

New Emergency Legislation Provides Paid Sick Days and Paid Leave for Child Care for Millions

APRIL 2020

The Families First Coronavirus Response Act, enacted in March 2020 and amended by the Coronavirus Aid, Relief, and Economic Security (CARES) Act, provides new rights to workers for short-term paid time away from work for coronavirus-related health and caregiving reasons, and provides long-term emergency paid family leave for working people who need to take care of a child whose school or daycare is closed.

The law ensures that approximately 65 million private-sector workers,¹ and an estimated 22 million public-sector workers,² have up to **two work-weeks of job-protected paid sick days** available immediately. This leave can be used to address their own or a loved one's health, self-isolation or quarantine needs. An estimated 31 to 65 million private sector workers and 22 million public sector workers can use the paid sick time for child care purposes and can access an additional 10 weeks of paid leave for child care.³ The bill also includes tax credits to reimburse employers for the cost of wages paid for the emergency paid sick days and paid leave, and tax credits for self-employed workers for the same purposes.

This significant and rapid expansion of access to paid sick days and paid leave is a critical step toward mitigating the spread of the virus. In a public health emergency, every day counts: While this bill has significant limitations, ensuring that tens of millions of workers can stay home without facing an economic shock will help “flatten the curve” and save lives.

Families First Provides Many with New Rights to Paid Sick Time and Paid Leave

Eligible workers have up to 10 days of immediately available paid sick time.

Employers with fewer than 500 employees are required to provide up to 10 days of immediately-available paid sick time to an employee who:

- Is subject to a quarantine or isolation order related to coronavirus, has been advised by a health care provider to self-quarantine, or is experiencing coronavirus symptoms and is seeking a diagnosis;

- Is caring for another individual who is subject to a quarantine or self-isolation order, or who has been advised to self-quarantine; or
- Is caring for a minor child whose school or usual place of care has been closed (including whose child care provider is unavailable) due to coronavirus.

To be eligible, a worker must be unable to work or telework due to one of the needs described above.

Paid sick time is fully paid at an employee's regular wage rate for self-care, and paid at two-thirds of the regular wage rate to care for another individual or a child. Part-time employees are entitled to paid sick time for the number of hours they typically work over a two-week period.

The law provides protections for employees, including:

- Employers cannot require an employee to look for or find a replacement worker in order to take emergency paid sick days.
- Employers cannot require an employee to use up other accrued paid leave before taking emergency paid sick days.
- Employers cannot fire or retaliate against employees who take emergency paid sick days.

Eligible workers have an additional 10 weeks of emergency paid family leave for child care.

Through an amendment to the Family and Medical Leave Act (FMLA), employers with fewer than 500 employees are required to provide 12 weeks of job-protected family leave for employees caring for a minor child whose school or usual place of care has been closed, or whose child care provider is unavailable, due to a public health emergency.

- To be eligible, a worker must be unable to work or telework as a result of the need to provide child care.
- The first two weeks of this leave may be unpaid; the subsequent 10 weeks are paid at two-thirds of the employee's regular wage rate.

Employers will be reimbursed for the cost of providing emergency paid sick days and paid family leave.

- Employers can claim a tax credit for 100 percent of the wages paid for emergency paid sick time, up to a cap. For each employee, the credit is capped at \$511 per day for employees' self-care time and \$200 per day for employees' time spent caring for another individual or a child, and limited at 10 days per employee.

- Employers can claim a tax credit for 100 percent of wages paid for emergency paid family leave, up to a cap. For each employee, the credit is capped at \$200 per day, and no more than \$10,000 in total.
- These credits are refundable against payroll taxes, meaning that employers will receive a cash refund if the credit is larger than payroll taxes owed.
- To speed access to this reimbursement, employers may choose to keep quarterly payroll tax payments they would normally make, up to the amount of paid sick days and paid family leave that would qualify for tax credits. If they are eligible for additional credit, the IRS is expected to issue instructions on how to receive accelerated reimbursement payments.
- Nonprofit employers and state and local government employers are eligible for this tax credit.

Self-employed workers can access financial support for emergency paid sick days and paid family leave.

Workers who are self-employed can access up to 10 days of emergency paid sick days and an additional 50 days of emergency paid family leave for the same reasons described above.

- Self-employed workers can claim a tax credit, for each day of sick time used to take care of themselves, in the amount of 100 percent of their average daily self-employment income (up to \$511 per day), and 67 percent for each day they take to care for another individual or a child (up to \$200 per day).
- Self-employed workers can claim a tax credit for each day they take for family leave for child care, in the amount of 67 percent of their average daily self-employment income per day of leave (up to \$200 per day).
- These credits are refundable against income taxes, meaning that self-employed individuals will receive a cash refund if the credit is larger than taxes owed.
- Workers cannot receive this tax credit for any day when they also received emergency paid sick days or paid family leave from an employer.
- To speed access to this reimbursement, self-employed workers may choose to keep quarterly income tax they would normally make, up to the amount of paid sick days and paid family leave that would qualify for tax credits. If they are eligible for additional credit, the IRS is expected to issue instructions to receive accelerated reimbursement payments.

Tens of Millions Were Blocked from Full Paid Sick Days and Paid Leave Guarantees, Undermining Our Country's Pandemic Response

Large business lobbyists blocked 59 million workers from being covered.

- In the bill's original draft, champions of paid sick days and paid leave included full coverage of workers, regardless of employer size. But heavy lobbying by associations representing large corporate interests, including the U.S. Chamber of Commerce, National Federation of Independent Business and National Association of Manufacturers, pressured Senate Republicans and the White House to fully exempt employers from the law if they have 500 or more employees.
- More than 59 million people were left out of emergency paid sick days and paid family leave for child care coverage merely because they work for larger employers.⁴ About 6.5 million of these workers currently have no access to paid sick days of any kind, and close to 42 million have no paid family leave through their employer.⁵ Many of the rest may have insufficient leave, the leave they do have may not be able to be used for these purposes, or they may face barriers such as punitive absence control policies, which don't allow them to use the leave.⁶

The rights of more than 34 million workers, including health care workers and emergency responders, are under threat from potential exemptions for small employers.

- The law permits the Department of Labor to exempt employers with fewer than 50 employees from requirements to provide emergency paid sick days for child care and paid family leave for child care, if those requirements would jeopardize the viability of the business.
- An estimated 34 million workers work for small private sector employers, and could have their rights to emergency paid sick days and paid family leave threatened by these exemptions.⁷ Among these workers, at least 12 million currently do not have any paid sick days, and nearly 30 million have no paid family leave – and many of the rest may not have enough accrued leave, or the leave they have may not be able to be used for these emergency purposes, or they may face barriers to using leave.⁸
- The law also allows the Department of Labor to exclude certain health care providers and emergency responders from eligibility for all types of emergency paid sick days, even though these workers face some of the highest risks of exposure to coronavirus. The law also permits individual employers to exempt these workers from paid family leave for child care.
- 16.6 million people are employed in health care and emergency service occupations, millions of whom could be affected by these exemptions.⁹

Gaps in the Families First Act perpetuate racial inequities in access to paid sick days and paid leave, leaving women of color to pay the price yet again.

- Even though women of color were already least likely to have access to employer-provided benefits,¹⁰ they are some of the workers most likely to be affected by gaps and exemptions in the Families First Act.
- Women of color are a disproportionate share of front-line health care workers. Among the more than 2 million workers employed as nursing and home health aides, 88 percent are women, more than one-third (37 percent) are Black and more than 1 in 6 are Latinx. Nearly a quarter-million people are employed as nurse practitioners and the vast majority are women; about 1 in 8 are Black and about 1 in 10 are Asian American.¹¹
- Women of color also make up more than their fair share in low-paid, public-facing occupations with few benefits. Many of these same occupations are providing essential services during the pandemic. Food service workers have a median annual income of just \$15,175; nearly 13 percent are Latinas, nearly 8 percent Black women, and nearly 4 percent Asian American women. Among retail cashiers, nearly 18 percent are Latinas, 14 percent are Black women and 4 percent are Asian American women, and the median annual income is just \$12,198.¹² Only 30 percent of workers in the lowest-wage jobs have access to paid sick days, and just 5 percent have access to paid family leave through their employer.¹³

Voters are concerned about a lack of comprehensive leave benefits.

- Eighty-nine percent of voters are at least somewhat concerned – and **68 percent of voters very or extremely concerned** – that the Families First Coronavirus Response Act only covers a small percentage of workers, and that Republicans blocked a measure to provide expansive paid sick days and paid family and medical leave for most people.¹⁴
- **Majorities of voters across party affiliation** report being very or extremely concerned about the lack of full coverage (55 percent of Republicans, 60 percent of Independents and 82 percent of Democrats), and **majorities across race and ethnicity** (65 percent of Asian American voters, 66 percent of white voters, 72 percent of Latinx voters and 79 percent of Black voters).¹⁵

Congress must pass the PAID Leave Act to close the gaps and extend essential paid sick days and paid leave benefits to all workers.

