

Learning Our Lesson: COVID-19 Emergency Paid Sick and Family Leave Showed the Value of a Robust, Permanent Paid Leave Policy

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JUNE 2023

The end of the federal public health emergency for the COVID-19 pandemic on May 11, 2023 closes out an unprecedented period of innovation and action to advance public health and economic security in the United States – including the nation's first-ever national paid sick days and paid family leave policies. The experiments of the past three years offer policymakers a unique opportunity to learn from what worked so that we can be ready for the future, from the everyday demands of work, health and caregiving to the unpredictable needs of the next pandemic.

Lack of universal access to paid sick days for short-term illness increased the risk that COVID-19 would spread in workplaces. Lack of paid family and medical leave for serious, longer-term illness and family caregiving needs meant that widespread illness and school and child care closures would disrupt employment as well as economic security for millions. And without national policies in place, employers who wanted to support sick and caregiving employees would face administrative challenges and potentially high costs. Responding to this clear and urgent need, lawmakers created the United States' first-ever federal program for emergency paid sick days and paid family leave as part of the Families First Coronavirus Response Act (FFCRA), amended by the Coronavirus Aid, Relief, and Economic Security (CARES) Act.¹ This program was in effect from April 1, 2020 to September 30, 2021, with the employer mandate to provide leave expiring after December 31, 2020, and tax credits for voluntary coverage continuing into 2021.²

This brief reviews the research and evidence about workers' and employers' need for and use of emergency sick and family leave, implementation and enforcement, and the costs and benefits of the program. It also shares qualitative findings from 20 interviews with workers who met FFCRA eligibility criteria, to better understand experiences of workers who had expanded access to paid leave and those who had unmet needs for leave in 2020.

Summary of Findings

Because the United States did not have any national earned sick time guarantee or paid leave policy prior to the pandemic, policymakers had to choose an approach based on what could be implemented quickly, rather than what would work the most smoothly (in terms of ease of program use) or effectively (in terms of having the largest impact) for all stakeholders. That constraint led to a program design that worked relatively well for workers and public health in the short term, but would need significant improvements and changes to meet employers' and workers' long-term needs.

The emergency paid sick and family leave program was effective at protecting public health, initially reducing the spread of the coronavirus by an estimated 15,000 cases per day in states that had previously not had paid sick leave laws.³ This benefit would have been even greater if the program had not severely restricted eligibility – less than half of workers were covered – and a more substantial public education campaign had ensured workers and employers knew about the program.

For eligible workers, the program not only provided paid sick days and family leave to some workers who had not previously had access, but also supported workers' health needs as the pandemic extended through 2020, including by supplementing existing leave banks at a time of unprecedented need. By June of that year, an estimated one million eligible workers per month were still able to take paid sick days and family leave (primarily for illness or quarantine) thanks to the emergency program.⁴ Workers' economic security also benefited from the wage replacement and from the ability to keep their jobs, and workers who took leave reported greater peace of mind. But their use of paid family leave for child care purposes was limited, perhaps due to low wage replacement and little awareness.

“Taking a paid leave was for my family, thank God I was there for them.”

— “Amina”

In the absence of a pre-existing earned sick time mandate to clarify employer obligations or a federal paid leave agency to administer a universal paid leave program, employers were tasked with implementing these new laws on their own. Less than 7 percent of employers claimed the tax credit that was offered to them to offset the cost of providing leave, and uptake was especially low among small employers.⁵

In addition, even though tax credits continued to be available for employers who opted to provide emergency leave after the mandatory program ended, there is no evidence that tax credits without a mandate incentivized employers to maintain or increase paid

leave on a permanent basis. However, evidence from both workers and employers in states with already-existing paid leave programs – which manage applications for leave and payment of benefits – indicates that such programs worked well.

In conclusion, emergency paid sick days and paid family leave provided significant benefits to public health and workers, despite confusing and restrictive eligibility criteria and poor outreach and education. In the future, emergency paid sick days laws would be most effective if they are inclusive of all working people and layered on top of an existing permanent paid sick days policy and a publicly-administered paid family and medical leave program. These permanent policies would set a baseline to ensure that the United States is prepared for a crisis while meeting the everyday needs of workers and their families as well as small businesses.

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Emergency Leave Provisions of the Families First Coronavirus Response Act

The Need for Emergency Paid Sick and Family Leave

As of March 2020, one in four private sector workers – an estimated 30 million workers – did not have access to paid sick days at their job,⁶ posing a risk to public health: workplace contacts are a common vector of transmission for infectious disease, including for the novel coronavirus,⁷ and the United States' lack of adequate sick leave had previously been shown to worsen the spread of flu-like illness.⁸ Six in ten civilian workers did not have short-term disability insurance for longer-term illness. Nearly eight in ten civilian workers did not have paid family leave through their employer.⁹ Yet in more than 70 percent of households with children under 18 – some 48 million households – all parents were in the labor force,¹⁰ meaning that widespread school and child care closures had serious impacts on employment.

