



COVID-19: Emergency Federal Paid Leave Regulations

The U.S. Department of Labor ([DOL](#)) has now published temporary [regulations](#) implementing, among other things, the paid leave provisions of the Families First Coronavirus Response Act ([FFCRA](#)). These regulations are in effect from April 1, 2020 through December 31, 2020.

Generally, employers with fewer than 500 employees must comply with the FFCRA's paid leave provisions, though DOL has provided [questions and answers](#) describing an exemption for a range of health care provider types.

Under the new regulations, small employers with fewer than 50 employees may qualify for an exemption from the requirement to provide paid leave due to school, place of care, or child care provider closings or unavailability, if the leave payments would jeopardize the viability of their business as a going concern. To qualify for the exemption, with respect to each employee requesting applicable leave, the employer must have determined that:

1. The leave requested under the Emergency Family and Medical Leave Act (allowing family and medical leave for qualifying need and requiring employers to pay certain portions of such leave), or the Emergency Paid Sick Leave Act (requiring employers to provide paid sick leave for certain qualifying reasons) due to school or child care provider closure, would result in expenses and financial obligations exceeding available business revenues that would cause the business to cease operating at a minimal capacity;
2. The absence of the employee or employees requesting leave under an such leave act due to school or child care provider closure, would entail a substantial risk to the financial health or operational capabilities of the 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 such leave, and these labor or services are needed for the small business to operate at a minimal capacity.

To elect this small business exemption, the employer must document that a determination has been made pursuant to the criteria set forth above. The employer should retain such documentation in its files.

All employers subject to the FFCRA must post a [notice](#) concerning the new federal leave acts, regardless of whether they choose to exempt one or more employees. An employer may satisfy this requirement by emailing or direct mailing this notice to employees, or by posting this notice on an employee information internal or external website.

DISCLAIMER: The information contained herein is provided by Glaser & Weiner, P.C. for informational purposes only. These materials should not be considered as, or as a substitute for, legal advice and they are not intended to nor do they create an attorney-client relationship. Because the materials included here are general, they may not apply to your individual legal or factual circumstances. This document contains information that may be modified or rendered incorrect by future legislative or judicial developments. You should not take (or refrain from taking) any action based on the information you obtain from this document without first obtaining professional counsel. It is possible that under the laws, rules or regulations of certain jurisdictions, this may be construed as an advertisement or solicitation. © 2020 Glaser & Weiner, P.C. All Rights Reserved.