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Paid Leave in the Families First Coronavirus Response Act: How Child Care Providers Are Left Behind

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On March 18, 2020, the Senate passed the [Families First Coronavirus Response Act](#) (FFCRA), and the president soon after signed the bill into law. The law provides critically needed relief for Americans during the COVID-19 crisis, including funds to cover coronavirus testing, support Medicaid, expand nutrition assistance, and shore up state unemployment insurance systems. It also takes important steps to expand access to paid sick days and longer-term paid leave in response to the current emergency by requiring certain employers to provide two weeks of paid sick time for coronavirus-related reasons, and up to 12 weeks of paid leave for certain workers with dependent children who are unable to work because schools are closed and/or child care is unavailable due to coronavirus-related reasons. The law provides tax credits to employers and self-employed individuals to cover the cost of both types of emergency leave.

However, these paid leave provisions do not reach many of the child care providers and educators who are on the front lines of the COVID-19 crisis. The analysis that follows details how the Families First Coronavirus Response Act falls short in providing paid sick days and paid family and medical leave for the child care workforce—and how the next stimulus bill must ensure that child care providers have the support they need to remain open (should they choose to do so or be required to) after the crisis and educators are able to continue to support their own families. In addition, [Congress must provide robust flexible funding to states to help the child care sector](#), including programs that are closed and may go out of business and families—especially front-line workers—who are struggling to afford child care during this crisis.

Emergency Paid Sick Leave in the FFCRA

The FFCRA requires 1) public employers of all sizes and 2) private employers with fewer than 500 employees to grant two weeks (or 10 work days) of job-protected paid sick leave to employees who are unable to work or telework due to the following reasons:

- To obtain a medical diagnosis or care if experiencing symptoms of COVID-19;
- To comply with a recommendation from a public health official;

- To care for an individual who is self-isolating because of a diagnosis or is experiencing symptoms; or
- To care for a child whose school is closed, or child care provider is closed/unavailable, due to the COVID-19 pandemic.CCDBG Funding

Employers are to provide full pay when employees take this leave to care for themselves, but only up to a maximum of \$511 per day/\$5,110 total; when employees take leave to care for a child or other individual, the rate of pay is reduced to 2/3 (up to \$200 per day/\$2,000 total). Covered employers can receive refundable tax credits against payroll taxes (or against income taxes for self-employed individuals) for all wages paid for emergency sick leave, up to the capped amounts. In addition to the exemption for large employers, the Department of Labor (DOL) has discretion to allow a “hardship exemption” from the requirement to provide paid sick leave to care for children whose school or place of care is closed for businesses with fewer than 50 employees if complying with that requirement would “jeopardize the viability of the business as a going concern,” and to exempt certain health care providers and emergency responders. Employers of health care providers or emergency responders can also choose to deny paid sick days to these front-line personnel.

This is the first national paid sick days requirement in the U.S.—but by excluding many employers and their workforces and responding only to the current crisis, it falls short of the universal, permanent coverage we need and leaves many early childhood educators unprotected and underpaid. Here’s how:

- **The FFCRA does not offer enough support for small businesses or their employees.** DOL’s authority to create a hardship exemption for businesses with fewer than 50 employees could mean that many educators working for small providers will be forced to go without pay if they need to stay home to care for their own children when schools or other care providers are closed. At the same time, small child care providers that do provide emergency paid sick days to their employees will not get the immediate support they need; the quarterly tax credit structure to reimburse employers ignores the reality that many providers struggle to pay their bills each month, and could have to shut down or lay off their employees while waiting for their tax credit.
- **The FFCRA excludes employers with 500 or more employees.** While many early childhood educators are self-employed or work for small providers, large chains also employ child care workers across the country—and these workers are left without any guarantee of paid sick time under the law.
- **The FFCRA only provides full pay for employees who are themselves infected with COVID-19 or required to stay home.** Providing care for sick children/dependents, or staying home with children due to school closures, will not allow child care workers to qualify for full pay. Given that [child care workers typically make less than \\$12 per hour](#), a 1/3 pay cut could leave struggling families unable to make ends meet.
- **The FFCRA only ensures emergency paid sick leave until December 31, 2020, and only applies to coronavirus-related sick leave.** Due to the rapidly changing nature of this crisis and its widespread impact on the economy and infrastructure, this arbitrary expiration date for emergency paid sick leave is unlikely to meet the needs of the child care workforce and millions of other low-paid workers. And limiting eligibility for paid sick days to coronavirus-related emergencies disregards the widespread need for the child care workforce to access this basic benefit, which existed long before this crisis and will continue after it is over.

