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Commentary: Policymakers Should Expand Emergency Paid Leave in Next Coronavirus Package

By Kathleen Romig and Kathleen Bryant

The Families First Coronavirus Response Act created two new types of emergency paid leave,¹ but left out tens of millions of workers, including the vast majority of employees in places like grocery stores, pharmacies, and warehouses who remain on the job even during “stay-at-home” orders and are at heightened risk for contracting COVID-19.² In addition, the law’s longer-term paid leave does not cover *any* medical leave for workers who contract coronavirus or are caring for a family member who does. It also leaves out some caregivers of elderly relatives and adults with disabilities. Policymakers should expand access to emergency sick days and family and medical leave in a future round of coronavirus relief legislation.

Many Workers Don’t Qualify for New Leave

The law provides ten days of paid sick leave for workers affected by the coronavirus: those who are ill or quarantined, or caring for an ill or quarantined family member or a child whose school or child care has closed. The law also provides ten additional weeks of paid caregiving leave, limited to parents whose children are out of school or child care.

These new benefits will help millions of workers. But there are large coverage gaps that leave out many workers who are at heightened risk of exposure to the virus.

The largest group of workers left out of the leave programs are those working for employers of 500 or more workers. The Families First Act excludes employees at large businesses from the paid

¹ National Partnership for Women and Families, “Know Your Rights: Emergency Paid Sick Days and Paid Leave for Child Care and Coronavirus,” April 2020, <https://www.nationalpartnership.org/our-work/resources/economic-justice/know-your-rights-emergency-paid-sick-days-and-paid-leave.pdf>.

² The Center for American Progress estimates that “68 million to 106 million private sector workers may be excluded from coverage due to the law’s exemptions and broad regulations issued by the Trump administration.” Sarah Jane Glynn, “Coronavirus Paid Leave Exemptions Exclude Millions of Workers From Coverage,” Center for American Progress, April 17, 2020, <https://www.americanprogress.org/issues/economy/news/2020/04/17/483287/coronavirus-paid-leave-exemptions-exclude-millions-workers-coverage/>.

leave benefits *and* their employers from federal reimbursement for any emergency leave they provide.

It's become clear that the large employer exclusion leaves out many of the front-line employees who remain on the job because they have been excepted from stay-at-home orders.³ Most workers at grocery stores, pharmacies, general merchandise stores, and warehouses are excluded from the new paid leave law (see Figure 1).⁴ These workers,⁵ many of whom earn low wages⁶ and receive limited benefits, risk exposure to the coronavirus and potentially to spread the virus.⁷ Many have little choice but to go to work ill, or to leave children at home alone or in the care of older siblings who are supposed to be distance learning.

FIGURE 1

New Paid Leave Law Excludes Most Employees of Many Large Businesses

For selected businesses of at least 500 employees, share of employees excluded from Families First's paid leave provisions



Note: Families First = Families First Coronavirus Response Act. Percentages are for the U.S. workforce in 2017, presuming that the new paid leave provisions were in effect that year. Examples of general merchandise stores include Walmart and Target.

Source: U.S. Census Bureau

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³ Alyssa Fowers and Shelly Tan, "The new sick leave law doesn't help the workers that need it the most," *Washington Post*, March 19, 2020, <https://www.washingtonpost.com/graphics/2020/national/sick-leave-workers-coronavirus/>.

⁴ U.S. Census Bureau, "2017 SUSB Annual Datasets by Establishment Industry," March 2020, <https://www.census.gov/data/datasets/2017/econ/susb/2017-susb.html>.

⁵ David Madland *et al.*, "How the Federal Government Can Protect Essential Workers in the Fight Against Coronavirus," Center for American Progress, April 8, 2020, <https://www.americanprogress.org/issues/economy/news/2020/04/08/482881/federal-government-can-protect-essential-workers-fight-coronavirus/>.

⁶ Christopher Ingraham, "Why many 'essential' workers get paid so little, according to experts," *Washington Post*, April 6, 2020, <https://www.washingtonpost.com/business/2020/04/06/why-do-so-many-essential-workers-get-paid-so-little-heres-what-economists-have-say/>.

⁷ Liz Scheltens, "One policy that changes the coronavirus math," *Vox*, March 27, 2020, <https://www.vox.com/2020/3/27/21196932/paid-sick-leave-coronavirus>.

