



Alert | **Labour**

Reopening Decree 2022

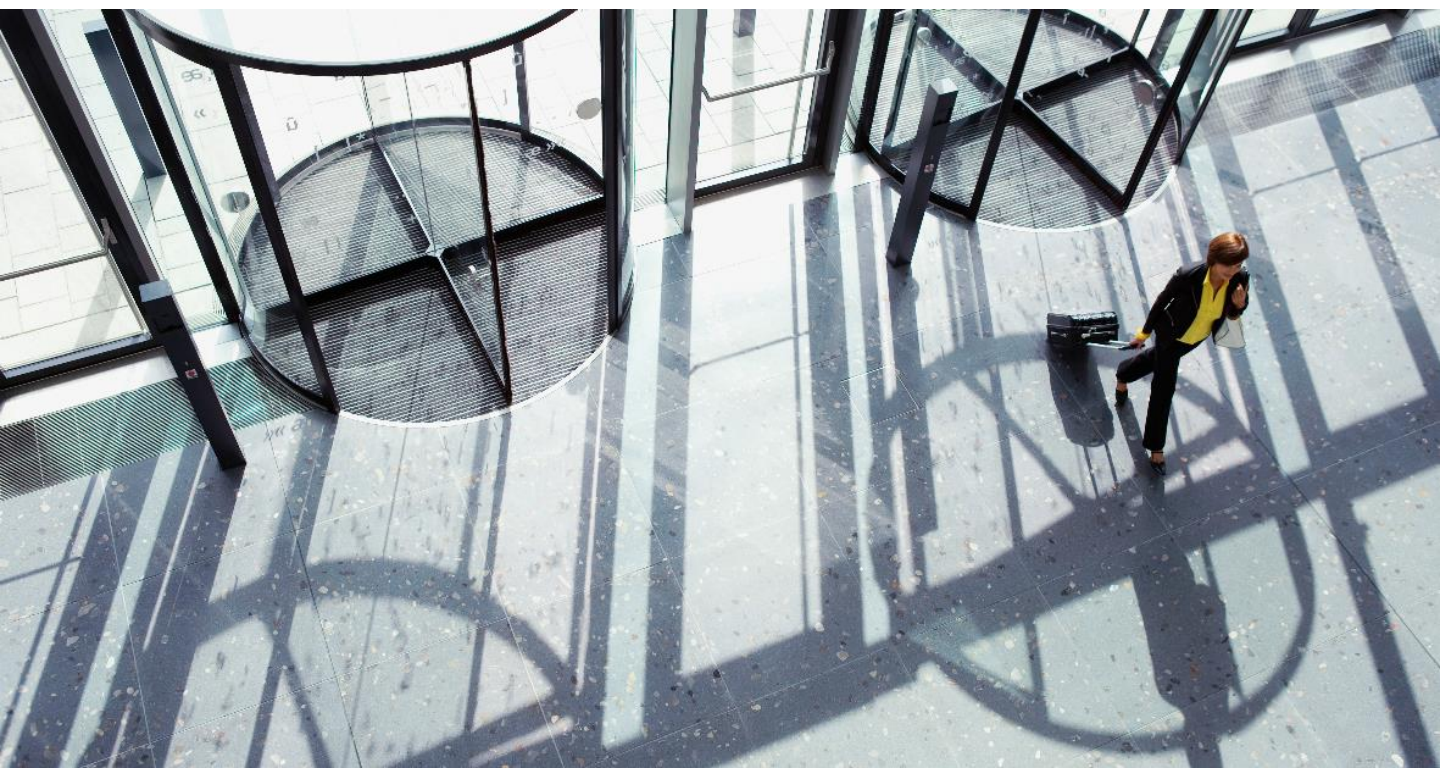
Vademecum for the employers

Instructions to access the workplace

From April 1st 2022 until April 30th 2022, it is possible to **have and, upon request, show only the «basic» Green pass**; the so called «basic» Green pass is valid for all employees regardless of age, and, therefore, **also for the over 50s (being, these latter, obliged to get vaccinated until June 15th 2022)**.

Please note that the «basic» Green pass is granted after vaccination (meaning both as completion of the primary cycle and after the booster dose), recovery from Covid-19 **or the negative result of a rapid antigenic or molecular swab**.