Paid Public Health Emergency Leave in the FFCRA

The FFCRA amends the Family and Medical Leave Act (FMLA) to add a provision for “public health emergency leave” related to COVID-19—which, unlike other bases for leave under the FMLA, is largely paid. The emergency leave provision also applies to some workers who are otherwise ineligible for FMLA leave, such as part-time workers and some working for smaller employers. Specifically, it requires 1) public employers of all sizes and 2) private employers with fewer than 500 employees to grant up to 12 weeks of job-protected leave to employees who are unable to work or telework because they need to care for a child whose school whose school is closed, or child care provider is closed/unavailable, due to the COVID-19 pandemic.

After the first 10 days, which are unpaid (but may be covered by paid sick leave or other accrued paid time off), employers are only required to provide 2/3 pay when employees take this leave, and only up to a maximum of \$200 per day/\$10,000 total. Covered employers can receive refundable tax credits against payroll taxes (or against income taxes for self-employed individuals) for all wages paid for emergency leave, up to the capped amounts. Like the paid sick days provision, in addition to the exemption for large employers, employers and/or DOL can choose to exempt certain health care providers and emergency responders, and DOL has discretion to allow a “hardship exemption” from the paid leave requirement for businesses with fewer than 50 employees if providing the required leave would “jeopardize the viability of the business as a going concern.”

This paid leave provision, too, is an important step in response to the COVID-19 crisis—but like the paid sick days provision (and for many of the same reasons), it does not do enough to support child care providers and early childhood educators:

- **Paid leave is only available to employees who are unable to work because they need to be at home to care for a son or daughter under 18 years of age** because of school closure or the unavailability of child care due to the COVID-19 crisis. This restriction ignores the care responsibilities that many educators have for other family members such as spouses, siblings, parents, and children with disabilities over the age of 18, as well as the possibility that they will need to care for themselves for an extended period.
- **The emergency leave provision does not offer enough support for small businesses or their employees.** As under the paid sick days provision, DOL’s authority to exempt small businesses could mean that even early childhood educators who need leave for qualifying reasons may not be able to take it if they work for a business with fewer than 50 employees. For educators with young children, not having access to paid leave may mean not having an income for the duration of the crisis, or losing their job entirely. And the paid leave provision includes the same delayed payroll tax credit reimbursement mechanism used for the paid sick days provision, which will be particularly problematic for small providers operating on razor-thin margins that are trying to provide longer-term leave for their employees who need it.
- **People working for large employers are also left unprotected.** Like the paid sick days provision, the public health emergency leave provision exempts employers with 500 or more employees, leaving educators working for large chains without any guarantee that they can take paid leave if they have to care for their own children during this crisis.
- **Wage replacement for public health emergency leave is only 2/3 of income and capped at \$200 per day.** For many child care workers who already struggle to get by and support their families, this is not enough. To adequately care for themselves and their families, child care workers who need to take leave during this crisis must have access to their full pay.
- **Small employers do not need to guarantee the jobs of employees who take public health emergency leave.** Although covered employers generally are required to restore employees who take this leave to their jobs (or equivalent positions) upon their return, employers with fewer than 25 employees do not need to do so if a worker’s position is eliminated during the crisis and the employer’s “reasonable efforts” to restore the employee to an equivalent position are unsuccessful. This means that many child care workers who take leave may not have jobs to return to once their children can return to school.

- **The FFCRA only provides leave in response to COVID-19 through December 31, 2020, and makes no provision for broader or longer-term needs for paid leave.** Like the paid sick days provision, the expiration of leave in response to what is likely to be an ongoing emergency is short-sighted. And even more short-sighted is the law's lack of attention to the need for a broader range of self-care and family care responsibilities—during and beyond a public health emergency—that child care workers, and all workers, need and deserve.

