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## **THE SMALL BUSINESS EXEMPTION UNDER THE FAMILIES FIRST CORONAVIRUS ACT**

The federal government has recognized that the leave terms outlined by the Families First Coronavirus Response Act (FFCRA) may impose substantial burdens on certain members of the small business class already hit hard economically by the COVID-19 virus. In response to this concern, the FFCRA has created an exemption policy for certain small businesses who would otherwise be subject to its provisions.

If an employer has less than 50 employees AND an employee wishes to take time off under the FFCRA in order to take care of a minor child whose school/day care has been closed, an employer may be granted an exemption from having to provide such leave, if the employer can provide conclusive evidence of one of the following:

- Allowing such leave would cause irreparable harm to the business, such that the costs would exceed revenues to the point that the business could no longer function at even minimal capacity;
- The employee's specialized knowledge is required for the successful functioning of the business and loss of that employee would cause a substantial risk to the solvency of the business; or
- Allowing such leave would result in too few workers being available for the employer to operate at even minimal capacity.

These exceptions are narrow and the employer must be sufficiently confident that employee use of leave will threaten the existence of the business, not merely inconvenience it. Please be advised that this exemption is only for an employee's request for leave in connection with care of a minor child due to school/daycare closure. If an employee must use leave for any other reason under the FFCRA, the employer cannot use this exemption to prevent it. This exemption is valid for both the expanded FMLA as well as the Emergency Paid Sick Leave under the FFCRA.