



Università
Ca'Foscari
Venezia

Master's Degree Programme
in Global Development and Entrepreneurship
course Global Markets

**Legal premises and social impact evaluation around the
practical and moral potentialities of Smart Working as a new
organizational labor model**

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Matriculation Number

858564

Academic Year

2020 / 2021

*Ai miei genitori e a mio fratello,
i miei punti fermi incondizionatamente,
a voi, sempre, dedicherò tutti i miei successi.*

Index

Introduction

1	Smart Working: historical and characterizing context	3
1.1	Introductory historical background: a new organizational model	3
1.2	Advantages and Disadvantages related to the Smart Working modality	7
1.2.1	Analogies and differences with other working modalities	12
1.2.2	Reasons for analyzing Smart working: a history of Globalization and Digital Revolution	14
1.3	SMART working fundamental principles	16
1.3.1	Equal exchange of time/productivity	17
1.3.2	A way to overcome space and time restrictions	18
1.3.3	Trustworthy commitment	19
1.3.4	Collaboration and Communication	20
1.3.5	Autonomy at work	21
1.4	Smart Working Triggers	22
1.4.1	Clapperton and Vanhoutte Model	22
1.4.2	Managerial culture and business policy	24
2	Italian Regulatory System	25
2.1	Jobs Act: the labor law reform of 2014	26
2.1.1	Legge Madia n°124/2015	27
2.2	Smart working governed by the law 81/2017	28
2.2.1	Approval procedure of the Law	30
2.2.2	Field of enforceability and juridical qualification	32
2.2.3	Art. 18: Smart Working and Species facti	33
2.2.4	Art. 19: Form and withdrawal rights	34
2.2.5	Art. 20: Compensation, right to lifelong learning and worker competencies certification	35
2.2.6	Art. 21: Disciplinary and control power	36
2.2.7	Art. 22: Safety at work	37
2.2.8	Art. 23: Mandatory insurance for workplace injuries and professional diseases	38
2.3	Legge di bilancio n°145/2018	39
2.4	Functional regulation of Smart Working during COVID-19 pandemic	40

2.4.1	Directive n°1/2020	44
2.4.2	Directive n°2/2020	45
3	Health, Well-being and Security of the Smart worker	48
3.1	Legal protection of the worker’s psychophysical integrity	50
3.1.1	Rights and Duties of the Employer	51
3.1.2	Rights and Duties of the Employee	53
3.2	Right to disconnect: an EU-wide fundamental right	57
3.2.1	Intervention of the Commission to the European Parliament, Council, Economic and Social Committee and to the Regional Committee: “Safer and smarter employment for everyone”	60
3.2.2	European Labor Authority: a new European Agency aimed at supporting member States in respecting the Communitarian Labor Rights	62
3.3	Legal Security of Smart Employees	64
3.3.1	Role of the law 81/2017 in pursuing the resolution of the Work-Life dichotomy	67
3.3.2	Second Level Incentives: Art. 25 of the draft law 80/2015	69
4	Sociological Approach to the Smart Working Dimension	70
4.1	Psychological Burnout as a cause of Smart Working	74
4.1.1	Isolation of the individual	78
4.1.2	Fusion between the professional and personal dimension of life	79
4.1.3	Distractions	81
4.1.4	Depression	82
4.2	Cultural barriers to Smart Working	84
4.2.1	Status Quo Bias	88
4.3	Female Working within the Smart environment	89
5	Antithetical geo-political and cultural Context: American Case	90
5.1	Historical and Regulatory background of the Smart Working in USA	94
5.2	Analogies and differences with respect to Italian case	97
5.3	American Express case of study	99

Conclusion

Bibliography/Website Citations

List of Tables

Figure 1

Organizational evolution of tele-working within two different companies, from "The Telecommunications-Transportation Tradeoff".

<https://www.bloomberg.com/news/articles/2015-12-01/what-telecommuting-looked-like-in-1973>

Figure 2

Table showing company-related benefits produced by SM.

Figure 3

Table showing workers-related benefits produced by SM.

Figure 4

Comparison between Smart Working, Home Working and Teleworking.

Figure 5

Smart Working Principles.

Figure 6

Descriptive Figure representing the Clapperton and Vanhoutte 3B Model.

<https://landing.bdo.be/start-building-your-hybrid-working-organisation-of-tomorrow-today/>

Figure 7

Agile Working legislative reforms timeline within the public sector

<https://www.certifico.com/sicurezza-lavoro/documenti-sicurezza/67-documenti-riservati-sicurezza/11212-lavoro-agile-smart-working-normativa>

Figure 8

Agile Working legislative reforms timeline within the private sector

<https://www.certifico.com/sicurezza-lavoro/documenti-sicurezza/67-documenti-riservati-sicurezza/11212-lavoro-agile-smart-working-normativa>

Figure 9

Employer's Duties and Rights/Powers recapitulatory table

Figure 10

Employee's Duties and Rights recapitulatory table

Figure 11

Role and Added Value of the ELA, 9 April 2019 EU Commission pdf

<https://www.ela.europa.eu/en/elas-mission>

Figure 12

Table showing impacts of Teleworking during the Covid-19 pandemic and key prevention measures for employment.

[https://www.europarl.europa.eu/RegData/etudes/STUD/2021/662904/IPOL_STU\(2021\)662904_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2021/662904/IPOL_STU(2021)662904_EN.pdf)

Figure 13

Smart Working Maturity Model

<https://docplayer.it/166726067-L-evoluzione-del-mondo-lavorativo-lo-smart-working.html>

Figure 14

Conceptual Model: the impact of job Burnout on workers well-being.

https://www.researchgate.net/figure/Conceptual-model-The-impact-of-job-burnout-dimensions-on-worker-well-being_fig1_268157951

Figure 15

Big Enterprises Smart Working diffusion stage, purposes and barriers.

<https://www.zerounoweb.it/smart-working/smart-working-2019-ecco-a-che-punto-siamo-in-italia/>

Figure 16

Small and Medium Enterprises Smart Working diffusion stage, purposes and barriers.

<https://www.zerounoweb.it/smart-working/smart-working-2019-ecco-a-che-punto-siamo-in-italia/>

Figure 17

Public Administration Smart Working diffusion stage, purposes and barriers.

<https://www.zerounoweb.it/smart-working/smart-working-2019-ecco-a-che-punto-siamo-in-italia/>

Figure 18

Gallup Panel showing the % of Americans adopting Smart Working after Covid-19 pandemic.

<https://news.gallup.com/poll/306695/workers-discovering-affinity-remote-work.aspx>

Figure 19

Diffusion of Smart Working in Italy before and after the Covid-19 Pandemic

<https://www.linkiesta.it/2020/11/osservatorio-smart-working-politecnico-milano-studio/>

Figure 20

Diffusion of Smart Working in U.S. before and after the Covid-19 Pandemic

<https://www.papercup.com/blog/if-people-listen-to-social-video-with-sound-off-why-dub>

Introduction

“Telecommuting, one of many forms of work-life flexibility, should no longer be viewed as a nice-to-have, optional perk mostly used by working moms. These common stereotypes don’t match reality—allowing employees to work remotely is a core business strategy today... We need to de-parent, de-gender, and de-age the perception of the flexible worker.” (Cali Williams Yost, CEO and Founder of Flex+Strategy Group and Work+Life Fit, intervention during Boston Globe op-ed).

The actual historical, social, cultural and geo-political environment pushes present generations to manage their daily lives frenetically, with a marked adaptability and innovative mindset: keeping in line with the times is by now a global social pact which involves all the most important fields of the human existence. Starting from the political field, governing and coordinating the complex organizational machine of each State, to the social and cultural sphere which rules the ideological, behavioral and relational mechanism of a civil society, all people and environments involved are expected to be opportune in terms of times, spaces and acts to be able to successfully sustain evolution.

In accordance with these general premises, it’s easy to observe a deep modification related to a specific field of human lives which is the labor landscape at both the national and international level. During the last decades, Globalization together with the Digital Revolution triggered the development of the Smart Working most likely as a preferred method of working due to the flexibility, accountability and immediacy which are intrinsic characteristics of this labor condition.

As to the Italian case, the number of smart workers by the start of 2018 was about 480.000 (F. Crespi, Quanti sono gli Smart Worker in Italia? in Osservatori.net, Digital Innovation, 16 ottobre 2018) value which could ostensibly increase consequently to the Pandemic Emergency of 2019 also for necessity reasons. A kind of promising statistical data seems to underline the potentiality of smart working considered as an institution able to provide benefits for both employers and employees, given the fact that its major quality is the principle of accountability of the worker and the opportunity to grant him a wide margin of autonomy and self-determination. Profit and also individual dedication to the Company would naturally increase as a result of a diffuse wellness within the workplace.

We can conclude that Smart working seems to be a plausible solution and response to the national and international need of modernizing the shape and organization of the institution of Labor. The implications of such a process of upgrade establish their roots on different dynamics taking place in the actual historical times: the diffuse push to technological innovation and to the ideological progress are two of the most important requirements related to the topic under analysis.

The following paper is divided in five chapters and is aimed at deeply observe and examine the subject of Smart Working in the Italian context, in terms of the fundamental ideological and legal pillars upon which it is grounded in, the positive and negative aspects which compose its structure, the prime benefits it is expected to provide and the relationship it entails with the sociological field in addition to the comparison with the American case.

Going into more details, the first chapter will be dedicated to a complete description of the institution of Smart Working, starting from the historical premises and general definition to consequently list the most important founding principles and the major analogies and differences with other working methods. The second chapter will be entirely dedicated to the analysis of the Italian regulatory and legal system in terms of Labor Law and its evolution during time since it could be considered as the basic starting point for the provision of a successful organization and realization of Smart Working, with particular attention paid to the law 81/2017. The third chapter is designated to the analysis of the most important positive implications that this working form should produce for what concern health, security and individual well-being if all the characters involved in the structure behaved correctly: employers and employees rights and duties have primary importance but also the intervention of the EU Commission on the subject matter shows to consider as a main concern the efficiency of the Smart Working institution. The second to last chapter is aimed at showing the mechanisms and effects involved in the Smart Working commitment from a sociological point of view, taking into consideration phenomena as isolation, distractions and fusion between personal/professional life, Burnout and status quo bias, as main terms of analysis. One specific paragraph is also dedicated to the female working situation within the SMART conditions. The last chapter will be useful to develop a comparison between the Italian actual situation of development and progress of Smart Working with respect to a completely different reality from the geo-political and cultural point of view as the one of USA, in its way of managing the same institution of remote working.

Conclusions will take stock of the achievement reached by this innovative way of working considering the national political viewpoint and the individual work-life balance considerations.

1 Smart Working: historical and characterizing context

“Wherever smart people work, doors are unlocked”

Steve Wozniak

The opportunity of working towards realistic objectives and goals, obtaining the power of choosing most suitable working time and being able to establish a profitable equilibrium between working and private life are some of the fundamental pillars upon which the mechanism of Smart Working is grounded. Alongside these practical premises, also some ethical elements cooperate in the definition of the mechanism under analysis among which the innovation of people mindset, the transformation of both employers' and employees' ways of acting and the crucial implementation of values of trust, accountability and collaboration.

These elements together possibly lay the foundations for a successful performance of Smart Working. Remote working, as it's also possible to name it, can be considered as a progressive opportunity for companies within both the private and public sectors as well as for their employees even though, as any innovative path, it bears the weight of potential risky implications that we will analyze throughout the paper.

During the last 2 years, following the uncertainties that pandemic situation of Covid 19 created, we had the chance to attend an exponential growth in Smart Working application, which enabled us to discover its unlimited potentialities and its inner weaknesses. The global emergency situation forced many entities to expose to this new working modality which already existed before, but maybe it did not show yet entirely the power of its purpose.

1.1 Introductory historical background: a new organizational model

The presupposition emerged till now let the central topic of this paper being eviscerated and deepened starting from the basic explanatory grounds; Smart working can be defined as ¹a way of executing subordinated working relationship which are naturally and legally characterized by the absence of

¹ Ministero dell'Istruzione ministero dell'Università e della Ricerca MIUR

time and space obligations and by the establishment of a type of organization based on phases, cycles and objectives set up by means of an agreement between the employer and the employee. Workers are not bounded to be physically present at office, but he/she can work in different places as well as in different and individually chosen work schedule time.

This organization is clearly regulated by a series of guidelines established by the company with the aim of fully executing one own's business and the required activities. The employee has the power of self-determinate his time, dedicating it to working tasks on the basis of a clear set of objectives to be reached and goals to be accomplished.

This modality is supposed to facilitate the worker in conciliating time to be dedicated to personal life and to professional life besides the fact that it is also thought to improve workers productivity at all levels.

The basic definition of Smart working draws the attention to the organizational flexibility typical of this mechanism, to the reciprocal willingness of parties involved in the individual agreement and also to the requirement of using proper instruments to be able to remotely work.

It's sounds curious but especially emblematic that the origin of the word "Smart Working", In Italian "Lavoro Agile" comes from the ² Latin word *agilis* which means doing something with facility: following this reasoning Smart Working could be considered as a new rapid, flexible and profitable way of unfolding a subordinated job in contrast with the old traditional working method conducted at office.

In general, these premises are mainly valid for all those kinds of working figures and activities that can be considered having an intellectual content such as people covering office workers, supervisors and managers roles within a company rather than figures like laborer or manufacturer which require a higher degree of physical presence and manpower activities. Nevertheless, there are studies about this distinction which show that even the job of a laborer could be made more flexible and smarter thanks to the wider use of specific software able to transform a mere physical activity of product transformation to a designer kind of activity involving different levels of competence and skills.

The most important aspect which let Smart Working being considered as a new organizational model, with the respect to traditional working conditions, lies on the principle of win-win logic, according to which the mechanism under analysis should represents an advantage for all parties involved. Smart working Strategy and application, indeed, seems to create reciprocal benefits not only in terms of an ethical matter, but also in terms of the practical and technical implications. A company implementing

² Avv. Martina Liaci, Nuovo modello lavorativo-organizzativo: lo smart working. 3 novembre 2021
<https://www.diritto.it/nuovo-modello-lavorativo-organizzativo-lo-smart-working/>

Smart Working is able to improve the quality of the organizational working environment as a whole, increase its own attraction on the labor market, enhance the productivity and well-being of workers and reach strategic targets and objectives thanks to the growth of each individual motivational and dedication level. The exchange seems to be fair, and the investment required does not exceed the benefit gained.

Starting from these premises it's possible to conclude that Smart Working can be evaluated as a convincing opportunity for enhancing the labor landscape not only by making it a virtue out of necessity, like while facing a global Pandemic, but by considering it as a successful model able to sustain the constant escalation towards progress which characterized our time.

Evolution, indeed, is an essential part of mankind and we can easily find evidence of this through examining the historical background and the original context in which Smart Working took its first steps and started to develop its inner requisites.

The very first origin of Smart Working is dated back to the Industrial Revolution (XVIII century) when a strong and deep transformation took place by substituting the old artisan and agricultural economy with a new economy dominated by Industries and mechanical based production. The effect of this Revolution was the foundation of a new working model that had to be conducted far from home by means of the transfer of workers from the countryside to big cities, where most of the factories were placed. During the 19th and 20th centuries this model established its roots deeper than to a higher degree of specialization. The solidity of this model started to vacillate with the expansion of technologies during the last decades of the 20th century.

Then, from the beginning of 21st century the arrival of personal computers, internet, mobile devices, social media and telecommunications gave for the first time the concrete possibility to communicate and work remotely, increasing the incidence of an imminent change related to the organizational aspect of work.

The first person who wrote about Smart Working was ³Jack Nilles, an ex NASA engineer in his book "*The Telecommunications-Transportation Tradeoff*" published in 1973.

The author's intention was to propose a solution to the problems of street and traffic congestion and consequently emerging issues, like pollution and psychological tensions, during a historical period in which USA and other Countries were facing a serious energetic crisis. Nilles questioned himself about whether communicating with one another within a quite digitalized factory could be more an issue of necessity or just a recurring habit. The answer was obvious: there was no real need to reach physically a specific place or headquarter to do the daily working activities required.

³ Jack Nilles, *The Telecommunications-Transportation Tradeoff*, New York: Jhon Wiley & Sons, 1976

The author clearly proposed an alternative solution, according to which workers could avoid moving every day to workplaces and instead taking advantage of the telecommunications and advanced technologies to complete their tasks and daily activities while saving energies, money and psycho-physical well-being.

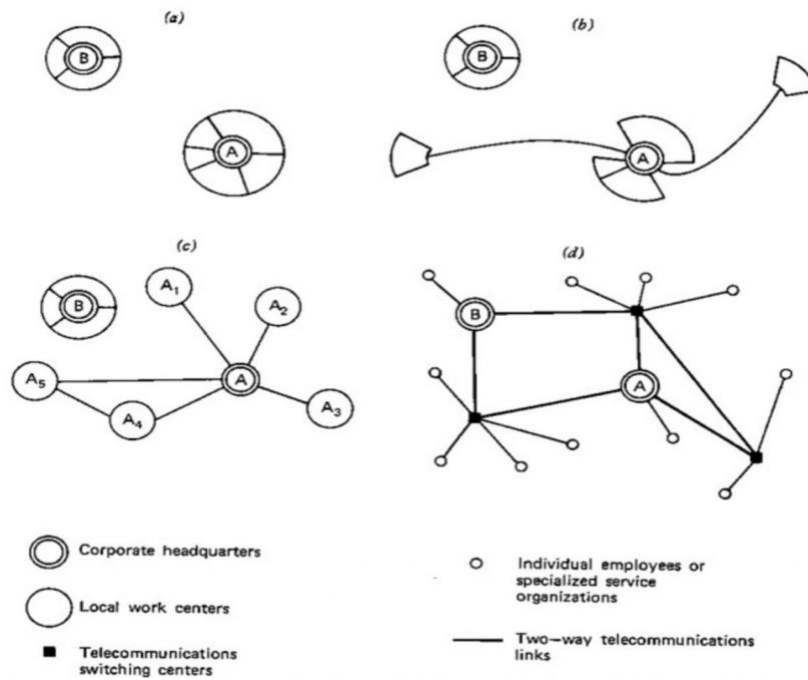


Figure 1

Organizational evolution of tele-working within two different companies, from "The Telecommunications-Transportation Tradeoff"

Nilles, following the new model proposed and the different attitude and approach adopted, created also a name to make reference to this innovative phenomenon: Telework, the first prototype of actual Smart Working. Six years after Nilles wrote his book, in 1979 the Washington post published an article called ⁴“Working at Home Can Save Gasoline” written by Frank Schiff vice-president of Committee for Economic Development (CED) who proposed a similar thesis. According to this article, most of the gasoline consumption within the country was due to the daily movement of people going to workplaces every day causing a strong increase of pollution, a risk for the security of city streets and a deep psychological stress with which workers have to coexist. Historical context is essential to analyze the development of a specific process, mechanism or institution because let the founding pillars of the subject matter to emerge and give a deeper sense to everything surrounding it.

⁴ Frank Schiff, Working from Home can Save Gasoline, Washington Post, 1979

1.2 Advantages and Disadvantages related to the Smart Working modality

Increased flexibility and productivity and improvement of work-life balance can be considered as the most relevant benefits that Smart Working is supposed to generate if properly adopted and implemented. Looking closer to a company's point of view, it is possible to recognize other significant advantages of resorting to this working method, such as a great reduction of headquarters maintenance costs and a deep and widely spread growth of workers performances.

During the last decades many studies have been focused on the analysis of the concrete advantages produced by Smart Working mainly through means of statistical investigations aimed at exploring the most relevant aspects considerable as intrinsic positive and profitable properties of this innovative modality, according to the opinions and considerations developed by people (both employees and firms) who experienced the object of study.

One of these statistics has been developed by ⁵ISTAT for what regards the collection of data coming from Italian workers situation and actual opinions. The survey takes as a reference the following categories in order to establish the most common and diffuse way of thinking: instruments, spaces and activities together with internal and external relationship and autonomy and working time.

As to the instruments, people's evaluation of SW experience may change considerably when influenced by the material and logistic conditions in which it is possible to conduct it. Technological equipment, thus, assumes a great importance with respect to the results of the enquiry. Italian Smart Workers, in wider terms, declared of facing no obstacles in finding an appropriate room to work in (64.7%) and to easily managing the presence of at least other 2 cohabitants (66%). Internet access through a secure connection and availability of technological devices are also considered as basic needs for properly developed home working and results did not disappoint expectancies since people positively evaluate the correspondence of both aspects, with a 90% and 52% respectively.

As to the opportunities of conducting all the required activities of a specific job, almost all workers (98%) declared to properly accomplish remotely to all the tasks demanded by their jobs with no differences noticed with respect to the tasks demanded when working directly at office.

The appeal to Smart Working modality brings along the necessity of developing a new type of communication between same employees, between the firm and its own employees as well as between the firm and all external organizations and entities. As to the internal relationships among colleagues,

⁵ ISTAT Italian national Institute of Statistics: main producer of official statistics in Italy.
Rapporto di Ricerca Indagine sullo Smart Working n.2/2021
https://www.inps.it/docallegatiNP/Mig/Dati_analisi_bilanci/Attivita_ricerca/Studi_e_analisi/Rapporto_Smart_Working_Inps2020_n2-2021.pdf

workers declared (59%) that they did not suffer a deterioration.

In the same way, Smart Working did not create obstacles to the external interactions with stakeholders and institutional partners according to the 82% of the interviewed, on the contrary, the 9% stated that relationships even improved.

Finally, for what concern autonomy and working time, only the ⁶4.4% of workers received a proper training program dedicated to working from home management and the rest faces all tasks by autonomously organizing themselves; the 43% of the interviewed shows to have substantially change the distribution of time during the day to be dedicated to working activities, when doing it remotely. The overall evaluation emerged from this statistic denotes a generalized positive approach and a diffused good propension towards Smart Working, both in the case of experiencing it during the Pandemic emergency phase and in the case of a long-lasting and permanent transformation of the working modality.

Smart Working, if processed in a correct way, is able to revolutionize the labor environment by providing to workers a key positioning around which everything else within the company operate and by promoting collaboration, openness and sharing of common and required knowledge.

It's possible now to easily summarize the main advantages created by SM:

- Collaboration/Communication improvement
- Performance/Productivity improvement
- Worker's engagement growth
- Strengthening of meritocratic working environment
- Creation of a labor system based on objectives achievement
- Reduction of costs
- Autonomy/Flexibility improvement

Both the Company and all subordinated workers benefit from the cited aspects, introduced and developed by the adoption of Remote working modalities: but there are some advantages, related to SW, that it is possible to distinguish between the ones which are strictly related to the company's personal profit and the ones which are exclusively connected with the worker's personal profit. These aspects are collected and differentiated in the table below:

⁶ ISTAT Italian national Institute of Statistics: main producer of official statistics in Italy. Rapporto di Ricerca Indagine sullo Smart Working n.2/2021

- Company-related advantages: increase of workers' productivity, reduction of absenteeism tax, increase in attractiveness in the labor market, reduction in costs (allowances, overtime payments and office maintenance/rent).

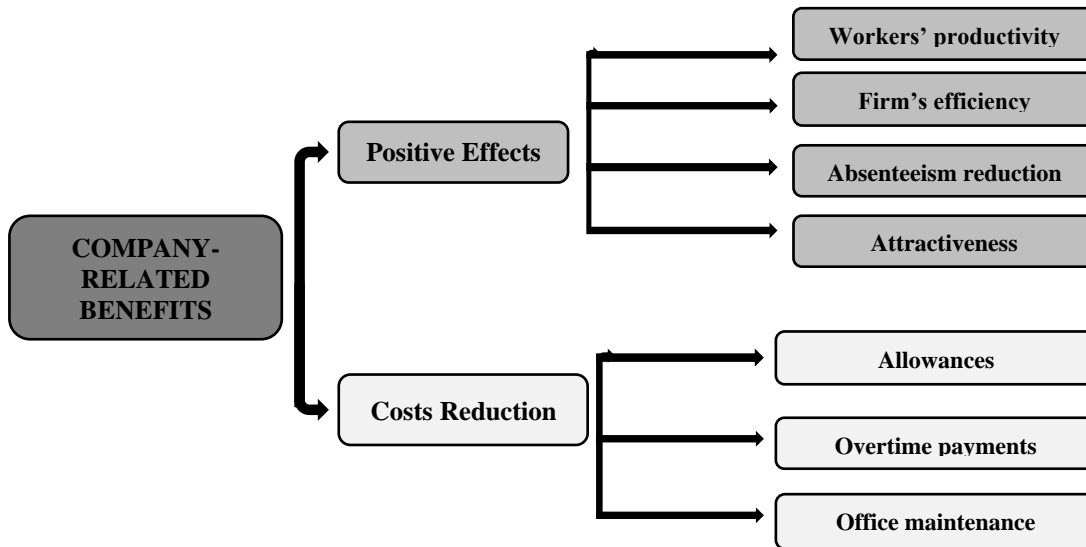


Figure 2
Table showing company-related benefits produced by SM.

- Workers-related advantages: opportunity of autonomously organizing personal life and working life, improvement of personal realization in terms of both working productivity and in terms of individual satisfaction and motivation and opportunity of saving money for transportation.

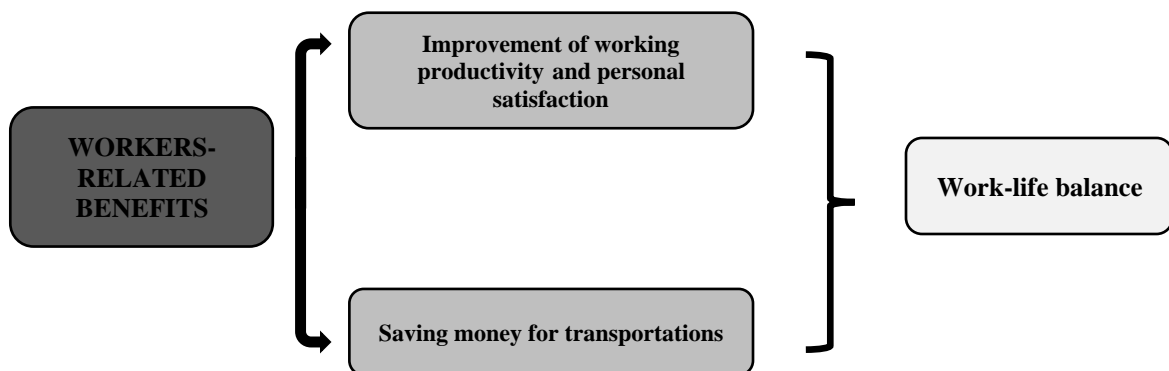


Figure 3
Table showing workers-related benefits produced by SM.

If one concentrates attention on the issue of Smart Working as it has just been described, it could seem to be a process of complete emancipation and an opportunity of integral self-determination, a travel with no obstacles but full of awareness and directed to the highest profitability. The point is that it is equally necessary to take into consideration all the potential disadvantages or negative implications, which indeed exist, generated by any kind of innovative process especially when it involves mankind and its peculiar and assorted mindsets and personalities as well as when it entails the coexistence of a multitude of changing variables.

Smart Working, as a new organizational labor model, may certainly disturb the prearranged internal organization of a company, shock the traditional and predominant managerial culture and it may worry the individual worker, so accustomed to a more passive approach and less self-centered attitude.

As a consequence of these premises, in the labor landscape difficulties and resistances in adopting SM are not absent and some of the most significant obstacles are listed below:

- Distraction factors growth
- Poor physical contact and interactions with colleagues
- Overlapping of working space and domestic environment
- Loneliness
- Psychological Burnout
- Tecnostress
- Missing Ergonomics
- Excess/Lack of working time dedication

One of the essential aspects to consider when talking about the opportunity of working from home deals with the necessity of arranging an adequate working space possibly a specific and dedicated room in order to avoid the risk of physically mixing domestic space and objects with the ones dedicated to professional activities. The potential overlapping of these two sectors could represent an obstacle for the worker who may end up not recognizing anymore the moments of his personal life as private and neutral: distinction with working moments could become not so clear and separated. Ergonomics⁷, defined, in this context, as ⁸the study of working conditions aimed at designing and

⁷ Alberto Oleotti, Smart Working: cos'è, vantaggi e svantaggi, 20 Ottobre 2021
<https://www.insic.it/sicurezza-sul-lavoro/covid-19/smart-working-che-cose-vantaggi-e-svantaggi/>

⁸ Oxford Dictionary (Ergonomics)

planning equipment and furniture for the efficient realization of different kinds of jobs, is connected to the concept of proper working from home environment and also to the availability of suitable devices to facilitate daily tasks and activities. A quiet room, a comfortable sit, a spacious desk and technical devices for easily accomplish working activities are elementary but essential elements whose absence could transform Smart Working into a bad experience, generating physical and psychological discomfort.

The potential increase in factors constituting a distraction for a worker's attention and concentration is another obstacle of this working modality: spending the entire day within a well-known place, as one own's home, could create many new and unexpected distractions.

The phone or the doorbell ringing, the drawing closer of the mealtime or again the dog catching the attention may change substantially the quality of time dedicated at work for this reason is very important to be organized, focused and precise. Personal mobile, for example, is suggested to be kept away from the working room/space and it is eventually recommended to specifically organize some breaks to answer personal calls, messages or check social media. Taking short but frequent breaks is necessary to be able to maintain a certain degree of concentration and a high level of focus on the required and mandatory activities, besides the fact that is essential for people working with laptops, to let their eyes and brain resting and recovering from time to time. Finally, having the faculty of freely deciding when working or not deals also with the individual capacity of, on one hand, respecting the minimum working time required and contractually established but, on the hand being able and responsible for avoiding exaggerate connection time, a risk that could be considered, by the same company, as a synonym of lack of professional maturity rather than a sign of impartial hardworking.

