

What DOL's New Rule Means for FFCRA's Small Business Exemption

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On April 1, 2020, the Department of Labor (“DOL”) posted a [temporary rule issuing regulations for implementing the Families First Coronavirus Response Act \(“FFCRA”\)](#), which became effective the same day. We reported on the DOL’s other recent efforts to flesh out the new law through its FAQ section, which included some much needed guidance on what has been dubbed the “small business exemption.”

In keeping with that guidance, the DOL’s temporary rule confirms our understanding of the eligibility requirements under the exemption. Employers with fewer than 50 employees may be exempted from providing leave to employees requesting leave due to a COVID-19 related school closure or unavailable caregiver if an authorized officer of the company determines that providing leave would “jeopardize the viability of the small business.” A more detailed analysis of these eligibility requirements can be found [in our previous post](#).

However, the temporary rule also places renewed emphasis on the importance of documenting. For every instance that an authorized officer determines leave should be denied based on the criteria set forth in the exemption, the business must document “the facts and circumstances that meet the criteria . . . to justify such denial” and must retain such documentation for four years.

Further, regardless of whether a small business chooses to exempt one or more of its employees through the exemption, businesses are still subject to the FFCRA’s notice posting requirements.