

Testimony of The Honorable Erika L. Moritsugu
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Senate Finance Paid Leave Working Group
Roundtable on Paid Leave Proposals in the COVID Era

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Good morning Co-Chair Cassidy, Co-Chair Hassan, and members of the working group. I am pleased to be here to discuss the importance of paid leave in the COVID-19 era and how the pandemic has exacerbated a crisis that working families in the United States have been living with for too long. Now, more than ever, it is evident that paid leave benefits working people, businesses, our economy, and public health.

My name is Erika L. Moritsugu and I am the Vice President for Economic Justice at the National Partnership for Women & Families. The National Partnership is a nonprofit, nonpartisan advocacy organization based in Washington, D.C. Our mission is to improve the lives of women and families by achieving equity for all women. We promote fairness in the workplace, reproductive health and rights, access to quality, affordable health care, and policies that help all people meet the dual demands of their jobs and families. We work toward creating a society that is free, fair and just, where nobody has to experience discrimination, all workplaces are family friendly, and every family has access to quality, affordable health care and real economic security.

The National Partnership has been working to solve the paid leave crisis for decades. Since our founding in 1971 as the Women's Legal Defense Fund, the National Partnership has fought for every major federal policy advance that has helped women and families, including our leadership in passing the nation's unpaid leave law, the Family and Medical Leave Act (FMLA) of 1993. Since then, we have provided research, technical and policy assistance and expert testimony on paid leave to national, state and local lawmakers, advocates and businesses across the country. Today, we convene the National Work and Family Coalition, which includes hundreds of organizations nationwide working to advance national paid leave and other policies to create a more family friendly and equitable economy and country. We are also a founding member of the Paid Leave For All Campaign, a new diverse collective of national and grassroots advocates working to enact meaningful, comprehensive, universal paid family and medical leave at the federal, state and local levels and in the private sector.

COVID-19 Shines A Spotlight On Our Nation's Paid Leave Crisis

The coronavirus pandemic has proven beyond a doubt that our nation's families and economy suffer when working people are forced to choose between the jobs they need to survive and the health of themselves and their loved ones. Before the pandemic, more than one-quarter of workers did not have any paid sick time. More than eight in ten had no paid family leave.¹ Even emergency measures enacted in March left up to 106 million workers without guaranteed protections.² It's little wonder more that one in ten essential workers say they still would go to work if they had a fever³ – a recipe for a continuing disaster as businesses reopen across the country. When workers choose their job over their own health, it puts the health of their colleagues and anyone they interact with at risk. And we know

that the symptoms of COVID-19 can be relentless and long lasting; without access to paid leave those who have survived the disease may face economic hardship as they recover for multiple weeks.⁴

We know that the need for time to care is universal. Nearly every working person will someday welcome a new child, deal with their own serious health issue or need to provide care to a seriously ill, injured or disabled loved one. Yet despite progress, most people still do not have the security they need to take time away from their jobs. Millions of people are forced to choose between putting food on their table and paying their bills or being there to care for a new baby or for a loved one's last breath. Just 19 percent of the workforce has paid family leave through their employers, and less than 40 percent has personal medical leave through an employer-provided disability program.⁵ The lack of paid leave costs the United States \$22.5 billion each year in lost wages alone.⁶

This reality is worse for people of color and low-wage workers. Racial disparities are stark when it comes to meaningful access to leave: about 71 percent of Latinx workers, 67 percent of American Indian and Alaska Native workers, 61 percent of Black workers and 54 percent of Asian American and Pacific Islander workers are either not eligible for or cannot afford to take unpaid FMLA leave.⁷ And nearly half (48 percent) of Latinx workers and more than one-third (36 percent) of Black workers report having no paid time away from work of any kind.⁸

A number of factors contribute to the growing need for paid leave in the United States, including: the growing share of fathers who want and expect parental leave; an aging workforce, which will increase the need for medical leave; the overall aging of the population – working or not – and the shrinking number of family caregivers, which will increase the need for family caregiving leave; and job growth in low-wage industries and occupations in which workers are unlikely to be offered paid leave through their employers, including a growing contingent or "gig" workforce in which no traditional employer-employee relationship exists to provide paid leave benefits.⁹ The need for time away from work to address these universal life events is likely to increase over time, yet access to paid family and medical leave is not increasing quickly enough to meet the demand today, let alone the growing need we can expect in the future.