Another aspect that must not be underestimated is the one which involve the psychological, sometimes even moral and ethical fields. Working alone from home could create a deep sense of loneliness, dependent also by the individual mental stability and behavioral determination besides the fact that this observation may be influenced also by the existing familiar situation that the smart worker is experiencing. If the individual gets used to spend all the working day alone, also the interactions and communication with other collogues risk to be undermined. Keeping a daily contact with colleagues and other person in charges, even if virtually, helps smart workers to maintain alive relationships, to improve the quality and contents of communication/interactions and to create opportunities for useful and encouraging discussions. Psychological Burnout and Tecnostress are two other forms of negative implications that Smart Working could create, from the psychological point of view, since the worker is almost always and alone completely exposed to the working environment for what regards availability, excess of working demand and constant working competencies update.

1.2.1 Analogies and differences with other working modalities

For the purpose of deeply understanding the functioning and main objectives of Smart Working, it is important to make a clear distinction between the conjugations created around this concept.

In fact, there are three separated terms that seems to refer to the same topic, but they reveal intrinsic and profound differences of meaning and definition: Home Working, Smart Working and Teleworking.

It is convenient to start analyzing these modalities on the basis of their historical origin order. Teleworking, by construction, is a type of work that is possible to conduct remotely with respect to a company central headquarter, thanks to the availability of telecommunication systems. As we discussed before in this paper, Teleworking is the first form of an innovative and not traditional working modality, diffused during 1970 contextually with the Third Industrial Revolution, thanks to the development of information technologies.⁹ Teleworkers are usually equipped with a fix working stationing which is placed in a specific location which is decentralized with respect to the belonging company headquarter. This form is clearly less flexible than Smart Working since there are pre-established spaces obligations to be respected but also time restrictions: work schedule is preemptively determined by other workers within the same company covering supervising or managerial roles. Nowadays, Teleworking should be overcome and replaced by Smart Working, when possible, even if it is not one of its evolutions.

The other word determining a sort of working modality is Home Working, which literally means working from home; it differs from Smart Working and Teleworking for what regards its purpose.

It can be described as a sort of concession through which a company gives, to the workers who requires it, the opportunity of transferring his working activities in the location which best fits his own needs, usually his home. Labor charge is exactly comparable to the one he/she would provide for at office, work schedule is the same of the company opening/closing times and also the place cannot be changed once contractually established. The nature of this working modality is what marks a clear difference since Home Working takes place whenever the employee voluntary demand for this specific opportunity.

As we previously stated, Smart Working represents the more flexible and agile modality since it includes these characteristics of being smart for every aspect that it concerns. Working location is not fix or mandatory anymore, since each worker can decide where he prefers to work: this peculiarity

⁹ Telelavoro e Smart Working: che differenza c'è? 21 Gennaio 2017- Ultimo aggiornamento 20 Marzo 2020
<https://quifinanza.it/lavoro/telelavoro-smart-working-differenza/100640/>

implicates also the expansion of the concept of ¹⁰BYOD, Bring Your Own Device policies, an expression use to refer to all those kinds of business policies that let workers bringing their own personal devices in the workplace and use them to have access to the privileged information and application belonging to the company processes.

Moreover, the working schedule is freely chosen and managed too, and this is maybe the most important revolution that SM entails. The individual possibility of deciding time to be dedicated to professional dimension introduces a completely new tradition and perspective that we were not used to realize in the labor dimension; this approach implies a completely new organization of work which is aimed at following phases and cycles and reaching objectives rather than merely occupying a place and spending the entire working days in predetermined activities and tasks. Smart Workers have all the technological equipment aimed at the correct accomplishment of their working duties disposable and their working condition is always governed by a formal agreement undersigned between parties. In general, in light of this extensive and details analysis and comparison between Teleworking, Home Working and Smart Working, it's possible to conclude that SM, with respect to all the other forms, introduces a new qualitative concept about work: the subject matter is not “how much” people works but “how” workers are able to reach objectives and achieve targets, independently from the working times and places. The following table will summarize the basic differences and similarities between the three working modalities considered.

	Smart Working	Home Working	Teleworking
Place	NO fix location/ opportunity of freely choose working place	Fix Location, usually one own's home	Fix location, decentralized
Time	NO mandatory, fix or pre- established working schedule	Mandatory working schedule (company opening/closing time)	Mandatory working schedule (company opening/closing time)
Working Instruments	Proper Business Equipment	Proper Business Equipment	Proper Business Equipment
Legal Origin	Governed by a formal agreement between parties	Voluntary nature of drafting and eventual revocation	Voluntary nature of drafting and eventual revocation

Figure 4
Comparison between Smart Working, Home Working and Teleworking

¹⁰ Suzanne Lucas, The Pros and Cons of a Bring Your own Device (BYOD) to Work policy, updated on September 17, 2020
<https://www.thebalancecareers.com/bring-your-own-device-byod-job-policy-4139870>

1.2.2 Reasons for analyzing Smart working: a history of Globalization and Digital Revolution

Considering all aspects emerged up to this point regarding Smart Working, it is interesting to understand why is so important to analyze the issue in relation to the actual modern times.

Besides the Pandemic Emergency, that certainly triggered the exponential development and the diffuse growth of all the potentialities incorporated by this modality, other two elements of our historical and cultural identity play a crucial role within the debate: Globalization and Digital Revolution. Examining the entity Smart Working within the cultural and historical actual context is what allow to observe this phenomenon from a different point of view, not merely as a new organizational model belonging to the labor sector, but also as a clear and profound signal of the actual society overturning evolution and progress within the technological field as well as within the ethical one.

The Pandemic Emergency, which forced many workers around the world to experience, sometimes for the first time ever, Smart Working or, at least a particular form of Teleworking, it's the clear example of how Globalization and these innovative modalities of dealing with daily matters like job, are increasingly connected with one another, creating almost a dependency and coexistence connection. ¹¹In fact, when the Covid 19 Pandemic exploded, many workers were conducting their jobs out and far from Italy started to feel the needs of coming back to their families whereas others in parallel, leaved Italy to go back to their families placed abroad. Consequently, many business employers started to increasingly think about the potential implications of this form of international mobility involving their own employees, concluding that it could be profitable and convenient to expand the research of manpower also outside the national boundaries. The labor market, then, changed, introducing wide research for highly specialized professional roles which were difficult to find exclusively within the national labor market.

In this sense, we can conclude that within the context of an increasingly Globalized world, which is characterized by the need of overcoming physical and mental boundaries in relation with time, space and communication, Smart Working with its flexibility and openness plays a central role in simplifying processes and encouraging the push towards an evolution of the labor field in step with the prerogatives and basic traits and commitments that Globalization requires. Being able to easily accomplish a job while travelling or having the opportunity to manage freely one own's time to

¹¹ Smart Working, globalizzazione e confini nazionali, intervista a Avv. Andrea Sonino
<https://www.lhh.com/it/it/aziende/article-listing/vox-sonino>

maximize its profitability are intrinsic properties of Smart Working, perfectly in line with modern globalized world made up of challenges, research of greater and more ambitious successes and constant need to overcome physical and moral limits. Philosophically, Smart Working can be considered as an important instrument capable of exploiting human resources to the fullest, maximizing the achievement of successful objectives and avoiding all sort of waste, related to time, energies, money and Earth resources.

Another phenomenon linked with the modern era which furtherly extend the importance of analyzing Smart Working as a major transformation of the labor sector is the one of Digital Revolution.

As we mentioned in the paragraph dedicated to the historical origin of SM, Digital Revolution, also known as Third Industrial Revolution, took place during 1950s and can be described as the gradual transition from an electronic analogue technology to an electronic digital kind of technology addressed and applied to almost all fields of human life such as culture, medicine, education, hobbies, tourism, economy and obviously also to labor sector. Digital Revolution takes his steps around the leading character, which is internet, consequently involving the development of a series of technological devices like mobiles, computers and tablets but also social networks and World Wide Web, with the aim of maximizing its potential and use.

The Digitalized Era takes with it a profound transformation connected with the way of accessing to information, the modality of communication and the type of social interactions. Our lives and the approach we use toward any aspect of everyday routine have changed accordingly. People are nowadays increasingly accustomed to cross boundaries, even if virtually, to enlarge in this way their knowledge, increase their information channels, improve communication quality and quantity and enhance cross-borders interactions. Information is available for anyone and in a very rapid way which is one of the preponderant characteristics of this transformation, the velocity of spreading information, of reaching people, of managing processes and facing daily activities. All this technological improvement and the advanced physical devices facilitate human lives under many different points of view, in other words they make things faster, easier and *smarter*. Coming back to the main theme of this paper, Digital Revolution is an opportunity we have to exploit at best, and it is not possible to stop or slow down this mechanism so that, all the fields of human life, firstly the labor sector, should be up to date, support the progress and evolve together with it. Smart Working, in this perspective, can be considered as an undeniable chance to keep this promise through accompanying the natural progress of the global society development. Technological devices and computer tools are perfectly suitable to simplify and streamline working process and labor mechanisms, entailing also a motivating enhancement for the personal life of any worker.

1.3 SMART Working fundamental principles

According to a definition provided by the ¹²Observatory of Milan Politecnico, explicitly dedicated to the study of people' evolution in the labor sector, Smart Working can be considered as a managerial philosophy for all intents and purposes: this means that we are dealing with a business management that is detaching itself from the traditional labor model to embrace an innovative and even visionary organizational project and business strategy which characterized the proper nature of any adopting company. This new and ambitious philosophy is based on the possibility of offering workers the opportunity of benefit from a higher degree of flexibility and autonomy when choosing their working time, location and instruments thanks to a greater accountability for what regards the achievement of targets, goals and established objectives.

It is not difficult to understand that such a material and moral concession, needs to be regulated and administrated in all the aspects which compose it, if the priority is to successfully interpret and put in action the mechanism of Smart Working. It is possible to recognize some basic principles which represents the fundamental values around which the concept of Smart Working, its adoption and proper functioning rotate and depend on. First of all, the equal exchange of time/productivity that we will see is completely changing the traditional labor mindset and destroying antique beliefs, the opportunity of overcoming space restrictions, the trustworthy commitment which is fundamental for the labor relationship to survive, then the principle of advanced Collaboration and Communication skills and finally the essential value of Autonomy at work which is basically what distinguish Smart Working from any other working modality. The following table collect all these main principles of SM.

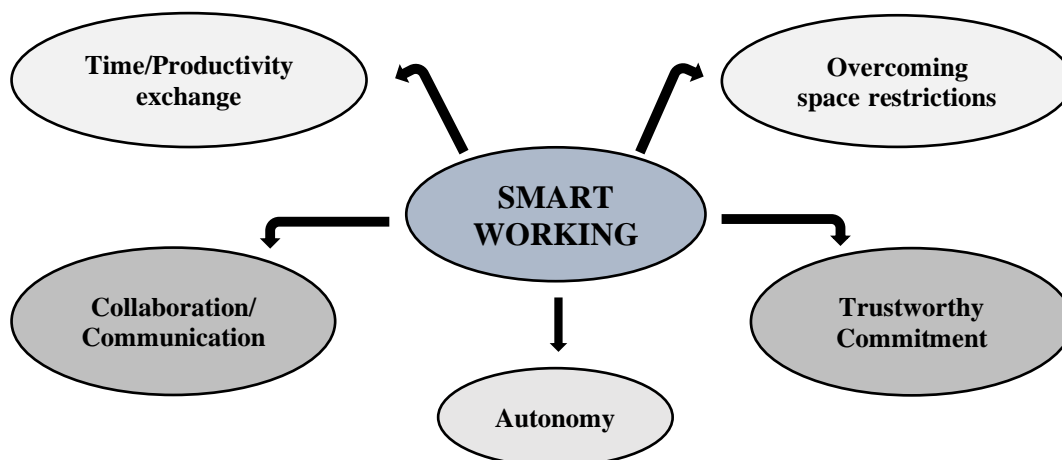


Figure 5
Smart Working Principles

¹²<https://www.osservatori.net/it/ricerche/osservatori-attivi/smart-working>

1.3.1 Equal exchange of time/productivity

The principle of equal exchange between time and productivity is probably the most characterizing aspect marking the modality of Smart Working as an innovative and modern working model. This because the traditional labor model, especially regarding the manufacturing sectors, tended to evaluate the physical presence of workers at office as a central element, able to determine and qualify the employment relationship.

According to this perspective, the factor “time” plays a crucial role, meaning that, following the common and antiquate belief, the more you time you spend while working during the day the best you are conducting your own job and related tasks and activities. This reasoning seems to be missing an important consideration: people are different in personality, education, experience and habits and so are workers, they certainly have different behavior, approach, different velocity of understanding and rapidity of acting. Therefore, considering workers as completely “equal” and interchangeable with one another is a concrete mistake, as well as considering people indifferently equal, independently from their different passions, character, preferences and sensitivity.

Thus, measuring professional performances on the basis of the factor time is a misleading, imprecise and hurried evaluation and qualification method since it does not take into account a series of important elements and variables. Our society has been accustomed until now to think about success and goals achievement, in the scholastic, working and relational spheres, as something which is inevitably and strictly associated with the amount of time dedicated to their realization. Overcoming this obsolete mindset is one of the basic principles that Smart Working boasts through means of the imposition of a new way of considering time as the object of an equivalent and commensurate exchange with productivity. What is essential is that the time that workers spend in their activities and tasks must be productive, profitable and of the highest quality.

This approach not only contributes to the successful performance of the company as whole for what concern the economic aspect, namely, the earnings generated, but it is also able to provide a solid background for the personal motivation and inspiration of each individual worker who will start working oriented to goals achievement and not merely oriented to the working day completion.

The flexibility, distinctive of Smart Working, lies also in the different consideration of the worker as an individual capable of exploiting time and resources at best thanks also to the opportunity that the company offers to him of self-determining his own time, space but also his proper professional qualities and deficiencies.

1.3.2 A way to overcome space and time restrictions

Smart Working, by construction, can be considered as an immediate and constructive way to overcome space restrictions, aspect which makes this modality as one of the best working arrangements for both the company and the employees.

Thanks to the fact that workers, as an effect of implementing Smart Working, do not have to respect any space and time obligations in order to achieve results and reach objectives, they are facilitated in overcoming and demolishing all binding barriers such as the physical transfer for concluding some job agreements, the need of daily moving to the office or again the limitations related to a fix time schedule which may not respect the professional attitude and approach of every single worker.

Obviously, technology plays a crucial role in allowing this theory becoming practice, since the employer must be properly equipped with mobile devices allowing the perfect and easy implementation of a kind of social and remote working and also with an organization of the job which allows to be called “deskless”, namely without a specific associated space.

The key word to describe this principle is ¹³“flexibility”, property that, if associated to the functioning and management of a business deals with the capacity of configuring the company’s resources and activities in a way that perfectly fit the needs and requirements of the competitive environment. Thus, a company is considered to be flexible whenever it is able to adapt its own organizational structures and its own business policies as a response to the external exogenous and not temporary changes.

Flexibility related to time and space could also represent a risk, if connected with a lower degree of control and supervising activity since it potentially brings to a consequent lower level of dedication and diligence in daily working tasks conducted by the company’s employees. This situation, even if possible and realistic represent the opposite aim of the concept of flexibility proposed by Smart Working modality, as it has been theorized. For this reason, SM is also grounded on another important principle, the one of Trustworthy commitment that we will analyzed in the following pages, is precisely thought to absolve SM from the risk of creating working gaps and professional inefficiencies. The main goal of Smart Working, indeed, besides representing an evolution within the labor field, is the one of improving knowledge and consequently also enhancing the competency level of workers through means of actuating a flexible working model that respect, on one hand, the employees’ different needs both in terms of time and space, but on the other hand generates a higher level of availability towards the employer’s requests.

¹³ Definition of Flexibility from Cambridge dictionary
<https://dictionary.cambridge.org/it/dizionario/inglese/flexibility>

1.3.3 Trustworthy commitment

Trustworthy commitment, considered as an element strictly related to the principle of flexibility granting the possibility of overcoming space and time limits, is an essential gear for the proper functioning of Smart Working machine. Both employers and employees must share trust feelings towards the working relationship and towards the company as a whole, in order to be able to overcome one of the potential negative implications of Smart Working, the lack of control due to the non-physical presence and non-fix time schedule that it dictates. Direct control over workers and the value of trust are inversely proportional properties within the game of remotely working: the more you are willing to have control over workers the less trust exist within the professional relationship.

According to ¹⁴Stephen M.R. Covey “Trust is the new currency of our interdependent, collaborative World”: in other words, he believes that trust is one of the leading strategies for a successful business able to overturn the traditional conception of the majority of business policies constantly presupposing malice at the basis of professional relationships. The author, in his book ¹⁵“The Speed of Trust” recommends trust as the most impactful element on people, it is convenient because it simplifies procedures making a business less expensive, it implies integrity, an essential value able of avoiding mistakes and unfairness reducing a company vulnerability, it is profitable since trustworthy people better understand their capacities and will work more and better to develop some new ones and finally it also improves, as the title of the book suggests, the velocity of the business since it is able to avoid lots of control and bureaucratic procedures aimed at granting operational security. The author also recognizes five different types of trust, also called waves, Self-trust, Relationship Trust, Organizational Trust, Market Trust and Societal Trust, which follow a logical schema: if you don’t trust yourself, you won’t be able to trust others (within social, economic and professional relationship).

It’s not difficult to understand at this point that the Trustworthy commitment implied by the adoption of Smart Working is not just a necessary element aimed at filling the gap of control reduction due to virtuality and physical distances but it also the starting point for a successful business model in terms of results and in terms of professional well-being, tank to the fact that this strategy grounds its foundations on the positive qualities of working people, integrity, honesty and propension to collaboration.

¹⁴ Stephen M.R. Covey is a global authority on trust, leadership and culture, former CEO and New York Times bestselling author.
<https://www.speedoftrust.com>

¹⁵ Stephen M.R. Covey, The speed of trust, 2006

1.3.4 Collaboration and Communication

Collaboration is the word with which the last paragraph ends, but not certainly less important than the Smart Working properties analyzed up to this point during the paper.

When deciding to evaluate the opportunity of implements a Smart Working model, it is necessary to take into account that it implies some changes and implications, especially related to the field of Communication and Collaboration modalities, both between colleagues as well as between the employee and the employer. Employees should be engaged in this cultural change and accompanied through it by the first moments, starting by communicating their objective clearly, since this can have a strong influence in the workers' performances which, in their turn, influence objectives and their achievement.

Collaboration passes through a limpid and on time communication process which is necessary to establish tasks, to govern the management of working activities and to create positive and constructive interactions which become without any doubts more difficult when perpetrated virtually. Physical distance would seem to make more difficult communication and to collaboration but with all technological devices and with the right personal and professional predisposition even these two aspects may result, at the end, simplified and optimized. What is important is to give the right attention to the communication modality aimed at providing essential guidelines and also to educate and train workers to an innovative and advanced collaborative organizational model which is intended to optimize business performances.

While defining this new required type of competency we can conclude that, within the working environment, is possible to recognize three different kinds of collaboration:

- **Team Collaboration:** activities involved are interdependent with one another and time, objectives and leadership are well defined aspects aimed at equally cooperate for the achievement of an equal recognition.¹⁶
- **Community Collaboration:** common interest activities are devoted to knowledge improvement rather than to an objective achievement.¹⁷
- **Network Collaboration:** network is an instrument to share knowledge and acquire new information.¹⁸

¹⁶ Marcelo Cataldo and Jems D. Herbsleb, Communication Networks in Geographically Distributed Software Development, 2008

¹⁷ Larry E. Penley and Brian Hawkins, Studying Interpersonal Communication in Organizations: A Leadership Application, The Academy of Management Journal Vol.28, No.2(Jun.,1985)

¹⁸ Olesen K. and Myers M., Trying to improve communication and collaboration with information technology, 1999

1.3.5 Autonomy at work

To conclude the list and description of Smart Working characterizing principles, it is not of less importance the concept of autonomy which can be described as the quality of self-governing. A proof of the increasing importance of this concept within the actual working environments is that centralization and control are progressively losing their efficiency in the context of modern and innovative companies in favor of diffuse autonomy for workers especially when deciding when, where and how they are preferring to work. In order to fully respect the proper application of Smart Working, employees should be granted the opportunity of self-determining where they are going to work, when and how they are more confident to work, with the aim of reaching the pre-established goals in an easier and more rapid way. Autonomy of workers in these three different fields time, space and modality, is able to incredibly increase their performances for the simple fact that people become more productive when they can dispose of the best locations and of the best time of day according to their personal preferences and habits.

¹⁹The risk of being trapped in opportunistic behavior due to the lack of centralized control actions is not enough to justify the strong attachment that still survive regarding the old deterministic and mindset for which people consider work as a mere product and act according to the law of maximizing his own profit by selling it.

Prejudices about humankind should be replaced with a new consideration of human nature, according to which reasons that make people acting in a certain way go far beyond the monetary and economic context, since, in fact, the majority of people show to be interested in the relational field of their work, giving a stronger importance to values like autonomy, competence and well-being as primary concerns. What we actually need, thus, is not a collection of more advanced instruments to be used for controlling people at work, rather what we need is the ability of exploiting and valorizing all the positive and valuable properties that human nature possesses, like the one of autonomy.

Being autonomous does not mean being irresponsible or even completely independent but it means to be aware of one own's competencies and limitations and especially it means to be informed and having trust towards relationships since is a fundamental need for self-determination.

A successful business does not mean to control people in their seats at office but means create an organizational model where workers are happy since they are valorized, and they are given the possibility of exploiting their infinite resources and potentialities.

¹⁹ Vittorio Pelligra, Lavoro, per renderlo davvero smart servono più autonomia e meno controllo, 21 giugno 2020 https://www.ilsole24ore.com/art/lavoro-renderlo-davvero-smart-servono-piu-autonomia-e-meno-controllo-ADheYaZ?refresh_ce=1

1.4 Smart Working Triggers

Smart Working, considered as a new organizational working model, moves its first steps within an increasingly developing society from the technological point of view as well as from the cultural point of view. This revolutionary feeling involved many different sectors which started to believe that a process of renovation had to be necessarily undertaken in order to be up to date with respect to the external evolving world. Making reference to the specific case of the labor sector, a significant part of the renovation process regards the possibility of implementing Smart Working to a wider range of job types. In order to reach this objective, we can take into consideration two of the most important triggers of Smart Working: the Clapperton and Vanhoutte Model and also the changing managerial culture which is able to support a sort of revolution within the working environment.

The Clapperton and Vanhoutte Model can be easily considered as the first contribution concerning the best strategy for the adoption, implementation and successful functioning of Smart Working, thanks to the participation and support of a solid and innovative new managerial culture lying at the basis.

The following paragraph is dedicated to a deep examination of the 3B model proposed by Clapperton and Vanhoutte to understand specific elements and requisites expected by the model and the last paragraph of the chapter explains, on the other hand, how the grounding managerial culture should be for the model to properly works.

1.4.1 Clapperton and Vanhoutte Model

The first fundamental contribution, as we saw in the previous paragraph, is the one provided by the ²⁰Clapperton and Vanhoutte 3B Model, according to which Smart Working adoption and implementation must be guided and governed by the highest managerial business levels so it must comprise a radical change of the managerial culture first.

Furthermore, the model is also introducing, consequently, the necessity of disposing of advanced technologies, of new way of considering the working space and of an innovative approach based on flexibility, aspects that allow workers to reach efficiency and efficacy objectives.

The authors in the book “Smarter Working Manifesto” (2014) try to share the best practices that, according to their view, would let managers, SME but especially Multinational Enterprises to improve their profits through means of the active collaboration of satisfied workers and employees.

²⁰ Guy Clapperton and Philip Vanhoutte, Il manifesto dello Smarter Working, 2014.

The Model proposed within the book addresses the attention towards three most important aspects to be considered whenever thinking about implementing Smart Working: Behaviors, Bytes and Bricks, reason for which the model is also called ²¹“3B”.

- **Behaviors:** the model refers to all those business policies regarding workers’ behaviors which need to be oriented towards a professional relationship based on responsibility and trust. If this element is missing, no technological device will be able to make Smart Working a successful mechanism.
- **Bytes:** the term is concerned with all the technological equipment necessary to properly implement Smart Working, by allowing employees to work remotely, communicate with colleagues virtually and overcoming in this way space and time restrictions.
- **Bricks:** the term is used to make reference to the reconfiguration phase of the physical dimension in order to privilege the smart dimension which is oriented to goals achievement and quality of working performances, regardless the working station.

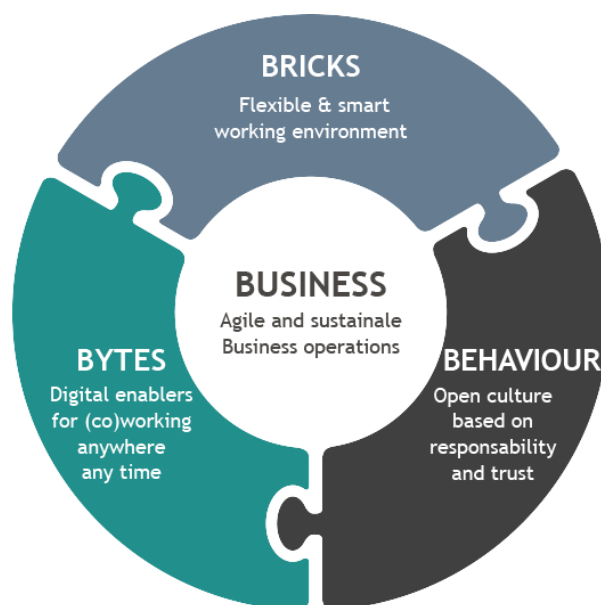


Figure 6

Descriptive Figure representing the Clapperton and Vanhoutte 3B Model

²¹ Guy Clapperton and Philip Vanhoutte, Il manifesto dello Smarter Working, 2014

1.4.2 Managerial culture and business policy

The Smarter Working Manifesto stresses the importance of a change in the managerial culture and around all business policies as one of the fundamental pillars of a correct implementation of the Smart Working modality. The reason is that, up to this point in time, the organizational culture of the majority of the European companies is still deeply rooted on the old traditional labor models characterized by heavy processes, rigid procedures and unmovable mindset more oriented to the time spent while working rather than to the amount and quality of objectives achieved.

Therefore, in order to overturn this system, it is necessary to start by changing the classical managerial approach and its related business policies: Smart Working can be considered as an instrument to materialize the theory about a modern and advanced organizational labor model.

The new approach is based on the conviction that employees should ²²“Work smarter, not harder”, meaning that the modern applications and technologies should be exploited in order to make works being more productive and profitable thanks to the availability of automation devices capable of driving the attention and dedication of the worker to the achievement of results and objectives, despite regardless the location chosen and independently from the time schedule dedicated to the tasks due. Indeed, the term *smart* literally means intelligent, agile, clever and brilliant, suggesting the real meaning of this working modality, a flexible, rapid, logic and concrete working method.

Managerial culture, besides duly absorbing this concept and applying it in daily activities also have to consider the term ²³SMART as the acronym of Specific, Measurable, Achievable, Realistic and Timely, which perfectly fit the basic intention and the essential purpose of the Smart Working modality. This acronym is usually referred to the best ways of setting business goals and labor objectives in order not to disperse you focus and dedication and raise the chances of reaching your results quickly and using less efforts.

Objectives and targets related to any opportunity of Smart Working adoption should be just as described by the term SMART, they should be properly defined, quantifiable through mathematical data, as much as possible corresponding with the actual state of things and thus most likely obtainable within an established period of time requested by the company one is working for. No matter how the worker will organize his own time, space, energies and dedication, the primarily important things is to trust your collaborator, and give him the material and moral opportunity of performing his own's best.

²² “Work smarter, not harder” originated in the 1930's by Allen F. Morgenstern an industrial engineer who created a work simplification program to increase productivity using less effort.

²³ <https://corporatefinanceinstitute.com/resources/knowledge/other/smart-goal/>

2 Italian Regulatory System

*True freedom requires the rule of law and justice,
and a judicial system in which the rights of some
are not secured by the denial of rights to others.*

Jonathan Henry Sacks

The revolutionary context described in the previous chapter has been analyzed, up to this point, starting from the analytical point of view, in order to provide all necessary elements to understand the conception of Smart Working, its functioning, use and potential benefits and disadvantages.

The current chapter is focused on a deep digression related to the Italian juridical framework, intended to provide common legal guidelines, tools and dispositions for the adequate juridical treatment of Smart Working in order to protect this new category of workers and to guarantee a fertile and safe land for the development of this new labor method.

In fact, it is worth noticing that labor law has a successful historical and cultural experience with respect to the traditional working environment regulation and control but, at the same time, is facing a new challenge while trying to balance and align the degree of protection and enhancement of the innovative working methods which are making their own way during recent times.

The point is that the spreading evolution of the digital world and also the unexpected explosion of Covid 19 Pandemic had a high impact on the introduction and progression of new types of job like Smart Working method, for which no protection rules, rights guaranties and general legislation had ever been developed before.

Labor Law, intended as the specific National, European and International legislation, oriented towards providing the due and adequate regulation about rights, duties and responsibilities of workers, plays the essential role of evaluating and constructing a regulatory system capable of including also all these new types of jobs and categories of workers as they were “standard” works and workers, at least for what regards their rights and protection policies. The aim is to provide incentives to improve the labor conditions of these new forms of jobs always considering also the external factors which may substantially impact the labor law environment (Globalization, Digitalization, Pandemic...).

This chapter, thus, is entirely dedicated to the analysis of the juridical instruments and legal provision adopted by the Italian regulatory system till now in relation to innovative and agile working modalities and advanced labor conditions.