Excluding so many of these employers whose workers are considered “essential” under stay-at-home orders may worsen the striking racial disparities in coronavirus diagnoses and fatalities,⁸ as Black and Hispanic workers are substantially overrepresented in low-wage jobs at those workplaces due to long-standing racial barriers to economic opportunity.⁹ For example, 24 percent of warehouse workers are Black and 32 percent are Hispanic, even though Black and Hispanic workers constitute just 12 percent and 18 percent of the workforce, respectively.¹⁰ Black and Hispanic workers are also overrepresented as cashiers and in other critical service-sector occupations.¹¹

Some, including Treasury Secretary Steven Mnuchin, have argued that large businesses should be exempt from the new law because many already offer paid sick days.¹² While more large employers provide sick days than smaller employers, many companies do not have permanent paid sick leave policies,¹³ and others have such restrictive and poorly administered policies that most workers don’t know they qualify or fear punishment for taking leave.¹⁴ And few large employers offer longer-term family and medical leave benefits, particularly for workers facing large-scale school and child care closures.¹⁵

Certain service-sector industries are particularly unlikely to offer paid leave — for example, about 35 percent of retail workers lack paid sick days and 85 percent lack paid family leave benefits.¹⁶ While some companies announced temporary paid sick leave policies in response to the coronavirus

⁸ Jeffrey C. Mays and Andy Newman, “Virus Is Twice as Deadly for Black and Latino People Than Whites in NYC,” *New York Times*, April 8, 2020, <https://www.nytimes.com/2020/04/08/nyregion/coronavirus-race-deaths.html>.

⁹ Chye-Ching Huang and Roderick Taylor, “How the Federal Tax Code Can Better Advance Racial Equity,” CBPP, July 25, 2019, <https://www.cbpp.org/research/federal-tax/how-the-federal-tax-code-can-better-advance-racial-equity>; Note: “Latino” generally refers to people whose origins are geographically located in Latin America, while “Hispanic” is not tied to geography but rather refers to those who have Spanish-speaking origins. In the Current Population Survey, the Bureau of Labor Statistics asks respondents to self-identify as “Hispanic, Latino, or Spanish” (this is asked in a single question).

¹⁰ U.S. Bureau of Labor Statistics, “Current Population Survey Table 18: Employed persons by detailed industry, sex, race, and Hispanic or Latino ethnicity,” updated January 22, 2020, <https://www.bls.gov/cps/cpsaat18.htm>.

¹¹ U.S. Bureau of Labor Statistics, “Current Population Survey Table 11: Employed persons by detailed occupation, sex, race, and Hispanic or Latino ethnicity,” updated January 22, 2020, <https://www.bls.gov/cps/cpsaat11.htm>.

¹² Jaelyn Diaz, “Big Business Covid-19 Paid Leave Exemption May Get Another Look,” *Bloomberg Law*, March 31, 2020, <https://news.bloomberglaw.com/daily-labor-report/big-business-covid-19-paid-leave-exemption-may-get-another-look>.

¹³ Jennifer Ortakales, “Here’s how a new law giving workers paid leave amid coronavirus will affect you,” *Business Insider*, March 20, 2020, <https://www.businessinsider.com/coronavirus-paid-leave-bill-hr6201-means-employees-businesses-2020-3>.

¹⁴ Daniel Schneider and Kristen Harknett, “Estimates of Workers Who Lack Access to Paid Leave at 91 Large Service Sector Employers,” U.C. Berkeley: The Shift Project, March 2020, <https://shift.berkeley.edu/files/2020/03/Estimates-of-Workers-Who-Lack-Access-to-Paid-Sick-Leave.pdf>.

¹⁵ Bureau of Labor Statistics, “National Compensation Survey: Private Industry Workers, Table 31A,” March 2019, <https://www.bls.gov/ncs/ebs/benefits/2019/ownership/private/table31a.pdf>.

