

# WILENTZ

—ATTORNEYS AT LAW—

WILENTZ, GOLDMAN & SPITZER, P.A.

## What Employers Should Know About the Families First Coronavirus Response Act

03/26/20

Each covered employer is required to post this notice of the [Families First Coronavirus Response Act \(FFCRA\)](#) requirements in a conspicuous place on its premises. An employer may also satisfy this requirement by emailing or direct mailing this notice to employees, or posting this notice on an employee information internal or external website.

**The effective date of the Families First Coronavirus Response Act is April 1, 2020, (not April 2<sup>nd</sup>).**

### Calculating Total Number of Employees for Coverage

The FFCRA applies to employers with 500 employees or less. The U.S. Department of Labor (DOL) clarified that in calculating the total number of employees, all full-time or part-time employees working within the United States (which includes all U.S. territories or possessions) should be counted, including all employees on leave and temporary employees who are jointly employed with another company as determined under the Fair Labor Standards Act (FLSA).

The Department of Labor confirmed that the joint-employer test from the FLSA and the integrated-employer test under the Family Medical Leave Act (FMLA) will be used to determine if multiple entities constitute a single employer for purposes of determining whether the employer has 500 employees or less.

### Small Business Waiver

Businesses with fewer than 50 employees may qualify for exemption from the requirement to provide leave due to school closings or child care unavailability if the leave requirements would jeopardize the viability of the business as a going concern. The DOL states that it will issue waiver criteria in forthcoming regulations and employers wanting a waiver should document why their business meets such criteria, but should not send any such documentation to the Department of Labor.

The Department of Labor has not yet issued small business exemption criteria pertaining to paid sick leave provided for other qualifying reasons under the Emergency Paid Sick Leave Act.

However, the DOL compiled common FAQs to address questions related to the Families First Coronavirus Response Act notice. Access the FAQ [here](#).

If you are an employer and need help understanding and responding to the Families First Coronavirus Response Act (FFCRA) requirements or any other employment concern, please contact [Tracy Armstrong](#) or any member of the Wilentz [Employment Law Team](#).

### Attorney

- Tracy Armstrong

### Practice

- Employment Law