2.1 Jobs Act: the labor law reform of 2014

The Italian legal framework in terms of labor law connected with the issue of new working methods, should start from the first rule that introduced the matter within the legal system: ²⁴Jobs Act (2014). Jobs Act is the acronym for ²⁵“Jumpstart Our Business Startups Act” and is informal way to refer to the Italian labor law reform promulgated during Renzi administration charge. ²⁶The main purpose of the Jobs Act in general terms is the one of making more flexible and attractive the labor market and, jointly, adopting some policies aimed at reducing unemployment through means of encouraging Italian companies to hire more workers. The most important points faced by the reform regards the introduction of the employment open-ended contracts with rising protection, the introduction of the possibility for an employer to opt for justified dismissal for a subordinated employee after three years of working relationship thanks to the application of ²⁷art. 18 of the Workers Statute without worker’s reinstatement obligation, the re modulation of the Italian subordinated type of working contract, the creation of NASpI (Nuova Assicurazione Sociale per l’Impiego) and the formulation of a set of incentives in favor of Italian hiring firms.

Besides all these norms, what is more significant for the purpose of our paper is the contribution of Jobs Act related to the introduction of Smart Working in the Italian Labor environment: in fact, it also introduced the opportunity of adopting Teleworking that, as we saw previously is something different from SM and is not an evolution of it. The objective of the Jobs Act was to provide a higher degree of flexibility for workers thanks to the adoption of an organizational solution characterized by technological devices support strictly connected to the workplace. Smart Working, on the other hand, represents a working modality based on the labor quality performance rather than on the place and time of its development. Therefore, it is possible to conclude that Jobs Act tried in some sense to modernize working models proposing more flexible solutions and more agile working strategies, but it circumscribed the conceived progress only to the potential adoption of Teleworking, which is a valid but different option.

²⁴ Jobs Act (2014): labor law reform promoted in Italy during Renzi mandate as country’s governor.

²⁵ “Jumpstart Our Business Startups Act” makes reference to an American law promoted by President Barack Obama in 2011 in order to provide incentives to small enterprises through means of funds. In Italy the terms Jobs has been used to refer to the fact that the reform deals with various aspect of the labor environment.

²⁶ <http://www.jobsact.lavoro.gov.it/Pagine/default.aspx>

²⁷ Art.18 legge 20 maggio 1970, n.300 of the Workers Statute: before Jobs Act it provided real protection from illegitimate dismissal imposing a reinstatement of the worker with damage compensation. This Provision then has been abolished by Jobs Act.

2.1.1 Legge Madia n°124/2015

After Jobs Act, the other significant passage within the Italian regulatory system that threw the basis for the Smart Working formal and legal identification and implementation is Legge Madia n° 124/2015. This law deals with a complete ²⁸Reform for the reorganization of the Italian Public Administration which introduced important changes such as the digitalization of processes employed within the public sector, the simplification of administrative procedures, the rationalization and wider control of the participant companies and the introduction of anticorruption legal measures to improve transparency.

²⁹Legge Madia introduced different provisions regarding jobs subordinated to the State and to the local Institution which represented a real transformation within the sector, for this reason, it is worth mentioning some of the most significant as the introduction of new disciplinary infractions determining potential work dismissals (cases of bad working performances reiterated for three years or cases of deontological rules violations), the appreciation of professional experience as a requisite for acceding the public job and the introduction of the triennial plan for job requirements aimed at planning hiring only when actually needed.

For the purpose of connecting the importance of this Reform to the main topic of this thesis it is essential to make reference to Art.14 included within Legge Madia which introduced Teleworking for the first time within the Public Administration sector.

The ³⁰Art.14, indeed, regards the work-life conciliation, through means of a dedicated provision aimed at reinforcing flexible organizational mechanism to allow public workers to reach the best equilibrium between private life and work. In practice, the provision encourages innovative organizational working model, even if in terms of Teleworking and not Smart Working, allowing employees to take advantages of these new modalities without being subjected to any kind of penalization in terms of salary or in terms of career progression opportunities. At the juridical level, Legge Madia 124/2015 can be considered as another step aimed at obtaining the formal and complete recognition of Smart Working as a Labor Institution valid for all legal purposes.

²⁸ Mariano Acquaviva, Legge Madia, 18 Gennaio 2020.
https://www.laleggepertutti.it/351960_legge-madia

²⁹ <https://mariannamadia.it/newsroom/legge-riforma-della-pa-sintesi-dei-contenuti>

³⁰Stefano Cairoli, Lavoro agile alle dipendenze della pubblica amministrazione entro ed oltre i confini dell'emergenza epidemiologica, 14 Gennaio 2021
<https://www.lavorodirittieuropa.it/dottrina/lavori-atipici/631-lavoro-agile-alle-dipendenze-della-pubblica-amministrazione-entro-ed-oltre-i-confini-dell-emergenza-epidemiologica>

2.2 Smart working governed by the law 81/2017

Smart Working, intended as an opportunity for workers aimed at organizing and managing their jobs in a more flexible and agile way, has been applied years ago by many different Italian company like Intesa San Paolo and Vodafone, for example. Specifically, ³¹Intesa San Paolo Group started to include the possibility of opting for Smart Working modality for its employees by March 2015 in order to improve the profitable coexistence of professional productivity needs and personal and familiar efficiency necessities.

Taking as example Italian Companies like the ones we mentioned, it is essential to underline the fact that even if these firms can be considered ahead of their time with respect to the adoption of innovative working model, the way in which they had to apply this new modality was completely missing a reference normative framework with specific laws and rules established by the collective bargaining. The objective of enhancing the competitiveness of Italian companies and businesses through means of high-quality responses on the subject of work-life balance needed to be faced and resolved legally and formally. This is the role played by the legislative provision n° 81 of May 22nd 2017, regarding “Agile Working”, which has been published on the on Gazzetta Ufficiale n° 135 of June 13th 2017.

³²Summarizing briefly the most significant concept developed by this provision, we can say that it is focused on the organizational flexibility applicable to certain types of jobs, on the voluntary base of the parties involved in the choice of opting and adopting Smart Working and on the regulatory enforceability of the use of technological devices aimed at properly managed work remotely. Furthermore, all workers opting for agile working modality will be treated equally from the economic and ethical points of view with respect to the employees unfolding the ordinary working modality, for which they are also equally protected by eventual professional illnesses or injuries.

With respect to the previous norms and laws mentioned, the provision 81/2017 is probably the most distinguishable and advanced, not only because it introduces precise rules for the legally adequate adoption and implementation of Smart Working and provides the necessary regulatory tools to consider this new modality as valid and admitted within the Labor Law field of application, but it also represents the expected and crucial additional degree of organizational flexibility, agility and innovation with respect to the already admitted form of Teleworking.

All Smart Working experiences adopted before the promulgation of law 81/2017 were considerable as “autarchic” and autonomous attempts undertaken by companies without any kind of legal normative

³¹ <https://group.intesasanpaolo.com/it/sostenibilita/persone/relazioni-industriali>

³² <https://www.lavoro.gov.it/strumenti-e-servizi/smart-working/Pagine/default.aspx>

framework to govern and regulate them, with the constant risk of generating issues of occupational safety in addition to mistakes and unfairness in its application and implementation.

These are some of the reasons why this Labor Law provision is so important in the history and culture of both the legislative and labor sectors, besides being the starting point for the development and expansion of a revolutionary stage within the evolutionary process of working environment.

The provision ³³81/2017 in its dedicated chapter II named “Agile Working” deeply covers the subject matter of Smart Working by outlining 7 different articles regarding called “Agile Working” (Art. 18), “Form and Withdrawal rights” (Art.19), “Compensation, right to lifelong learning and worker competencies certification” (Art.20), “Disciplinary and control power” (Art.21), “Safety at work” (Art.22), “Mandatory insurance for workplace injuries and professional diseases” (Art.23), plus a final article dedicated to the autonomous district of Bolzano.

The law introduces for the first time, within the Italian Juridical System, the concept of Smart Working, called “agile working” and legally defined as ³⁴“a working modality, possibly entailing the use of technological devices, in which tasks are performed partially outside a company’s premises and with flexible working time patterns, within the sole limit of the maximum duration of working time, generally 48 hours per week. The act specifies that smart working should be considered as a modality of subordinate employment relationships, therefore preventing employers from considering ‘smart workers’ as self-employed.”

In this way, Smart Working becomes a legal entity in the form of a specific type of labor contract, established following the result of an individual agreement stipulated between the parties involved who needs to preemptively stipulate all ne necessary arrangements for the proper unfolding of the agile working activity such as the working instruments in terms of technological devices that the employee will use, the methods of control and supervising activities to be performed by the employer and the worker’s rights to rest and especially to disconnect.

As it has been previously mentioned, the employee will receive the same economic and ethical treatment of the “standard” working condition in physical presence included insurance and the agreement can be either with a definite period of time or permanent.

It is not difficult to notice the innovative meaning of the institution of Smart Working as a completely self-deterministic and flexible working method, also according to the judgement of the Law.

³³Legge 22 maggio 2017, n. 81
<https://www.gazzettaufficiale.it/eli/id/2017/06/13/17G00096/sg>

³⁴ Iudicone, Feliciano, Italy: New Rules to protect self-employed workers and regulate ICT-based mobile work, 02 August 2017
<https://www.eurofound.europa.eu/publications/article/2017/italy-new-rules-to-protect-self-employed-workers-and-regulate-ict-based-mobile-work>

2.2.1 Approval procedure of the Law

The Italian Government decided to present the ³⁵draft law Senato n.223 designed with a specific part the so called “Capo II” entirely dedicated to the regulation of agile working, convinced about the need of implementing a working environment more focused on the establishment of work-life balance but at the same time adequate and suitable to the achievement of productivity objectives and results.

The draft law has been accepted by the Council of Ministers on 28th January 2016 and consequently introduced to the Senate on 8th February 2016. The project has been sustained by another simultaneous draft law, ³⁶n. 2229 titled “Adattamento negoziale delle modalità di lavoro agile nella quarta rivoluzione industrial” proposed by the Parliament following the initiative of the member of the Congress Sacconi. The proposals mentioned differed in some aspects since the governmental one is oriented and addressed to all subordinated workers whose activities are to be developed remotely, while the Parliament provision is more centered on a detailed examination of specific cases of applicability, measures of implementation and rules defining the remote working modality.

Both draft laws then converged on a unique one formed at the Chamber of Deputies and since they are recognized as having the same purposes and promulgating similar intentions. The reasoning lying at the basis regards the necessity of improvement of working quality and quantity performances and also the enhancement of work-life balance in order to design a plan capable of taking advantages of the availability of modern technological devices and systems within the labor environment.

As to the juridical reasoning representing a fundamental pillar to this law, there’s the absence up to that moment in the Labor Law history, of a normative framework capable of providing legal dignity and juridical legitimacy to agile working modalities. The traditional context and labor culture, in fact, was and still is deeply rooted on the conviction that physical presence at work determines performances but the reality is that this limitation is not ruled by any law, rather by a historical and cultural heritage of our society. The common objectives pursued by this law deal with the willingness of producing a new working model focused on goals achievement, of designing a legal framework promoting flexibility through the absence of space and time obligations and a consequent adequate set of provisions governing the evolution of the working relationship.

³⁵ Senato della Repubblica, Disegno di Legge, presentato dal Ministro del Lavoro e delle Politiche Sociali (Poletti), n. 2233, Misure per la tutela del lavoro autonomo non imprenditoriale e misure volte a favorire l’articolazione flessibile nei tempi e nei luoghi del lavoro subordinato.

³⁶ Senato della Repubblica, Disegno di Legge, d’iniziativa dei senatori Sacconi, D’Ascola, Marinello e Pagano, n. 2229, Adattamento negoziale delle modalità di lavoro agile nella quarta rivoluzione industriale.

The law has been approved after a complex and long parliamentary analysis and discussion period: the successful result may be also due to the growing importance directed to the social field of work-life balance that attracts the majority of the consideration within the actual labor environment.

This is due to the fact that Smart Working seems to be a concrete and practicable solution to the need of finding an equilibrium between personal and professional life of workers seeing as a “win-win” strategy, meaning that it can provide benefits for employees, employers and to the adopting Company as a whole. Specifically, workers’ personal and individual well-being will be easily reflected to their professional activities letting productivity performances becoming more favorable and profitable.

These two crucial objectives find their original expressions in some constitutional principles. The first one, regarding a better work-life convergence it is generally addressed by the ³⁷Art. 2, 3, 4, 35 of the Italian Constitution that introduces the fundamental principles in terms of equality, respect and rights that must be granted to every single person within the personal and professional life together with the recognition and appreciation of the Institution Labor, legally considered as a right, in compliance with the due consideration of every person’s characteristics and personality, providing also legal protection and formal safeguard in terms of labor rights. The expected increase in productivity and quality performances is mentioned in the Art. 41 of the Constitution with no lower importance with respect to the other principles.

The implicit purpose, that is emerging, deals with the need of overcoming the traditional rigidities belonging to the working environment to focus on a new organizational efficiency generated by

³⁷ Art.2 Costituzione Italiana: La Repubblica riconosce e garantisce i diritti inviolabili dell'uomo, sia come singolo, sia nelle formazioni sociali ove si svolge la sua personalità, e richiede l'adempimento dei doveri inderogabili di solidarietà politica, economica e sociale.

Art. 3 Costituzione Italiana: Tutti i cittadini hanno pari dignità sociale [cfr. [XIV](#)] e sono eguali davanti alla legge, senza distinzione di sesso [cfr. [artt. 29 c. 2, 37 c. 1, 48 c. 1, 51 c. 1](#)], di razza, di lingua [cfr. [art. 6](#)], di religione [cfr. [artt. 8, 19](#)], di opinioni politiche [cfr. [art. 22](#)], di condizioni personali e sociali. E compito della Repubblica rimuovere gli ostacoli di ordine economico e sociale, che, limitando di fatto la libertà e l'eguaglianza dei cittadini, impediscono il pieno sviluppo della persona umana e l'effettiva partecipazione di tutti i lavoratori all'organizzazione politica, economica e sociale del Paese.

Art. 4 Costituzione Italiana: La Repubblica riconosce a tutti i cittadini il diritto al lavoro e promuove le condizioni che rendano effettivo questo diritto. Ogni cittadino ha il dovere di svolgere, secondo le proprie possibilità e la propria scelta, un'attività o una funzione che concorra al progresso materiale o spirituale della società.

Art. 35 Costituzione Italiana: La Repubblica tutela il lavoro in tutte le sue forme ed applicazioni. Cura la formazione e l'elevazione professionale dei lavoratori. Promuove e favorisce gli accordi e le organizzazioni internazionali intesi ad affermare e regolare i diritti del lavoro. Riconosce la libertà di emigrazione, salvo gli obblighi stabiliti dalla legge nell'interesse generale, e tutela il lavoro italiano all'estero

Art. 41 Costituzione Italiana: L'iniziativa economica privata è libera. Non può svolgersi in contrasto con l'utilità sociale o in modo da recare danno alla sicurezza, alla libertà, alla dignità umana. La legge determina i programmi e i controlli opportuni perché l'attività economica pubblica e privata possa essere indirizzata e coordinata a fini sociali.

<https://www.senato.it/istituzione/la-costituzione/parte-i/titolo-iii/articolo-35>

responsibilities assumption towards assigned objectives, rather than focusing on the narrow insistence on the physical presence at work implications.

2.2.2 Field of enforceability and juridical qualification

The Law 81/2017 is defined in its fields of enforceability and juridical qualification by the clause 3 and 1 belonging to the Art. 18. As to the Field of enforceability, ³⁸clause 3 of Art. 18 specifies that the Institution of Smart Working can potentially be applied to any kind of subordinated work both in the case of a private kind of working dependency as in the case of a public administration one, if all principles, requisites and conditions proposed and established within the Art.18 of the Law 81/2017 related to the discipline and proper implementation of Smart Working are present and respected.

Law 81/2017 excludes from its field of enforceability for the application of Smart Working modality the category of autonomous and not subordinated works, on-call types of working contracts, instead it comprises the opportunity of application to professional apprenticeships.

The ³⁹clause 1 of the Art. 18, on the other hand, provides the juridical qualification of the Smart Working Institution by specifying what the Law considers as agile working, a way of organizing the subordinated professional relationship through means of an agreement established between the parties involved, aimed at developing working activities on the basis of cycles and objectives to be reached, without time and place obligations and with the support of technological equipment. ⁴⁰The Italian definition of Smart Working is not formulated in the best way since it leaves some interpretative doubts regarding the correct presentation of the definition of agile working rather than the one of Teleworking. By saying that agile working can be applied “also” through means of smart organizational model, the Art. 18 seems to be referring also to the specific and different case of Teleworking which indeed has similar characteristics to the SM modality, as we previously mentioned, but it is concretely missing the purpose of converting and overturning the traditional working schemas since it is missing the central and essential property of flexibility. The risk of losing control over workers, due to the fact that smart working environment gives the opportunity of self-

³⁸ Legge 22 maggio 2017, n. 81, Art. 18 clause 3
<https://www.gazzettaufficiale.it/eli/id/2017/06/13/17G00096/sg>

³⁹ Legge 22 maggio 2017, n. 81, Art. 18 clause 1
<https://www.gazzettaufficiale.it/eli/id/2017/06/13/17G00096/sg>

⁴⁰ R.Casillo, La subordinazione “agile”
http://csdle.lex.unict.it/archive/uploads/up_867663351.pdf

determining as professional role, could be considered as non- representative of the definition of subordinated job. ⁴¹For this reason, even within the legal field, new terms to refer to the concept of subordination in the labor sector emerged, as the one “subordinazione attenuata”, in English would correspond to an attenuate subordination, a terminological nuance which involves and introduces the profound and radical transformation taking place within the labor, especially subordinated, environment.

2.2.3 Art. 18: Smart Working and Species facti

At this point of the analysis is necessary to provide a detailed digression article by article of the mentioned Law 81/2017, in order to provide a clear framework of the conceptual content of each article constituting the Law.

Art. 18 is the first one and deals with the configuration of agile working as a new type of contract as a peculiar modality execution of subordinated work aimed at increasing flexibility and productivity and enhancing employees work-life balance. The article is divided in five different clauses, ⁴²the first one providing the definition and purpose of agile working, as we already introduced and adding also the specification of the mechanism involved, based on cycles and oriented towards objectives thanks to the availability of technological devices and supported by the advantages generated by flexibility in terms of time and space, but always within some time limitations planned by the National Collective Bargaining.

The second clause recall the employer’s responsibility with respect to the safety at work and to the proper functioning of the technological equipment of which the worker is supplied. The third clause regards the field of enforceability of the law, namely all subordinated works within both the public and private sectors while the fourth clause set off the equality in terms of economic treatment of physically or remotely managed working activities.

Finally, the last clause is focused on the establishment of unvaried and constant burden of which public administration, human, financial or instrumental resources have to be dedicated for the adoption and application of the provision.

⁴¹ A.Maresca, Smart Working, subordinazione soft, 26 Luglio 2017
https://www.ilsole24ore.com/art/smart-working-subordinazione-soft-AEdSLD3B?refresh_ce=1

⁴² Legge 22 maggio 2017, n. 81, Art. 18
<https://www.gazzettaufficiale.it/eli/id/2017/06/13/17G00096/sg>

2.2.4 Art. 19: Form and withdrawal rights

Art. 19 is dedicated to the Form and Withdrawal rights related to the correct applicability of Smart Working. As to the form, ⁴³the article establishes as a necessary element the written form of the agreement execution since its probatory value constitutes a benefit for both the employer and the employee in determining the crucial elements for the proper implementation of Smart Working: regulations about the place of job execution out of the company's locations and offices, set of rules governing the forms of managerial control entrusted to the employer and the regulation with respect to the proper use of technological business devices. The article ends with a very important aspect about the rights of smart workers which is the one related to the right to disconnect, a crucial principle that will be analyzed more in details during next chapters.

The second and last clause of Art. 19 focuses on the rights to withdrawal to be applied in the specific case of agile working modality. The contract involving such an organization can be applied either to a permanent contract or a fixed-term contract, with the only provision related to the fact that in the case of a permanent contract withdrawal can be requested with a withdrawal notice of thirty days.

In cases of justified reasons, both parties can terminate the agreement before its established deadline in case of a fixed-term contract and without notice in case of a permanent contract, whereas in case of disabled workers the deadline notice has to be lower than ninety days in order to arrange an adequate reorganization of the worker professional path.

The importance of the written form of the contractual agreement would be also useful in order to smooth out all potential misunderstandings generated by the act of referring to the term "withdrawal" that could be wrongly interpreted. ⁴⁴Within Art. 19 of the Law 81/2017 the resolutions about the form and withdrawal rights, in fact, makes reference to the suspension of the Smart Working modality alone and does not comprise in any way the suspension of the working relationship. For this reason, the national Collective Bargaining is once again necessary to grant the juridical certainty that the worker, by choosing to suspend the agile working modality, will be reinstated in his previous place, condition and professional role of the standard modality, providing him a further but hoped legal protection.

⁴³ Legge 22 maggio 2017, n. 81, Art. 19
<https://www.gazzettaufficiale.it/eli/id/2017/06/13/17G00096/sg>

⁴⁴ Domenico Iodice e Riccardo Colombani, Il Lavoro agile nella legge n. 81/2017. Flessibilità o destrutturazione del rapporto?
https://moodle.adaptland.it/pluginfile.php/29946/mod_resource/content/1/wp_9_2017_iodice_colombani.pdf

2.2.5 Art. 20: Compensation, right to lifelong learning and worker competencies certification

Article 20 of the law 81/2017 deals with the compensation, right to lifelong and worker competencies certification, in other words, the article is divided in two different clauses,⁴⁵ the first one dedicated to providing a specification of the economic treatment expected to Smart Workers and the other focused on the right of the employee to receive an appropriate and constant learning, accompanied by a justified certification of his developed professional competencies.

The first clause directly refers to the economic regulations established by the national Collective Bargaining for what concerns the economic treatment to be entitled to any subordinated worker; in this sense Law 81/2017 introduces and adds the specification regarding the fact that unfolding working activities remotely does not influence in any way the material compensation due to the employee.⁴⁶ The grounding basis of this provision is related to the juridical principle of compensation intangibility and the principle of safeguard of economic rights of the worker.

This provision creates some doubts and uncertainties with respect to the proper and adequate salary of an employee working remotely only in the case in which the economic treatment of the same has been established by an individual agreement rather than by the national Collective Bargaining. Nevertheless, this national labor entity can easily solve this ambiguity by applying the regulations entailed by the collective labor agreement.

As to the second clause, it is formulated to grant the equal opportunity of a comparable standard worker in relation to the right to lifelong and permanent learning through means of formal or informal trainings and courses, in addition to the availability of receiving periodically the professional certification of progresses made and knowledge and experience acquired.

⁴⁷The principle of lifelong learning is governed by the law 92/2012 and consists in the consideration of all activities perpetrated by an individual during his life with the aim of enhancing his knowledge and his capacities to progress in the social and professional life, as considered in our society as a fundamental element for the accomplishment of the educational cycle of every person.

⁴⁵ Legge 22 maggio 2017, n.81 Art. 20
<https://www.gazzettaufficiale.it/eli/id/2017/06/13/17G00096/sg>

⁴⁶ Domenico Iodice e Riccardo Colombani, Il Lavoro agile nella legge n. 81/2017. Flessibilità o destrutturazione del rapporto?
https://moodle.adaptland.it/pluginfile.php/29946/mod_resource/content/1/wp_9_2017_iodice_colombani.pdf

⁴⁷ Legge 92 del 28.06.2012, articolo 4, comma 51
<https://www.miur.gov.it/tematiche-e-servizi/istruzione-degli-adulti/apprendimento-permanente>

2.2.6 Art. 21: Disciplinary and control power

Article 21 of the Law 81/2017 is entirely focused on the regimentation of the control and disciplinary power in case of remote unfolding of the working activities.⁴⁸ The article is divided in two different clauses, the first one establishes the right of the employer to exercise the power of controlling and supervising the workers' performances even if at distance and following the dispositions provided by the Art. 4 of the Law n.300 of 20th May 1970.

The second clause on the other hand, is dedicated to the determination of eventual disciplinary penalties on case the employer would notice wrong or incorrect behaviors or low quality working performances.

As to the initial clause is necessary to make reference to the⁴⁹ Law n.300 of 20th May 1970 at the Art. 4 which governs the proper implementation of the rules for controlling workers remotely using technological devices arranged by the same company. The law prohibits the use of any audiovisual or similar devices for controlling employees remotely, unless the necessity regards the activity of supervising the organizational activities, the productivity performance and the working safety. Furthermore, the devices implemented with the purposes described must be necessarily installed only if subjected to an agreement with the Labor Union, otherwise, the Work Inspectorates is authorized to intervene within the matter. Art. 21 of the Law 81/2017 does not clarify how it is possible for the employer to exercise his duty/right of controlling workers and properly informing them about this possibility and, at the same time, making them aware of the potential risk of being sanctioned in case of wrong conduct, despite the presence of the clause two introducing and establishing which conducts are to be considered punishable through a disciplinary penalty.

The reason for this defect is due to the complete lack of any consideration with respect to the privacy matter implied by the same law.

The defect cited can be solved or at least finds partial resolution by making reference to the⁵⁰ draft law n. 196 of 2003 which is also known as Privacy consolidated act, aimed at providing a reference normative for the protection of personal data complying with the fundamental rights and freedoms.

⁴⁸ Legge 22 maggio 2017, n. 81 Art. 21
<https://www.gazzettaufficiale.it/eli/id/2017/06/13/17G00096/sg>

⁴⁹ Legge 20 maggio 1970, n. 300 Art. 4
<https://www.gazzettaufficiale.it/eli/id/1970/05/27/070U0300/sg>

⁵⁰ Decreto Legislativo 30 giugno 2003, n. 196, "Codice in materia di protezione dei dati personali", pubblicato nella Gazzetta Ufficiale n. 174 del 29 luglio 2003
<https://web.camera.it/parlam/leggi/deleghe/03196dl.htm>

2.2.7 Art. 22: Safety at work

Art. 22 of the Law 81/2017 introduces the important aspect of the safety at work by providing two different clauses oriented to the resolution of doubts in relation to the worker's safety when unfolding his activities remotely.

⁵¹The first clause set off the duty of the employer to guarantee the well-being and security of employees working remotely and for this purpose gives him, with an annual cadence, a written leaflet for proper examination and awareness, regarding both the general and specific risks that the worker is subjected to while unfolding his job under this peculiar method of execution of the working relationship.

The second clause of the article 22 is crucial within the context examined of Smart Working modality since it introduces the commitment expected by the worker of cooperating in the difficult but necessary task of implementing all the possible security measures able to face the potential risk and obstacles generated by agile and remote working. This aspect, once again, underlines the importance that this innovative working modality gives and implicates to the concept of accountability, crucial for the purpose and setting proper of the modality described.

One of the most significant ⁵²implications of Smart Working is to make workers becoming more and more responsible for their own activities, performances and entire labor context for necessity and functional needs. Therefore, also the workers cooperation, required by the Law in preventing the potential risks in terms of security and well-being, can be considered as an element directed to the full and growing dedication expected in relation to responsibility and accountability.

The physical connections between workers and workplace and between workers and working instruments is clearly impoverished by the lack of physical presence of people that Smart Working modality entails but, at the same time, the faculties of behaving responsibly and acting through self-determination are enormously enriched.

The only emerging critical consideration, from the legal point of view, regards the fact that Art. 22, as it is structured, run the risk of creating a situation of disequilibrium with respect to the practical responsibilities of employers as they were formulated within the Art. 2087 of the Civil Code, according to which he had to take full charge of the worker's protection.

⁵¹ Legge 22 maggio 2017, n. 81 Art. 22
<https://www.gazzettaufficiale.it/eli/id/2017/06/13/17G00096/sg>

⁵² Domenico Iodice e Riccardo Colombani, Il Lavoro agile nella legge n. 81/2017. Flessibilità o destrutturazione del rapporto?
https://moodle.adaptland.it/pluginfile.php/29946/mod_resource/content/1/wp_9_2017_iodice_colombani.pdf

2.2.8 Art. 23: Mandatory insurance for workplace injuries and professional diseases

The last article composing the Law 81/2017 in the section dedicated to the regulation of agile working is the ⁵³Art. 23, completely focused on the issue of mandatory insurance required for all cases of workplace injuries and professional diseases. The article is divided in three different clauses, but the first and second are dedicated to reminding the general disposition provided in relation to any case of subordinated works. The main point recalled by these two clauses recall the workers' rights to be protected by any form of injuries that can take place at work or be safeguarded by potential professional diseases specifically in cases in which the working activities are unfolded through agile and remote method.

The third and most significant clause instead, introduces the right of the employee to be protected against the possibility of suffering any type of injuries and professional diseases through means of a mandatory insurance, as provided within the ⁵⁴Legislative Decree n. 1124 promulgated by the President of the Republic on 30th June 1965, whenever the workplace does not correspond to the office but with a place able to response to the worker's need of facilitating the equilibrium between personal and professional life like in the case of agile working method.

The last clause also makes reference to the term "according to good sense criterion" that must be followed, according to the provision, when talking about the choice of the employee regarding the place in which he wants to work. ⁵⁵This term creates a state of uncertainty from the legal point of view since the disposition of using the good sense criterion in the establishing if the chosen workplace is correct or not, empowers Inail (Istituto nazionale Assicurazione Infortuni sul Lavoro) Institution to execute an afterwards verification and examination that could bring to an economic worsening in case of a work injury.

It is possible to conclude that, in general, the Law 81/2017 is a meliorative provision with respect to the condition of legal protection of smart and agile workers, but it still seems to create potential misunderstandings and to leave space to ambiguous interpretations about some details of the directives proposed.

⁵³ Legge 22 maggio 2017, n. 81, Art. 23
<https://www.gazzettaufficiale.it/eli/id/2017/06/13/17G00096/sg>

⁵⁴ DECRETO DEL PRESIDENTE DELLA REPUBBLICA 30 giugno 1965, n. 1124, Testo unico delle disposizioni per l'assicurazione obbligatoria contro gli infortuni sul lavoro e le malattie professionali.

