

New Guidance Released for FFCRA Small Employer Exemption

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The U.S. Department of Labor has issued guidance on the criteria small businesses can use to determine if they will be exempt from the mandates of the Families First Coronavirus Relief Act.

The act states that a small business with fewer than 50 employees is exempt from certain paid sick leave and expanded family and medical leave requirements of the act if providing an employee such leave would **jeopardize the viability of the business as a going concern**.

The department has clarified in its guidance that a small business is exempt from mandated paid sick leave or expanded family and medical leave requirements **only if** the business employs fewer than 50 people, the leave is requested because the child's school or place of care is closed or child care provider is unavailable due to COVID-19-related reasons, and an authorized officer of the business has determined that **at least one of the three** following conditions is satisfied:

- 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.
- 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.
- 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.

The small business exemption applies to private employers and religious or nonprofit organizations.

To elect this small business exemption, a company should document why its business meets the required criteria. Companies should not send any materials to the federal Department of Labor when seeking a small business exemption for paid sick leave and expanded family and medical leave.

If you have any questions on this new act, please [contact me](#) or any member of the [Barley Snyder Employment Practice Group](#).

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