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Paid Time Off, COVID-19, and Policy Gaps: Providing California Workers With Quality Paid Leave

Choosing between paying the bills or caring for their families has never been an easy choice for California workers, and COVID-19 health and economic conditions have only exacerbated that dilemma. The federal Families First Coronavirus Response Act temporarily addresses workers' lack of paid time off in the United States by requiring employers to provide both paid sick days and job-protected paid leave to care for a family member (See Table on page 3). While the federal government will provide tax credits to businesses to cover the cost of the required leave policies, the federal law has exemptions that allow some employers to opt out of providing paid time off to workers, many of whom earn low wages, have limited benefits, and are at heightened risk of being exposed to COVID-19.

Workers ineligible for new federal leave laws may be able to rely on California's family and medical leave laws, but these policies also have limitations that create barriers for workers taking paid time off from work. These barriers are particularly acute for workers with low wages – disproportionately women, Black, and Latinx workers. Finally, some workers may be covered by their employers' benefits, but workers with low wages are far less likely to have paid time off via workplace benefits. This means that even as state leaders work to stop the spread of COVID-19 and have directed people to stay home, some workers cannot access paid time off to care for themselves or family members and still support their household needs.

Caught in the Gap: A part-time cashier at a nationwide pharmacy needs several weeks away from work to stay home to care for her spouse who is gravely ill and is under an isolation order, but she is ineligible for federal paid time off because she works for an employer with more than 500 employees. While this worker could use California's paid family leave, she would not be able to take leave with job security because she works just 20 hours a week, which does not meet the requirements for job-protected leave under California law. **Closing the Gap for Workers:**

- Federal policymakers should require large businesses with more than 500 employees who are currently excluded in the Families First Act to provide paid time off. This could reach *millions* of additional workers in California.
- State policymakers should extend job protections to all workers who take family and medical leave regardless of the size of the employer, hours worked, or tenure.

Caught in the Gap: A single mom working at a small, local grocery store finds herself without care for her children due to the closure of local schools and day care centers. Her employer has told her that providing her with paid time off to care for her children would be a hardship that would jeopardize the business, and she is not eligible to utilize federal paid leave. California's paid family leave program is not an option for parents who suddenly find themselves

without care for their children due to a public health emergency. Her only option is to apply for unemployment insurance benefits. **Closing the Gap for Workers:**

- Federal leaders should limit small-business exemptions to those who would be forced to immediately close if they gave their employees paid time off under this new federal leave program. Currently, the Department of Labor definition of hardship is vague and requires only self-certification by small employers. Small businesses should also be required to submit a simple form to the federal Department of Labor, rather than current practice, which is to self-certify without any documentation.
- State policymakers should include care for a family member due to the closure of school, child care center, or adult day center during a public health emergency or natural disaster as a reason one can utilize paid family leave.

Caught in the Gap: A worker in the cleaning and maintenance department of a small, rural hospital fears he might have been exposed to COVID-19 when he dropped off groceries for his mother who has since tested positive for the virus. He knows he should self-quarantine for the recommended 14 days, but he only has three days of sick time under California's paid sick days law and he's worried about paying his bills. His employer has already informed him that he is considered a health care worker, and they won't be providing any paid sick days under new federal laws. He could apply for state disability insurance, but he needs medical certification. Unfortunately, even though he works in a hospital, he does not have a primary care doctor, has been unable to schedule an appointment with a new doctor, and is afraid to go to urgent care due to the risk of spreading the virus or increasing his risk of exposure. **Closing the Gap for Workers:**

- Federal policymakers should provide health care workers and emergency responders with paid time off to care for themselves or their family. The regulations are overly broad and allow employers to exclude many workers, many of whom have a greater chance of being exposed to COVID-19, and they may need time off, too. Adding to their dilemma and economic hardship, many of these workers likely earn low wages, such as janitors in hospitals and factory workers building medical supplies.
- State policymakers should increase the minimum required number of paid sick days provided by all employers, which is currently just three days or 24 hours, to the equivalent of two weeks during a public health emergency and seven days when not in a public health emergency. Governor Newsom recently signed an Executive Order expanding paid sick days, but just for essential workers in the food sector who work for large employers currently excluded from federal law.
- State policymakers should waive medical certification necessary for state disability insurance or paid family leave during a public health emergency to ease the strain on the health care system.