Missing or failure to show a valid «basic» Green pass will continue to imply the ban to access workplace. In such cases, employees may be considered **unjustified absent** without disciplinary or salary consequences, but with the right to keep their employment relationship.



After the fifth day of unjustified absence, the employer may suspend the employee for the duration of the employment contract, if any, entered into in order to replace the employee without the «basic» Green pass and, in any case, for a period that cannot exceed ten working days, renewable until April 30th 2022. Even in this case, no disciplinary consequences will apply and the employee involved will be entitled to keep his employment relationship.

Therefore, **starting from May 1st 2022**, unless future amendment to the relevant regulation will occur and with the exception of specific cases, **no certification** will be needed in order **to access workplaces**.



And what about canteen's access?

From April 1st, also for canteens' access, for all employees (regardless of age), it is sufficient to **have and, on request, show only the «basic» Green pass.**



And, once in the workplace, what changes?

As of April 1st 2022 and until **April 30th 2022**, **surgical masks** (and not the “FFP2” model as requested for other indoor places) will be **considered** as personal protective equipment (“PPE”) **for the generality of employees** and, therefore, must be provided by the employer and worn.

According to the provisions of the Decree, **after April 30th 2022**, the mask should not be longer considered as PPE and, therefore, it should not be longer mandatory to wear it at the workplaces.

A deeper interpretation of the health and safety’s provisions (section 2087 of the Italian Civil Code, provisions of the Legislative Decree no. 81/2008), suggest to be careful also after the end of April 2022; the recent ordinance of the Ministry of Health of April 1st 2022, valid until December 31st 2022 (the “**Ordinance**”)

confirmed, indeed, the effectiveness of the Protocol for contrasting and containing Covid-19 dated April 6th 2021 (the “**Protocol**”).

As known, in fact, section 2087 of the Italian Civil Code provides a specific obligation for the employers to protect employees’ health.



The **Protocol**, in line with the mentioned section 2087 of the Italian Civil Code, even if related to the emergency phase, requires the use of respiratory protection devices (*i.e.* surgical masks or individual protection devices of a higher level) *«in all cases of workplaces' sharing even if indoor or outdoor»*, without defining a specific time frame of use.

Based on the mentioned Ordinance and regardless of the fact that the Protocol seems to be linked to the emergency phase, the relevant rules shall be maintained or included in the DVR, unless the Protocol itself would be further amended.

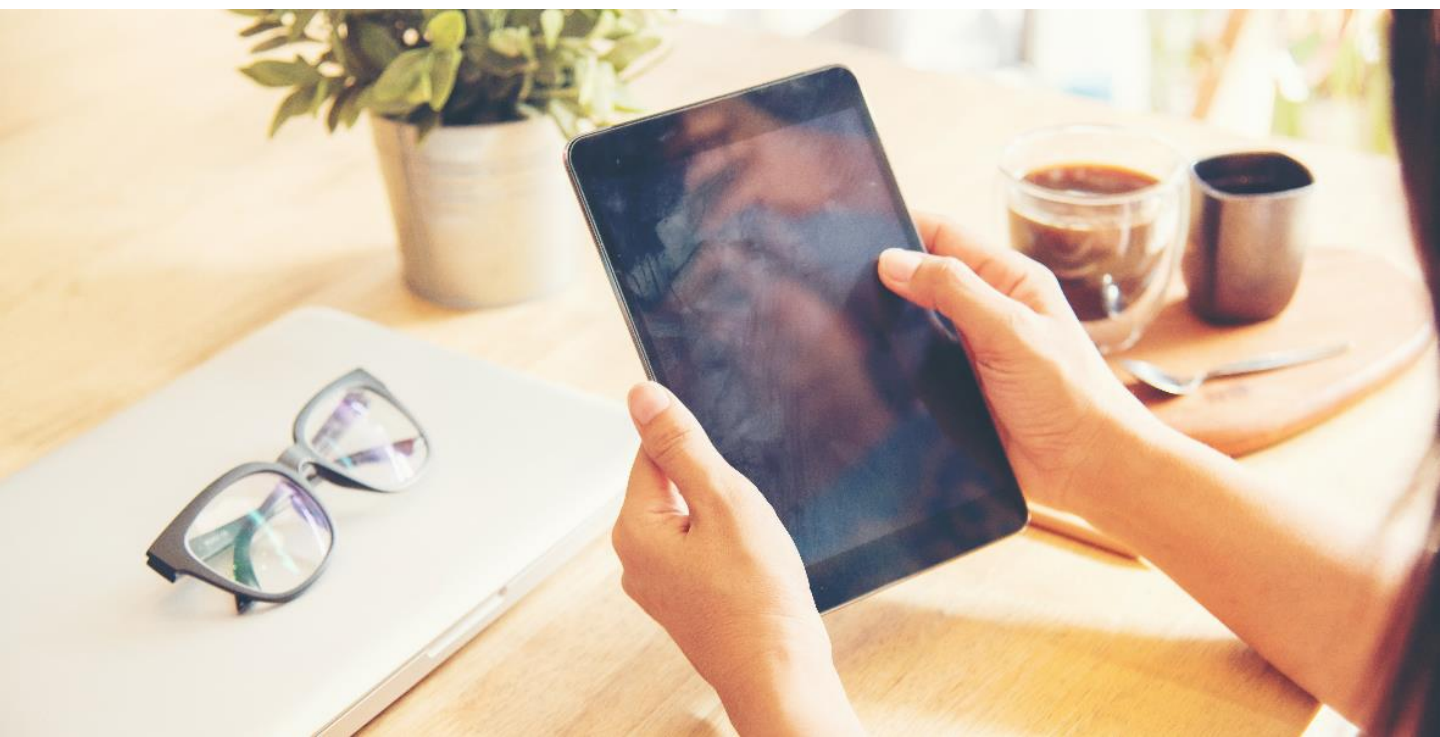
Our experienced H&S's consultants are available to help the companies in managing this transition.