<https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.del.presidente.della.repubblica:1965-06-30;1124!vig>

⁵⁵ Domenico Iodice e Riccardo Colombani, Il Lavoro agile nella legge n. 81/2017. Flessibilità o destrutturazione del rapporto?
https://moodle.adaptland.it/pluginfile.php/29946/mod_resource/content/1/wp_9_2017_iodice_colombani.pdf

2.3 Legge di bilancio n°145/2018

According to the etymological definition, from the legal and juridical point of view, a ⁵⁶budget law is considered as a legal disposition through means of which, every year, the Government in power approves the State financial statement. In other words, it is an accounting document containing all the public expenditures and the earnings of the State, on the basis of the Law in force, which are expected for the next year.

Within the ⁵⁷budget Law n.145/2018, with reference to the fiscal year 2019, the Government introduced an important modification related to the institution of Smart Working, aimed at facilitating work-life balance through means of giving to workers the opportunity of unfolding their jobs outside a company's office and regardless a prior established time schedule.

The Law 81/2017 defining in detail all requisites and norms for the proper adoption and implementation of agile working has been integrated, specifically in the Art. 18, on a specific aspect by the budget law n. 145/2018. The budget Law, in fact, introduced the ⁵⁸clause 486, with a provision related to the duty of the employer of giving a strong priority for agile working implementation to two different categories of workers: mothers within the triennium following the maternity leave and workers considerable as caregivers, namely parents with disabled children.

It is not difficult to recognize that the willpower promoted by the budget law 145/2018 of giving priority to underprivileged categories of people with the aim of making their working activities more agile and smarter, is creditable and embraceable; but at the same time this provision, as it is formulated, generates the risk of narrowing without reason the categories of people and workers specifically, that could need to have priorities of being facilitated and protected legally.

In fact, within the law there's no mention to other equally important categories like ill workers or again working people taking cares of ill relatives.

This imprecision will be presumably mitigated by the application of ranking lists to confer a correct and fair priority to eligible workers in need.

⁵⁶ Definizione di legge di Bilancio

https://www.rgs.mef.gov.it/VERSIONEI/attivita_istituzionali/formazione_e_gestione_del_bilancio/bilancio_di_previsione/

⁵⁷ Legge 30 dicembre 2018, n.145

<https://www.gazzettaufficiale.it/eli/id/2018/12/31/18G00172/sg>

⁵⁸ Riccardo Pallotta, Smart Working: priorità per lavoratrici madri e caregivers, 17 gennaio 2019

<https://www.ipsoa.it/documents/lavoro-e-previdenza/rapporto-di-lavoro/quotidiano/2019/01/17/smart-working-priorita-lavoratrici-madri-caregivers>

2.4 Functional regulation of Smart Working during COVID-19 pandemic

As it has been mentioned before during this paper, agile working as a new form of execution of labor relationships has been used since decades even if under the less flexible modality called Teleworking. Therefore, the need of transforming some specific type of jobs, eligible as models of flexible works, thanks to their organizational nature, dates back to not recent times and is related to the cultural and societal progress inducted by the Digital Revolution and by the engaging flow of Globalization process, in addition to the increasing need of the individual of finding meliorative conditions to conduct personal and professional life at best.

Within this pre-existent historical and cultural context something changed when Covid 19 Pandemic exploded by triggering a series of consequences and implications involving all fields of human lives, the labor one included.

Indeed, it is just due to the explosion of the Covid 19 Pandemic that Smart Working, within the context of the labor environment, started to assume a different role and to outline its most significant characteristics, potentialities and advanced properties as an instrument capable of instituting a practical and effective resolution to a global obstacle.

The main difference with respect to the past, in fact, lies specifically on the reason why and the purpose for which Smart Working is adopted and implemented: after Covid 19 Pandemic, agile forms of working has changed their driving purpose from being considered a nice to have different working opportunity up to being evaluated as a necessary labor condition for the personal and collective safeguard.

According to the already mentioned Law 81/2017, agile working has been described and regulated as a simple experimental regime applicable to certain kinds of jobs, namely the office type of works that could easily be unfolded remotely. With the beginning of the global health emergency established during March 2020, agile working, with the introduction of the ⁵⁹Legislative Decree n. 18 promulgated on 17th March 2020, officially became a new ordinary and extended labor modality based on remoteness of the working activities, as a solution aimed at guaranteeing the social distancing requested and planned by the Government as a security measure. During the more difficult periods characterizing this Pandemic emergency, namely, during all those periods in which the Pandemic was and still is more acute, especially in terms of infections, all forms of agile working are

⁵⁹ Decreto-Legge 17 marzo 2020, n. 18
<https://www.gazzettaufficiale.it/eli/id/2020/03/17/20G00034/sg>

used and implemented in a massive way with respect to preceding times when Smart Working and similar flexible working methods were adopted only marginally.

This exponential growth gave the chance to experience Smart Working methodology for a wider range of consumer base and to bring to light positive and negative aspects still unknown or, at least, scarcely tested also with the respect to the legal framework governing this innovative contractual relationship. In fact, after the Pandemic explosion, in conjunction with the increasing flow of workers forced, more or less voluntarily and propositionally, to stay at home and manage their working activities remotely, many issues, doubts and inconsistencies emerged around the normative field of agile working modality. The first problem emerged regards ⁶⁰the admissibility of the right to receive meal tickets for the employees who are unfolding their job remotely under an agile and smart regime. The Court of Cassation, to solve this doubt, recalled the fact that meal tickets right is related, by construction, to a preferential treatment with a “helpful” nature but not certainly remunerative; following this principle, meal tickets should not be recognized for smart workers since they do not constitute in this case a form of supplementary aid as in case, for example, of a business headquarter with no workplace canteen.

The formal resolution to this problem arrived with the ⁶¹circular n. 2 on 1st April 2020 promulgated by the Minister for Public Administration which established the absence of automaticity for the recognition of the right to receive meal tickets for smart working personnel.

The issue is very complex since some collective contracts confer the right to receive meal tickets on the basis of different parameters such as a working schedule covering both the mornings and afternoons with a break not higher than two hours and not lower than half an hour, incompatible element with the Smart Working time flexibility, or again on the basis of a minimum weekly working time schedule of five days with a minimum period of break which instead could be compatible with the organizational structure of Smart Working.

Another important issue emerged regards the regulation of parental leaves for people experiencing agile forms of working whenever the scholar activities are suspended due to the Covid 19 Pandemic situation.

⁶⁰Presidenza del Consiglio dei ministri, Dipartimento della Funzione Pubblica, Ufficio per l’organizzazione del lavoro pubblico, Servizio trattamento del personale pubblico, Smart Working emergenziale, L’impatto su alcuni istituti contrattuali
http://www.funzionepubblica.gov.it/sites/funzionepubblica.gov.it/files/documenti/SW_COVID/Smart_working_emergenziale.pdf

⁶¹ CIRCOLARE N. 2/2020, Registrata alla Corte dei conti il 2 aprile 2020 n. 585
<http://www.funzionepubblica.gov.it/articolo/dipartimento/02-04-2020/circolare-n-2-del-1-aprile-2020>

The disposition that intervened to solve this problem is the ⁶²draft Law n. 30 of 13th March 2021 and consequently by the ⁶³Legislative Decree n. 146 of 21st October 2021.

The Art. 9 of the Legislative Decree n. 146/2021, following the previous one n. 30/2021 introduces the possibility of abstention from the working activities for the entire or partial period of suspension of the scholar activities whenever the worker is the parent of a child having contracted the infection from SARS-CoV-2 and being younger than fourteen years old.

These parental leaves, according to the provision, will be recognized with an allowance equal to the 50% of workers' compensation and they can be excluded by the standard computation of parental leaves contractually expected.

These norms are intended to be applicable both to standard workers as well as for smart or agile workers, the only difference may take place when comparing the public and private sectors since initially the norm was addressed only to the public sector; the missing specification regarding private personnel has been solved with a consequent modification of the law that resolved the inconsistency by specifying that the provision must be considered applicable for both the public and the private sectors.

The last problem emerged as a consequence of the growing adoption of Smart Working modalities regards ⁶⁴the admissibility of the rights to ask for paid leaves. The legal Department, in fact, declared that the principle justifying the request for a paid leave is completely incompatible with the organizational mechanism established for agile working modalities. Working time schedule is not specifically measured as the worker himself decide when to dedicate his own time to the working activities, exactly in line with the main purpose of a flexible type of job. The opportunity of freely deciding when and where to work and the simultaneous request for paid leaves are elements resulting as totally conflicting with one another from the conceptual point of view.

⁶² D.L. 13 marzo 2021, n. 30, Pubblicato nella Gazzetta Ufficiale del 13 marzo 2021, n. 62.
<https://www.cliclavoro.gov.it/Normative/D-L-13-marzo-2021-n-30.pdf>

⁶³ Decreto-legge 21 ottobre 2021, n. 146
<https://www.lavoro.gov.it/notizie/Pagine/Convertito-in-Legge-il-D-L-21-ottobre-2021-n-146-ulteriori-misure-a-tutela-del-lavoro.aspx>

⁶⁴ Presidenza del Consiglio dei ministri, Dipartimento della Funzione Pubblica, Ufficio per l'organizzazione del lavoro pubblico, Servizio trattamento del personale pubblico, Smart Working emergenziale, L'impatto su alcuni istituti contrattuali
http://www.funzionepubblica.gov.it/sites/funzionepubblica.gov.it/files/documenti/SW_COVID/Smart_working_emergenziale.pdf

In addition to these specific principles related to the Smart Working condition that had the chance to preponderantly emerge during the remote working experiences, exploited as a necessary provision to fight Covid-19 Pandemic, some other considerations need to be reported, as a consequence of last and most recent resolution provided by the Italian Government. In December 2021 the Italian Ministry of Labor published the conclusive report called ⁶⁵“Relazione del Gruppo di studio Lavoro agile e del protocollo Nazionale sul lavoro in modalità Agile” which is aimed at presenting the results of the study conducted about the effects of Smart Working organizational models adopted during the health emergency in order to develop possible solutions to the criticalities encountered both in the Public and Private sectors. According to the report the epidemiologic emergency threw the basis to an outstanding reorganization of the labor sector thanks to the exponential adoption and implementation of agile working modalities which showed a positive impact in terms of productivity and efficiency as well as some legal gaps within the mechanism that need to be fulfilled if the goal is the one of creating a stable and reliable working model beyond the needs and boundaries of the Covid-19 Pandemic. For this reason, the main purpose of the Minister Orlando is to build a social dialogue aimed at favoring the development of an updated protocol to regulate a modern system of labor organization applicable also to the post-pandemic situation. Following this perspective, indeed, on December 7th 2021, 26 labor unions signed the updated ⁶⁶“Protocollo nazionale sul Lavoro Agile nel settore privato”, establishing the rules and norms for the development and widening of Smart Working modalities as the preferred modality that will characterize the labor environment of the future for what strictly regards the private sector. In the same way, the Public Administration found an agreement regarding the guidelines for Smart Working implementation thanks to the ⁶⁷Unified Conference that took place in December and which clarified norms and rules for the activation, extension and continuity of Smart Working in the Public Sector. Until today, the only difference between public and private sector when dealing with agile working matters is the fact that for private companies the access to SM is voluntary and still takes the simplified form whereas in the public sector the access is already bounded by the drafting of an individual agreement. All recent provisions throw the basis for the creation of a unified, shared and common vision and practical model.

⁶⁵Gruppo di Studio “Lavoro Agile”: la relazione conclusiva
<https://www.lavoro.gov.it/notizie/Pagine/Gruppo-di-studio-Lavoro-agile-la-relazione-conclusiva.aspx>

⁶⁶ Protocollo Nazionale sul lavoro agile nel settore privato
<https://www.lavoro.gov.it/notizie/Pagine/Smart-working-nel-settore-privato-resta-alto-interesse-per-il-Protocollo-sottoscritto-il-7-dicembre-2021.aspx>

⁶⁷ Smart Working, in Conferenza Unificata disco verde alle linee guida per la Pa.
<https://www.funzionepubblica.gov.it/articolo/ministro/16-12-2021/smart-working-conferenza-unificata-disco-verde-alle-linee-guida-la-pa>

2.4.1 Directive n°1/2020

With the aim of giving continuity and concrete effect to the protection measures promulgated by the Government as a response to the Covid 19 Pandemic situation other two important directives have been established at the national level in relation to the main topic of the agile working modality, the directive n.1 and n. 2 2020.

This paragraph is entirely dedicated to a deep analysis of the circular n. 1/2020 which is focused on providing all the necessary elements to incentivize the adoption of agile and flexible working modalities against the diffusion of the Pandemic.

The ⁶⁸directive n. 1/2020 is divided in four different parts, the first one is a premise, the second one governs the improvement promotion of work-life balance within the public administrative context, the third one specifies all the incentives provided for the proper adoption of agile working modalities and the fourth part recalls the concept of monitoring.

The introduction or general premise of the directive recalls the definition, main purpose and mechanism involved for Smart Working as a new instrument to be used not only to be up to date with the digital and modern challenges of nowadays societies but also and especially as a necessary review of the traditional working method to actively face the situation of global emergency, thanks to its characteristics of flexibility and agility capable of adapting to the complex actual condition. Furthermore, adopting this innovative method would bring benefits for all parties involved in terms of productivity and in terms of work-life balance improvement. The directive n.1/2020 is made to provide important information and clarifications about measures to be adopted, instruments to be used and rules to be followed for the correct development of the agile and remote working relationship.

The second part of the directive is addressed to the specification related the concept of work-life balance involved by the agile mechanism within the context of the public administration which is mainly regulated by the Law 81/2017 which introduced measures for the legal protection of Smart Workers and for the proper definition of this new modality of unfolding a job remotely, with flexibility properties in terms of time and space and aimed at the achievement of specific objectives. According to the third clause of the directive there are different element provided also by Labor Law and by business companies, that can be considered as incentives towards the increasing consideration of this modality as a preferred one whenever it is possible to implement it.

Among these incentives we can recognize the following:

⁶⁸ Circolare n.1 del 2020

<http://www.funzionepubblica.gov.it/articolo/dipartimento/04-03-2020/circolare-n1-del-2020>

- Active appeal to agile working as more evolute form of Teleworking guarantying more flexibility for workers organization of working activities.
- Use of “cloud” solutions for sharing data, information, documents.
- Technological appeal to appropriate tool and technological devices such as web-call and online conference to successfully manage working meetings.
- Adopting a flexible approach also when the worker voluntarily proposes to use his own personal devices when the company’s ones are missing or insufficient, always guarantying the due protection and security measures.
- Activate a proper reporting system to accomplish control and monitoring of performances duties.

The last part of the directive reminds the importance of implementing adequate systems for the monitoring, control and supervising activities for the final evaluation of workers performances and qualification of the objectives achievement.

2.4.2 Directive n°2/2020

The directive n. 2/2020, already mentioned at the beginning of the previous paragraph, has been promulgated after the first one and replacing it due to the emission of the Prime Minister Decree on 9th March 2020, which established the persistence of the national emergency condition due to the Covid 19 Pandemic and the consequent ongoing necessity of maintaining the security measures.

The directive is divided in ⁶⁹eight different parts, the first one introducing the premises and reasons for a new emission, the second regards the public administration management activity, the third one recalls the norms to be followed for the correct development of the agile working relationship, the fourth and fifth ones are dedicated to the regulation of working meetings and business trips, the sixth one declares the suspension of public bid procedures and the seventh and eighth ones provides further information and directives about the rules to be followed within the working environment in case of contagion.

As to the introductory part, the directive explains that it is necessary to extend the restrictive measures

⁶⁹ Circolare n. 2 del 2020

<http://www.funzionepubblica.gov.it/articolo/dipartimento/12-03-2020/direttiva-n2-del-2020>

already activated in the first directive due to the continuous returns characterizing the tendency of the Pandemic. As a consequence of the state of the Pandemic condition, the public administration activity management requires the continuity of the reduction of employees physically present in their respective workplace, in order to guarantee minimum distance and all the other conducts aimed at reducing the contagion trends, whenever the working activity does not make indispensable the physical presence of the worker.

For this reason, the directive immediately reminds, in the third clause, the importance of maximizing the adoption of agile forms of working without being subjected to any form of economic worsening condition.⁷⁰ Since Smart Working, according to the new regulatory system is not anymore in its experimental phase, it is necessary, more than ever, to rethink about many other working roles which have been previously excluded by the opportunity of activating remote and agile working, in order to transform the nature of some jobs not only for an emergency reason but also for the promotion of an innovative, modern and technological way of considering the labor environment.

The worker, given the emergency situation, is expected to cooperate and fully provide his availability in terms of assuming an active and adaptable moral approach as well as in terms of making available personal tools and devices for realizing professional activities remotely, whenever the company's ones are not sufficient or adequate.

As to the business meetings and trips, the directive orders to avoid the physical transfer of people and instead it encourages the unfolding of meetings via online conferences and in general in via telematics tools. Following these guidelines with coherence, the disposition also suspends all public bid procedures until the Pandemic situation makes it not in line with the necessary security measures.

Regarding the last two clauses of the directives, are thought to provide further considerations and orders about the correct management of public places when in presence of people, such as the adoption of workplace hygiene instruments like mandatory use of face mask, arrangement of hydroalcoholic solutions for hands cleaning, single-use hand towels and temperature detectors.

The last important consideration recall employer to keep on communicating with their employees even if only virtually, about all the personal protection measures they have to respect and put in practice, the correct and moral behavior they need to assume if experiencing some Covid19 symptoms in addition to keep them up to date regards any new disposition or regulation involving the professional environment in which they are working.

⁷⁰ Circolare n. 2 del 2020

<http://www.funzionepubblica.gov.it/articolo/dipartimento/12-03-2020/direttiva-n2-del-2020>

Recapitulatory Tables of the fundamental normative passages for the public and private sectors

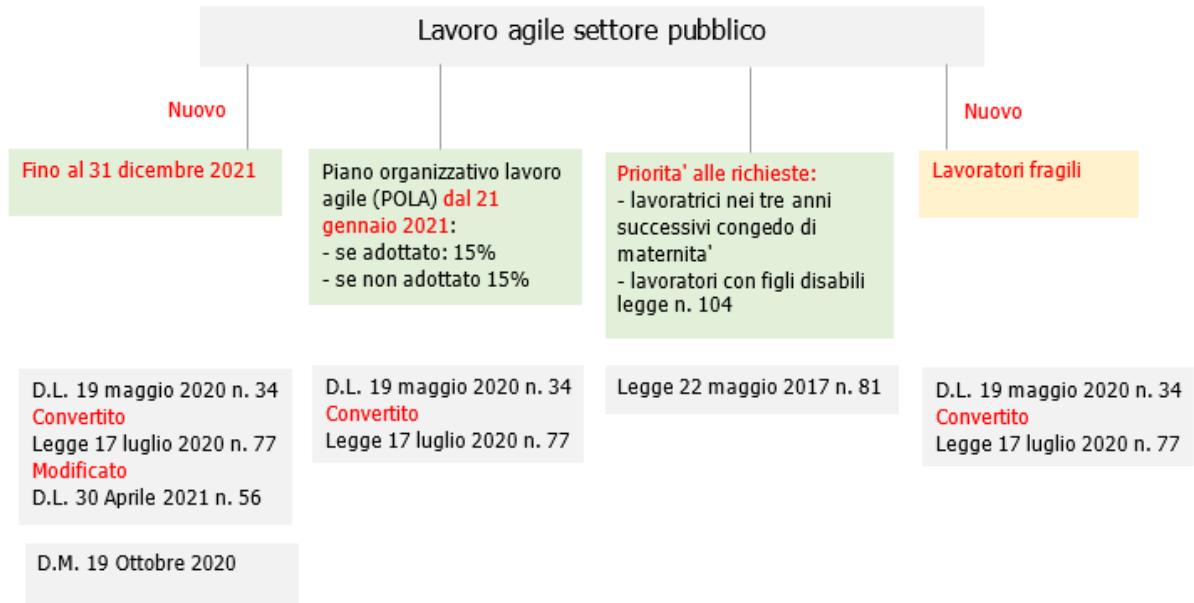


Figure 7

Agile Working legislative reforms timeline within the public sector

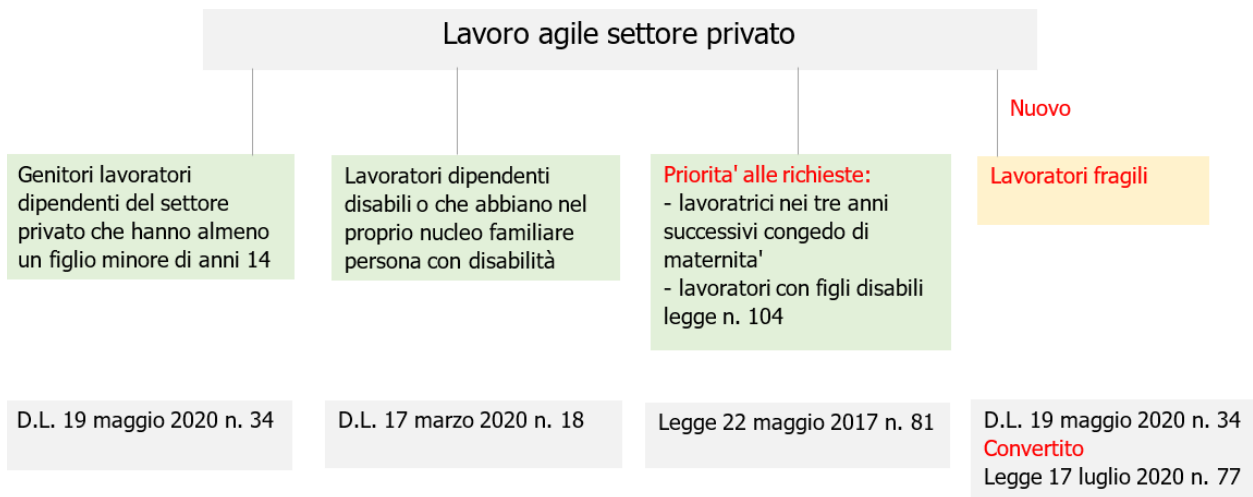


Figure 8

Agile Working legislative reforms timeline within the private sector

3 Health, Well-being and Security of the Smart worker

*“Improving the health and well-being of our employees makes good business sense.
As a leading provider of workplace health services,
we see every day the difference it can make to a company’s bottom line
and the impact it can have on employee morale and motivation.
It offers a ” win-win ” all round.
Employees benefit from better support for their health.
Companies benefit from less absence and improved productivity.
And society benefits from improved public health.”*

Steve Flanagan (Commercial Director, Bupa)

The above quotation perfectly introduces and matches the reasons and purposes of the current chapter which will be entirely dedicated to a deep analysis of the health, security and well-being conditions of workers unfolding their activities remotely and in an agile and flexible way.

The Law dedicated to the regulation of the security and health measures for agile workers, once again, is the Law n. 81/2017, specifically in the Art. 18 clause two and the Art. 22.

The mentioned Law seems to simplify the topic of working health and security when it regards its agile and remote form, but the important point is to understand if the law simplifies it because it is effectively more agile or because it is a necessary facilitation.⁷¹ The response seems to direct to the second option, namely the one related to the missing specification, within the legal provision, of a detailed regulation about the anti-hardship field. The reason could be referred to the impossibility of the application of the general norms related to labor security and health in cases of agile and smart working cases, but this could risk being considered as a discrimination of Smart Workers with respect to “standard” workers who could appear to be more protected within their labor environment.

The perception of a lower degree of protection needed by agile workers derives from a logical inference, according to which it results more difficult to entrust the responsibility of workers’ health and security to the employer when the labor relationship is unfolded at a physical distance from the

⁷¹ M. Gallo, *Smart working e sicurezza del lavoro, quali gli obblighi del datore?*, Guida al Lavoro, 17 novembre 2017
<https://www.guidaallavorodigital.ilsole24ore.com/art/rapporto-di-lavoro/2017-11-17/smart-working-e-sicurezza-lavoro-quali-obblighi--datore-170237.php?uuid=ABaiQf5B>

business offices. On the other hand, according to different interpretations of the same topic, the reason for this missing specification of the Law is due to the fact that the employer is considered responsible only for the proper functioning, maintenance and control of the technological equipment but not for the professional health, well-being and security of workers.

A significant solution to these interpretative doubts is played by the ⁷²Art.3, clause 10 of T.U. 81/2008 which predispose the regulation of health and security protection of Teleworkers but it is referred in general to all those categories of subordinated workers who unfold their working activities not in presence, so that this draft Law could be easily applied also to all cases of agile workers, not only Teleworkers, allowing them to find a legal framework compatible and accessible also to their condition. Furthermore, in 2017 the ⁷³INAIL circular n. 48 has been emanated which introduced the disposition according to which the employer is equally responsible, in relation to health and security issues, for both “standard” and in presence workers as well as for agile and remote workers.

Another interesting school of thought believes that the reason for a less specific and deepened discipline for regulating security and health at work for agile modality lies on the same nature of the Institution of agile or smart working: giving less responsibilities in terms of security and health protection to the employer would make the choice and the option of this modality more attractive and perfectly in line with the objectives of flexibility, simplicity and minimalism that it establishes, with the aim of reaching a higher level of adoption and implementation.

To conclude, it seems plausible to believe that the discipline related to workers security and health protection when dealing with the institution of Smart Working is actually simplified through means of giving to employers a limited degree of responsibility.

This is the reason why is necessary to define the specific duties and rights of both employees and employers involved in an agile working relationship, argument about which the next paragraph will go into deep details.

Then, to follow, the other paragraph will be dedicated to the examination of the health and security at work field of study, considered as a physical but also psychological subject, especially when related to the agile and remote working performance, through means of a digression focused on the various provisions established and measures promulgated by the legal entities at the European level.

⁷² D.lgs. 9 aprile 2008, n. 81, Testo Unico sulla Salute e Sicurezza sul lavoro, Art. 3, comma 10
<https://www.ispettorato.gov.it/it-it/Documenti-Norme/Documents/Testo-Unico-Dlgs-81-08-edizione-di-luglio-2018.pdf>

⁷³ Circolare Inail n. 48 del 2 novembre 2017
<https://www.inail.it/cs/internet/atti-e-documenti/note-e-provvedimenti/circolari/circolare-n-48-del-2-novembre-2017.html>

3.1 Legal protection of the worker's psychophysical integrity

The reason why is a relevant matter the legal protection of workers in general but in a special way the one of smart workers is that conducting labor activities remotely, using technological devices and often at home with flexible hours can cause many different positive but also negative implications in relation to the physical as well as psychological point of view.

The way in which Smart Working is becoming popular and widely used in Italy but also in many other European and non-European countries is related to the health emergency condition generated by Covid-19 Pandemic, which forced all countries and Governments to take security measures for the security of people.

One of these provisions has been linked with the realization, whenever it has been considered feasible and viable, of a new organizational working model allowing workers to stay at home and unfolding their daily tasks and activities remotely and in a flexible and agile condition.

The urgency, impetus and the intransigence that characterized past two years and decisions and choice that we all had to take contributed to make the transformation that involved the labor context an impacting and sometimes perturbing experience.

The life of everyone changed almost from one day to another and finding oneself at home with the working equipment and the need of organizing autonomously activities and objectives during the circumstances of a global emergency condition has not been easy.

The risk is that positive aspects and properties of agile working modalities become less important and significant than the negative implications due to the precariousness and uncertainty of the system regulating this new organizational labor model, just for the fact that it has been in some sense extemporized, but it still keeps on maintaining potentialities to be exploited and appreciated.

Therefore, it is important to fix the legal system regulating agile and flexible forms of jobs in all those aspects that have been introduced only partially or not in the possible way.

Legal protection of workers is one of the most important aspects to be able to provide a reliable, solid and functioning working system capable of maximizing the improvement of workers' work-life balance and their labor experience all-round while minimizing the negative consequences that legal and operative gaps or disruptions can cause.

Starting by defining which are the rights and duties of both employees and employers is necessary to clarify the collaborative nature of the institution of Smart Working, grounding its basis of the ability to be accountable, reliable, cooperative and mentally independent. Labor Law role, then, will deal with the fundamental need of granting the legal protection of workers' psychophysical integrity.

3.1.1 Rights and Duties of the Employer

As the previous paragraph already underlined, it is very important to clarify the specific rights and duties of both employers and employees in order to guarantee the proper functioning of the institution of Smart Working but also to provide the correct safety and health policy for the protection of workers.

This section is entirely dedicated to a digression focused on the precise rights, powers and duties that employers have within the field of agile working relationships.

⁷⁴According to the Art. 18, clause 2 of the Law n. 18/2017 employers are responsible for the security and proper functioning and implementation of technological instruments of which employees are equipped for the unfolding of their working activities, but the provision does not specify the detailed duties in terms security responsibility that the employer is required to sustain.

The point is that the Law introduces the use of technological devices as a “possible” solution for working remotely but reality shows that the supply and maintenance of technological equipment is a necessary element for agile working management without which would not be possible to activate this as a working option.

The simple fact that the law makes employer responsible for the provision and proper functioning of working instruments is considered as sufficient in order to relieve employees from the same juridical obligation. The employer is responsible for any malfunctioning or damage to the detriment of workers and working instruments.

Another duty to which the employer is subjected regards the commitment of properly and punctually (on an annual base) inform and make the employees aware of all risk related to the security and health issues connected with their working activities, through means of sending them a written leaflet for their necessary acknowledgement and acceptance. ⁷⁵The observation of this commitment is specified by the Art. 22 clause 1 of Law n. 81/2017 that governs and introduces the concept of general and specific risks. General risks are defined as all those elements that place at risk the management of a working activity whereas specific risks are considered all risks connected to the management of the

⁷⁴ Andrea Puccio, Infortunio in Smart Working e responsabilità del datore di lavoro, 26 maggio 2021
https://ntplusdiritto.ilsole24ore.com/art/infortunio-smart-working-e-responsabilita-datore-lavoro-AECz10L?refresh_ce=1

⁷⁵ Smart Working: come tutelare la salute e la sicurezza nel lavoro agile? 25 marzo 2020
<https://www.puntosicuro.it/sicurezza-sul-lavoro-C-1/tipologie-di-rischio-C-5/attrezzature-macchine-C-45/smart-working-come-tutelare-la-salute-sicurezza-nel-lavoro-agile-AR-19935/>

working activity in a specific context. When referring to Smart Working the most significant risks workers can incur in are Physical risks like Ergonomics, Noise risk, fire risk, earthquake risk computer terminal related syndrome and psychological risks like stress, Burnout, isolation and depression. For all these reasons is necessary that the employer shares with his employees a complete leaflet with all instructions and suggestions about how to properly unfold the agile working activities with the aim of protecting the security and health of workers.

