

FFCRA Small Business Exemption

[1]The USDOL has issued temporary regulations clarifying application of the paid sick leave and expanded FMLA leave provisions of FFCRA. One significant portion at page 103 of 124 pages related to the small business exception.

"Exemption from requirement to provide leave under the EPSLA Section 5102(a)(5) and the EFMLEA for Employers with fewer than 50 Employees.

(1) An Employer, including a religious or nonprofit organization, with fewer than 50 Employees (small business) is exempt from providing Paid Sick Leave under the EPSLA and Expanded Family and Medical Leave under the EFMLEA when the imposition of such requirements would jeopardize the viability of the business as a going concern. A small business under this section is entitled to this exemption if an authorized officer of the business has determined that:

(i) The leave requested under either section 102(a)(1)(F) of the FMLA or section 5102(a)(5) of the EPSLA 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;

(ii) The absence of the Employee or Employees requesting leave under either section 102(a)(1)(F) of the FMLA or section 5102(a)(5) of the EPSLA 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

(iii) 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 leave under either section 102(a)(1)(F) of the FMLA or section 5102(a)(5) of the EPSLA, and these labor or services are needed for the small business to operate at a minimal capacity.

(2) To elect this small business exemption, the Employer must document that a determination has been made pursuant to the criteria set forth by the Department in § 826.40(b)(1). The Employer should not send such documentation to the Department, but rather retain the records in its files.

(3) Regardless of whether a small Employer chooses to exempt one or more Employees, the Employer is still required to post a notice pursuant to § 826.80.