Legislative Solutions: The PAID Leave Act and More

In response to the many gaps in support left by the FFCRA, Senators Patty Murray and Kirsten Gillibrand along with Representative Rosa DeLauro introduced the Providing Americans Insured Days of Leave Act (PAID Leave Act), which would provide all working people with access to paid sick days and paid family and medical leave during and beyond the COVID-19 crisis. Here is how the PAID Leave Act would fill the gaps in the FFCRA for child care workers and providers:

- **Expands allowable uses for emergency leave and eliminates the sunset provision.** The PAID Leave Act ensures that workers can use emergency paid sick days and public health emergency leave to care for themselves or family members who need care because of being quarantined or isolated due to exposure linked to a public health emergency; to care for a child whose school or place of care is closed due to a public health emergency; or when their employer is closed for a public health emergency. These provisions apply in any public health emergency (not limited to the COVID-19 crisis) and do not expire.
- **Establishes permanent, non-emergency paid sick days and paid family and medical leave requirements.** The PAID Leave Act would, for the first time, establish a right to paid sick days and paid family and medical leave for working people across the United States. Workers could accrue up to seven days of paid sick leave annually to be used for personal illness or preventive care, caring for a family member, or absences related to domestic violence, sexual assault, or stalking. And beginning in 2022, workers would be able to access up to 12 weeks of paid family and medical leave to welcome

a new child, care for a family member with a serious health condition or manage their own serious health condition, or for certain military caregiving and leave purposes. These universal, permanent provisions could dramatically improve job quality for the child care workforce.

- **Applies to all employers, regardless of size.** By establishing paid sick days and paid family and medical leave requirements applicable to employers large and small, as well as the self-employed, the PAID Leave Act ensures that child care providers and workers do not have to choose between caring for themselves or their families and getting a paycheck.
- **Provides a more inclusive family definition.** The more inclusive definition of family in the PAID Leave Act allows for child care workers to stay home and care for anyone who might depend on them.
- **Ensures all employees taking sick leave are paid full wages.** The PAID Leave Act requires employers to pay full wages for paid sick days, with no caps, regardless of the reason for taking leave—an essential provision for child care workers earning low wages. (The paid family and medical leave portions of the bill, however, maintain a 2/3 wage replacement rate.)
- **Provides direct reimbursement to employers for emergency leave and establishes a sustainable funding structure for the permanent provisions.** Under the PAID Leave Act, the Treasury Department would directly reimburse employers for the cost of providing emergency paid sick days or public health emergency leave within seven days of receiving the request—a critically important support for small child care providers and their employees. Beginning January 1, 2022, employers would assume the cost of the permanent paid sick and safe days, and the permanent paid family and medical leave program would be funded by employer and employee payroll contributions.

The PAID Leave Act provides a comprehensive approach to paid leave that reaches many of the people left behind by the FFCRA—but still more will be necessary to support the unique needs of child care providers and workers in this time of crisis. [Countless providers have already been forced to close their doors, either by local mandate or due to families pulling their children out of care, and are \(or](#)

will be) unable to continue charging families for services they are not providing as the COVID-19 crisis continues. To ensure that educators have jobs to return to once this crisis is over and families have access to child care, we need more than federally subsidized paid leave; [we need a substantial, direct, long-term investment from the federal government](#) to ensure that child care providers can remain afloat and educators are able to continue to support their own families, including (but not limited to) paying providers when they are required to be closed and eliminating copayments or tuition for families without penalizing providers.

At the same time, child care must remain available for the health care providers, emergency responders, and others on the front lines of the pandemic—many of whom are themselves not entitled to paid leave under the FFCRA. The federal government must also provide robust, flexible emergency funding to states to meet the emerging needs of families, providers, and educators in the child care sector, including (but not limited to): paying providers to cover their ongoing operational costs when they are closed, eliminating copayments and tuition for families, helping providers find and pay substitutes, creating new facilities or expanding capacity of existing facilities to serve children of front-line workers, tracking child care closures and capacity, providing training and medical supports to enhance health and safety practices, purchasing cleaning materials for providers, and providing higher levels of compensation for educators and providers serving front-line workers or operating for longer hours. And boosts to unemployment insurance, housing assistance, grants for small businesses, and other supports must be designed so that all child care providers—whether centers, family child care homes, or family, friend, and neighbor care providers—can participate and take advantage of the benefits.

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Child care—and the women, disproportionately women of color, who provide it—is the backbone of our nation's economy. The COVID-19 pandemic is already testing the strength of our economy and our public health infrastructure, both of which depend on child care and child care workers. In its continuing response to this crisis, Congress must ensure that the underpaid child care workforce can access the paid leave they need to care for themselves and their own families—and it must take swift and decisive action to ensure that providers can continue to support their communities, now and in the future.