The PAID Leave Act (Providing Americans Insured Days of Leave Act), introduced by U.S. Senators Patty Murray (D-WA) and Kirsten Gillibrand (D-NY), and Congresswoman Rosa DeLauro (D-CT), would close these loopholes in access to emergency paid sick days and

paid family leave. It would cover critically important needs for leave that were carved out of the Families First Act, including paid safe days to allow people facing domestic violence, sexual assault or stalking to seek assistance. Finally, the PAID Leave Act recognizes that people need time away from work to address caregiving needs, during a public health crisis and beyond.

¹ U.S. Bureau of Labor Statistics. (n.d.) *National Business Employment Dynamics Data by Firm Size Class* (Table F. Distribution of private sector employment by firm size class: 1993/Q1 through 2019/Q1, not seasonally adjusted). Retrieved 15 March 2020, from https://www.bls.gov/web/cewbd/table_f.txt. Unpublished calculation of the number of people employed by private sector firms with fewer than 500 employees in 2019.

² Federal Reserve Bank of St. Louis. (n.d.) All Employees, Government. Retrieved 15 March 2020, from <https://fred.stlouisfed.org/series/USGOVT>.

³ See notes 1 and 2.

⁴ See note 1. Unpublished calculation of the number of people employed by private sector firms with 500 or more employees in 2019.

⁵ See note 1; U.S. Bureau of Labor Statistics. (2019, September). *National Compensation Survey: Employee Benefits in the United States, March 2019* (Tables 31 and 34). Retrieved 27 March 2020, <https://www.bls.gov/ncs/ebs/benefits/2019/employee-benefits-in-the-united-states-march-2019.pdf>

⁶ Ibid; U.S. Bureau of Labor Statistics. (2019, August). *Access to and Use of Leave Summary* (Table 3). Retrieved 27 March 2020, from <https://www.bls.gov/news.release/leave.t03.htm>; A Better Balance. (2017, June). *Pointing Out: How Walmart Unlawfully Punishes Workers for Medical Absences*. Retrieved 27 March 2020, from <https://www.abetterbalance.org/wp-content/uploads/2017/05/Pointing-Out-Walmart-Report-FINAL.pdf>

⁷ See note 1. Unpublished calculation of the number of people employed by private sector firms with fewer than 50 employees in 2019.

⁸ See notes 1, 5 and 6.

⁹ U.S. Bureau of Labor Statistics. (2019). *Current Population Survey, Household Data, Annual Averages, Table 11. Employed persons by detailed occupation, sex, race, and Hispanic or Latino ethnicity*. Retrieved 27 March 2020, from <https://www.bls.gov/cps/cpsaat11.htm>. Total includes employment in the following occupations: Healthcare practitioners and technical occupations (9.7 million), Healthcare support occupations (3.8 million), and Protective service occupations (3.1 million). As of the date of publication, the Department of Labor had not yet issued guidance for interpreting these exemptions.

¹⁰ National Partnership for Women & Families. (2018, August). *Paid Family and Medical Leave: A Racial Justice Issue – and Opportunity*. Retrieved 27 March 2020, from <https://www.nationalpartnership.org/our-work/economic-justice/reports/paid-family-and-medical-leave-a-racial-justice-issue-and-opportunity.html>

¹¹ See note 9.

¹² U.S. Bureau of Labor Statistics. (2019). *Current Population Survey, Table PINC-06. Occupation of Longest Job-People 15 Years Old and Over, by Total Money Earnings, Work Experience, Race, Hispanic Origin, and Sex, 2018. Employment and earnings data for Both Sexes 15 Years and Over, Total Work Experience, All Races (All other food preparation occupations, and Cashiers)*. Retrieved 27 March 2020, from <https://www.census.gov/data/tables/time-series/demo/income-poverty/cps-pinc/pinc-06.html>

¹³ See note 5, U.S. Bureau of Labor Statistics.

¹⁴ Winter, E., Sheyman, I., & Mangan, A. (2020, March). *Concern over the coronavirus: Most voters are worried about lack of paid leave, health care, and limited federal response*. Retrieved 27 March 2020, from Data for Progress website: <http://filesforprogress.org/memos/concerns-about-coronavirus.pdf>

¹⁵ Ibid.

The National Partnership for Women & Families is a nonprofit, nonpartisan advocacy group dedicated to promoting 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 work and family. More information is available at NationalPartnership.org.

© 2020 National Partnership for Women & Families. All rights reserved.