

PAID LEAVE UPDATES FOR BUSINESSES UNDER 50 EMPLOYEES

A new update to the Families First Coronavirus Response Act provides a partial carveout for the smallest businesses. Employers with fewer than 50 employees, including religious or nonprofit organizations, will not have to provide EPSL or EFMLA to employees who need to care for their son or daughter whose school or place of care is closed or child care provider is unavailable for COVID-19 related reasons when allowing such leave would jeopardize the viability of the business.

One of three factors must exist for the business to be exempt:

- Doing so would raise expenses and financial obligations above available business revenue such that the employer would cease operating at a minimal capacity
- The requesting worker's absence would pose a substantial risk to the employer's financial health or operations because of their specialized skills, knowledge of the business, or responsibilities
- The employer can't find enough able, willing, available, and qualified workers to perform the work of the employee requesting an absence

Required Documentation

The DOL's new rule goes beyond its previous question-and-answer guidance and clarifies what records employers may request from employees and are required to keep under the FFCRA.

Documentation supporting an employee's request for EPSL or EFMLA must include an employee's signed statement with:

- (1) The employee's name
- (2) The date(s) the employee is requesting leave
- (3) The COVID-19 qualifying reason for leave
- (4) A statement that the employee is unable to work or telework because of the COVID-19 qualifying reason

An employee requesting EPSL to care for an **individual** subject to a quarantine or isolation order, or advised by a health care provider to self-quarantine, must provide either:

- (1) The government entity that issued the quarantine or isolation order the employee is subject to
- (2) The name of the health care provider who advised the self-quarantine.

An employee requesting to take EPSL or EFMLA to care for a **child** due to a school or child care closures, or unavailability of child care due to a public health emergency, must provide:

- (1) The name of the child
- (2) The name of the school, place of care, or child care provider that closed or became unavailable
- (3) A statement representing that no other suitable person is available to care for the child during the period of the requested leave.

For each reason the employee is requesting leave of any type, the documentation must include a statement of the employee is unable to work or unable to telework.

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Other COVID-19 qualifying reasons for leave that require additional documentation

An employee requesting EPSL due to a federal, state or local quarantine or isolation order related to COVID-19 must provide the name of the government entity that issued the quarantine or isolate order governing that employee.

An employee requesting EPSL due to a health care provider advising self-quarantine due to COVID-19 concerns must provide the name of the healthcare provider who advised the self-quarantine.

IMPORTANT TO NOTE

Normal FMLA certification requirements still apply for leave taken for an employee's own serious health condition related to COVID-19, or to care for the employee's spouse, son, daughter, or parent with a serious health condition related to COVID-19, under the FMLA.

For each reason the employee is requesting leave of any type, the documentation must include a statement of the employee is unable to work or unable to telework.

Additional resources and HR coaching: