



Small Business Exemption for Emergency Paid Sick Leave and Expanded FMLA

While the Families First Coronavirus Response Act (FFRCA) requires that small business (fewer than 500 employees) provide Emergency Paid Sick Leave and Expanded Family and Medical Leave, it also provides that employers with fewer than 50 employees are exempt if complying would jeopardize the viability of the small business as a going concern.

The Department of Labor has now issued guidance as to how to meet that criteria. A small business (fewer than 50 employees) may claim this exemption if an authorized officer of the business has determined that at least one of the following conditions 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.

If you believe your business qualifies for this exemption, I would strongly recommend documenting your analysis (including which of the 3 conditions was satisfied) and retaining that documentation in your records.

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