The other responsibility that the employer has with respect to his workers is to periodically control the proper functioning of the technological instruments and the providing the necessary eventual maintenance activities on the equipment furnished by the company. The respect and fulfillment of these duties for the employer represents a contractual responsibility for which the missing observation of these rules and obligations is considered as a violation and concrete transgression of the normative frameworks of the labor environment.

On the other hand, the employer is also the bearer of some rights or powers especially regarding employees.

From the juridical point of view, the commitment of the employer, established within ⁷⁶the Art. 37 of the draft law 81/2018, to provide workers a constant process of enablement and education for the proper management of agile and remote working, can be considered as a power for all intents and purposes.

The other significant right and power that the employer owns is related to ⁷⁷the right to control the working activities of workers even if remotely. By keeping in mind privacy rules and norms established as general conditions of respecting workers' rights of their privacy, and with the unique intent of monitoring and supervising the proper moral conduct and the successful practical and productive performance of workers, the employer is authorized to check, also remotely, the expected, valid, and compliant labor trend and evolution of agile workers. Controls implemented by employers must be focused, precise and never being invasive in addition to the fundamental prerogative of being permitted only when performed on the company's labor instruments and technological devices, but never on personal ones.

The use of business software, webcam or other similar tools to control and verify the presence at home or the real connection of workers to their computers is not legitimate.

⁷⁶ D.lgs. 9 aprile 2008, n. 8, Testo unico sulla salute e sicurezza sul lavoro
<https://www.ispettorato.gov.it/it-it/Documenti-Norme/Documents/Testo-Unico-Dlgs-81-08-edizione-di-luglio-2018.pdf>

⁷⁷ Il datore di lavoro può controllare un dipendente in Smart Working?, 10 agosto 2020
<https://laborability.com/lavoro-in-pillole/il-datore-di-lavoro-puo-controllare-un-dipendente-in-smart-working>

Employer's Duties within an agile working Relationship
- Activate all general measures for workers' protection according to the Art. 15 T.U.
- Consign to workers annual leaflet with all information about risks and measures to be adopted for their personal safeguard.
- Provide adequate and periodical education in relation to security and health issues at work.
- Provide instruments to work remotely and the consequent maintenance and activities.
- Ensuring proper functioning and conformity of technological working equipment.

Employer's Rights/Powers within an agile working Relationship
- Provide workers a constant process of enablement and education for the proper management of agile and remote working.
- Control the working activities of employees remotely through means of a constant and focused activity on professional tools aimed at evaluating and supervising productivity performances.

Figure 9

Employer's Duties and Rights/Powers recapitulatory table

3.1.2 Rights and Duties of the Employee

After having analyzed all duties that the employer bears and all rights and powers he is legitimate to exercise it is important to underline and explore the duties and rights of employees when implementing the working activity in a smart and remote modality.

The first and maybe most significant responsibility and duty of the employee is to assume and maintain a cooperative approach with respect to the agile working environment especially for what regards the all the protection measures established by the employer or by the same belonging company and he is also obliged to inform of any malfunctioning or damage of the technological

equipment of which he is provided, as it is explicitly reported within the ⁷⁸Art. 22, clause 2 of the Law n. 81/2017. The worker must be compliant with the correct and requested conduct towards the physical treatment of technological instruments arranged for the working use and also with the moral and ethical behavior towards the realization of the labor performance. He is expected and requested to diligently safeguard all instruments and tools at his disposal, and he is responsible for company's data confidentiality. Then, since the employer is obliged to inform him about all potential physical and psychological risks related to the agile, and not only, unfolding of his job, the employee must cooperate also for the personal prevention of working-related security and health risks.

If these dispositions are not respected and fulfilled by the employer, the situation would represent a concrete legal violation with respect to the labor relationship and the employer will be authorized to treat a bad conduct as a grave legal breach, punishable with a disciplinary action, a monetary sanction or even detention.

In addition to be compliant with a cooperative and collaborative behavior, approach and conduct the employer is also called ⁷⁹to satisfy the achievement of objectives and goals, in terms of productive performances, established by the business company as a necessary term for the evaluation of the professional capacity aimed at maintaining and guaranteeing the stability and profitability of the working relationship. Smart Workers are equally responsible as "standard" workers for bringing and ensuring good results expected and requested by the company, even if the working activities are unfolded remotely.

In some cases, on the basis of the type of job and role covered by the employer, he could be also subjected to the commitment of availability, namely the condition for which a worker must be reachable, especially by phone, during specific time schedule of the working day, in order to be able to respond and satisfy the needs of customers or the requests of the employer.

All duties and obligations described are significant and necessary especially if considered with the aim of protecting and safeguarding the security and health state of workers, since the agile and smart labor modality involves lots of ⁸⁰risks for the physical and psychological condition of employees, among which we can mention the risk of isolation and psychological Burnout as main mental implications and ocular and visual diseases or osteoarticular pathologies as main physical effects.

⁷⁸ Legge 22 maggio 2017, n. 81 Art. 22
<https://www.gazzettaufficiale.it/eli/id/2017/06/13/17G00096/sg>

⁷⁹Lo Smart Working: normativa, diritti e doveri, 20 marzo 2020
<https://www.dirittoconsenso.it/2020/03/20/lo-smart-working/>

⁸⁰ Noemi Secci, Lavoro da casa al pc: come evitare i rischi, 20 agosto 2020
https://www.laleggepertutti.it/411466_lavoro-da-casa-al-pc-come-evitare-i-rischi

On the other hand, and in the same way with respect to “standard” workers, smart workers also enjoy some rights according to what the legal framework establishes, confers and recognizes them.

First of all, the basis upon which a Smart Working modality can be applied and implemented is deliberate willingness of the worker who can freely decide to adopt such a system to unfold his working activities obviously as a consequence of a mutual agreement established in compliance with the employer and the belonging company.

Moreover, according to the Law n. 81/2017,⁸¹ a smart worker benefits of the very same economic retributive treatment than in presence workers, since agile working modality allows to unfold the working activities in a different place and with different time schedule, but it does not compromise a lower amount of time spent working nor a different or less productive labor performance.

The worker has also the right to be properly informed about risks they could face in relation to their working activity and also about the proper and adequate behavior and conducts to be assumed during the remotely working day.

The inner nature, the organizational structure and the characterizing purposes of the Smart Working Institution is also able to provide workers of the right or benefit that surrounds the concept of flexibility: workers can freely decide when to work and when to work according to their personal preferences, attitudes and also daily tasks, so that they can enhance and improve the quality of both their professional and personal life at the same time and reaching a good equilibrium and a solid work-life balance.

The last, but not less important right of an agile worker is related to the⁸² Right to Disconnect which correspond to the basic but fundamental opportunity for agile and smart workers to literally disconnect their devices and technological instruments at the end of the working day, ensuring them a period of rest from work of at least 11 hours.

This right for the first time in the history of Labor Law, has been formally regulated by a specific provision, within Law n. 81/2017, since it is considered as a fundamental right for workers at the European level as we will see during the next paragraph.

This right is so important, especially for smart workers, since this modality surely provide more flexibility and opportunity for auto determine working and personal tasks, but at the same time it

⁸¹ Lo Smart Working: normativa, diritti e doveri, 20 marzo 2020
<https://www.dirittoconsenso.it/2020/03/20/lo-smart-working/>

⁸² E.C., Diritto alla disconnessione: cos'è, perché è utile, leggi, come siamo messi in Italia
<https://www.ilgiorno.it/economia/diritto-disconnessione-1.6949415>

generates the risk of overlapping moments to be dedicated to one own's job and moments to be dedicated to one own's personal and private life.

Employee's Duties within an agile working Relationship
- Assuming a cooperative approach with respect to the security norms and health insurance rules.
- Maintaining a collaborative conduct for what regards the physical treatment of technological instruments and their respectful maintenance.
- Ensure a professional diligence for the achievement of working results and objectives.
- Commitment to availability (when requested by the role covered)

Employee's Rights within an agile working Relationship
- Voluntary basis for the implementation of Smart Working in compliance with an agreement established with the employer.
- Same economic retributive treatment than in presence workers.
- Right to be properly informed about risks they could face in relation to their working activity and also about the proper and adequate behavior and conducts to be assumed.
- Flexibility property of Smart Working which allows workers to organize their time and space freely and consequently improving work-life balance.
- Right to Disconnect.

Figure 10

Employee's Duties and Rights recapitulatory table

3.2 Right to disconnect: an EU-wide fundamental right

The recent and modern digitalization and the increasingly technology-based procedures and processes involved in many different types of jobs makes a reconsideration of the concept of workers health and security concept and policies as a necessary passage. In fact, according to the traditional labor security mindset, work-related risks were basically considered of a physical kind but the new labor modalities like the one of agile working force to take into consideration also new risks for employees which are now focused on their psychological sphere. Smart workers may be subjected to psychosocial risks life isolation,⁸³ technostress, Burnout and also risks connected to the use of technological instruments, as a consequence of the fact that they perform their job remotely.

For all these reasons the⁸⁴ Art. 19 of the Law. 81/2017 introduces the necessity of establishing specific rest times and breaks, to be taken during the working time schedule, that the worker must respect for the purpose of his own mental and physical security, in compliance with the agreement stipulated with the employer at the moment of agile working modality activation and implementation.

The need described above is commonly known as Right to Disconnect, a Right of latest generation which has involved the active interest of many countries at the European level in terms of labor legislation. It is a common concern related to the labor field which is recently becoming a significant and crucial subject matter for discussions also as a consequence of the growing adoption of technological devices for managing certain types of jobs, which causes the potential state of constant and unlimited connection of the worker.

As we mentioned, the need of recognizing the right to disconnect and rest from the working activities has been felt and considered by the Labor Law systems of different European countries and in this sense, France paved the way for the legal and formal introduction of such a right. France introduced the Right to Disconnect within a specific Law called⁸⁵ Loi Travail n. 1088 of 8th august 2016, which

⁸³ Technostress definition

“Technostress is a result of altered habits of work and collaboration that are being brought about due to the use of modern information technologies at office and home situations. People experience technostress when they cannot adapt to or cope with information technologies in a healthy manner. They feel compulsive about being connected and sharing constant updates, feel forced to respond to work-related information in real-time, and engage in almost habitual multi-tasking.” Cit. <https://www.definitions.net/definition/technostress>

⁸⁴ Legge 22 maggio 2017, n. 81, Art. 19
<https://www.gazzettaufficiale.it/eli/id/2017/06/13/17G00096/sg>

⁸⁵ LOI n. 2016-1088 du 8 Aout 2016 relative au travail, à la modernisation du dialogue social et à la securisation de des parcours professionnels
<https://travail-emploi.gouv.fr/archives/archives-courantes/loi-travail-2016/>

constituted a concrete and legally recognized Right to Disconnect from digital instruments for workers. As a result of the porosity of time, especially for employers engaged in smart activities associated with the use of technological devices, which can result in a damage to the personal life quantity and quality, the right to disconnect is starting to be considered as a fundamental right within the Labor system by the entire European Community.

⁸⁶The French Law cited, establishes the mandatory character and nature of the Right to Disconnect in terms of the opportunity of taking breaks from the working activities during specific time slots but the regulation of these moments remains chargeable to the employer or to the national collective bargaining rules.

For what concern the case of Italy, ⁸⁷the discussion about the need of limiting the availability of workers to the sole working time schedule, in order not to allow the overlapping of personal and professional spheres, has been faced by the Art. 19 of the Law n. 81/2017 which introduces the necessity of properly organizing measures to consent and ensure adequate rest moments to employees.

The point is that the Art. 19 of the Italian Law, with respect to the French one, does not explicitly constitute a true Right to Disconnect, but it only introduces the opportunity felt as a need of providing moments to be dedicated to the disconnection of workers from the working activities, as a measure established in compliance with the agreement negotiated with the employer.

The fact that the Italian Law does not specify which measures should be taken in order to guarantee the right to disconnect is probably due to the necessity of establishing customized and personalized modalities of breaks and rest moment on the basis also of the specific worker's needs, in order to respect the nature and structure of agile working condition, mainly focused on the provision of flexibility benefits to the employees.

To conclude this comparison, it is possible to say that the Right to Disconnection is a fundamental right of the agile worker which generates a commitment related to the organizational properties of the job in question, that has to be faced and guaranteed by the employer with the support of national collective bargaining, in the case of France and of the individual contractual agreement in case of Italy.

The positive benefits that a Smart working modality has shown to be able to involve and generate

⁸⁶ R. Di Meo, Il diritto alla disconnessione nella prospettiva italiana e comparata, 14 Dicembre 2017
<https://labourlaw.unibo.it/article/view/7571>

⁸⁷ E. Dagnino, Il diritto alla disconnessione nella legge n. 81/2017 e nell'esperienza comparata
Diritto delle Relazioni Industriali, Numero 4/XXVII - 2017. Giuffrè Editore, Milano
<http://www.bollettinoadapt.it/il-diritto-alla-disconnessione-nella-legge-n-81-2017-e-nellesperienza-comparata/>

risks to be shaded by the negative consequence of ⁸⁸iper-connection that working at home without disconnecting and taking breaks could cause.

Bad repercussions that remaining connected with technological instruments can cause are many and serious, related to both the physical and psychological health of individual workers: remaining seated for hours in front of a pc can bring to eye weariness, weakening of the muscular and articular apparatus in addition to an excess load of anxiety and stress able to decrease the concentration and cognitive capacities. For all these reasons introducing a Right to digital Disconnection, especially in case of agile and Smart Working modalities, is fundamental in order to prevent these kinds of work-related diseases and to release to all the gaps that the Institution of Smart Working for its structure and form, can cause.

The other important and significant consideration regards the fact that Covid 19 Pandemic has been a trigger for the exponential increase of Smart Working cases adoption and implementation, but this innovative modality is not strictly or better exclusively related to the emergency need of respecting distances and all other governmental norms for the social security against the Pandemic, but it is aimed at remaining and increasingly become a preferred working modality thanks to the benefits that is able to offer. Therefore, taking advantage of the digital working, smart and agile modalities, is not intended to be abandoned once the Covid 19 Pandemic Situation will be eventually disappeared or at least kept under control. The most probable and concrete expectation is that Smart Working represent the preferred working modality of the future that we had the opportunity to test on a wider scale as a consequence of the Pandemic condition and related new needs emerged.

In fact, on ⁸⁹1st March 2021 the Italian labor unions C.I.F.A. and CONF.S.A.L. established the “Accordo Interconfederale Nazionale per la regolamentazione del Lavoro Agile” which introduced a new collective bargaining contract that companies could use as an innovative instrument for properly managing the implementation of Smart Working, proof of the fact which is not considered as a mere temporary experiment but as the turning point for the digital era, involving the economies of the entire World.

Considering Smart Working under this point of view, regulating the Right to Disconnection, was a necessary step that Labor Law had to undertake to facilitate and support the achievement of this progress.

⁸⁸ Isabella Mascioni, Il diritto alla disconnessione, 8 luglio 2021
<https://www.diritto.it/il-diritto-alla-disconnessione/>

⁸⁹ Accordo Interconfederale Nazionale per la regolamentazione del Lavoro Agile, tra C.I.F.A. and CONF.S.A.L., 1° maggio 2021
https://www.euroconference.it/media/Files/15367_Cifa_Confsal_accordo_lavoro_agile_010321.pdf

3.2.1 Intervention of the Commission to the European Parliament, Council, Economic and Social Committee and to the Regional Committee: “Safer and smarter employment for everyone”

As it has been mentioned during the previous paragraph, digital and technological instruments and their use for working activities has certainly improved the quality and performance of daily tasks in terms of flexibility and efficiency properties but this kind of smart organization also created a new labor culture based on 24h per day availability. The fact that workers are facilitated in their continuous and rapid contact with customers or with the employer at any point in time and in any place they are, is a risky condition which tends to embrace the worker in a very dangerous vicious cycle.

For this reason, being able to respect the fundamental right of workers to digital disconnection is one of the central debates surrounding the matter of Smart Working and involving the interest, the concrete participation and the active engagement of the European Parliament, in addition to the cooperation of every single member State and their respective Labor regulatory systems.

The first intervention of the European Parliament in this sense, took place on January 21st 2021, when it asked for a new ⁹⁰EU Law n.2019/2181 (INL) aimed at defining the Right to Disconnection, establishing the absence of consequences of any sort for workers taking advantage of this right and regulating some fix and norms and basic standards for disconnection to be respected by agile and remote workers. ⁹¹The European Parliament resolution defines the Right to Disconnection as a fundamental right for workers representing new organizational working models and also as a significant social instrument representing the protection of employees’ security and health as a crucial common interest. Disconnection basically consents workers to abstain from unfolding their working activities such as calls, messages, e-mails, meetings and other tasks, during all festive days of the year, parental leaves, holidays and especially out the daily working time schedule, without being subjected to any kind of negative consequence. The provision also establishes a legal sanctioning system in case of fundamental right violation by the employer or by the company.

The European Parliament also complete the regulation of Smart Working in relation to the right of

⁹⁰ Risoluzione PE del 21 gennaio 2021 n.2019/2181 (INL) - Diritto alla disconnessione
https://www.aranagenzia.it/documenti-di-interesse/sezione-giuridica/unione-europea/11528-risoluzione-del-21-gennaio-2021-n20192181-inl-diritto-alla-disconnessione.html?utm_source=newsletter&utm_medium=email&utm_campaign=AranSegnalazioni&utm_content=Informazioni

⁹¹ L’iniziativa europea sul diritto alla disconnessione, 28 Dicembre 2021
<https://www.lavorodirittieuropa.it/2-uncategorised/894-1-iniziativa-europea-sul-diritto-alla-disconnessione>

disconnection by outlining in a specific way the minimum standards required to be able to accomplish an agile modality of work properly, using the technological instruments in an adequate way and especially during the correct period of time in order to avoid them to become dangerous for the health and security of employees. The measures of implementation of Right to Disconnection are contained within the Art. 4 or the EP proposal which substantially retraces the guidelines provided by the ⁹²European framework Agreement about digitalization for the respect of the right in question, also provides ⁹³concrete and practical measures to be adopted when working remotely in order to disconnect from digital instruments without consequences thank to a system of time measurement aimed at considering also the health necessity of the employee who must become aware of this work-related risks, potential implications and useful protective actions.

The ⁹⁴Parliament decided to underlined the importance of a dedicated Law regulating the right to disconnection because of the great awareness shared about the psychological and physical significance of taking time to rest from the working activities especially if focused on tasks to manage through means of display screens or in general through means of technological devices because the absence of disconnections may cause negative effects on the workers' health and on their crucial equilibrium between professional and personal life, in addition to the fact that it can results into overtimes not paid. For this reason, the European Parliament is recognizing a common strategy aimed at asking to employer the commitment of avoiding demanding the workers' availability out of their established working time schedule.

With this provision the EU Parliament reached a reasonable objective for the legal regulation of these new forms of agile works which can be reassumed with the term ⁹⁵“flexi-protection”, aimed at providing common guidelines and norms to be adopted for not standard jobs so that the crucial concept of flexibility does not lose its positive potential to the detriment of the workers' security.

These new inclusive norms are able to provide a safer and at the same time smarter working condition for everyone, in compliance with the social progress we are attending.

⁹² Accordo europeo sulla digitalizzazione, 9 giugno 2021
<https://www.cisl.it/notizie/notizie-contrattazione/accordo-europeo-su-digitalizzazione/>

⁹³ L'iniziativa europea sul diritto alla disconnessione, 28 Dicembre 2021
<https://www.lavorodirittieuropa.it/2-uncategorised/894-l-iniziativa-europea-sul-diritto-alla-disconnessione>

⁹⁴ Il parlamento Europeo vuole garantire il diritto alla disconnessione dal lavoro, 26 gennaio 2021
<https://www.europarl.europa.eu/news/it/headlines/society/20210121STO96103/il-parlamento-europeo-vuole-garantire-il-diritto-alla-disconnessione-dal-lavoro>

⁹⁵ Condizioni di lavoro migliori per tutti: equilibrio tra flessibilità e sicurezza. Aggiornato il 2 agosto 2019
<https://www.europarl.europa.eu/news/it/headlines/society/20181018STO16583/condizioni-di-lavoro-migliori-per-tutti-equilibrio-tra-flessibilita-e-sicurezza>

3.2.2 European Labor Authority: a new European Agency aimed at supporting member States in respecting the Communitarian Labor Rights

The European union has always been interested and focused on providing a common regulatory system for the member States to be able to guarantee protection and adequate treatment within the field of Labor environment and for this reason established, for example, precise rules regarding the minimum standards for working time schedule, not more than 48 per week and at least 4 weeks of holidays per year. European norms also regulate the functioning of night time jobs and work shifts and also the work rhythm: recently, as we mentioned EU had to face new labor-related issues cause by the great and influencing changes that the labor market has been subjected to.

These changes include the evolution of new forms of jobs like for example Smart Working or, more in general, non-standardized employment that are usually identify by the property of agility and remoteness and that necessarily require a completely new type of legal recognition, normative regulation and formal protection.

The clearest example of an innovative provision released by the European Parliament as a regulatory element specifically dedicated to the safeguard of non-standard workers is the Right to Disconnection, deeply analyzed during the previous paragraph.

The willingness of promoting an increasingly wide formal consideration of these new type of jobs and related new classes of workers is evidenced by the existence of another important provision emanated by the European Parliament regarding the creation of a new ad-hoc Institution called ⁹⁶“European Labor Authority”.

The European labor Authority has been adopted in 2019 but will be completely operative in 2023 and is defined by the same EU as the entity that ⁹⁷“ensures that EU rules on labor mobility and social security coordination are enforced in a fair and effective way and makes it easier for citizens and businesses to reap the benefits of the internal market”.

The most significant goal of the European Labor Authority is to support member States in their commitment to respect the Communitarian labor rights in relation to the labor mobility and to the coordination of social security norms. The need of creating this new European legal entity comes

⁹⁶ Come l’UE ha migliorato le condizioni di lavoro e i diritti dei lavoratori, aggiornato il 02/08/2019, <https://www.europarl.europa.eu/news/it/headlines/priorities/inclusione-sociale/20190506STO44344/come-l-ue-ha-migliorato-le-condizioni-di-lavoro-e-i-diritti-dei-lavoratori>

⁹⁷ European labor Authority
<https://www.ela.europa.eu/en>

from the fact that Eu is really aware about the increasing growth and constant evolution of the labor market and is willing to find the most suitable solutions to all kinds of labor-related issues.

In this sense, the growing development of working roles that requires the availability to international mobility for workers made it necessary to provide a specific regulation to protect their rights and safeguard their security also when they are physically far from the home country for working reasons.

⁹⁸Workers may be sent to another member State of the EU by their company or employer with a temporary condition, in order to perform tasks engaging different countries' workers or to fulfill projects for which the physical presence abroad is a necessary element. The crucial point is that, even if a worker is experiencing a similar condition, all his rights must be adequately respected, his economic treatment must be equally recognized, and his level of social and professional protection must be equally guaranteed: to satisfy these needs the purpose of the European Labor Authority emerged and started to promote its potentialities.

⁹⁹*“We should make sure that all EU rules on labour mobility are enforced in a fair, simple and effective way by a new European inspection and enforcement body. It seems absurd to have a Banking Authority to police banking standards, but no common Labour Authority for our Single Market.”*

As the above quotation by European Commission President Jean-Claude Juncker states, ensuring a common valid and efficient regulatory system for the European Labor environment is one of the fundamental aims of the European Parliament, which is showing its ability to take into account the modern revolutionary challenges and the innovative working-related progresses of actual society.

ROLE AND ADDED VALUE OF THE EUROPEAN LABOUR AUTHORITY

- ▶ **Support Member States in providing access for individuals and employers to information** on their rights and obligations as well as to relevant services;
- ▶ **Support cooperation between Member States** in the cross-border enforcement of relevant Union law, including facilitating concerted and joint inspections and tackling undeclared work;
- ▶ **Mediate solutions in cases of cross-border disputes** between national authorities.

Figure 11

Role and Added Value of the ELA, 9 April 2019 EU Commission pdf

⁹⁸ Come l'UE ha migliorato le condizioni di lavoro e i diritti dei lavoratori, aggiornato il 02/08/2019
<https://www.europarl.europa.eu/news/it/headlines/priorities/inclusione-sociale/20190506STO44344/come-l-ue-ha-migliorato-le-condizioni-di-lavoro-e-i-diritti-dei-lavoratori>

⁹⁹ European Commission President Jean-Claude Juncker, State of the Union Address, 13 September 2017
Towards Fair Labour Mobility: setting up a European Labour Authority, 9 April 2019 (pdf EU Commission)
<https://www.europarl.europa.eu/news/it/headlines/priorities/inclusione-sociale/20190506STO44344/come-l-ue-ha-migliorato-le-condizioni-di-lavoro-e-i-diritti-dei-lavoratori>

3.3 Legal Security of Smart Employees

The necessity of providing legal security and health protection for workers is the starting point for the definition of the discipline regarding the normative obligations that the employer is expected to observe within the context of the specific type of work under analysis, in this case Smart Working.

Nevertheless, it is important to remind the fact that the general security at work regime has to make reference to the ¹⁰⁰Art. 2087 of the Civil Code, which establishes that the employer must necessarily safeguard the physical health and the moral integrity of employees on the basis of the potential risks known as connected and cause by every specific job typology.

Within the context related to the specific case of Smart Working, thus, ¹⁰¹the employer is demanded the role and commitment of analyzing, identifying and evaluating all physical and psychological risks that the Smart Working professional service could imply and cause, on the basis of its organizational peculiarities and structural specificities, he is expected to provide formal and precise information to the employee about these risks and finally he is also required to arrange and implement all the necessary corresponding protection measures for the legal protection of the working relationship.

The regulatory context regarding the workers' health and security protection has been recently improved by a series of Laws and provision as it has been mentioned during the previous paragraph but it is evidence that it still needs to be perfected especially because it makes reference to the Institution of Teleworking as the first origin of the new working modality even if its advanced evolutions methods presents characteristics and functionalities that substantially distinguish Teleworking from the other innovative forms. Furthermore, until recent times Teleworking was used as an exceptional and experimental working method so that the regulatory needs were easier and less complicated but as a consequence of the Covid 19 Pandemic the implementation of agile and remote working grew exponentially increasing also the necessity of enhancing and expanding the normative and regulatory context. Considering the prevision of keeping agile working not as a marginal working option for the future but as a predominant labor modality the necessity mentioned is increasing even more. The most important aspects for which is important to consider the legal security of workers

¹⁰⁰ CODICE CIVILE-art. 2087

https://www.gazzettaufficiale.it/atto/serie_generale/caricaArticolo?art.versione=1&art.idGruppo=262&art.flagTipoArticolo=2&art.codiceRedazionale=042U0262&art.idArticolo=2087&art.idSottoArticolo=1&art.idSottoArticolo1=10&art.dataPubblicazioneGazzetta=1942-04-04&art.progressivo=0

¹⁰¹ Gianluca Meloni, La sicurezza del lavoro nello svolgimento dello smart working, Rivista on-line della Fondazione Prof. Massimo D'Antona

<http://www.lavoro-confronto.it/archivio/numero-24-25/la-sicurezza-del-lavoro-nello-svolgimento-dello-smart-working>

regards both the physical and psychological sphere of the professional life as well as of the private one. The moral implications of unfolding a job remotely and with the opportunity of taking advantage of the agility properties will be deeply analyzed alongside the next chapter.

On the other hand, the specific physical risks related to the agile working modalities are resumed to follow, in order to understand the concrete relevance of being able to rely on an updated and inclusive legal framework.

The development of Smart Working takes with it the appearance of new related risks from the physical point of view, and these can be summarized as follows:

- ¹⁰²MSDs (Musculoskeletal Disorders): the common lack for specific and appropriate working spaces at home and adequate ergonomic furniture, makes Smart Workers more exposed to the insurgency of musculoskeletal diseases especially in the back, neck and legs, due to incorrect prolonged posture and due to poor physical dynamism and mobility during the working day.
- ¹⁰³Visual Fatigue: working for hours in front of display screen and without fixed and established rest moments, can cause visual diseases like fatigue, eyes burning, eye tearing, photophobia (eye extreme sensibility), loosing vision and headache or migraine issues.
- ¹⁰⁴Obesity, heart diseases: due to the prolonged sedentary conduct, smart workers also risk suffering physical and health diseases like heart and in general cardiac pathologies and also, they are more exposed to eating disorders, obesity and gaining weight issues.

The ones mentioned are the most significant potential working-related physical diseases that can take place as a consequence of the agile and remote performance of a specific job.

