

COVID-19: OPT OUT & EXPANDED FMLA INFORMATION

REQUIRED NOTICE POSTER

- ▶ [DOL.gov: FFCRA Poster WH1422](#)

DOCUMENTATION FOR QUALIFIED LEAVE

- ▶ You must require your employee to provide you with appropriate documentation and support of the reason for leave, including: the employee's name, qualifying reason for requesting leave, statement that the employee is unable to work, including telework, for that reason, and the date(s) for which leave is requested.
- ▶ Documentation of the reason for the leave will also be necessary, such as the source of any quarantine or isolation order, or the name of the healthcare provider who has advised the employee to self-quarantine. Retain these records as you may need them to complete any Internal Revenue Service (IRS) forms that may be required to substantiate your claim for a tax credit.
- ▶ If an employee is taking expanded family medical leave to care for a child whose school or place of care is closed or childcare provider is unavailable, due to COVID-19, under the Emergency Family and Medical Leave Expansion Act, you must require your employee to provide you with the appropriate documentation of such leave, just as you would for conventional FMLA requests. This could be as simple as a notice that has been posted on a government, school or daycare website.

OPT OUT INFORMATION (LISTEN FROM 28:40-32:55 VIA LINK BELOW:

- ▶ [ThinkHR: COVID-19 Best Practices Webinar](#)

EMERGENCY PAID SICK LEAVE & FAMILY MEDICAL LEAVE EXPANSION ACTS

58. When does the small business exemption apply to exclude a small business from provisions of the Emergency Paid Sick Leave & Emergency Family and Medical Leave Expansion Acts?

A. 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:

- ▶ You must require your employee to provide you with appropriate documentation and support of the reason for leave, including: the employee's name, qualifying reason for requesting leave, statement that 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;
- ▶ 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
- ▶ If 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.

59. If I am a small business with fewer than 50 employees, am I exempt from the requirements to provide paid sick leave or expanded family and medical leave?

A. A small business is exempt from certain paid sick leave and expanded family and medical leave requirements if providing an employee such leave would jeopardize the viability of the business as a going concern. This means a small business is exempt from mandated paid sick leave or expanded family and medical leave requirements only if the:

- ▶ employer employs fewer than 50 employees;
- ▶ leave is requested because the child's school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons; and
- ▶ an authorized officer of the business has determined that at least one of the three conditions described in Question 58 is satisfied.

The Department encourages employers and employees to collaborate to reach the best solution for maintaining the business and ensuring employee safety.