

Urgent Update

To: SimpleHR Clients
From: Human Resources
Date: March 30, 2020
Re: Small Business Exemption Rules under the FFCRA for Clients less than 50 Employees

DOL Issues Initial Guidance and Employee Notice for Families First Coronavirus Response Act:

DOL guidance states that the FFCRA goes into effect on April 1, 2020. Therefore, covered employers must comply with the FFCRA from April 1, 2020, until the law expires on Dec. 31, 2020. The DOL guidance states that businesses with fewer than 50 employees may qualify for exemption from the requirement to provide leave due to school closings or child care unavailability if the leave requirements would jeopardize the viability of the business as a going concern. Here is the link to the full DOL frequently asked questions: <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>

HIGHLIGHTS OF UPDATED GUIDANCE ON SMALL BUSINESS EXEMPTION

When does the small business exemption apply to exclude a small business from the provisions of the Emergency Paid Sick Leave Act and Emergency Family and Medical Leave Expansion Act?

An employer, including a religious or nonprofit organization, with fewer than 50 employees (small business) is exempt from providing (a) paid sick leave due to school or place of care closures or child care provider unavailability for COVID-19 related reasons and (b) expanded family and medical leave due to school or place of care closures or child care provider unavailability for COVID-19 related reasons when doing so would jeopardize the viability of the small business as a going concern.

A small business may claim this exemption if an authorized officer of the business has determined that:

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 I am a small business with fewer than 50 employees, am I exempt from the requirements to provide paid sick leave or expanded family and medical leave?

A small business is exempt from certain paid sick leave and expanded family and medical leave requirements if providing an employee such leave would jeopardize the viability of the business as a going concern. This means a small business is exempt from mandated paid sick leave or expanded family and medical leave requirements only if the:

1. employer employs fewer than 50 employees;
2. leave is requested because the child's school or place of care is closed, or
3. 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 conditions described above is satisfied.

If providing child care-related paid sick leave and expanded family and medical leave at my business with fewer than 50 employees would jeopardize the viability of my business as a going concern, how do I take advantage of the small business exemption?

To elect this small business exemption, you should document why your business with fewer than 50 employees meets the criteria set forth by the Department, which will be addressed in more detail in forthcoming regulations.

You should not send any materials to the Department of Labor when seeking a small business exemption for paid sick leave and expanded family and medical leave.

PLEASE NOTE:

If you intend to claim an Exemption from the FFCRA prior to April 1, 2020, we ask that you send an email to SimpleHR, either to payroll or HR, stating that you are claiming the exemption based on the requirements above. We will maintain this information so we can update the appropriate pay codes in our payroll system. This will reduce confusion if worksite employees are asking about any types of leaves under the FFCRA that they may be eligible to utilize. You are still required to display the mandatory posting regarding these leaves under the FFCRA.

If you have, any questions or concerns please contact Human Resources (850) 650-9935.