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**From:** American Dental Association <ada@messaging.ada.org>  
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**Subject:** Department of Labor Issues Regulations on Exemptions for Small Businesses Under the Families First Coronavirus Response Act

## Issues Alert

ADA®



### **Department of Labor Issues Regulations on Exemptions for Small Businesses Under the Families First Coronavirus Response Act**

Hello, Fellow Dentists:

On April 1, the ADA issued an [interim recommendation](#) that dentists keep their offices closed to all but [urgent and emergency procedures](#) until April 30 at the earliest.

Dentists around the country continue to navigate the unprecedented business challenges presented by the COVID-19 pandemic. The American Dental Association has learned more from the Department of Labor about what business and employment provisions could mean for you.

The second legislative package Congress developed in response to the coronavirus pandemic, H.R. 6201, the Families First Coronavirus Response Act (FFCRA), included provisions regarding emergency paid sick leave and the expansion of Family and Medical Leave Act (FMLA).

Under the paid sick leave provisions, employers could be required to pay two weeks of sick leave to employees under certain circumstances, including:

1. The employee is subject to a federal, state, or local quarantine or isolation order;

2. The employee has been advised by a health care provider to self-quarantine;
3. The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis;
4. The employee is caring for an individual to which points 1 or 2 apply;
5. The employee is caring for a child if the child's school or place of care has been closed;  
or,
6. The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretaries of Labor and the Treasury.

Under the FMLA provisions, employers could be required to pay for up to 10 weeks of leave, but only for those employees who must care for their children because their school or child care center is closed.

However, H.R. 6201 gave the Secretary of Labor the authority to exempt businesses with fewer than 50 employees from the requirement that they provide paid sick leave and extended family medical leave when the child's school or place of care has been closed if "such requirements would jeopardize the viability of the business as a going concern."

The ADA and other dental organizations sent a [letter](#) to the Department of Labor (DOL) asking that small dental practices be included under this exemption. We additionally asked that the Secretary "not require each dental practice to apply for an exemption."

On April 1, the DOL issued a [rule](#) implementing H.R. 6201. This rule says that a small business with fewer than 50 employees may claim the exemptions if:

1. The leave would cause the small employer's expenses and financial obligations to exceed available business revenue and cause the small employer to cease operating at a minimal capacity;
2. The absence of the employee or employees would pose a substantial risk to the financial health or operational capacity of the small employer because of their specialized skills, knowledge of the business, or responsibilities; or,
3. The small employer cannot find enough other workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services the employer or employees requesting leave provide, and these labor or services are needed for the employer to operate at a minimal capacity.

An authorized officer of the business has to determine that the business meets one or more of these criteria, and the business must document that it meets those criteria. That documentation should be kept on file by the business for four years but it does not need to be sent to the DOL.

The ADA has checked with the DOL and they have confirmed that ***dental office owners are not required to pay paid sick leave or extended family leave—if the employee has a child whose school or daycare is closed due to COVID-19—as long as they meet at least one of the three criteria above.***

The DOL has additional information for employers and employees on COVID-19 that can be found [here](#).

The ADA will keep you informed on relevant legislative updates in the weeks to come. For more COVID-19 resources, visit [ADA.org/virus](http://ADA.org/virus).

Stay well,



Chad P. Gehani, DDS  
President



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