For more than a quarter-century, the FMLA was the United States' only national law providing leave, a landmark policy that has given millions of working people the opportunity to take the time off they needed to care for themselves and their families. The FMLA allows qualified individuals to take up to twelve weeks of unpaid leave to care for themselves, for a family member or for a new child. Since it was signed into law in 1993, it has been used nearly 280 million times,¹⁰ with approximately 13 million workers taking FMLA-type leaves each year.¹¹ More than half, or 55 percent, of the individuals who take leave under the FMLA do so for personal medical care, with 21 percent taking leave to care for a new child, 18 percent taking leave to care for a family member, and 2 percent for military exigency leave.¹²

Despite strong concerns about potential negative impacts on the nation's businesses or the potential for fraud or misuse by employees in the lead up to its passage, the FMLA has turned out to be good for employers, with most employers reporting neutral or positive effects when employees take FMLA leave. The majority of worksites report no noticeable

effect from complying with the FMLA, and more than one-third experienced positive effects.¹³ Furthermore, there is little evidence that employees misuse leave - fewer than 2 percent of worksites report any misuse of the FMLA.¹⁴

But, while the FMLA has helped to transform workplaces in the United States, it has left far too many people behind. Approximately 40 percent of the workforce is not covered by the FMLA because they work for small employers, do not work enough hours, or have not worked for their employer for long enough.¹⁵ And among those who do qualify for the FMLA, too many people cannot afford to take unpaid leave.¹⁶ Additionally, the FMLA's restrictive definition of who is considered a family member - a spouse, parent, or minor child - does not reflect what families today look like, or who may be available to provide care in conditions of limited travel and stay-at-home restrictions.

In the absence of federal action, states have made tremendous progress toward filling in the gaps. To date, nine states, including the District of Columbia, have enacted comprehensive paid family and medical leave insurance programs, five of which are currently up and running.¹⁷ Evidence from these programs shows that, when designed correctly, they can have tremendous benefits for workers, employers, and public health,¹⁸ and can respond quickly and nimbly to adjust benefits during a public health crisis, as we've seen in recent months.¹⁹

But even in states that have paid leave social insurance programs, people are still left out. Think of the person in California undergoing surgery, whose son in Nevada can't get the time off to care for her. Or the person in Virginia who can't take time away to move her dad in D.C. into a nursing home. Until we have a national, universal, comprehensive paid family and medical leave program, working people will continue to be left behind.

Paid Leave Is Essential for Public Health

In an infectious pandemic, the most effective way to reduce contagion is to stay home when you are sick. And when an estimated one-third of deaths have occurred in long-term care and other congregate living facilities,²⁰ millions of high-risk individuals, including older adults and people with disabilities,²¹ need family support to shelter at home safely. None of this is possible without paid sick days or paid leave. Thirty-two million U.S. workers don't have access to a single paid sick day.²²

While paid family and medical leave programs are meant to cover longer periods of leave and are typically funded as a social insurance program, paid sick days cover short-term leave, usually taken in hourly or daily increments, to recover from short-term illnesses, to care for a sick family member, to seek preventive care, or to seek various types of assistance related to domestic violence. Employees typically accrue paid sick time, which is then fully paid through payroll at their normal hourly rate.

