



# HR COMPLIANCE BULLETIN

## HIGHLIGHTS

- + The FFCRA's employee leave provisions apply to private employers with fewer than 500 employees, and some public employers.
- + Small businesses with fewer than 50 employees may be exempt from some of the paid leave requirements.
- + Employees who are health care providers or emergency responders may be excluded from the FFCRA's paid sick leave and expanded family and medical leave.

## IMPORTANT DATES

### April 1, 2020

The FFCRA's new paid leave provisions take effect.

### April 17, 2020

A temporary nonenforcement policy applies until April 17, 2020 for employers that make reasonable, good faith efforts to comply with the law.

### Dec. 31, 2020

New leave laws sunset.

## DOL CLARIFIES EXEMPTIONS TO CORONAVIRUS PAID LEAVE LAWS

The U.S. Department of Labor (DOL) has issued [frequently asked questions](#) (FAQs) that address exemptions to the paid leave requirements under the Families First Coronavirus Response Act (FFCRA). The FFCRA requires covered employers to provide their employees with paid sick leave or expanded family and medical leave for specified reasons related to COVID-19.

The FFCRA includes an exemption for small businesses and an exemption for certain types of employees.

- + Small businesses with **fewer than 50 employees** may qualify for an 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.
- + Employers of **health care providers or emergency responders** are not required to provide these types of employees with paid sick leave or expanded family and medical leave under the FFCRA.

The DOL's FAQs on these exemptions address:

- + When the small business exemption applies.
- + Who constitutes a "health care provider" or "emergency responder" who may be excluded from paid sick leave and/or expanded family and medical leave.

This Compliance Bulletin includes the DOL's FAQs on the FFCRA's exemptions.

## ACTION STEPS

Employers should review the DOL's guidance to determine whether they qualify for an exemption to the FFCRA's paid leave requirements. Employers should also continue to monitor the DOL's [COVID-19 website](#) for compliance updates.



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## FREQUENTLY ASKED QUESTIONS

### **Who is a “health care provider” who may be excluded by their employer from paid sick leave or expanded family and medical leave?**

For the purposes of employees who may be exempted from paid sick leave or expanded family and medical leave by their employer under the FFCRA, a health care provider is anyone employed at any doctor’s office; hospital; health care center; clinic; post-secondary educational institution offering health care instruction; medical school; local health department or agency; nursing facility; retirement facility; nursing home; home health care provider; any facility that performs laboratory or medical testing; pharmacy; or any similar institution, employer or entity. This includes any permanent or temporary institution, facility, location or site where medical services are provided that are similar to such institutions.

This definition includes any individual employed by an entity that contracts with any of the above institutions, employers or entities to provide services or maintain the operation of the facility. This also includes anyone employed by any entity that provides medical services; produces medical products; or is otherwise involved in the making of COVID-19-related medical equipment, tests, drugs, vaccines, diagnostic vehicles or treatments. This also includes any individual whom the highest official of a state or territory, including the District of Columbia, determines is a health care provider necessary for that state’s or territory’s—or the District of Columbia’s—response to COVID-19.

To minimize the spread of the virus associated with COVID-19, the DOL encourages employers to be judicious when using this definition to exempt health care providers from the provisions of the FFCRA.

### **Who is an emergency responder?**

For the purposes of employees who may be excluded from paid sick leave or expanded family and medical leave by their employer under the FFCRA, an emergency responder is an employee who is necessary for the provision of transport, care, health care, comfort and nutrition of such patients, or whose services are otherwise needed to limit the spread of COVID-19.

This includes but is not limited to military or national guard, law enforcement officers, correctional institution personnel, fire fighters, emergency medical services personnel, physicians, nurses, public health personnel, emergency medical technicians, paramedics, emergency management personnel, 911 operators, public works personnel, and persons with skills or training in operating specialized equipment or other skills needed to provide aid in a declared emergency, as well as individuals who work for such facilities employing these individuals and whose work is necessary to maintain the operation of the facility. This also includes any individual that the highest official of a state or territory, including the District of Columbia, determines is an emergency responder necessary for that state’s or territory’s—or the District of Columbia’s—response to COVID-19.

To minimize the spread of the virus associated with COVID-19, the DOL encourages employers to be judicious when using this definition to exempt emergency responders from the provisions of the FFCRA.

### **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 (a 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

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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:

- + 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;
- + 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
- + 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 this labor or these 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:

- + Employer employs fewer than 50 employees;
- + Leave is requested because the child's school or place of care is closed, or 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 in the FAQ directly above is satisfied.

The Department encourages employers and employees to collaborate to reach the best solution for maintaining the business and ensuring employee safety.