



**MacMain
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**IS YOUR SMALL BUSINESS EXEMPT FROM THE
EMERGENCY PAID SICK LEAVE OR EMERGENCY FAMILY
MEDICAL LEAVE REQUIREMENTS UNDER THE FAMILIES
FIRST CORONAVIRUS RESPONSE ACT?**

On March 17, 2020 President Trump signed the Families First Coronavirus Response Act (FFCRA) into law. The FFCRA became effective on April 1st and requires, among other things, that all employers with less than 500 employees provide emergency sick leave of up to 2 weeks paid time off for certain Covid-19 related concerns, including mandated quarantine as a result of a positive test, suspicion of infection, and for certain school and or day care closings impacting employees. On Saturday April 3 the Department of Labor issued additional guidance and FAQs related to the employer's responsibilities under the FFCRA. Included in the FAQs is clarification for when certain employers, with less than 50 employees may qualify for an exemption from the emergency paid leave and / or emergency family medical leave provisions of the Act. Below is a link to the DOL's guidance and FAQs and an excerpt from the FAQs to help you determine if you may be eligible for an exemption.

<https://www.dol.gov/agencies/whd/pandemic/ffera-employer-paid-leave>

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:

- 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 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:

- 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 Question 58 is satisfied.

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

As MacMain, Connell & Leinhauser, LLC addresses the concerns of the COVID-19 health crisis, the health and safety of our clients, employees, and friends of the firm remain our top priority. During this time, and consistent with the government's recommendations and orders, our physical office is closed. All of our staff are working remotely and will respond to your emails and phone calls as quickly as possible. Please note that during this time, email communication is the most effective way to communicate with our attorneys and staff. Therefore, to the extent possible, please utilize email correspondence to reach out to us so that we can respond to your needs as quickly as possible.



If we work together to protect ourselves and our employees, we can stop the spread of COVID-19. Our legal team at **MacMain, Connell & Leinhauser, LLC**. can help your company understand the laws evolving around the COVID-19 outbreak. **Contact us online** or call

us at **484-318-7106** for more information. Located in West Chester, Pennsylvania, we serve clients throughout Philadelphia and Chester County, as well as in New Jersey.

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