The European Parliament recently developed a diffuse and deep study about the effects from the physical and psychological point of view that digital working can cause providing specific study cases and taking into consideration the direct experience of workers belonging to different countries and different business realities but sometimes sharing the same inclination and the same adversities with

¹⁰² Manuela Samek lodovici, The impact of teleworking and digital work on workers and society, Study requested by the EMPL Committee, April 2021, pgs 49
[https://www.europarl.europa.eu/RegData/etudes/STUD/2021/662904/IPOL_STU\(2021\)662904_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2021/662904/IPOL_STU(2021)662904_EN.pdf)

¹⁰³ Videoterminali: rischi per la salute e sorveglianza sanitaria, 28 marzo 2017
<https://www.puntosicuro.it/sicurezza-sul-lavoro-C-1/tipologie-di-rischio-C-5/videoterminali-C-47/videoterminali-rischi-per-la-salute-sorveglianza-sanitaria-AR-16671/>

¹⁰⁴ Manuela Samek lodovici, The impact of teleworking and digital work on workers and society, Study requested by the EMPL Committee, April 2021, pgs 51
[https://www.europarl.europa.eu/RegData/etudes/STUD/2021/662904/IPOL_STU\(2021\)662904_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2021/662904/IPOL_STU(2021)662904_EN.pdf)

respect to the agile working modality. The following table has been extrapolated directly from this EU Parliament paper with the aim of showing the effects and consequences of Teleworking as the most used working instruments as a response to the Covid 19 Pandemic. Comparing risks before and during the Pandemic emergency and offering potential control and protection measures is a good and clear way to understand the impact of this innovative Institution as a whole. Despite the fact that the Table only considers Teleworking of which we already mentioned the different nature and structure, it is relevant to notice the main impacts, positive and negative, related to this innovative working modalities.

Family of Risk	Effects of Telework	Amplification or reduction in the context of COVID-19-related containment	Key prevention measures for employers
Risks associated with transportation	Decreased	None	-
Risks associated with home working environment	Increased risks associated with housing (fire, and slip, trip and fall hazards, temperature conditions)	Amplified (due to lack of anticipation)	Dissemination of simple, pragmatic security messages
Psychosocial risks	Increased risks of social isolation in the professional sphere	Reduced (universalisation of telework)	Adoption of virtual collective working periods (teleconferences)
	Increased risk of blurring of boundaries between work and home time	Potentially amplified by the multiplication of nonwork-related tasks such as caring for children and facilitating home schooling	Adapt working time and schedule for workers ensuring home childcare
Behavioural risks (diet, sleep, addiction)	Ambiguous	Amplified (confinement, COVID-19-linked anxiety)	Allow and promote teleconsultations with occupational practitioners

Figure 12

¹⁰⁵Table showing impacts of Teleworking during the Covid-19 pandemic and key prevention measures for employers.

¹⁰⁵ Bouziri, H. et al, (2020). Working from home in the time of COVID-19: How to best preserve occupational health?, Occupational & Environment Medicine, July 2020, vol. 77, n. 7. [https://www.europarl.europa.eu/RegData/etudes/STUD/2021/662904/IPOL_STU\(2021\)662904_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2021/662904/IPOL_STU(2021)662904_EN.pdf)

3.3.1 Role of the law 81/2017 in pursuing the resolution of the Work-Life dichotomy

The Italian response to the emergence and exponential growth in the adoption and implementation of innovative agile working modalities, from the legal point of view, basically arrived with the promulgation of the Law n. 81/2017.

This provision has an important role for what regards the specific Italian regulation with respect to the subordinated working type with the aim of providing it of a solid normative framework able to define this new labor Institution, providing rules for its proper implementation and ensuring rights for the adequate protection of new workers classes.

Besides this general description, one of the most significance purposes of the Law that support the expansion of Smart Working is the opportunity of legally codifying a method through means of which people, especially workers, could be able to enhance and improve work-life balance, thanks to the flexibility, agility and autonomy typical of this advanced labor method.

In fact, after having analyzed the physical risks and implications that Smart Working could generate, is also important to consider the matter related to the human necessity of finding an accurate balance between their professional life and private life, as it is one of the goals that Law 81/2017 and Smart Working in general want to reach.

¹⁰⁶Work-life balance is a wide concept that basically represents the ability of finding and maintaining an equilibrium between work, as intended to one own's professional activity, carrier and related ambition, and the private life, as intended in terms of family, hobbies, spare-time, entertainment, sport and personal passions.

This concept involves the consideration of equilibrium as the harmony of these two spheres in terms of time to be dedicated to each one of them, the energy and individual engagement that the individual is able to dedicate to each one of them and the satisfaction that he/she is capable of benefitting from. Thus, as suggested by many studies, work-life balance is a crucial element for the promotion of people well-being and the achievement of this equilibrium pass through the primary willingness and participation of the individual but also pass through the opportunity, given by employers, of putting in practice the necessary actions thank to a flexible and inspiring labor environment.

The employer, as established by the Law 81/2017, plays a crucial role in allowing Smart Working to become a concrete instrument to facilitate work-life balance, in fact he must provide all measures for the workers to be able to unfold his activities remotely and in agile and smart way by supplying

¹⁰⁶ Work-life balance def. 26 febbraio 2016
https://argomenti.ilsole24ore.com/parolechiave/work-life-balance.html?refresh_ce=1

technological instruments, ensuring due security policies but also establishing a relationship based on mutual trust and confidence in order for the employee to be able to self-determine his professional life and consequently also his personal life in the most profitable and successful way.

What the worker can do in order to facilitate a process, the one of pursuing work-life balance, that could last for his entire life, is to start organizing his days in the way which mostly fit his own proper needs, abilities and his character. It is important to know oneself perfectly, to respect one own's moments, personality and sensibility and start to manage life according to these elements without losing focus on the necessary targets, objectives, desires and commitments.

Self-determination is the key property that Smart Working is able to bring to light and is what support anyone of us to freely choose, decide and determine all those aspects of personal and professional life that can depends completely on ourselves without the risk of generating without generating bad repercussion of anyone or anything but certainly providing more self-esteem, self-respect, empowerment and accountability for all workers trying such an experience.

The Law can provide guidelines and technical support and, in the person of an employer, also supply the employee concrete suggestions and advice capable of facilitating the process towards the achievement of a good equilibrium between professional and private life.

In fact, many companies adopting Smart Working, recently, has included their employees in training and courses entirely dedicated to the explanation of which are the most important element to guarantee that Smart Working could be a positive experience, to ensure its fullest potentiality is exploited and that results are maximized and successfully obtained.

The more relevant ¹⁰⁷suggestions related to the good management of a Smart Working experience are:

- Creating a stable routine, planning and organizing
- Avoiding distractions by taking brief but constant breaks
- Keeping in touch with colleagues to avoid isolation
- Establishing reachable but motivating personal objectives

Through means of these simple but important tips the experience of Smart Working can evolve in the most successful and satisfactory way for both the employer and employee who will be able to create a valid equilibrium between the time he must dedicate to work and the time he necessarily has to dedicate to his private life, allowing his personality to emerge according to the most adequate way.

¹⁰⁷ Come sopravvivere allo Smart Working: consigli per lavorare da casa, 24 marzo 2020
<https://www.scambieuropei.info/consigli-smart-working/>

3.3.2 Second Level Incentives: Art. 25 of the draft law 80/2015

Regarding the crucial topic of enhancing work-life balance in favor of working people is important to mention the Art. 25 belonging to the draft law 80/2015 which introduced measures to improve the equilibrium between personal and professional life, especially focused to the protection of maternities of working women.

The basic innovation of the law ¹⁰⁸80/2015 regards the introduction of more favorable condition for acceding maternity leaves under specific conditions like premature birth or neonatal hospitalization, the extension of paternal leaves for all categories of workers, and the sharpening of the normative related to the economic treatment for parental leaves.

For what regards specifically the ¹⁰⁹Art. 25 of this provision, it is entirely dedicated to the analysis and description of the resources to be dedicated to the improvement of work-life balance within the labor environment. It establishes, in the first clause, that for the triennium 2016-2018 the 10% of the existent resources of the Fund for the contributory allowance had to be allocated to the promotion of measures and incentives for the enhancement of private and professional life balance.

The second clause establishes the cooperation between the employment and social policies Minister and the economy and finance Minister for the organization of the criteria for assigning the cited resources to innovative models and new organizational methods which can be considered to be aimed at improving work-life balance.

The third and last clause reminds that the achievement of this triennial objective won't expect additional public expenditures in terms of human resources, material instruments and financial resources.

The law mentioned in this paragraph has been promulgated in 2015, proof of the fact that the matter of improvement related to the working conditions going into a more flexible and agile path has been launched times before the explosion of the pandemic emergency so that we can possibly conclude that Smart Working methods should not be considered exclusively as a response to the Covid 19 emergency but also as a response to other and not temporary necessities belonging to the labor environment which deserve a valid and reliable solutions and evolutionary options , as much as the Pandemic situation deserves them.

¹⁰⁸ Legislative Decree n. 80/2015

<https://www.informaimpresa.it/item/decreto-legislativo-n-80-del-15-giugno-2015-recante-misure-per-la-conciliazione-delle-esigenze-di-cura-vita-e-di-lavoro-in-attuazione-dell-articolo-1-commi-8-e-9-della-legge-10-dicembre-2014-n-183>

¹⁰⁹ Art. 25, Law n. 80/2015

http://www.jobsact.lavoro.gov.it/documentazione/Documents/Decreto_Legislativo_15_giugno_2015_n.80.pdf

4 Sociological Approach to the Smart Working Dimension

“Remember to enjoy the freedom of being able to work from anywhere and the flexibility to adapt your work to your life rather than the other way around.”

Alex Muench (Product designer at Doist)

The social dimension can be considered as an approach for the analysis of different matters, and it is usually defined as the set of norms, rules, values and roles that belongs to the life of everyone and for this reason is the main source of influence on human behavior thanks to the solid basis it throws on the actual surrounding culture.

Analyzing Smart Working from the sociological point of view means to take into consideration the labor environment as a substantial part of daily life of people, the societal phenomenon taking place in the present to understand its effects and causes and to examine the relationship of the individual with respect to these events and trying also to give a sense and a higher moral value to the role of the inner personality and conscience of individuals within the context of common and practical field of every society like labor is.

Nowadays we are assisting to the emergence of a new productivity structure and an innovative organizational trend and mindset involving the complete and radical transformation of the labor institution and environment which can be observed, examined and addressed through means of a multi-disciplinary approach, involving fields like the legislative, economic psychological and also sociological ones. Smart working as a new labor organizational model is introducing and engaging many aspects belonging to every individual that remained marginal or at least aside prerogatives for the labor structure as it was before. Autonomy, flexibility, accountability, talent and merit appreciation and trust can all be considered inner properties promoted by Smart Working and they characterize not only the entity “work” but also the entity “employee” who is expected to be able to exploit and maximize these faculties as a crucial purpose of his professional life.

Employment sector is enormously changing and constantly evolving and transforming following the legal guidelines and the moral precepts established by the new labor system of flexible and agile sort.

It is important to underline the fact that the revolutionary impact that Smart Working method takes with it, does not mean that jobs are becoming ¹¹⁰self-managed by workers, but it certainly means that the mental paradigm and the behavioral regime proper of workers and expected by them is changing, also according to the evolving socioeconomic requests of actual digitalized society.

Another symptom, related to the labor field, of this revolutionary atmosphere is the brand-new coining of the concept of ¹¹¹industries 4.0, which refers to the process of digitalization and automation of industries thanks to the opportunity of exploiting advanced technologies, innovative machines and digital instruments, cloud computing and artificial intelligences.

As a consequence of this social and economic context, jobs are undergoing a process of evolution from being considered as a having a central role for workers who were the only capable of providing manual skills and labor power, to become a type of intelligent work, which is able to mix manual properties and necessities with high level of complexity knowledges application.

Obviously, to be able to unfold an intelligent kind of job, workers have to advance in terms of certified capabilities, competencies and propensities related to the technological sector so that they need to acquire a specific “employability” suitable to the requirements of the industry 4.0.

In order to stress the importance of this progression path, in Italy many incentives and many different provisions have been released recently to sustain and support the development of industry and employment 4.0 like for example the Transition Plan 4.0 proposed and actuated by the Ministry of the economic development.

To conclude, these premises has been reported to understand the real and concrete load and revolutionary repercussion of this innovative process connected to the labor environment which is engaging many different sectors of the society in a multidisciplinary effort aimed at transforming the working structure to rationalize costs and maximize benefits and successful performances.

As we mentioned, one of the fields involved in this process is the sociological one, so that this chapter will be entirely dedicated to the deep examination and the consequent evaluation of the sociological impact that Smart Working have primarily on workers and on their lives. Following paragraphs, indeed, will touch arguments like psychological Burnout of which workers could be victims, sense of isolation and depression, fusion between private and professional life, risk related to distractions and status quo bias. An entire paragraph will be oriented to the specific condition of female work.

¹¹⁰ Smart Working: una rivoluzione del mondo del lavoro?, 21 marzo 2020
<https://sociologicamente.it/smart-working-una-rivoluzione-del-mondo-del-lavoro/>

¹¹¹ Luciana Maci, Che cos'è l'industria 4.0 e perché è importante saperla affrontare, 11 gennaio 2022
<https://www.economyup.it/innovazione/cos-e-l-industria-40-e-perche-e-importante-saperla-affrontare/>

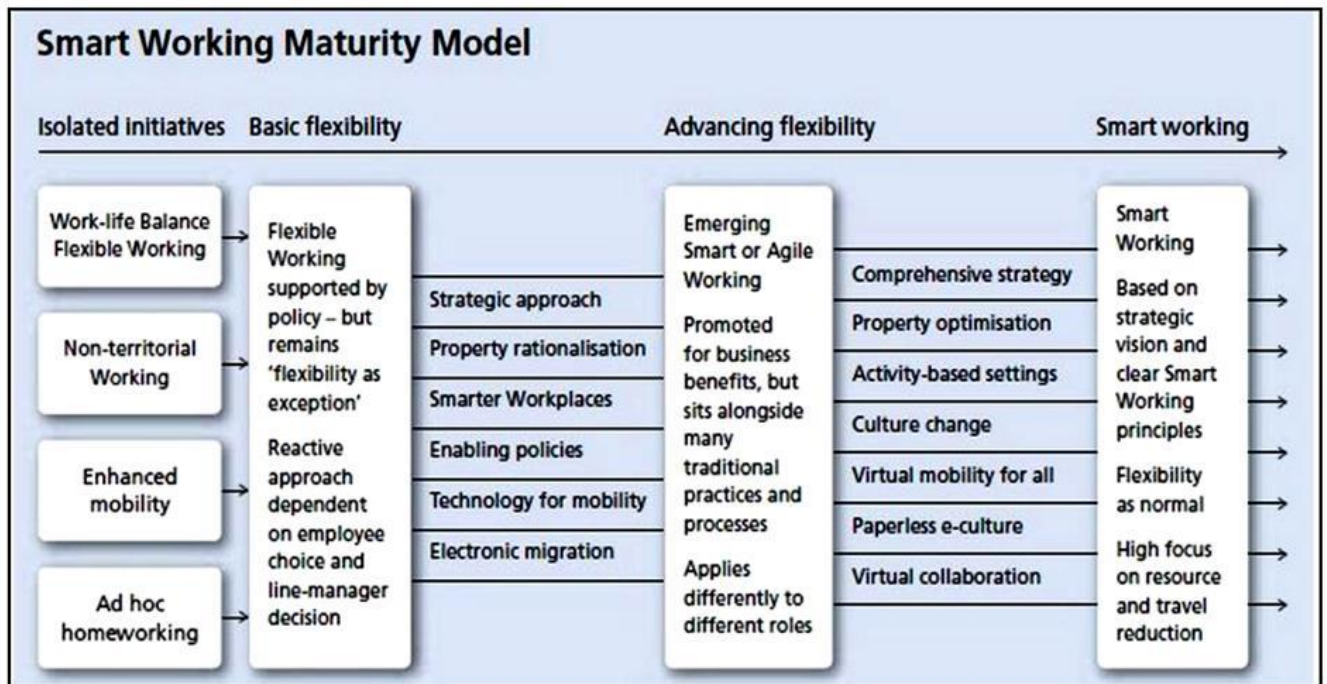


Figure 13
Smart Working Maturity Model

The Smart Working Maturity Model reported above clearly shows how much the social dimension is relevant and significant within the process of implementation and realization of a Smart Working modality. This model has been developed by ¹¹²Andy Lake, a specialist in implementation of flexible and smart labor models, in his book “Smart Flexibility” with the aim of showing and identifying the degree of “maturity” of the introduction of an agile working model within a specific company.

¹¹³“Smart Flexibility is a practical read, with the benefit of sound theoretical underpinning ... This book really feels like an “ultimate” guide to flexible working ... a thought-provoking read and one that I feel should be essential reading for any managers wishing to take flexible working seriously within their organization.” Leadership & Organization Development Journal talked in these terms about the book of Lake as it is, indeed, a concrete manual focused of providing employer the adequate and necessary instruments to be able to create a successful Smart Working kind of model within their firms. The model proposed by Lake is defined as divided into four different progression levels for the implementation of Smart Working in compliance with the new labor organizational culture:

¹¹² Andy Lake, Smart Flexibility, 2013
<https://flexibility.co.uk/about-andy-lake/>

¹¹³ Quotation by Leadership & Organization Development journal
<https://flexibility.co.uk/being-smart-about-flexibility-and-how-to-put-it-into-practice/>

- Isolated Initiatives: it represents the first step of the process conducting to Smart Working implementation, in which some isolated, simple and occasional initiatives are undertaken within a firm with the aim of increasing workers mobility and interactions between colleagues.
- Basic Flexibility: it's the second stage where these isolated initiatives are accompanied by a discrete formalization of policies and programs aimed at sustaining the development towards a Smart working model.
- Advancing Flexibility: correspond to the third phase of the process in which companies take decisions about the introduction of all technological materials needed and the digital instruments to physically implement an agile form of work in addition to a communication project aimed at informing workers about benefits and best practices related to Smart Working.
- Smart Working: It's the last phase of the process in which principles of flexibility, autonomy, trust and work management towards objectives are the crucial, integrated and diffuse values of each worker's professional life. At this stage flexible work becomes the standard and people are so used that start to be productive and efficient even if they are not physically at office, cooperation is an everyday occurrence and mental openness helps workers to positively embrace the introduction and use of any innovative technological tool.

The achievement of this last step requires great and largely diffuse dedication, but it also demands for the engagement of lots of social properties at both the individual and collective level and this is the reason why this model has been included within the chapter dedicated to the social dimension of Smart Working. As it is possible to see from the table, in the second step workers are asked to assume a reactive approach, in the third one come into play the need of changing the labor culture not only in terms of practical tools and remedies but especially within workers' minds and also to contribute with the ability to collaborate as a crucial role for the proper functioning of Smart Working method. In the last phase, flexibility become the normality and workers will have ended with completely change their approaches, their beliefs and their way of organizing professional and private life consequently.

To conclude the social sphere existent within each person plays a fundamental role in accepting changes in the more profitable way and in being able to make what is "ideal" something concrete.

4.1 Psychological Burnout as a cause of Smart Working

The first issue, related to the sociological and psychological context, that can be caused by Smart Working modality and that can touch the emotional sphere of agile workers is the so-called psychological Burnout.

Burnout literally means breakdown and refers to a state of mental and physical exhaustion that, in the specific case can be caused by the negative implications that unfolding a job remotely may generate. It is usually connected with all those mental and emotional states that human beings, in this case especially workers, starts to feel and suffer as a consequence of chronic stress, professional dissatisfaction or oppressive and suffocating constant requests and frustrating expectations.

¹¹⁴Studies confirmed that two workers out of three are experiencing similar conditions and can be said to be afflicted by mental breakdown, corresponding to the 69% of working population; this is the reason why in 2019 WHO World Health Organization decided to include the psychological Burnout syndrome within the list of Icd, International Classification of Disease as an “occupational phenomenon”.

The term “Burnout” used to refer to this kind of pathology has been used for the first time by the psychologist ¹¹⁵Freudenberger who was willing to describe exactly the workers conditions of “burning” caused by the great fatigue of facing continuous stressful situations at work, having a profound negative impact on both their social and professional life in addition to physical and psychological wellness.

Despite the existence of these studies, the phenomenon of Burnout does not show yet clear evidence of the factors that can cause and generate it or significant proof of the process of its occurrence, because the variables playing a crucial role in the emergence of this conditions are various and may vary from person to person, or better from worker to worker.

In Italy, for example, the ¹¹⁶draft law Bosetti Gatti n. 81/2008, dedicated to the policies providing protection at work, forced all Italian organization to properly evaluate working-related risks against

¹¹⁴ Burn-out an “occupational phenomenon”: International Classification of Disease, 28 may 2019
<https://www.who.int/news/item/28-05-2019-burn-out-an-occupational-phenomenon-international-classification-of-diseases>

¹¹⁵ Freudenberger, H. J. (1974). Staff burn-out. *Journal of social issues*, 30(1), 159-165.
https://www.researchgate.net/publication/346586006_Herbert_J_Freudenberger_and_the_making_of_burnout_as_a_psychopathological_syndrome

¹¹⁶ Decreto legislativo 9 aprile 2008, n. 81
<https://www.ispettorato.gov.it/it-it/strumenti-e-servizi/Pagine/Testo-unico-salute-e-sicurezza.aspx>

stressful situations in order to be able to promptly intervene with safeguard measures aimed at protecting workers from the potential emergence of this kind of psychological issues and pathologies. The most significant ¹¹⁷psycho-traps that are formally recognized by psychologist studying working related mental risk are the following:

- ***Expectations Psycho-trap***: whoever gives strong and absolute importance to the castle of values, convictions and principles developed during the course of one own's life considering them as impeccable, indestructible and unchallengeable, sooner or later will face situations in which he/she won't be able to accept and reasonably consider alternative ways of managing life and supporting opinions. Especially if we trust the person with whom we need to discuss we risk creating distress to ourselves, being discouraged and losing our enthusiasm. Whenever people enter into a professional or other kind of relationship with other people, the expectations, more or less justifies, that we develop for ourselves could differ substantially from the reality, creating frustration and sense of failure.

The solution is to always take into consideration that things not always go as expected or hoped and that the same situation can be analyzed and considered from different perspectives.

- ***Insisting Psycho-trap***: insisting on adopting more and more dedication and commitment in quantity terms, to professional tasks whenever things become more difficult and complex create a sort of vicious circle which assign too much responsibility to an individual worker for example.

Dedication is good but it's not a matter of time rather it's a matter of quality.

- ***Underestimate/Overestimate Psycho-trap***: workers very often risk overestimating their capacities in terms of problem-solving skills, organizational properties or controlling and monitoring abilities as well as it is often the case that many professional figures tend to underestimate themselves and the circumstances surrounding them. None of this condition is helpful and adequate if the goal is avoiding frustration at work and maintaining a certain level of wellness and equilibrium during the working activities.

In this case, recognizing and respecting one own's limits is the best strategy to avoid this trap: asking support and demanding for breaks and rest moment is not a failure but it's a recognition signal we owe with respect to our same self, as individual being and professional figures.

¹¹⁷ Mikolajczak M., Gross J.J., Stinglhamber F., Lindahl Norberg A. & Roskam I., 2020, Is Parental burnout Distinct from Job Burnout And Depressive Symptoms?, Clinical psychological Science. https://www.researchgate.net/publication/338188510_Is_parental_burnout_distinct_from_job_burnout_and_depressive_symptomatology

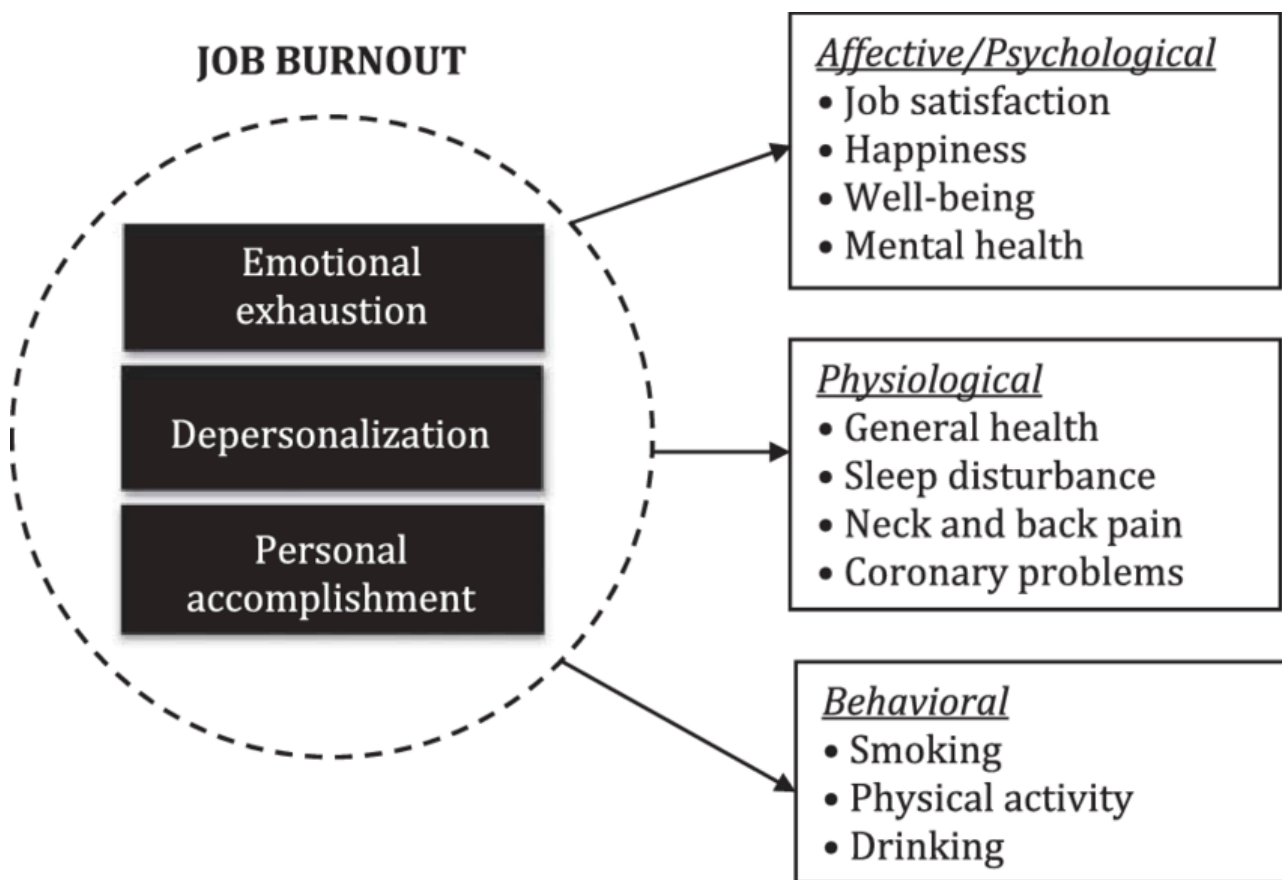


Figure 14

Conceptual Model: the impact of job Burnout on workers well-being

According to the above model the Burnout syndrome is characterized by three different emotional¹¹⁸ components, the emotional exhaustion which corresponds to the sensation of having no more feelings to offer at the emotional and psychological level, the depersonalization which is referred to the development of coldness, cynicism and pessimism attitude and the lack of personal accomplishment which regards the inappropriateness and inadequacy feelings that may accompany workers together with the impoverishment of their self-esteem, motivation and ambition.

Other authors like¹¹⁹ Maslach (1997) tries to collect all the objective causes of psychological job Burnout into six different classes which are, according to her point of view the decisional autonomy, workload, equity, values, gratification and sense of belonging; her conclusion is that job Burnout is

¹¹⁸ Andrea Castello, La sindrome di Burnout: teorie
<https://www.psicologiadellavoro.org/la-sindrome-di-burnoutteorie/>

¹¹⁹ Maslach C., The truth about Burnout, 1997

mainly due to the objective factors generating professional kind of stress, conclusion that brings to set subjective factors aside.

On the other hand, ¹²⁰Edelwich and Brodsky (1980) tried to identify the different stages of the process of development of the psychological job Burnout pathology, managing to select four most significant phases:

- Enthusiastic Stage: workers are really passionate, exciting and optimistic towards their working activities, regardless the reason for which they chose to do that specific job. Individuals during this phase tend to underline and focus only on the positive aspects related to their employment, keeping difficulties and obstacles far from their daily mindset.
- Stagnation Stage: during this phase workers start to notice all the complications and uncertainties related to the achievement of their professional goals and results, so they gradually lose initial enthusiasm and excitement to leave space to new sensations like boredom and concern about their professional future and destiny.
- Frustration Stage: during this phase of the process of Burnout development, again, new emotions start to prevail within workers minds and spirit like anger, disillusion and sadness because the gap between their initial expectations and the reality they are living is too wide and unsatisfying. Employees needs and desires differ too much from the requests and commitment that their employer or the same company for which they work is demanding and claiming and the consequence of this condition reflects into the emotional sphere of workers who are now feeling empty, useless and powerless.
- Apathy Stage: this corresponds to the last stage of the process when Burnout actually becomes established, generating the worst and risky condition of constant frustration.

To conclude, it is possible to say that burnout is never the result of a single negative aspect, sad failure or annoying misunderstanding in relation to the professional field, but it is eventually the result of simultaneous occurrence of multi-dimensional phenomena, capable of disintegrating the psychological equilibrium of a working individual. The most renowned strategy to fight against the insurgence of Burnout syndrome symptoms seems to lie in the sport practice, like Yoga, thanks to its capacity of giving rest moments, instill relaxing feelings and regenerate minds, bodies and souls.

https://www.researchgate.net/publication/303791742_Burnout

¹²⁰ J. Edelwich, A. Brodsky, Burn-out stages of disillusionment in the helping professions, 1980
<https://archive.org/details/burnoutstagesofd00edel/page/n3/mode/2up>

4.1.1 Isolation of the individual

Psychological job burnout can be triggered by many different factors, as mentioned during the previous paragraph, but there are some common characteristics belonging to the structure and functioning of Smart Working modality, which play an important role as triggering factors.

One of these elements is related to the social isolation that the individual experiences when working remotely: human beings are considered as social animals, as Aristotele (IV century b.C) said in his “Politica”, meaning that they constantly look for external relationships they tend to create groups constituting a society and they need to confront, discuss and enter in contact with other people.

