

# SMALL BUSINESSES MAY QUALIFY FOR EXEMPTION FROM PAID SICK LEAVE REQUIREMENT

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**The U.S. Department of Labor (DOL) recently released its updated [Questions & Answers](#) that provide information on how small business may take advantage of an exemption under the Emergency Family and Medical Leave Act (EFMLA) and the Emergency Paid Sick Leave Act (EPSLA).**

An employer's general duties under the EFMLA and EPSLA are discussed in a recent article from Bell Nunnally at this [link](#).

Businesses with fewer than 50 employees who meet certain criteria set forth by the DOL can elect a small business exemption from the EFMLA and EPSLA. While additional regulations are expected to be announced soon, the DOL's Questions and Answers provide the following:

A small business is exempt from providing paid sick leave and 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.

The DOL's answers suggest that the small business exemption is limited to exempting employers from child-care-related paid leave, but not for the other leave provided under the EFMLA and EPSLA.

The DOL also expressly stated that it "encourages employers and employees to collaborate to reach the best solution for maintaining the business and ensuring employee safety."

If you want to discuss whether your business may qualify for the department's small business exemption, please contact our [Labor, Employment and Benefits team](#).

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