Twelve states including the District of Columbia, and twenty-two cities and counties have enacted paid sick days laws.²³ A thirteenth state, Colorado, just passed a paid sick days law that is awaiting the Governor's signature. According to A Better Balance, 11 states, including the District of Columbia, and 18 localities have instituted laws or regulations to grant emergency paid sick time for coronavirus purposes.²⁴

Paid sick days and paid medical leave are critical to our communities' public health. People without paid sick days are 1.5 times more likely than those with paid sick days to report going to work with a contagious illness like the flu or a viral infection. And many people go to work sick because they fear workplace discipline or losing their jobs - nearly one in four workers has reported either losing a job or having their job threatened for needing to take a sick day.²⁵

While more than one quarter of private sector workers don't have access to paid sick days, that number increases to 7 out of 10 of the lowest-income workers.²⁶ Disparities in access to paid sick days disproportionately expose Latinx and Black workers to increased risk of illness.²⁷

What has been vividly exposed by the pandemic is that workers who interact the most with the public, particularly those who have been deemed "essential," are often the least likely to have paid sick days. The vast majority of people working in food service (81 percent) and at child care centers (75 percent) lack access to paid sick days.²⁸ Workers in these occupations are also more likely to be exposed to contagious illnesses and, therefore, to spread illnesses to the public when they are forced to go to work sick and interact with others. Essential workers are also disproportionately women and people of color, a result of discrimination in the labor market and other ongoing impacts of structural racism. About 47 percent of all workers are women, yet women make up more than half (53 percent) of building cleaning workers, more than three-quarters (77 percent) of health care workers, and more than eight in ten (85 percent of) child care and social service workers. Workers of color are overrepresented in public-facing jobs that pose a high risk of exposure, including Black and Latinx workers in grocery stores, and Black and AAPI workers in health care.²⁹ This is almost certainly a factor in the elevated death rates from COVID-19 among these groups: as of June 10, 1 in 1,625 Black Americans has been killed by COVID-19 and 1 in 3,550 Latinx Americans, even higher than the already-unacceptable rate of 1 in 3,800 white Americans.³⁰

If the United States had had a universal, national paid family and medical leave program and a universal right to paid sick days, we would have been much better prepared for this pandemic. A 2017 study in the *Journal of Public Economics* found that the general flu rate in jurisdictions with paid sick days laws decreased by between 5.5 to 6.5 percent after the laws took effect.³¹ And states with existing paid leave programs have been helping people take the time off they need; according to a recent study by the Urban Institute, two states with existing paid leave programs, California and Rhode Island, saw a surge in new claims for personal medical and family caregiving leave, particularly Rhode Island as they expanded their leave program to allow time off to care for a child whose school or daycare is closed for COVID-related reasons.³² Waiting weeks, or even months, to gain access to paid leave and paid sick days during an emergency situation added to workers' financial hardship and may have cost lives and we need to better prepared for the need families have for personal care and caregiving. Paid leave and paid sick days need to be a part of the way we are thinking about a new public health infrastructure.

Paid Leave in the *Families First Coronavirus Response Act*

Congress took a huge step forward with the passage of the *Families First Coronavirus Response Act*. The emergency paid sick days and paid leave for child care provisions in this bill allow some workers to take 10 days of paid sick time to care for themselves if they are sick with COVID-19 or under quarantine, or to care for a family member in the same condition. These workers are also eligible for 10 days of paid sick time, plus 10 weeks of longer-term paid leave, to care for children whose school or place of care is closed due to COVID-19. While these benefits are paid for directly by the employer to make them more accessible, the federal government is covering the full cost of all benefits that employers are required to provide. These provisions are providing much-needed relief to workers who don't have to choose between their health and caregiving needs and their paycheck, and to businesses who don't have to worry about whether or not they can afford to pay for their employees' leave.

These protections, however, exclude far too many working people. The law fully exempts all those who work for employers with more than 500 employees; and people who work for health care providers, first responders, and federal government employees can be exempt from all protections by their employer. Businesses with fewer than 50 employees can self-exempt from complying with the paid child care leave if they believe it “would jeopardize the viability of their business,” and can make this decision on their own without providing any justification. The Department of Labor has chosen not to oversee the individual businesses' decisions, nor will it require employers to report that they have chosen to exempt their workers.³³