Starting from this premises, it is difficult to look at the institution of Smart Working as a component perfectly matching with human nature, actually, the forced physical isolation that agile working entails crash with the human propensity to socially connecting with the external physical world. It is just for this reason and due to this basic inconsistency, that, sometimes, Smart Working risks to result in a dangerous living condition and existential attitude that can bring people to psychologically suffer from this experience.

The contrived social isolation that workers experience may generate a high level of irritability, stress and frustration, symptoms directly connected and strictly associated to the impossibility of face-to-face communicating with colleagues, sharing difficulties and frames of mind, obtaining or providing support for concrete emerging issues during working activities and simply socializing for the purpose of personal and professional growth and evolution of the individual.

Capacities of communicating, discussing, respecting different opinions, training adaptability and acceptance are all faculties that has being tested hard during the recent months and years due to the properties of autonomy, isolation and independency that Smart Working involves.

Social isolation, as well as other factor that will be analyzed during the following paragraphs, can be considered as one of the main social and mental cost of adopting this kind of labor organizational models which certainly have positive consequences and valuable premises too, but they are still missing some expedients and precautions in order not to generate negative side effects.

According to some studies, the lack of interpersonal relationships, of professional but at time also friendly sort, of communication and sharing moments and of the direct monitoring and vigilance of superior roles, could generate also a significant drop on the productivity and efficiency of the same working activities, in addition to the psychological implications observed.

Social isolation experienced by agile workers, previously used to live his professional life in groups, teams and communities, could bring to an impoverishment of the professional dedication and motivating interest that is like to reflects on the productivity quality and quality drop as well as on

the company established efficiency objectives.

It is worth noticing and underlining that, at the moment, this situation of social isolation that all smart workers are experiencing, is also strongly influenced and accentuated by the existing norms, rules, limitations and directive belonging to our daily lives, beyond the professional sphere alone, caused and established by Governments with the aim of fighting Covid-19 pandemic.

In other words, workers that undertook a job path of agile and remote kind before the Pandemic, surely had at least the chance to train and valorize their natural social and communitarian spirit out of the working time schedule, for example spending times with friends, families, at the gym, at restaurants and so on. The Pandemic emergency prohibited even this easy way out that Smart Workers could adopt in order to struggle against the sense of social isolation they experienced at work.

At the moment, due to external and hopefully temporary factors, we are all demanded to live an isolated everyday life for the purpose of our self and others' protection and safety but certainly the requests for isolation relapse to the nth degree on workers who experiences this sensation all day independently from private and professional life distinction.

The only possible small solution or slight relief to the problem, is to take advantage of the technological devices and instruments we all possess in the digital era and try to keep constant contacts and communication, even if virtually, with colleagues and superior roles when working, in order to suffer less from the sense of isolation, exclusion and alienation.

4.1.2 Fusion between the professional and personal dimensions of life

the opportunity of managing a job in a place different from the office, at the complete discretion of the worker who usually choose his home, can be considered an advantage as a first step but it also represents another obstacle or criticism of Smart Working involving the social dimension of the worker's life.

These innovative labor organizational models tend to make more ephemeral and subtle the boundaries between professional and private life both from the physical and moral point of view, establishing new necessities in terms of work-life balance achievement, one of the most significant objectives that Smart Working is aimed at supporting.

Indeed, like in the previous cases, also the fusion between two different spheres of individuals' life can be considered to be an added value provided by agile forms of working and one of its major criticisms and potential negative implication at the same time.

Within the labor environment a new term has been coined to refer to this kind of situation which is

¹²¹“work life blending” namely the combination and overlapping of the personal and private side on people life with their professional working side. This term, according to the most recent studies, has a positive connotation because it refers to a condition in which workers are completely free to manage their job in the way that best fits their personalities, passions and projects and capabilities.

Many smart workers stated that, for example, they prefer having the possibility of dedicating more time today to working activities and tasks in order to autonomously choose to dedicate some time of the following days for resting, sports, hobbies and so on.

This way of conceiving work completely corresponds to the principle of flexibility that Smart Working entails, without forgetting the fact that, as a consequence of the adoption of this method, individuals are expected to be flexible and positively consider flexibility for both their personal and professional commitments and responsibilities in order to successfully realize the concept of work life blending.

Once again, the equilibrium is hanging on a razor's edge, since the agile working system also involves the possibility that the fusion between private and working life results in a dangerous and draining mixing of routines, overlapping of tasks and responsibilities, mental and physical confusion and an annoying sense of intrusiveness and disregard for privacy.

In all these cases in which Smart Working seems to have more negative rather than positive aspects in relation to the work-life balance concept and objective, is important to follow norms and respect legal regulations aimed and addressed at diminishing and preventing potential social and psychological side effects generated by flexibility.

Workers will have then to take literally all information about working-related risks and suggestions to protect their mental and physical well-being trying to put in practice with perseverance guideline and best practice norms suggested at the national and EU level. The Right to Disconnect plays an important role as a concrete tool workers should exploit to try to at least mentally separate the labor environment from their family or private environment. Taking break, respecting time sessions dedicated to work, avoiding tasks accumulation and planning a daily organization are some of the best practices that can help workers suffering from this fusion to re-establish correct boundaries and respect specific bonds.

Work life blending, if brought at the extreme can easily result in the job Burnout syndrome: being able to avoid negative repercussions is one of the new challenges addressed to nowadays professionals.

¹²¹ Work-life blending: cadono i confini tra lavoro e tempo libero, 09 giugno 2020
<https://www.postfinance.ch/it/chi-siamo/azienda/storie-di-pionieri/work-life-blending-cadono-i-confini-tra-lavoro-e-tempo-libero.html>

4.1.3 Distractions

One of the greatest concerns about working from home is related to the presence of different distraction elements from the ones workers were used to when working at office.

The cause of distractions related to the domestic environment are of two different types, the home and who lives in it and the personal smartphone. As to the first cause, it is important first of all to establish and obtain respect by the member of the family or by the flat mates with which one shares his/her home. It is necessary to create a dedicated space, even if small and extemporized, in order to physically outline the location that must be respected by others but also by one-self representing the moment in which time has to be dedicated exclusively to working activities and task. Children especially should be educated and trained to leave time and space to their parents while working, even if at home, in order to allow them managing their tasks without interferences but also to teach to our children and future workers the importance and concrete value of work and the respect for other's need to concentrate and to be committed to a specific activity.

On the other hand, also the home itself can represent a source of distraction and interference because housework is constantly needed for the proper maintenance of one own's place, but they should not be considered as an opportunity to gain time when it's not appropriate, like while working.

The adequate mental attitude would be considering daily home working as if the worker would be at office, maintaining the additional opportunity of disposing of some more time to dovetail also other activities of non-professional kind like, indeed, housework.

Taking advantage of rest moments from work to bring about domestic matters could result in a further and additional stress and frustration occasion and source.

The other great cause of distraction that may hit people working from home is the constant availability of personal mobiles: the lack of constant physical, direct and visual control of superior roles could bring some workers to under esteem the risk and potential damaged provoked by the improper use, in term of time spent, of these devices. Social networks, calls, messages, chats, mobile games and so on are ones of the greatest and most distracting sources for people belonging to the digital era and the problem is furtherly expanded if this kind of distractions involve workers during their working time schedule, since the risk is equivalent to a potential loss of control that could be reflected on the efficiency and productivity performance of the worker first but also of the entire business.

This aspect is so significant because technological devices and especially smart phones are a consistent part of our daily lives and issues related to their abuse and overuse are everyday occurrences. The main point is that studies showed that for the majority of people is so difficult to find the right concentration level as much as it is incredibly easy to distract from the activities they

are doing. Going deeper into this analysis studies has demonstrated that on average people are subjected to distractions every twelve minutes, due to messages reception, e-mail sending, calls etc., and then we need, always on average, twenty-three minutes to re-obtain the right level of concentration. It is not worth the trouble.

The unique solution to avoid this vicious circle is to start off on the right foot by voluntarily distancing and keeping physically far from us all device that can cause a drop of our state of concentration.

Leaving the mobile phone into a different room from the one we are working in is the best solution to avoid too close breaks due to mobile phone interruptions. In this way, also dedicating time to the online or mobile kind of diversion and entertainment will become a productive, adequate and motivating moment since we will resort to it only for pleasure and not for boredom.

At the basis of every single one of these problems and obstacles a worker could face when dealing with agile working, there's the essential principle of good sense, following which we should be able to measure and control the level of isolation, the fusion between private and professional life and the distractions that surrounds us but it is also true that finding an equilibrium within this evolving and mechanism requires a constant and decisive intervention of our deterministic power and willpower.

4.1.4 Depression

Each one of the elements described within the previous paragraphs plays a role and contribute to the potential development of another additional and maybe more worrying bother related to the psychological sphere and involving also the social context which is the depressive state.

Depression is defined by the ¹²²WHO as “a common mental disorder. Globally, it is estimated that 5% of adults suffer from the disorder. It is characterized by persistent sadness and a lack of interest or pleasure in previously rewarding or enjoyable activities. It can also disturb sleep and appetite. Tiredness and poor concentration are common. Depression is a leading cause of disability around the world and contributes greatly to the global burden of disease. The effects of depression can be long-lasting or recurrent and can dramatically affect a person's ability to function and live a rewarding life.” The main causes of this mental disease are to be searched on a complex mixture and interaction of social, biological and psychological different elements that sometimes, when combined together can generate Depression.

¹²² World Health Organization definition of Depression
https://www.who.int/health-topics/depression#tab=tab_1

During this paragraph depression will be analyzed only in terms of a working environment-related condition, especially in cases of agile modalities as they are the main topic of this section.

Working many hours per day in front of a pc screen in the same home where you live, constantly fight against the risks of isolation and feeling the sensation of repetitiveness of the daily activities come in succession day by day can bring workers to start show first sign of a depressive state.

Symptoms emerge in the forms of a constant sense of bad and sad humor, frustration, low self-esteem, lack of appetite or sleepiness, difficulties in finding concentration and a progressive impoverishment of motivational and optimistic feelings.

In general, a prolonged condition of stress and tension at both the physical and mental level, tend to generate the psychological pathology of depression on workers who are the first example of person extremely exposed to stressful situations and anxious contexts and environments.

Obviously, this is a condition that may be referred to both standard and agile workers but differently from standard working condition in which causes of depression could primarily be related to one own's personal mental condition with respect to the employment unfolded, in the case of Smart Working methods tend to emerge in a more generalized way as a sort of common denominator dictated by the nature and structure of this organizational labor model, regardless the initial psychological condition in which the worker was.

It is worth underlining the fact that the actual historical context plays, once again, a significant role in aggravating and emphasizing feelings like social isolation, loneliness, confusion, instability and lack of future motivating perspectives. Covid-19 Pandemic forced many people to experience Smart Working in a mandatory and obliged way for the main purpose of their self and others safeguard and health protection, so that the risk of suffering a similar condition instead of exploiting all its positive consequences and interesting implications is much higher than how it could be.

Social isolation and distancing both from the domestic as well as from the professional point of view, prohibitions, complex living conditions, rules and uncertain implications make recent months and years difficult to manage and to accept.

Since the aim of Smart Working organizational models, as we mentioned, is not the sole and unique in addition to temporary solution to a health crises and emergency but it is the one of providing more flexibility, adaptiveness and agility to the working environment in absolute terms, it is important to accept the actual historical context as a temporary and provisional situation under completion to be eventually exploited to get used, more familiar and accustomed to these innovative organizational labor model as for when they will become the standard preferred method for realizing the difficult goal of work-life balance.

4.2 Cultural barriers to Smart Working

The social, psychological and also physical negative implications that Smart Working can generate can also be related to a difficulty in accepting innovative strategy as a consequence of deeply rooted cultural barriers that still exist within our society.

The greatest paradox characterizing our society deals with the fact that we all live in a digital, iper-connected, technological, innovative and revolutionary society and historical context but at the same time organizational models, principles and functional strategies are still very often grounded on old, traditional obsolete mental and practical schemas.

In order to maintain the discussion related to the labor field, it is sufficient to think about the fact that, before Covid-19 pandemic, the majority of workers moved themselves every day to their company's headquarters, offices and in general working locations, to be able to connect and start their labor activities via chats, e-mails, calls and online meetings and realizing activities and tasks thanks to the support of innovative software, technological instruments and digital applications.

Following this reasoning Smart Working could play an important role in overcoming this paradox by providing concrete and tangible benefits for both workers and businesses as for example avoiding to waste energies, time and space uselessly, becoming more productive, more satisfied and fulfilled and being up to date with respect to the surrounding world and evolving societal mechanisms.

Smart Working so far had the occasion of promoting, developing and demonstrating only partially its great potentialities and this is due to the strong and deeply rooted reticence and restrictions, especially in terms of mental limitations, that our society still own and which very often it let be overpowered by.

All cultural barriers represent a brake that weaken slacken and the inexorable path towards progress. Within this paragraph all kinds of cultural, mental or technical barriers will be analyzed in order to clarify them and eventually individuate, if existent, a potential solution, with the aim of understanding the main issues and obstacles related to the proper expansion and development of Smart Working. Besides the psychological and social potential negative implications for workers individuals, as we mentioned previously, also employers and the society as a whole can represent a mental and physical hindrance for a wider adoption of these new organizational models, the majority of times linked to some cultural and historical heritage that still endure in our daily lives.

In fact, the first common mindset which represent an obstacle for the propositional approach to agile working modality is the fact that we still tend to consider work as strictly related to the prejudice according to which the quantity but especially the quality of one own's work dedication, motivation

and interest is related to the amount of time one spends seated at office in front of a screen when constantly being monitored and supervised by superior roles rather than to the real diligence, the concrete accuracy, the personal motivation and the measurable efficiency adopted and applied to the daily working tasks. Italian labor culture is strictly anchored to the belief that the more you spend time working the more you are considered having high level professionalism and dedication if you also accede to overtime working. This mindset should be changed radically in favor of the idea that productivity corresponds to highest quantitative results and better qualitative objectives realization. Other more practical and concrete reasons for which sometimes implementation of Smart Working modalities seems to be an insurmountable obstacle are reassumed in the following tables showing reactions and feedbacks about agile working activation processes for Big Enterprises, Small and Medium ones and also for the Public Administration sector.

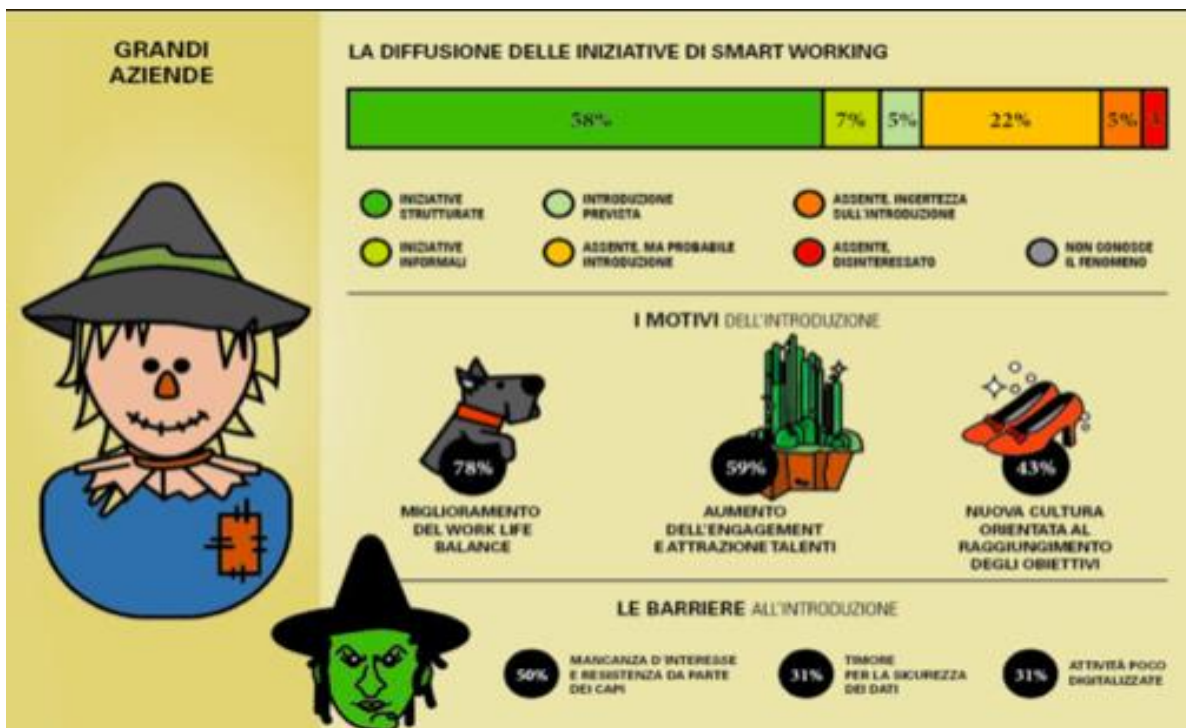


Figure 15

Big Enterprises Smart Working diffusion stage, purposes and barriers.

As we it is possible to notice by the table, among Big Enterprises percentages of distribution of implementation phases of Smart Working are positive and encouraging, the main reasons for activation of agile modality lie on the very basic purposes of the same institution of Smart Working concept namely the improvement of work life balance, the enhancement of engagement and talent valorization and also the prerogative of developing labor environment towards objectives achievement.

As to the cultural barrier to introduction of Smart Working, Big Enterprises show to deal with not interested to the matter employers, the concern for business data protection and security and poorly digitalized and computerized firms, for which implementation of Smart Working realization would represent a complete transformation.

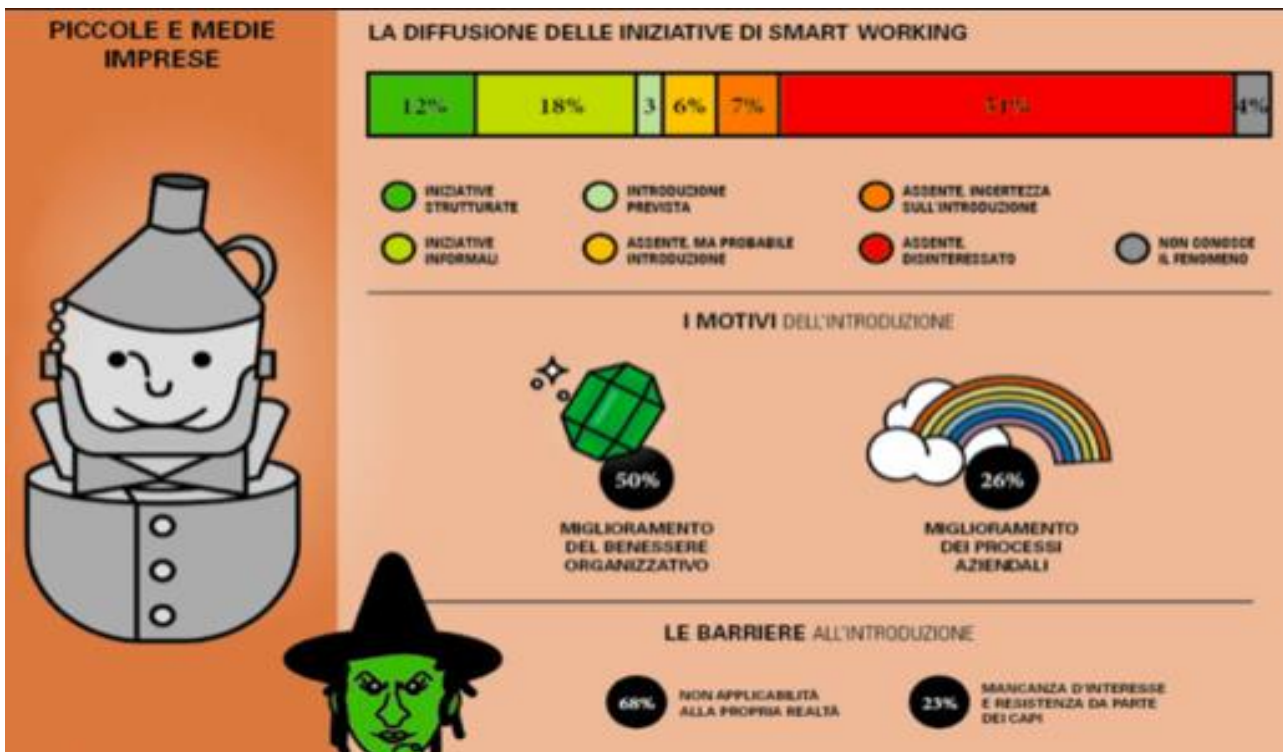


Figure 16

Small and Medium Enterprises Smart Working diffusion stage, purposes and barriers

Within the context of Small and Medium Enterprises which is clearly showed in the table above, the level of diffusion of Smart Working is quite different with respect to Big Enterprises: only the 12% of SME decided to implement agile working modalities and the 18% is trying to activate procedures even if in an informal way. The 51% of SME is not interested at all in evaluating and taking into consideration the opportunity of implementing and starting to act this transformation.

As to the reasons for implementation we can observe the purpose of improving the organizational well-being within the company and also the enhancement and simplification of business procedures and policies. Finally, for what concern the barriers observed by Small and Medium Enterprises to the displeasure of Smart Working realization there's the inapplicability of this working modality with respect to the typology of job unfolded by some specific companies and, once again the lack of interest and motivation showed by employer for providing workers this labor opportunity and condition. In this case, given the results in terms of percentage of activation of Smart Working, barriers play a

crucial role in determining this progressive turn within the labor sector related to SME. It is certain that this labor modality is not applicable, in practice, for every type of job in absolute, but there's a big margin of employment that could be easily transformed into agile and more flexible conditions if certain employers were able to detach from the traditional mindset to embrace progress.

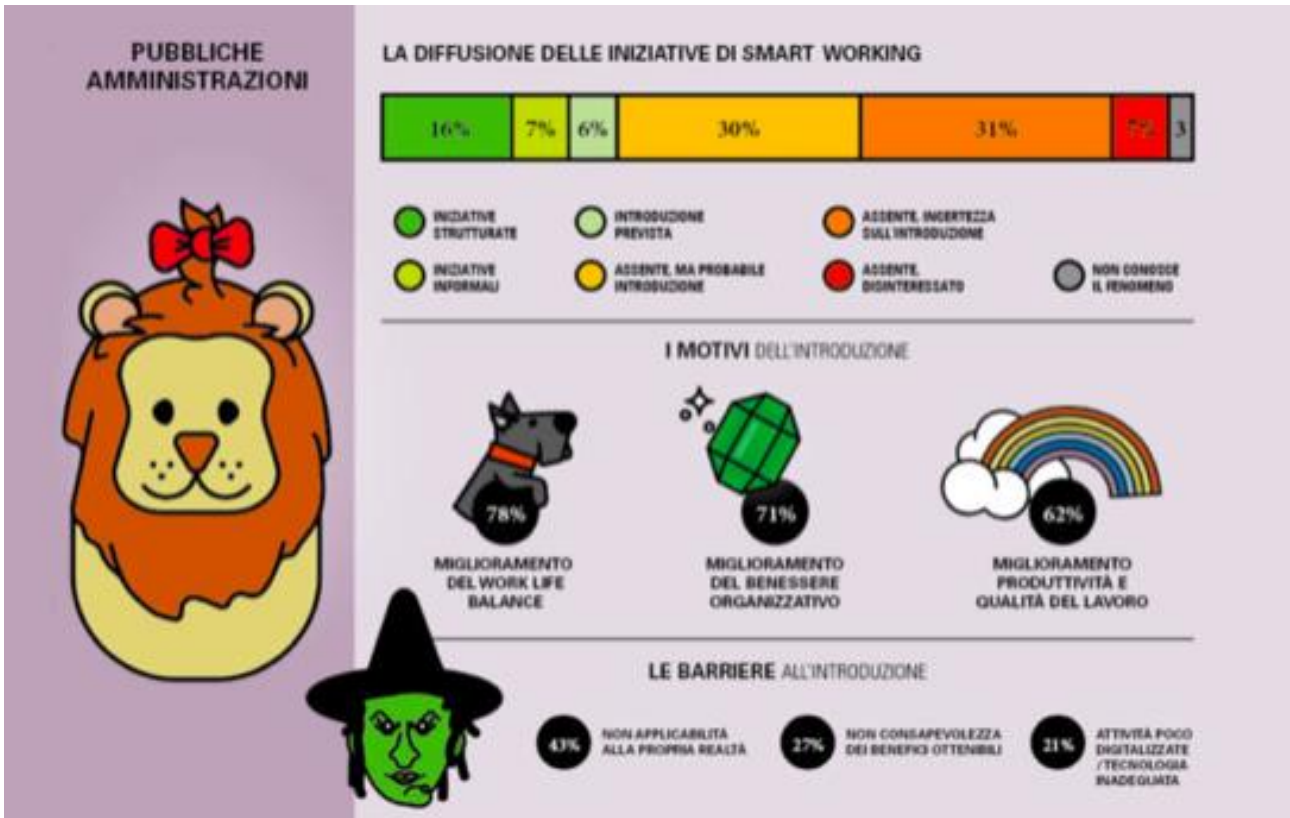


Figure 17

Public Administration sector Smart Working diffusion stage, purposes and barriers

To conclude, it is the turn of the Public Administration sector that show to be less impacted and influenced than the other two regarding the level of Smart Working implementation, in fact only the 16% of public activities embraced this model and the 7% is activating it in an informal way. The most significant data is the one related to the potential future implementation which is represented by a motivating 30%. Another 31% is covered by the presence of uncertain employers.

Reasons for activation in this case regard work life balance and organizational well-being improvement and also the concrete attempt of enhancing productivity and job quality. Once again, barriers to Smart Working implementation lie on the problem of inapplicability of flexible model to certain type of public activities, lack of digitalization and missing awareness of potential benefits.

4.2.1 Status Quo Bias

With the aim of coming full circle about the topic of the social dimension of Smart Working Revolution and related in particular to the issue of people conditionings towards the opportunity of actively taking part to this process it is worth mentioning the factor of status quo bias.

First of all, it is good defining what a bias is and by construction we can say that a cognitive bias is a mental distortion that people realize for their personal evaluation of facts and phenomena, usually influenced by prejudices. They can be considered for all intents and purposes some involuntarily mental acts which provide a contort view of reality through means of the creation of a subjective vision and consideration of facts that does not correspond, indeed, to the reality.

¹²³Status quo bias, specifically, deals with the propensity of some people under certain circumstances to choose the actual, known and comfortable option rather than choosing other unknown options.

In other words, it is a prejudice that our mind creates when we find it difficult to change because changing sometimes can be frightful, unexpected and uncertain so that our mental inclination tends to show as an easier approach to maintain our status quo, our habits and routines and our comfort zone. This is the reason why is so difficult and complex to change the social system, the cultural models and rooted traditions, because even if sometimes these are obsolete, inexplicable and senseless we tend to make them prevail just for the fact that “Better the devil you know than the devil you don't”.

This is the same reasoning that can be applied to the passivity often observed in the approach of many employers in the context of Smart Working adoption and implementation. Within the labor environment too status quo bias plays an important role sometimes in limiting and restraining the growth of some innovative models and strategies like, indeed, the one related to the expansion of agile working modalities. Functioning and management of works at office, physically monitored till the eye can see and standardly unfolded following certain and known habits and procedures, represent a comfort zone for many employers and employees whereas opening up to new technologies and devices and to innovative ways of realizing working tasks and procedures sometimes may represent an obscure and uncertain dimension. The emotional dimension counts but it is important to become aware of the fact that changes make preponderant part of life and for this reason is impossible to reject them: what is important is to exploit them to contribute to progress in the most successful way.

¹²³ Bias- Euristiche
<https://www.stateofmind.it/tag/bias/>

4.3 Female Working within the Smart environment

Following the progressive approach assumed during the previous paragraphs, another fundamental topic to be analyzed regards the female working contextualized within the smart, flexible and agile point of view. Especially for women, the opportunity of improving the conciliation between private and professional life is a fundamental factor if we start from the premise that nowadays the majority of women who are also parent keep on working for the economic and personal realization of themselves as individual and also for the benefit of their families.

Smart Working, in this sense, could reveal to be a perfect instrument to facilitate the work life balance of working mothers in a way that allow them to satisfy their needs and desires related to the familiar sphere without having to disregard or even give up their professional ambitions.

The clearest benefit for women having the possibility of managing their job remotely and in a flexible way is related to the pregnancy condition: in Italy the ¹²⁴draft law 1334/2019 establishes the so-called maternity leave which is a flexible period of maximum five months in which a working woman during pregnancy can abstain from the working activities in accordance with the specialized opinion of her attending doctor. The opportunity of managing their work at home and with flexible hours could allow women to continue working also while they are pregnant without compromising the health security of themselves and their babies during the pregnancy progress, if they would be willing to do it. The important element is that this possibility must be dependent on the mother's eventual willingness and voluntary agreement, but it should never be considered as a forced command by the employer exploiting the properties that an agile working modality can offer.

Give the wide margins of freedom and flexibility, women tend to consider Smart Working as a positive option, especially if they are mothers, since they can better integrate and conciliate working and non-working activities on the basis of their individual and familiar needs.

The argument is not so easy and valid in absolute terms because, in fact, it shows some controversial aspects as for example the fact that during Covid-19 pandemic and consequent lockdown periods the ¹²⁵domestic responsibilities of working mothers has increased substantially also for those women who already managed their jobs at home, remotely. This because potentially Smart Working could create

¹²⁴ Indennità per congedo di maternità/paternità per lavoratrici e lavoratori dipendenti e per iscritti alla Gestione Separata, pubblicato il 3 aprile 2017, aggiornato il 9 dicembre 2021
<https://www.inps.it/prestazioni-servizi/indennita-per-congedo-di-maternitapaternita-per-lavoratrici-e-lavoratori-dipendenti-e-per-iscritti-alla-gestione-separata#>

¹²⁵Paola Biasi, Smart Working e il rischio che a conciliare famiglia e lavoro siano solo le donne
<https://www.eticaeconomia.it/smart-working-e-il-rischio-che-a-conciliare-famiglia-e-lavoro-siano-solo-le-donne/>

an effect, concerning the distribution of advantages and disadvantages of Smart Working, which would be asymmetric for women and men.

