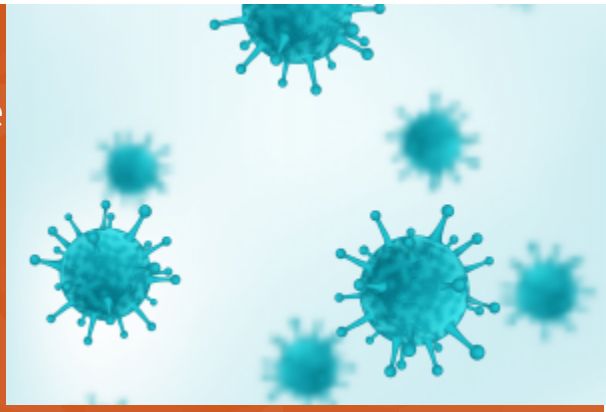
COVID-19 Alert: Emergency Paid Sick Leave Guidance



DOL Issues Revised Emergency Paid Sick Leave Guidance; Limits Scope of Small Business Exemption

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As previously reported in an earlier Employment Law Alert, the emergency paid sick leave provisions of the Federal Families First Coronavirus Act (the "FFCA") take effect **April 1, 2020**. In anticipation of that effective date, the federal Department of Labor (the "DOL") has published a revised and expanded "Questions and Answers" Guidance (the "Guidance") concerning the FFCA.

This guidance addresses 59 distinct subject matters that relate to the complex application of the FFCA. **Of particular note:** The Guidance defines the scope of the FFCA exemption that applies to employers with fewer than 50 employees.

The text of FFCA implies a general exemption, from the paid sick leave requirements of the FFCA, for employers with fewer than 50 employees, that are experiencing economic hardships as a result of the coronavirus outbreak. Through the Guidance, the DOL **adopts a narrowed interpretation** of this small business exemption:

> "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;
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> - *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 [certain financial exigencies exist.]"

Guidance, Q&A 59.

As such, *unlike previous reports*, small businesses are **not** broadly exempt from FFCA emergency paid leave requirements, and **must** provide employees with emergency paid leave benefits

absent the limited exceptions described above. For example, under the Guidance, a small business **is** required to provide 80 hours of emergency paid sick leave to an employee that is absent from work as a result of a COVID-19 related illness.

In addition to the Guidance, in the coming days, the Internal Revenue Services is expected to publish instructions related to tax credits available to employers that incur expenses related to FFCA emergency leaves.

The rules and guidelines that relate to the FFCA, and to the other federal and state coronavirus relief programs, are moving targets. The Morse Employment Law team is following these, and other matters related to COVID-19 responses, and will continue to report as appropriate.

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