

This summary is a resource developed by the ECE Business and Operations Team at Public Health Management Corporation with the support of a labor and employment attorney. Child Care operators should determine understanding and applicability. For more resources, visit www.sustainingquality.org

THE SMALL BUSINESS EXEMPTION UNDER THE FAMILY FIRST CORONAVIRUS RESPONSE ACT

A small business with under fifty (50) employees may be entitled to an exemption from the requirement under the [Family First Coronavirus Response Act](#) (“FFCRA”) that employees with under five hundred (500) employees provide (1) Extended Family Leave to eligible employees or (2) Emergency Paid Sick Leave when the leave is requested by an employee to care for a child due to school or child care closures or childcare unavailability as a result COVID related reasons.

There can be NO exemption from providing Emergency Paid Sick Leave if the leave is requested for any of the other 5 delineated reasons that qualify an employee to take paid sick leave under the FFCRA. In other words, *the exemption can only be taken with regard to providing: (1) Extended Family Leave due to school or child care closures or childcare unavailability as a result of COVID related reasons or (2) Emergency Paid Sick Leave as result of need to care for child due to school or child care closures or childcare unavailability as a result COVID related reasons.*

To qualify for the exemption, an officer of the business must make a determination on a case by case basis to see if there are grounds for the exemption and then document the reason for the exemption if it denies the request on that basis. The Small Business exemption is not automatic and will not be applicable to every situation. Each request should be separately evaluated to determine whether the exemption can be applied. An employer is not required to send a letter to the DOL requesting an exemption.

In assessing whether an exemption applies to a particular situation, an authorized officer of the provider would need to determine that providing the requested leave to the requesting employee would jeopardize the viability of the business based on one (or more) of the following three reasons:

1. Providing the requested leave would result in the provider’s expenses and financial obligations exceeding available business revenues and cause the small business to cease operating a minimal capacity (i.e.: provider can’t afford to pay for the covered leave);
2. The absence of the employee requesting the leave would entail a substantial risk to the financial health or operational capabilities of the small business because of the employee’s specialized knowledge of the business, skills or responsibilities (i.e.: the employee requesting leave is one of the only that performs a specialized job function); and/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 requesting the paid leave and these services or labor are needed for the small business to operate at minimal capacity (i.e.: the employer will not be able to operate if the employee is on leave)

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The reason for claiming the exemption and not granting the leave should be set forth in writing by an authorized officer of the employer and maintained in the employee's file for 4 years. Likewise, if leave is granted, there should be documentation of the reason for the leave and maintained for 4 years.