¹⁶ *Ibid.*

crisis, many fall short of the new law's requirements: some provide fewer than ten sick days, exclude part-time workers, exclude franchises, or impose onerous requirements to access the benefit.¹⁷

In addition, the paid leave law and subsequent rulemaking¹⁸ broadly exempt health and emergency workers on the front lines of the crisis, denying them not only the longer-term paid caregiving leave but also the shorter-term paid sick days. The law says that “health care providers” and “emergency responders” can be exempt from *both* sick days and family leave, and the Department of Labor (DOL) is interpreting these terms so broadly that it could leave out about 13 million workers, according to DOL. This means that millions of workers exposed to the virus in the line of duty may not qualify for *a single sick day* under the law.¹⁹

Finally, millions of workers are left out of the caregiving leave benefits in the law. The law excludes most of the federal workforce from the longer-term paid family leave, providing those workers with only two weeks of emergency paid sick days, apparently because of a drafting error.²⁰ The federal government is the nation's largest employer, and this omission excludes more than 2 million workers from the longer-term emergency paid leave. In addition, the law exempts small businesses with fewer than 50 employees, which employ 34 million private-sector workers,²¹ from providing any school or child care leave to parents if doing so may cause their companies to shutter. DOL also interprets this provision very broadly, and has indicated it will not require small businesses to submit any paperwork to prove they meet that criterion.

Policymakers Should Expand Access to Leave in Next Relief Package

To expand access to paid sick days and paid family and medical leave, especially to the workers who need it most, we recommend that Congress consider the following changes in a future round of coronavirus relief legislation:²²

- **Provide emergency paid sick days and paid family and medical leave to workers in companies with 500 or more employees.** This would expand coverage to roughly half of

¹⁷ Roselyn Miller, Brigid Schulte, and Haley Swenson, “Which Companies Still Aren’t Offering Paid Sick Days?” New America, updated April 15, 2020, <https://www.newamerica.org/better-life-lab/reports/which-companies-still-arent-offering-paid-sick-days/>.

¹⁸ U.S. Department of Labor, “Temporary Rule: Paid Leave under Families First Coronavirus Response Act, April 1, 2020, <https://www.dol.gov/agencies/whd/ffcr>.

¹⁹ Some health care and emergency response workers will have employer-provided sick days, but others will not, such as many contractors cleaning medical facilities. Among those with employer-provided sick days, most workers accrue fewer than ten days per year, and some will have already used up their sick days or will have only begun to accrue them.

²⁰ The law cited only Title 1 of the Family and Medical Leave Act (FMLA) in describing which federal employees may receive paid family leave, though most federal employees are covered by Title 2 of FMLA. The law did not exclude any federal agencies from paid sick leave and there is no apparent policy reason for excluding those who happen to be listed under a different title.

²¹ U.S. Bureau of Labor Statistics, “Quarterly Data Series on Business Employment Dynamics: Table F,” updated January 29, 2020, https://www.bls.gov/web/cewbd/table_f.txt.

²² Sharon Parrott *et al.*, “Immediate and Robust Policy Response Needed in Face of Grave Risks to the Economy,” CBPP, March 19, 2020, <https://www.cbpp.org/research/economy/immediate-and-robust-policy-response-needed-in-face-of-grave-risks-to-the-economy>.

private-sector workers,²³ about 60 million in all — including the substantial majority of workers who remain on the job even amid widespread closures — and give their employers federal reimbursement for the emergency leave.

- **Provide health care providers and emergency responders with emergency paid sick leave that they can use if they get sick or need to be quarantined.** These workers are at heightened risk of contracting COVID-19 and should have access, at a minimum, to paid sick leave if they contract the virus.
- **Expand paid family leave to include all federal employees.**
- **Expand the longer-term leave to include coronavirus-related medical and family caregiving leave.** The ten additional weeks of “paid family and medical leave” provided in the Families First Act only provide benefits to parents whose children’s schools or day care providers have closed; they do not provide any benefits for workers who contract the coronavirus or are caring for a family member who does. The version of the Families First bill that originally passed the House on March 14 with substantial bipartisan support included this provision, but it was subsequently pared down to school leave only.
- **Expand coverage of caregivers for older adults and adults with disabilities.** The law provides caregiving leave only to parents whose children’s schools or child care has closed (the rule clarifies that this extends to disabled adult children). This leaves out family caregivers for other relatives who have lost their usual source of care, such as older parents or siblings with disabilities, as well as people who otherwise receive care from direct service providers.

²³ U.S. Bureau of Labor Statistics, “Quarterly Data Series,” *op. cit.*