

# COVID-19

## **GREEN PASS REQUIREMENT TO ENTER WORK PREMISES: GUIDANCE FOR ENTERPRISES**

Decree law no. 127 of 21/9/2021 - introducing urgent measures to ensure a safe working environment for public and private workers by extending the requirement for an EU digital COVID certificate ("Green pass") and enhancing the screening system – was published in the Italian Official Journal on 21 September 2021.

### **SCOPE OF APPLICATION**

According to the new decree, between 15 October 2021 and 31 December 2021 (end of the state of emergency), anyone who carries out paid or volunteer work in private enterprises is required to produce the Green Pass upon entering the work premises.

The obligation is extended to anyone who carries out work pursuant to a supply of service or work contract.

The obligation does not apply to workers who have been exempted from the vaccination obligation on medical grounds.

### **CONTROLS**

Employers will be required to ascertain that anyone entering the working premises has a Green Pass. To this end, by 15 October 2021, companies will have to:

- Determine the manner in which such controls will be carried out;
- Formally appoint the individuals in charge of conducting such controls.

According to the rules, controls may be carried out on a sample basis and, if possible, upon entering the working premises.

A Prime Minister Decree will establish the manner of conducting such controls. The 17 June 2021 Prime Minister Decree currently in force provides that this should be done by scanning the QR Code on the Green pass using a special-purpose app.

### **WORKERS WITHOUT A GREEN PASS**

Workers who do not have a Green Pass or declare that they don't have the certificate with them at the time of entering the work premises, will not be allowed in and will be considered to be "absent without justification" until they obtain their Green Pass. During their absence, they will not be entitled to receive pay or other work-related compensation.

If a worker's absence protracts over 5 days, companies with less than 15 employees who are unable to reinstate him or her due to the lack of a Green Pass may hire a replacement pursuant to a fixed-term agreement for a maximum of 10 days, which may be renewed only once.

In line with the general rules on fixed-term contracts, the second contract:

- will have to specify the reason for the renewal (replacement of the absent worker);
- may be entered into 10 days after the end of the first contract ("stop and go" rule).

As an alternative, companies could take advantage of the possibility (pursuant to article 93 of Decree Law 34/2020) to renew the contract only once, without specifying the reason for the renewal, provided that the new contract is entered into by 31 December 2021. In this case, it is possible to derogate from the "stop and go" rule.

## **DATA PROTECTION COMPLIANCE OBLIGATIONS**

The employer's control activities will require the processing of personal data to be conducted by the company in a capacity as Controller in compliance with the applicable data protection rules.

The Controller will be required in particular to:

- put in place controls that are limited to checking the certificate and, if necessary, the worker's ID;
- issue specific data processing instructions to the individuals in charge of conducting the controls;
- issue a privacy notice specifying, inter alia, that processing is required to meet the obligations introduced by Decree Law no. 127 of 21/9/2021 and that no processing, other than the mere verification of the data, will be carried out;
- update the personal data processing ledger.

## **PENALTIES**

The breach of the obligations imposed by the Decree will trigger administrative penalties. Specifically:

- the violation of the employer's control obligation and the failure to adopt the required administrative measures by 15 October 2021 may trigger an administrative penalty ranging between Euro 400 and 1,000; this amount will be doubled in the event of a repeated violation;
- a worker's access to the premises in breach of the Green Pass obligation may trigger an administrative penalty ranging between Euro 600 and 1,500; furthermore, disciplinary measures may apply.

**For further information, please contact:**

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