

# COVID-19 AND ITALIAN EMERGENCY LEGISLATION

## Criminal Law risks for individuals and employers

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*Release II*  
Updated to April 16<sup>th</sup>, 2020

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## 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.**

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

## EMERGENCY LEGISLATION

March 8<sup>th</sup>, 2020 Prime  
Minister Decree

Emergency restrictions are imposed over Lombardia area and 14 other Provinces

March 9<sup>th</sup>, 2020 Prime  
Minister Decree

Emergency measures extended to the whole national territory Criminal Law sanctions are imposed.

March 11<sup>th</sup>, 2020  
Prime Minister  
Decree

Several businesses are suspended over the whole national territory

## EMERGENCY LEGISLATION

March 20<sup>th</sup>, 2020  
Ministry of Health's  
Ordinance

Further **restrictive measures** are imposed over the whole national territory

March 22<sup>nd</sup>, 2020  
Prime Minister  
Decree

Further **restrictions** are imposed on businesses and individuals and **time limits** of the emergency legislation are **extended**

March 25<sup>th</sup>, 2020  
Ministry of Economic  
Development's  
Ordinance

The list of **suspended businesses** revisited

## EMERGENCY LEGISLATION

March 25<sup>th</sup>, 2020  
Decree-Law no. 19

Some **Criminal Law sanctions** provided for emergency measures' violations are **replaced by administrative fees**

April 1<sup>st</sup>, 2020 Prime  
Minister Decree





**Time limits** of the emergency legislation are **extended**

April 10<sup>th</sup>, 2020 Prime  
Minister Decree




**The framework of restrictions** imposed over businesses and individuals is **redesigned** and **time limits** of the emergency legislation are **extended**

## APPLICABLE RESTRICTIONS FOR INDIVIDUALS

According to applicable emergency legislation, individuals are prohibited from:

-  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 3<sup>rd</sup>, 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:**



**well-founded work needs**



both within the municipality in which the individual is currently located and from it to another one



**situations of necessity**



within the municipality in which the individual is currently located



**situations of absolute urgency**



from the municipality in which the individual is currently located to another one



**health reasons**



both within the municipality in which the interested person is currently located and from it to another one

Circumstances allowing individuals to move **shall be justified by means of self-declaration**



## APPLICABLE RESTRICTIONS FOR INDIVIDUALS

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

- **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, violating emergency restrictions is not *per se* a crime anymore. Conversely, the mere violation of emergency restrictions is punished with an administrative fine.



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

## 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):

(only for persons **quarantined** because virus-positive) moving away from the place of residence

Crime pursuant to **Article 260 Royal Decree no. 1265/1934**

filling out the self-declaration with **false information** regarding the **circumstances which allow individuals' movements** or **personal identity** as well as giving such false information to the Police during a check

Crimes pursuant to **Articles 483 and 495 Criminal Code**

voluntary or recklessly **infecting other people** despite knowing/recklessly ignoring to be infected

**Personal injuries / Epidemic** (Articles 438, 452, 582, 583 and 590 Criminal Code)

voluntary, culpably or recklessly **infecting and consequently killing other people** despite knowing/recklessly ignoring to be infected

**Murder / Voluntary culpable homicide / Manslaughter** (Articles 575, 584 and 589 Criminal Code)

## 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*



**CLOSED  
UNTIL MAY 3<sup>rd</sup>, 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 14<sup>th</sup>, 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 Art. 4(1) Decree Law 19/2020 (*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 *IMPRISONMENT OR A FINE* FOR:**

- 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*)

IF:

- 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

Legislative Decree no. 231/2001  
*on Corporate Criminal liability*



Personal injuries/manslaughter



CORPORATE LIABILITY  
APPLIES IF:

- 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 **safety policies**, 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 *Covid-19 Safety Protocol in the workplace* signed on March 14<sup>th</sup> 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**