL MAY 3rd, 2020



NO SHUTDOWN FOR:

- farming, fishing, food and drink industries and stores
- industries and services in healthcare and pharmaceutical sectors
- industries supplying energy, fuel and water
- financial, banking, insurance, legal and accounting activities
- businesses carried out remotely (**smart-working**)
- any other businesses expressly authorized by Law
- industries and services which are functional (work chain) to essential and authorized businesses (subject to prior notification to the Authorities)

SAFETY MEASURES FOR ONGOING BUSINESSES



EMPLOYERS MUST RESPECT:

Covid-19 Safety Protocol in the workplace

signed by Government, trade unions and trade associations on March 14th, 2020



Workplace cleaning and sanitation

Personal protective equipment for workers

Safety information for all entering people

Safety distance between people (1 meter at least)

Management of symptomatic workers

Healthcare and safety supervision

SANCTIONS FOR EMPLOYERS



SHUTDOWN AND SAFETY MEASURES VIOLATION MIGHT IMPLY:

Administrative fines



Under <u>Art. 4(1) Decree Law 19/2020</u> (see above slide no. 10)

Criminal punishments



according to Workplace Health and Safety Act



according to Italian Criminal Code

SANCTIONS FOR EMPLOYERS

Workplace Health and Safety Act



EMPLOYERS MIGHT BE SENTENCED TO !

- failing to assess contamination risks in the workplace
- failing to inform workers about dangers, safety measures and health procedures
- failing to provide workers with suitable safety equipments
- failing to appoint a doctor providing the company healthcare supervision
- not requiring the doctor to comply with healthcare obligations
- not requiring workers to comply with health and safety legal provisions and company's measures
- > not providing an emergency plan to be followed in case of immediate danger

SANCTIONS FOR EMPLOYERS

Italian Criminal Code



EMPLOYERS MIGHT BE SENTENCED TO

IMPRISONMENT

under Art. 590 ICC (*culpable personal injury*) or under Art. 589 ICC (*manslaughter*)



- ➤ One of the **safety measures** provided by Law is **violated**
- ➤ A personal injury or death occurs in the workplace
- ➤ Injury/death and safety violation are causally linked

SANCTIONS FOR COMPANIES



- Crimes are **committed by** *Company directors* **or** *employees*
- The **Company takes an** *interest* **or** *advantage* from the offence (*e.g.*, cost savings made for not purchasing protective equipments for workers)

SANCTIONS FOR COMPANIES

Corporate criminal liability may trigger:

Administrative fines

- up to 387.250 euros for personal injuries
- up to 774.500 euros for manslaughter

Disqualifying sanctions

- Debarment from exercising activity
- Suspension or revocation of authorizations, licenses or concessions
- Disqualification from contracting with Public Administration
- Exclusion from public benefits, loans, contributions or subsidies
- Debarment from publicizing goods or services

Confiscation

of any **profit gained** from the offence

RISK MITIGATION STRATEGIES

In order to **minimize criminal risks**, it is advisable for companies to:

- Draft specific internal <u>safety policies</u>, to be listed in the Risk Assessment Document (so called «DVR»)
- Update the Internal Emergency Plan
- Encourage smart-working, holidays and paid leave
- Suspend all non-essential activities
- Provide workers with protective equipments
- Ensure the daily cleaning and periodic sanitation of all workplaces
- Enforce all safety measures set forth by <u>Covid-19 Safety Protocol in the workplace</u> signed on March 14th 2020
- Refrain from providing Authorities with information that might be found to be false and, if possible, save documentation demonstrating such information are true
- Collect Covid-19 emergency-related documentation (*e.g.*, notifications to Authorities, Risk Assessment Document, Internal Emergency Plan) in a dossier and be ready for potential dawn raids by Authorities aimed at checking compliance with business and safety regulation