This asymmetry would be given by the fact that mothers working from home would assume a higher level of responsibility towards the domestic tasks and the home and children care which would consequently widen the gap between women and men in terms of domestic collaboration. It results that the lacking domestic collaboration would have a negative impact on the Smart Working experience, decreasing its potential of generating personal well-being and individual satisfaction in addition to the potential increase of new forms of conflicts.

On the other hand, it is important to remind that agile and flexible working modalities has showed promote another important principle significant for every cultural system which the one of gender gap. According to the study of ¹²⁶Variazioni, a company specialized in counseling for organizational innovation and Smart Working proposing its analysis at the Employment Commission XI of the Chamber of Deputies, there exists a strong correlation between Smart Working adoption, women's employability and economic transparency and equity.

Smart Working, when adopted as an organizational structured solution aimed at improving efficiency contributes to favoring the economic and retributive equity since it enhances the proper and adequate use of time to be dedicated to the equitable dedication to domestic and professional cares for both genders, it reduces part-time jobs for women, the need for business trips and the improper exploitation of vacations, permits and sick leaves.

Moreover, Smart Working improves the retributive equity between working women and men because what counts is not time spent while working but the achievement of established objectives, besides reinforcing the digital and managerial functions and competencies and makes procedures and process more transparent because its adoption passes through listening to people's needs.

Considered all these aspects, agile and flexible working modalities can be considered, according to a general analysis, as an instrument capable not only to enhance the work-life balance of workers but also to specifically improve the female working conditions.

This process, to be successful, should be encouraged by a stable system of fiscal incentives and by the introduction of a simplified and streamlined legal and structural policy, so that the evaluation of Smart Working and its activation and implementation phases could be considered as a concrete trigger for the cultural transformation which must be realized starting from its more deeply roots.

¹²⁶ Arianna Visentini & Stefania Cazzaroli, Smart Working: mai più senza, Guida pratica per vincere la sfida di un nuovo modo di lavorare
<https://variazioni.info/libro/>

5 Antithetical geo-political and cultural Context: American Case

*“Women are working more,
men are understanding their value as caregivers,
women are primary breadwinners
—I mean, we could go on and on and on.
Things are different.
So, we can’t keep operating like everything is the same,
and that’s what many of us have done.
And I think it’s up to us to change the conversation.”*

Michelle Obama

The above quotation, stated by the ex-First Lady Michelle Obama during the annual ¹²⁷White House summit on Working Families, is a small part of the American project aimed at supporting the expansion of flexible working models to give more power to employees, goal which perfectly match all the premises mentioned during the previous chapters in relation to agile and smart working modalities. In the same way in which happened in many other European and also non-European countries, the Covid-19 Pandemic contributes to a great expansion and diffusion of Smart Working modalities adopted by a constantly increasing number of Companies and business. According to the ¹²⁸consultancy Willis Towers Watson ¹²⁹the percentage of smart workers in USA before the Pandemic was about the 14% whereas it increased up to the 60% after the emergency exploded.

In USA, as in other parts of the world flexible working experiences are showing to produce real and concrete benefits so that it can now be considered as a solution that goes beyond the limits imposed by the Pandemic and by the forced social distancing but it reveals to be a fundamental instrument aimed at allowing working continuity in situations of danger or emergency, providing a significant

¹²⁷ The White House Office of the Press Secretary, FACT SHEET: The White House Summit On working Families, June 23, 2014
<https://obamawhitehouse.archives.gov/the-press-office/2014/06/23/fact-sheet-white-house-summit-working-families>

¹²⁸ Willis Towers Watson: one of the major consultancy brokerage companies at the global level which allows companies to transform risk into benefits and raise talents to increase productivity.
<https://www.wtwco.com/it-IT/About-Us/overview>

¹²⁹ Alberto Battaglia, Smart Working: società Usa pagano l’arredamento ai dipendenti, 5 giugno 2020
<https://www.wallstreetitalia.com/smartworking-societa-usa-pagano-larredamento-ai-dipendenti/>

improvement of work life balance and constituting a tool to reach higher levels of productivity and business efficiency.

To remark this concept, the company ¹³⁰Gallup started to monitor the way in which American workers approached their professional and private life consequently to the Pandemic, showing clearly, as it is possible to notice by the table below, that the percentage of workers embracing flexible working models or at least remote ones arrived at the 62% of the total employed workers by the beginning of April 2020.

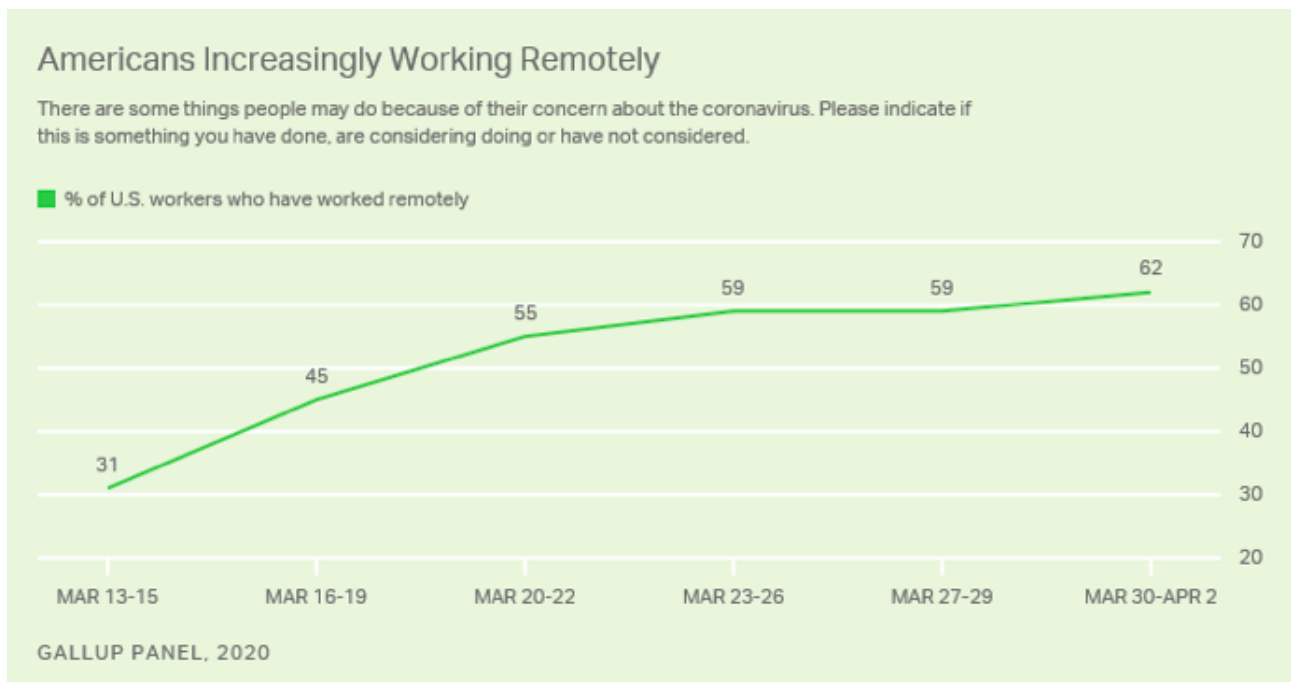


Figure 18

Gallup Panel showing the % of Americans adopting Smart Working after Covid-19 pandemic.

Besides suggesting that Smart Working experience at this point has been tested by a great number of workers so that the experimental phase of the model can be said to be overcome and terminated, the Gallup survey also suggests specific considerations about Americans preferences with respect to this working modality: ¹³¹three in five American employees who actually did their jobs remotely and in a

¹³⁰ Gallup: American analytics and advisory company based in Washington D.C. that became famous for the opinion surveys that it conducted and still conduct worldwide.
[https://en.wikipedia.org/wiki/Gallup_\(company\)](https://en.wikipedia.org/wiki/Gallup_(company))

¹³¹ Megan Brenan, U.S. Workers Discovering Affinity for Remote Work, April 3, 2020
https://news.gallup.com/poll/306695/workers-discovering-affinity-remote-work.aspx?utm_source=tagrss&utm_medium=rss&utm_campaign=syndication

flexible way during the Pandemic would be willing to maintain this modality even once the emergency will be concluded. On the other hand, the 41% of employees who found out by themselves what the flexible and remote work means, would prefer to come back to be physically present at office when the external conditions will allow it.

Despite these divergencies, in general, Smart Working modality adoption and implementation brought positive consequences for both employees and employers showing its best potentialities in a way that convinced many U.S. Companies to transform completely their structure and organizational ideology.

With the aim of stressing the conceptual side of the American approach, it is sufficient to think about the fact that during ¹³²May of 2021 a group of employees of Apple strongly opposed to the eventuality of coming back to offices following a little decrease in term of danger of the Pandemic emergency. Workers claimed the opportunity of extending and prolonging flexible and remote working modalities since they have had the chance to do the job of their life without being limited or bounded by the daily obstacles and difficulties involved by the job at office. This position is not difficult to imagine since the previous table showed that agile working is the option preferred by Americans following a trend which is in constant progression and increase. They privilege the comfortable condition of staying at home, having no pre-established working time schedule and being able to better conciliate private and professional life.

To furtherly support this point of view, there's another important element which involves American Businesses and Companies which agree, for the majority, with the opinion of workers claiming for prolonging agile forms of working as a structured and legalized permanent solution.

¹³³Some U.S. Companies, in fact, started to provide, in addition to the basic and fundamental tools needed by employees to manage their daily labor activities, economic contribution and incentives for workers to purchase office kinds of furniture to decorate their homes while are designated as a working space, in order to improve ergonomics and functionality of agile working experience.

These considerations open the chapter dedicated to the analysis of the institution of Smart Working when applied to a geo-political context like the one of USA which is, for certain reasons, antithetical with respect to the cultural, legal and structural conditions of Italy. The last paragraph will be dedicated to the examination of a case study about SM, the one of American Express.

¹³² Vittorio Ferla, L'America chiede lo Smart Working: l'83% a favore del lavoro agile, 15 giugno 2021
https://www.ilriformista.it/lamerica-chiede-lo-smart-working-183-a-favore-del-lavoro-agile-226876/?refresh_ce

¹³³ Alberto Battaglia, Smart Working: società Usa che pagano l'arredamento ai dipendenti, 5 giugno 2020.
<https://www.wallstreetitalia.com/smartworking-societa-usa-pagano-larredamento-ai-dipendenti/>

5.1 Historical and Regulatory background of the Smart Working in USA

Regarding the regulatory and normative system that governs the Institution of Smart Working in the United States it is worth dedicating a paragraph to all the norms and provisions that has been activated during time by the Federal Government with the aim of better meet the human capital needs and improve labor conditions in terms of flexibility and work life balance.

Formally, the first law introduced by the Federal Government in favor of agile and flexible working modalities is the ¹³⁴Public Law 111-292, also called Telework Enhancement Act of 2010, which has been signed the bill into law by President Barack Obama on December 9, 2010.

The law makes obviously reference to the United States Code and contributed to fulfill it with a new chapter which is entirely dedicated and focused to Telework defined as a ¹³⁵“a work flexibility arrangement under which an employee performs the duties and responsibilities of his or her position, and other authorized activities, from an approved worksite other than the location from which the employee would otherwise work. The head of each executive agency is required to establish a policy under which employees (with some exceptions) would be authorized to telework.”

Employers are expected to enter into a formal agreement with their employers in order to correctly activate the procedure of Telework activation starting by the premises that this opportunity should be ensured to everyone except workers whose daily tasks and activities are not eligible and applicable for agile working because they cannot be handled remotely.

Moreover, the Public Law 11-292 establishes that employees exploiting flexible working modalities must receive a proper and adequate training and formation aimed at successfully accomplish the rules, norms and objective of agile working modalities.

American law also includes arrangements about the egalitarian treatment conditions of workers despite the flexible or on flexible working modality they are healing so that they must not be discriminated on the basis of age, gender, disability or national origin, because the legal conditions and regulation existing before the Covid-19 Pandemic which expanded Smart Working adoption still remain active and enforceable. Worker will receive the same economic treatment than “standard” workers and all collaborators belonging to the same business company, especially if working

¹³⁴ Public Law 111-292, Dec. 9, 2010, 111th Congress
<https://www.govinfo.gov/content/pkg/PLAW-111publ292/pdf/PLAW-111publ292.pdf>

¹³⁵ Barbara L. Schwemle, Analyst in American national Government, P.L. 111-292, the Telework Enhancement Act of 2010: Summary of Provisions and Possible Issues for Oversight, May 11, 2011
<https://sgp.fas.org/crs/misc/R41818.pdf>

remotely should have a special consideration and focus on the technological instruments and digital devices used to unfold daily working activities and also towards the security of confidential data and sensitive information that must be kept within the professional environment exclusively.

U.S. legal system regarding the matter of Telework also provides a specific, updated and mandatory list of which are the rights and duties that both the employee and the employer must respect to be in compliance with the ethical, moral and practical regulation of Telework.

First, the employee's code of conduct in terms of ¹³⁶obligations and rights include:

- Following the belonging workplace policies and procedures related to safety and health security.
- Taking care of one own's health and security at work and eventually reporting injuries or unsafe conditions.
- Right to be provided of a health and secure workplace from both the physical and mental points of view.
- Right to be protected from discriminative conducts.
- Right to be granted your own personal privacy.

The employer's code of conduct in terms of ¹³⁷obligations and rights include:

- Providing a secure and safe workplace from both the physical and psychological points of view.
- Preventing any potential causes of injuries.
- Prohibiting any forms of discrimination at work.
- Registering eventual injuries to which the employees could be subjected.
- Right of asking questions about the physical or mental health of workers if a legitimate reason exists for the request.
- Right to reject not legitimate workplace adjustments, whenever it is very expensive, complex, or does not meet the employee's role commitments.

The respect of these rights and obligations is what allows to protect and safeguard the physical and psychological health and security of both employees and employers within any workplace in order to create working conditions able of generating benefits for everyone.

¹³⁶ Employee's legal obligations and rights

<https://www.nsw.gov.au/mental-health-at-work/legal-obligations-and-rights>

¹³⁷ Employer's legal obligations and rights

<https://www.nsw.gov.au/mental-health-at-work/legal-obligations-and-rights>

With the aim of supporting and sustaining U.S. companies both in cases of Small and Medium Enterprises and Multinational Corporations the most adequate Smart Working structure must take into account the existence of some ¹³⁸legal issues related to its implementation: following the list of the major legal concerns to be considered for the successful implementation of Smart Working as an innovative tool providing economic and social gains and benefits.

1. Data Privacy: Smart Working implies constant connections both internally and externally to the company so that it is important to provide a legal framework of Privacy protection to safeguard confidential information related to the business but also to safeguard the employees' privacy in relation to all those activities that are not directly subjected to the employer's control.
2. Data Security: protection of confidential data and information against the public or the competitor's interest is one of the main concerns of any business, especially when dealing with flexible working modalities under which monitoring and controlling conditions are more complex and limitative. This concept is even more relevant when dealing with companies adopting BYOD policies for which employees are requested to take special care of the security and protection of data with which they daily work.
3. eDiscovery: this aspect involves all the digital exchange of messages, chats, e-mails, calls and in general virtual sharing of digital materials that can create situations of illicit activities bringing potential negative consequences and implications for both the employers and employees. For this reason, it is very important that each employee is aware about his rights about the access and proper use of working devices.
4. Employment: besides the limitations entailed by Smart Working modalities in terms of choosing the workplace in which employees will handle their job, there's an additional and particular insurance coverage against potential injuries taking place while flexible working.
5. Insurance: obviously, in relation to the concern above, smart workers must be insured against some specific physical and psychological risks related to the flexible workplace in which they decided to manage their working activities.

All the aspects described contribute to streamline the U.S. specific legal background and structural framework under which the Institution of flexible working can be implemented and expanded among the companies of the Country, maintaining as leading principle the successful realization of flexibility, autonomy, security and productivity values and objectives.

¹³⁸ Giacomo Olivi, Smart Working: the top five legal issues to consider, January 22, 2019
<https://www.jdsupra.com/legalnews/smart-working-the-top-five-legal-issues-87305/>

5.2 Analogies and differences with respect to Italian case

As it possible to notice from the previous paragraph there are many common considerations about Smart Working as it is considered and developed in Italy and in USA. Starting from the basic concept and definition of Smart Working both legal systems define it as an innovative organizational model that companies can decide to embrace exploiting the availability of advanced technologies and digital tools in order to improve principle of flexibility and autonomy, enhance the productivity and the work life balance within the labor environment.

Both in USA and Italy this system has to be verified and then eventually applied through means of a formal agreement with the employee and it must be regulated by a specific legal context and normative framework capable of providing a solid structure to the model and a health and security protection basis for workers involved.

In addition, rights and duties of both employees and employers are very similar if we consider the workers specific commitments as requested by the Italian labor system on one hand, and by the American labor environment on the other hand.

Since the definition, structure and functioning of Smart Working is equal in both countries, also the pros and cons and the positive and negative implications experienced by flexible workers are pretty aligned on the same wavelength.

Concerns about the security policies to be activated and realized to develop the agile working model successfully are coherent and harmonized.

To conclude, the last but not less important shared and common element is the one that regards the absence of a legal formalization of the term, and consequently of the setting, of Smart Working: in fact, both the Art n. 81/2017, which regulates the adoption of flexible working in Italy, and the Public Law 111-29, which regulates the adoption of flexible working in U.S., never mention directly the word Smart Working. We usually make reference to this term for simplicity and practicality, but we already saw that there's a profound difference between Smart Working and Teleworking, term to which formally both legal terms make reference to when dealing with flexible and agile working modalities.

The missing point, in both cases, is represented by the lack of a formalized and legally established definition and realization of a specific structure and conceptual standpoint to refer to Smart Working. The most significant points of separation between the Italian and American consideration of the same topic lie basically only on the percentage, or more in general, the level of diffusion of Smart Working

among companies and subordinated employees and the different mindset and approach that Italian and American workers assumed with the respect to the adoption of these flexible working modalities.

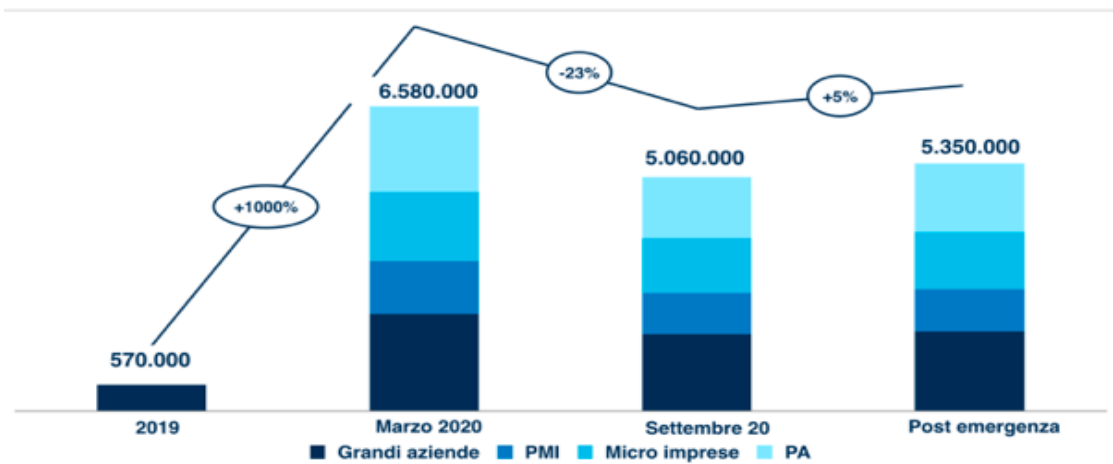


Figure 19
Diffusion of Smart Working in Italy before and after the Covid-19 Pandemic

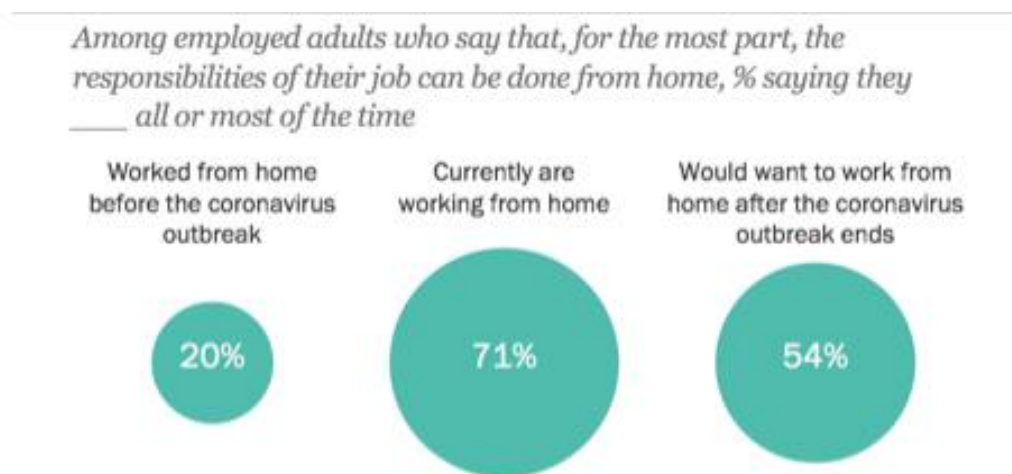


Figure 20
Diffusion of Smart Working in U.S. before and after the Covid-19 Pandemic

The most impactful difference, beyond the fact that these graphs are not identical and does not provide a strict comparison, deals with the fact that U.S. workers approached agile forms of working before the Pandemic in a wider sense. This is probably due to the different labor mindset and labor cultural context based more on principles like punctuality, hard dedication and meritocracy so that it's probably easier and more attractive in U.S. to think about a working environment in which success is based on concrete results reached and not only on the amount of time spent physically at office constantly monitored.

5.3 American Express case of study

American Express is a diversified American Corporation which operates on the field of financial services and travels. It deals with credit cards especially, travels and insurance services.

As to the history, it has been ¹³⁹developed in 1850 as a company of armored truck guard but then in 1882 the society started to launch its first payment orders becoming quickly the primary competitor of American postal service. The company then, created its first credit card in 1958 which has evolved during the following years into other different famous forms of cards which are the Gold Card, the Platinum Card, the Blu American Express Card aimed at managing in instalments payments, the Black Card and the ExpressPay.

Through history, American Express has always been a successful company in terms of qualitative and quantitative productivity performances but also from the point of view of the working experience as collaborators.

For this reason, American Express recently became also one of the greatest examples of working innovation and progress, in this case specifically related to its project related to Smart Working and flexible working modalities.

Within one of the latest research projects conducted by Gartner, the well-known American Multinational Corporation specialized in strategic consulting, work-life balance is one of the factors that mostly attract employees to be engaged with a certain company and at the same time is one of the main reasons for abandoning a working position when it is lacking.

To furtherly underline the importance of this aspect it is worth mentioning the direct experience of American Express in engaging and captivating workers during the Covid-19 Pandemic lockdown, through means of exploiting benefits and potentialities of flexible working.

According to what ¹⁴⁰Mellissa Ferretti Peretti, the chief executive officer of American Express Italia said, the company already partially adopted Telework before and independently from the Pandemic, so employees started a little bit advantaged; but, when Covid-19 exploded the number of employees that started to work remotely within the company grew exponentially.

Italy has been the first Country in which American Express decided to transfer all workers to remote flexible working from one day to the next.

¹³⁹ American Express
https://it.wikipedia.org/wiki/American_Express

¹⁴⁰ Simona Politini, Work-life balance e Smart Working: la ricetta di American Express Italia, 5 giugno 2020
<https://www.digital4.biz/hr/smart-working/work-life-balance-e-smart-working-la-ricetta-american-express-italia/>

Thus, American Express, against the current Italian labor culture which has always considered professionalism as the physical presence at office of workers, their availability 24-hours and disposable to sacrifice their personal life in favor of work, realized a real change of the course of things, starting precisely by the transformation of the common mindset.

According to Melissa Ferretti, once you manage to overcome the obstacle of changing managers' and employers' mindset and cultural heritage according to a new labor culture and structure based on reaching results, targets and objectives, people gradually start to become accountable, autonomous engaged and productive.

For example, ¹⁴¹American Express, in order to support their collaborators in facing a new changing environment related with evolving challenges, provided them of all technological equipment and digital instruments needed to support their daily activities but also introducing some innovative tools like the service of telemedicine and digital psychological support in order to show the empathy, comprehension and interest of the company with respect to each one of their collaborators.

The general and diffuse changed mentality brought American Express to take the decision of allowing workers coming back to office after and during the Pandemic exclusively on a voluntary base in order to respect the needs and sensitivity of both those who would be ready to face the presence at office and those who are still convinced that they prefer to manage their job at home.

The secret of American Express during the forced period of Smart Working generated by the explosion of Covid-19 Pandemic emergency has been the constant and interested engagement towards their collaborators, exploiting the principle of innovation as one of their core values in order to be able to offer best solutions for both their customers and their employees.

The phenomenon of the Pandemic simply contributed to facilitate and accelerate the process of digitalization of companies, with the consequent transformation of organizational models and working structures with the aim of supporting and accompany the evolution of the labor environment. In general, the position and common belief of American Express with respect to the Smart Working recent experience is the one of a "lesson learnt", a positive sign and proof of the enormous potentialities of this institution and at the same time a motivating objective in terms of flexibility that the company is willing to maintain, furtherly promote and improve. At the moment the emotive impact of the recent and still actual emergency situation is still too intense and hysterical but the project for the future of this company definitely includes agile and flexible working modalities as the primary tools to enhance work life balance and to increase talents growth and appreciation.

¹⁴¹ Simona Politini, Work-life balance e Smart Working: la ricetta di American Express Italia, 5 giugno 2020 <https://www.digital4.biz/hr/smart-working/work-life-balance-e-smart-working-la-ricetta-american-express-italia/>

Conclusion

“But increased demand for enhanced flexibility has not occurred purely because of the pandemic. This had been starting before, helped by the development of the internet and software-based tools that our organizations are now built upon which had already alleviated the absolute requirement for us all to work together in the same place at the same time. But the pandemic acted as the accelerator for this change, forcing us to take make the transition before we otherwise would have done. This truly terrible backdrop as well as the speed by which the change has occurred has been daunting and unsettling for many. It is not yet clear what will be the ‘new normal’, but I do believe that organizations that fail to embrace the profound changes that have occurred will quickly be left behind.”

This quotation comes from the speech of Joanna Place, the Chief Operating Officer of the Bank of England who talked about how the bank of England responded to Covid-19 pandemic situation on terms of applying a more flexible and agile working environment. Their aim, as she stated, was and is the one of maintaining an effective and profitable collaborative working conditions for workers, despite remote relationship and distance obligations, through means of a more innovative and efficient inclusive working environment.

Her speech basically reinforces the concept of how Smart Working is by now a revolutionary condition that not only play the role of a concrete solution to the need of social distancing created by the health emergency, but it is something which is deeply rooted on the culture of the future, strictly belonging to a progressive society made up of digital discoveries and technological advances.

What is important to underline, after having analyzed all the significant aspects connected to the functioning and relative benefits and negative consequences of Smart Working, is the fact that time and physical presence are still important to every one of us, especially within the working contexts, but social capital does not necessarily pass through the physical presence.

It could be sufficient to be aware, conscious and adapted to these new kinds of organizational models to be able to individually and collectively develop new and different ways of creating forms of collaboration, union, engagement and sharing.

Following this guidelines Smart Working could be capable of producing more benefits than shortcomings bringing the company, the employers and employees equally satisfied and motivated from the economic, social, physical and psychological points of view.

It’s a known fact that revolutions and changes in general takes a long time to be effective, completed and profitable but the pretext of forced experience of flexibility generated by the Covid-19 Pandemic

should be considered as the undeniable change to diffuse and promote the modified and advanced mindset and culture that support the technological progressive society that characterizes our present and future times.

All new and not new situations imply positive and negative consequences, as Smart Working does, according to what we mentioned during the previous chapters and paragraphs, but progressive projects and objectives rich of great potentialities should never be discarded as a matter of principle. Society should rather work hard, or better “smart”, in order to limit the negative implications that still exist regarding the implementation of flexible organizational models and at the same time maximizing the positive attributes and properties so that an increasing number of working people could start to enjoy the benefits of this innovative structures likely to represent the future of the labor environment. According to what Joanna Place stated, the situation we are living since 2019 is not certainly representing a turning point for the labor world but it is very likely and probably the first experience of “new normal” condition, in which prerogatives, premises, objectives and priorities are and maybe will be different from the ones we had before.

With a great proof of Awareness and consciousness Place also said that all Companies that, during this period, rejected or failed to embrace this progressive project will probably pay dearly in the future for this blank and missed opportunity.

There are no perfect situations and conditions in the world but what makes the difference is the approach with which the individual and the community is able to face and approach new challenges of the surrounding world and of the proper existence. Pandemic does not represent the complete change of people mindset and culture by forcing them to consider and evaluate things necessarily as different with respect to the past but surely it can be exploited as a starting point to embrace progress and realize something positive and special from this bad experience.

UK Prime Minister Winston Churchill said, “to improve is to change; to be perfect is to change often”. The physics and writer Georg Christoph Lichtenberg said “When in doubt, choose change. I cannot say whether things will get better if we change; what I can say is they must change if they are to get better. There is nothing permanent except change.”.

These quotations perfectly represent the aim hidden behind this thesis, focused on a contemporary matter which involves in some sense anyone of us, me personally, that consists in knowing and recognizing facts as they are presented in our daily life without losing the bravery to make changes to our lives, improving our adaptability and open-mindedness.

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