Everyone needs time off to care for themselves or their families, and the COVID-19 pandemic has only heightened the necessity for all workers – crisis or not – to know they can safely keep their jobs and care for the health and well-being of loved ones. State and federal laws create a patchwork of policies to address the need for paid time off but leave notable gaps and workers without a reliable way to care for themselves and others. Both state and federal policymakers should take additional action in the midst of this public health and economic crisis to support California's workforce in the same way workers show up for the economy every day.

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Policies Providing Time Off From Work in California for COVID-19, 2020

	State Law					Federal Law		
	Paid Sick Leave	COVID-19 Supplemental Paid Sick Leave	Paid Family Leave	State Disability Insurance (SDI)	California Family Rights Act	Family Medical Leave Act	Emergency Paid Sick Leave Act	Emergency Family and Medical Leave Expansion Act
Employers Covered	Private-sector and public-sector employers ¹	Private-sector employers	Most private-sector employers and some public-sector employers ²	Most private-sector employers and some public-sector employers ²	50 or more employees within a 75-mile radius	50 or more employees within a 75-mile radius	Generally public employers and private employers with less than 500 employees ³	Generally public employers and private employers with less than 500 employees ³
Job Protections	Yes	Yes	No	No	Yes	Yes	Yes	Yes, but exceptions apply if the employer has fewer than 25 employees
Worker Eligibility	Worked at least 90 days	Essential critical worker in the food sector who is not able to telecommute	Earned at least \$300 while contributing to SDI in the 5 to 18 months prior to the claim	Earned at least \$300 while contributing to SDI in the 5 to 18 months prior to the claim	Worked a minimum of 1,250 hours for at least one year for a covered employer	Worked a minimum of 1,250 hours for at least one year for a covered employer	All individuals working for a covered employer ⁴	Worked for at least 30 days for a covered employer ⁴
Reason for Leave⁵	Unable to work due to preventive health care or treatment of an existing health condition for oneself or a family member	Unable to work due to isolation or quarantine or prohibited from working due to health concerns related to COVID-19	To bond with a new child or care for an ill family member	Unable to work due to nonwork-related illness or injury, pregnancy, or childbirth	To bond with a new child or care for an ill family member	To bond with a new child or care for an ill family member	To care for themselves or another individual due to COVID-related symptoms, isolation, or quarantine or to care for a child whose school or child care provider has closed	Unable to work due to a coronavirus-related school or child care closure affecting a child in the family
Paid Leave	100% of wages	100% of wages (set to no lower than the minimum wage) up to \$511 per day and a max of \$5,110	Yes, 60%-70% of wages	Yes, 60%-70% of wages	No	No	100% of wages (set to no lower than the minimum wage) up to \$511 per day and a max of \$5,110. When caring for an individual, two-thirds of wages up to \$200 per day and a max of \$2,000	After the first 10 days (which may be unpaid), two-thirds of wages up to \$200 per day and a max of \$10,000
Duration⁶	Minimum of 24 hours in one year	80 hours (prorated for part-time work)	6 weeks ⁷	52 weeks for non-work related illness or injury	Up to 12 weeks	Up to 12 weeks	80 hours (prorated for part-time work)	12 weeks

Source: Budget Center analysis of federal and California state law and administrative documents

- ¹ The law doesn't apply to workers covered under a collective bargaining agreement with certain provisions, to certain public employees, and certain airline employees.
- ² Certain employees and certain types of employment are exempt and don't contribute to state disability insurance. In addition, employers or a majority of employees can opt into voluntary disability plans in lieu of state disability insurance and paid family leave with approval from the state.
- ³ Businesses with fewer than 50 employees can opt out of providing paid sick days or paid leave for workers who need time off to care for family due to a closure of a care facility if it would jeopardize the business.
- ⁴ Employers can opt to exclude health care workers and emergency responders.
- ⁵ The definition of "family member" varies across state and federal laws.
- ⁶ May be prorated for part-time work.
- ⁷ The 2019-20 budget agreement extended the duration from six weeks to eight, effective July 1, 2020.