



EMPLOYMENT ALERT

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Small Businesses and the Families First Coronavirus Response Act

The United States Department of Labor has released guidance relating to how a small business may be exempt from certain of the paid leave requirements in the Families First Coronavirus Response Act (FFCRA). As we addressed in prior Alerts, the FFCRA created two paid leave schemes that are applicable to various circumstances relating to the coronavirus (COVID-19) —the Emergency Paid Sick Leave Act and the Emergency Family Medical Leave Expansion Act. For more information about these Acts, please see our previous articles [COVID-19 and Workplace Impacts FAQs](#) and [Updated Coronavirus Legal Update](#).

The small business exemption excuses a small business from providing paid sick leave or expanded family medical leave if an employee requests leave due to the employee's child's school being closed or childcare provider being unavailable due to COVID-19 related reasons provided that certain criteria are met. Specifically, the company seeking an exemption must have less than 50 employees and be able to show that by providing the leave it may jeopardize the viability of the small business as a going concern. To claim this exemption, an authorized officer of the small business must be able to determine that one of the following criteria is satisfied:

1. The provision of paid sick leave or expanded family and medical leave would result in the small business's expenses and financial obligations exceeding available business revenues and cause the small business to cease operating at a minimal capacity;
2. The absence of the employee or employees requesting paid sick leave or expanded family and medical leave would entail a substantial risk to the financial health or operational capabilities of the small business because of their specialized skills, knowledge of the business, or responsibilities; or
3. There are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services provided by the employee or employees requesting paid sick leave or expanded family and medical leave, and these labor or services are needed for the small business to operate at a minimal capacity.

At this time, the Department of Labor is directing that companies not send any materials to the Department when seeking a small business exemption. Instead, the company should document why the business meets the criteria set forth above. Additionally, the Department is encouraging employers and employees to work collaboratively to reach a solution for maintaining the business and ensuring employee safety.

For more information please contact

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