Effective April 1, 2020, the Families First Coronavirus Response Act (FFCRA) provides paid sick leave and expanded Family and Medical Leave for specific reasons related to COVID-19.

This has left many employers with under 50 employees (who were not covered under traditional FMLA regulations) with questions, specifically surrounding whether or not they too are covered under FFCRA.

There is an exemption available but it is only for one component of the FFCRA regulation. This pertains to an employee’s request for leave to care for his or her child, whose school or child care facility is closed or care provider is unavailable. If this kind of leave request would impact the viability of the business operation, a small employer can self-determine that they are exempt from the requirement. This exemption is both for the paid sick leave and EFMLA. According to the Department of Labor, there is no formal application process.

The exemption is not automatic (like traditional FMLA). In making this determination the employer should:

- Evaluate if the leave would result in expenses and financial obligations that exceed business revenues and would cause the small business to cease operation (even at a minimal capacity);
- Examine if an employee’s skills, knowledge of the business, or responsibilities would cause a substantial risk to the financial health or operational capabilities of the small employer if the absence is granted; OR
- Qualify that there are insufficient employees able, willing, and with the essential skills at the time and place needed to perform labor or services provided by the employee, and these labor or services are needed for business to operate at a minimal capacity.
Under FFCRA, when calculating the total number employees at a business, the count should include any individuals on the payroll. This includes:

- Full time employees
- Part time employees
- Employees on leave
- Temporary employees jointly employed
- Day laborers hired through staffing agencies

There are exclusions in the employee count such as for workers in the District of Columbia, U.S. territories and outside the United States.

We remind employers that thorough documentation is key. Government enforcement agencies operate under a policy which says that the burden of proof is on the employer. In other words, employers must be able to prove that their policies and procedures comply with state and federal employment regulations.

Please contact your Seay Management Consultant if you have any questions about the FFCRA or any other HR issue. We appreciate having you as a friend and client of our firm.

The Seay Management Team – Sandy, Kylie, Jackie, and Sissy

It is our goal to:

1. Help ensure that your business is in compliance with all of the state and federal employment regulations and guidelines which affect your company and your employees;
2. Help eliminate your financial exposure in these areas; and
3. Develop the policies and systems which will help you employ and maintain a satisfied, happy and productive work force.

Seay Management provides Human Resources Management and Labor Relations consulting services. Seay Management does not provide legal advice and does not engage in the practice of law. If you need an attorney, we’ll be glad to recommend one to you.

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