The elimination of longer-term paid leave for all purposes except child care leave means that workers who contract COVID-19, or are caring for family members with COVID-19, will quickly run out of their allotted ten days before they recover. The Center for American Progress found that under a best-case scenario, only 47 percent of private sector workers will have guaranteed emergency leave, and only 17 percent under a worst-case scenario.³⁴

In Louisiana, nearly 240,000 people work in health care, and 80 percent of these workers are women. That's 240,000 health care workers who can be exempted from paid leave protections.³⁵ In New Hampshire, more than 36,000 people work at grocery, convenience, and drug stores – and more than half are women, with Black workers making up a 47 percent larger share than in New Hampshire's workforce overall.³⁶ Putting these people at risk exposes a cruel dichotomy when these essential workers are treated as expendable in this way, but deemed “essential” for keeping our economies running. And we risk worsening the economic crisis and public health crisis when business might be shut down again if we cannot flatten the curve of the spread of the virus when we are requiring workers to put their lives on the line to show up to work when they are sick.

Even when working people might be eligible for these protections, outreach and education to eligible workers and small businesses have been abysmal. As described in a recent *Politico* article, the Department of Labor has not engaged in any kind of serious outreach and education campaign, despite being allocated \$15 million for this exact purpose.³⁷ We expect that this will result in many eligible people not using the program, and left many small employers without critical information and support, as outreach and education are

essential to its success. In May, the National Partnership commissioned a poll finding that a full 28 percent of workers said that they were unaware of the protections or did not know if they would use them.³⁸

For people who can't access paid leave they may likely choose other more extreme options like quitting their jobs³⁹ when they need time off to care for themselves or a family member, which threatens the economic security of the individual family and has a larger macroeconomic effect.⁴⁰ Recent reports show that the share of women in the workforce drastically dropped below 50 percent this spring, erasing nearly forty years of progress.⁴¹ Paid leave helps women stay in the workforce throughout their careers during the pandemic and beyond. Analysis from prior to the pandemic showed that if women participated in the U.S. labor force at the same rates as women in countries with paid leave, our economy would benefit from more than \$500 billion in additional economic activity each year.⁴² S&P recently noted that increased female labor force participation could accelerate U.S. GDP growth, adding a staggering \$5.87 trillion to the global stock market in 10 years.⁴³ On the flip side, it is economically devastating when women leave their jobs to do caregiving instead of taking the time they need during this unique situation and beyond. Community groups, nonprofits, and state and local officials have been trying to fill in the gaps to help more families understand their rights under this leave,⁴⁴ but the federal government must do its part.

With robust universal federal paid family and medical leave policies in place, and a good public education campaign about their existence, many people who were pushed onto Unemployment Insurance because they became unable to work due to a need to care for themselves or a family member could have used those paid family and medical leave policies instead, and therefore would not have been severed from important employer-provided benefits like health insurance. Moreover, employers would have seen meaningful cost-savings by not having to hire and retrain new employees.

Over the past few years, over one hundred large brand-name businesses have introduced or expanded their paid leave policies to recognize the needs of their workforce and the benefits to their bottom line.⁴⁵ Dozens of leading companies have endorsed a national paid leave policy like the FAMILY Act.⁴⁶ Polls of small businesses repeatedly demonstrate overwhelming support for a national paid leave policy structured as social insurance, and hundreds of small businesses have endorsed the FAMILY Act.⁴⁷ These developments demonstrate the clear business case for paid leave, yet they unfortunately haven't translated into significant expansion for working people. The percentage of workers with access to paid leave has increased at a glacial pace over the past few decades, reaching only 19 percent this year.