And what about smart working? the “simplified way” will be still applicable until the end of June 2022

Employers of the private sector will be able to continue to use the simplified smart working until the end of June 2022 and therefore:

- the communication to the Ministry of Labor and Social Policies, including the names of the employees authorized to perform smart working, as well as the date of termination of this way of work, will be the “massive” one used during the emergency phase (section 90, paragraphs 3 and 4 of the Law Decree no. 34/2020, converted with amendments by Law no. 77/2020);
- health and safety reporting obligations towards employees and employees’ safety representatives can still be fulfilled electronically, also by adopting the reporting model made available on the institutional website of INAIL (National Institute for insurance against injuries at work);
- there is no need to enter into the individual agreement between the employer and the employee as required instead by the ordinary regulation.



For the so-called fragile employees, it has not been extended the possibility to perform the relevant working activities in smart working mode “as a rule”. At the moment, therefore, they will not have preference criteria with respect to other colleagues.

It will certainly be useful, according to the specific nature of the company context, in any case, to draft individual agreements, taking advantage of these months of continuation of the simplified regime described above and taking into account that the obligation to enter into the relative agreement will be newly in force, as from July 1st 2022, except for further extensions.



Extraordinary parental leave no longer exists

From April 1st, it is no longer possible to benefit from the extraordinary parental leave (section 9 of Law Decree no. 146/2021) for the case of suspension of teaching or educational activities, or for Covid infection or quarantine of the employee's children.



What happens to the vaccination's obligation?

The obligation will remain in force for:

- i. health professions, operators of health interest, employees working in residential, socio-assistance and socio-health facilities, individuals performing their activities in health and socio-health facilities (Legislative Decree no. 502/1992), **until December 31st 2022**;
- ii. school staff, defense, security and public aid sector, local police, bodies regulated by the provisions of Law no. 124/2007, the National Cybersecurity Agency, prisons, universities, higher education institutions (art, music and dance) and higher technical institutes, forest staffs of the special statute regions, teaching and educational staff in schools, **until June 15th 2022**;

- iii. employees **over 50 years of age until June 15th 2022**, but they could access workplace only with the «basic» Green pass.

A news introduced by the **Decree**, however, concerns the fines in case of failure to comply with the vaccination obligation for the subjects referred to in points (ii) and (iii). Failure to get vaccinated will not lead to suspension from work, but only to administrative fine provided by section 1, paragraph 1 of Law Decree no. 1/2022, converted into Law no. 18/2022, (*i.e.* order to pay **Euro 100**), without prejudice, in any case, to the specific provisions related to teaching and educational staff of the school.



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