

Small Business Exemptions Under Emergency Paid Sick Leave Act and Emergency Family and Medical Leave Expansion Act

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The paid leave provisions of the Families First Coronavirus Response Act, the Emergency Paid Sick Leave Act and the Emergency Family and Medical Leave Expansion Act, are effective April 1, 2020 and apply to leave taken between April 1, 2020 and December 31, 2020. 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 you are an employer and need help navigating the small business exemptions under the Families First Coronavirus Response Act or any other employment laws during this COVID-19 crisis, contact [Tracy Armstrong](#) or any member of the Wilentz [Employment Law Team](#).

Attorney

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Practice

- Employment Law