At the National Partnership, we provide leading businesses with resources and technical assistance to improve their own internal policies and to better understand the role of public policy. Most recently, we co-authored an employer guide outlining best practices to support workers during the pandemic, which has been distributed to hundreds of organizations and businesses and covered in the media. This guide includes recommendations around emergency paid sick days and paid family and medical leave. We will continue to pursue outreach and education and work with leading businesses to strengthen their own policies as we work collectively toward national policy solutions.⁴⁸

Now, More Than Ever, the American People Need and Want Paid Leave

We know that in order to truly meet the needs of working people, a paid family and medical leave program must have certain core principles.⁴⁹ It must be comprehensive of all FMLA-covered events and be gender-equal, particularly as our nation ages and more working people are called upon to care for their family members.⁵⁰ It must have adequate wage replacement so that people can actually afford to take time off, as well as a meaningful duration of leave, so that people have enough time to physically recover from health conditions or from childbirth, to bond with their new children, or to take care of their family members. It must incorporate an inclusive definition of who is considered a family member to adequately reflect the way our families really look, particularly for families of color, immigrant families, and the LGBTQ community.⁵¹ It must offer job protection so that people can take the time off they need without having to worry if their job will still be there for them when they return.⁵² And it must be funded affordably and sustainably, without cutting other essential programs that working people need. Proposals that gut Social Security benefits or reduce future Child Tax Credit payments when people need them the most, while not guaranteeing paid leave and limiting access only to new parents, do not represent the core principles that are essential to equitable, meaningful, sustainable worker supports that every family will need.

Polling has consistently found strong levels of support for universal, comprehensive paid family and medical leave. In 2018, the National Partnership commissioned a nationally representative survey of registered voters that found that more than 8 in 10 voters (84 percent) support a comprehensive national paid family and medical leave policy that covers all people who work. This includes 94 percent of Democrats, 83 percent of Independents, and 74 percent of Republicans. Voters also prefer paying for a national paid family and medical leave policy through a shared cost between employers and employees, like in the FAMILY Act (S. 463).⁵³ Subsequent surveys have only reinforced the high popularity across party lines of well-designed national paid family and medical leave programs and paid sick days policies.⁵⁴

While the paid sick days and paid child care leave provisions in the *Families First Coronavirus Response Act* were a start, Congress must take further action to respond to the current crisis, and to prepare us for future pandemics. As states begin to reopen their economies and more people start to return to work, it is more important than ever that people who are sick have the ability to stay home. Leading public health organizations have urged the adoption of paid sick leave policies,⁵⁵ and the Centers for Disease Control and Prevention urge employers to actively encourage sick employees to stay home from work.⁵⁶

Congress must close the gaps in the *Families First Act* provisions by extending the right to take emergency paid sick days and paid leave to all working people, by expanding the purposes for longer-term leave to match those of the shorter-term paid sick days, and by providing full wage replacement for all paid sick days purposes. This will ensure that the grocery store clerk diagnosed with COVID-19 will have enough time to recover when he still has symptoms after 10 days; that the waitress for a small restaurant who starts to feel symptoms can stay home without losing her paycheck; that the hospital janitor who gets sick, but who can't take time off because he is considered a health care worker, can stay home; and that the single mom who works for a small business can care for her child who is

home from school without being forced to quit her job. The House of Representatives closed these gaps in the *HEROES Act*, which I strongly urge the Senate to take up and pass with these provisions intact.

Congress must also pass permanent paid sick days and paid family and medical leave policies that cover all working people. This pandemic has affirmed that a paid leave program that only covers the birth or adoption of a child is insufficient – working people need paid leave for their own health and to care for family members, including children throughout their childhoods. The *HEROES Act*, which would close the gaps as we requested⁵⁷ is pending before this Chamber as we speak. The *FAMILY Act* (S. 463) would create the kind of paid family and medical leave insurance program that our country needs, and the *Healthy Families Act* (S. 840) would create a national paid sick days standard. The *PAID Leave Act* (S. 3513) incorporates both of these policies, as well as emergency paid sick days and paid leave. The National Partnership, along with a broad coalition of national, state, and local organizations⁵⁸ strongly support all three of these pieces of legislation as the best evidence-based approaches to paid leave and paid sick days.

In closing, we must never forget how devastating this crisis has been for the millions of people around the country who have lost their lives, lost loved ones or lost jobs and income. And it is low income workers and workers of color who have paid the price for our lack of preparedness. We owe it to our people to ensure they never again have to make the decision between their health and their financial well-being.

Thank you for your time, and I look forward to answering your questions.

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