



U.S. DOL Provides Guidance on Exemptions From New Emergency Leave Laws for Small Businesses and Health Care Providers

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Over the weekend, the U.S. Department of Labor provided additional guidance regarding the implementation and applicability of the new **Emergency Family Medical Leave** and **Paid Sick Leave laws** that take effect of April 1st. Among other things, the DOL clarified certain exemptions that apply to health care providers and to small businesses with fewer than 50 employees. Understanding the parameters of these exemptions is critical as employers continue to make workforce decisions in the coming days and weeks.

Small Business Exemption

An employer with fewer than 50 employees is exempt from providing paid sick leave and expanded family and medical leave due to a school or child care closure “when doing so would jeopardize the viability of the small business as a going concern.” In order to meet this standard, the employer must determine that:

1. Providing the paid leave would result in the expenses and financial obligations of the business exceeding available revenue, and cause the business to cease operating at a minimal capacity;
2. The absence of the employee(s) requesting paid leave would create a substantial risk to the financial health or operational capabilities of the employer because of their specialized skills, knowledge, or responsibilities; or
3. The business lacks sufficient workers who are able, willing, and qualified, to perform the roles provided by the employee(s) requesting paid leave, and such services are required for the business to operate at a minimal capacity.

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This exemption only applies if leave is requested for child care reasons. It does not exempt employers from providing paid sick leave to employees who are sick or caring for someone who is sick due to Covid-19 related reasons, nor to someone subject to an isolation or quarantine order.

Health Care Providers

The definition of “health care provider” for purposes of this exemption is somewhat broader than anticipated. It includes anyone employed at a doctor’s office, hospital, health care center, clinic, medical school, nursing home, nursing facility, retirement facility, home health care provider, pharmacy, lab, or any similar institution – including temporary sites. It also includes employees of businesses that provide services (like maintenance) to any such institutions. The exemption also applies to a wide range of “emergency responders” and individuals who work for facilities employing emergency responders.

Employees covered by these broad definitions may be exempt from the paid leave laws at the discretion of their employers. The DOL encourages employers “to be judicious” when determining who is exempt, in order to help minimize the spread of Covid-19. Employers are not required to exempt any employees from coverage.

The complete DOL Q&A guidance is available here:
<https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>

Prior Covid-19 Client Alerts are available on the home page of our firm’s Newsroom.

With additional clarifications and information emerging on a nearly daily basis, it can be difficult to keep track of the many moving pieces that are in play. Please feel free to contact us with any questions.

ATTORNEYS

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