



Your Business May Qualify for an Exemption from the New Paid Leave Requirement

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Who is this for? Small businesses (businesses with fewer than 50 employees) if imposition of the new leave requirements would jeopardize the viability of their business as a going concern (details below).

How might this benefit me? You may be entitled to an exemption from some of the new paid leave requirements that were recently enacted in the Families First Coronavirus Response Act (FFCRA).

What do I have to do? Document internally the facts and circumstances that meet the criteria for the exemption. Businesses are not required to file anything with the Department of Labor (DOL). A certification and documentation by the employer as to the basis for the exemption under the law is all that is required.

What are the details? We previously wrote about the paid leave requirements of the FFCRA [here](#). The potential small employer exemption would apply to (1) paid sick leave due to school closures or the unavailability of child care because of the COVID-19 pandemic and (2) expanded family and medical leave due to school closures or the unavailability of child care because of the COVID-19 pandemic. In just-released regulations, the DOL has clarified the criteria for claiming the exemption. A business need only meet one of the below criteria.

1. The leave would cause the small employer's expenses and financial obligations to exceed available business revenue and cause the small employer to cease operating at a minimal capacity;
2. The absence of the employee or employees requesting leave would pose a substantial risk to the financial health or operational capacity of the small employer because of their specialized skills, knowledge of the business, or responsibilities; **OR**
3. The small employer cannot find enough other workers who are able, willing, and qualified and who will be available at the time and place needed, to perform the labor or services the employee or employees requesting leave provide, and these labor or services are needed for the small employer to operate at minimal capacity.

With respect to the above, an employer may deny paid sick leave or expanded family and medical leave only to those otherwise eligible employees whose absence would cause the small employer's expenses and financial obligations to exceed available business revenue, pose a substantial risk, or prevent the small employer from operating at minimum capacity, respectively. Employers should document all the facts and circumstances that meet the above criteria to justify the denial of leave and retain the records in their own files.

We would be happy to discuss the exemption with you and assist you in identifying and preparing the appropriate exemption documentation for your records.

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Wisler Pearlstine, LLP can assist you with this and many other COVID-19-related legal issues. Please contact Rhonda Grubbs, Esquire at rgrubbs@wispearl.com or (610) 825-8400 for more information on how we can help you today with your business.

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