The absence of basic health and caregiving protections was, and three years later continues to be, especially concentrated among workers of color, with nearly half of Latinx workers and more than one-third of Black workers reporting no paid time away from work of any kind.¹¹ Workers with less than a high school education and those

without health insurance are also less likely to have paid sick leave.¹² Occupational exposure has been a driving factor in the heightened rates of coronavirus infections and death from COVID-19 in communities of color.¹³ Black, Latinx, Native, Asian and Pacific Islander people make up disproportionate shares of workers in essential jobs such as essential retail, transportation, building cleaning and maintenance, child care and health care support (including in long-term care and home health care).¹⁴

Emergency Sick and Family Leave

FFCRA (amended by the CARES Act) established a right for covered and eligible workers to take up to 10 days of paid sick leave for their own pandemic-related illness or quarantine, for care for an ill or quarantined individual, or for child care due to school or child care closure, and up to 10 additional weeks of paid family leave for child care due to school or child care closure. The law covered state and local government agencies, most federal agencies and private sector employers with fewer than 500 employees. Workers taking paid family leave for child care were eligible for job protection rights under the Family and Medical Leave Act, which was amended by FFCRA. For workers taking paid sick leave, FFCRA included provisions for anti-retaliation, job protection and that workers could not be required to use up existing leave banks or find a shift replacement as a condition of taking leave.

All employees of covered employers were potentially eligible for 10 paid sick days, and those who had been employed for at least 30 days for 10 weeks of paid family leave.¹⁵ However, employers were permitted to exempt employees who were deemed to be health care providers or first responders from all forms of leave. Moreover, employers with fewer than 50 employees could exempt themselves from providing child care leave if it would jeopardize their viability.¹⁶ Additionally, in order to qualify for any form of emergency paid leave, a worker's worksite had to be open, and the worker had to be unable to telework, as well as have a qualifying reason for leave related to illness, quarantine or family care.¹⁷

Notably, an eligible worker could use emergency paid sick leave to care for any immediate family member, someone who regularly resided in their home, or someone whose relationship to the worker created an expectation of or dependence on the worker's care.¹⁸ This definition of family member was broader than that in the Family and Medical Leave Act, which limits "family" for the purposes of leave to only a worker's parent, spouse, minor son or daughter, or disabled adult son or daughter who is incapable of self-care.¹⁹

Leave was required to be paid directly by the employer. Sick leave for the worker's own health needs was paid at 100 percent of the worker's usual wages, up to a cap of \$511 per day (2020 dollars). Paid sick leave for the other purposes and paid family leave were paid at two-thirds of usual wages, up to a cap of \$200 per day. Private sector employers

were eligible for immediately refundable tax credits worth 100 percent of qualified wages, plus qualified health care plan expense and Medicare tax attributable to those wages paid for any form of emergency leave.²⁰

These provisions went into effect on April 1, 2020; the employer mandate sunset on December 31, 2020; and the tax credits sunset on September 30, 2021 after being expanded on April 1, 2021.

Extent of Coverage

As of March 2020, there were approximately 5.2 million private sector employers with fewer than 500 employees,²¹ as well as local, state and federal government employers, which would have been covered by the law. Due to a lack of data collection about employers' use of exemptions, as well as the Department of Labor's broad interpretation of exemptions in the statute,²² it is difficult to determine the precise number of workers covered. An estimated 22.2 to 60.6 million private sector workers²³ and 22 million public sector workers²⁴ should have been eligible for emergency paid sick and family leave.

"I know it was so bad, but I couldn't get time. I couldn't get any time to properly rest and recover. [...] Within the hospital I saw my residents who were employed still not take their sick days off, which is absolutely horrifying and deplorable because they look after people who could die because they contact illnesses.

— "Katie," an Asian American woman in her 20s who was a public health student working at a hospital in 2020

Approximately 68 million private sector workers were excluded from coverage because they were employed by large employers. An estimated nine million workers were subject to potential exemption from sick days or family leave by their employers as health care providers or first responders,²⁵ and up to 33.6 million employed by small employers could have been exempted from the paid family leave provision.²⁶

Particularly concerning in the context of a public health emergency in which health workers were especially vulnerable to exposure and illness, an estimated one in four workers in the health care sector were potentially excluded from eligibility.²⁷ By one estimate, just 30 percent of workers were likely eligible.²⁸

Emergency Leave's Impact as a Pandemic Response

In the context of a pandemic, the primary measure of success for an emergency policy is whether it helped protect public health, such as by limiting the spread of illness and/or by improving health outcomes of ill people. In addition, a successful pandemic policy might mitigate secondary effects of the pandemic, including mitigating negative economic impacts on workers and employers. The evidence is clear that emergency paid

sick and family leave achieved some success on both primary and secondary measures, despite its flaws.

Reduced COVID-19 Infections and Increased Leave-Taking

First and foremost, emergency paid sick leave did cut the number of coronavirus infections shortly after implementation, reducing spread by an estimated 400 cases per day in states where workers newly gained access to paid sick leave after the law went into effect, or approximately 15,000 cases per day nationally.²⁹ This finding reinforces a large body of research showing that paid sick leave reduces the spread of infectious disease, including flu-like illnesses.³⁰

Other research also indicates that emergency leave achieved this reduction in illness by enabling more workers to stay home while ill or quarantined. Analysis of Current Population Survey data suggests that workers primarily used emergency sick leave (not leave for child care).³¹ Men and women used emergency leave about equally, as did workers with and without minor children.³² Leave-taking patterns suggest that the additional bank of leave provided by FFCRA enabled eligible workers to better manage their leave-taking throughout a year that brought elevated health and caregiving demands, while workers who weren't covered exhausted their available leave early in the year. By June 2020, workers overall were 51 percent less likely to be on a paid leave than in previous years – but the workers most likely to be eligible for FFCRA leave were about 68 percent more likely to be on a paid leave in June 2020 compared to pre-pandemic baseline rates.³³ (Note that this increase is only large in relative terms: just 1.31 percent of employees were out on a paid leave in a given week in June 2020, compared to 0.89 percent previously.)³⁴ As of June 2020, an estimated one million workers per month took paid leave thanks to the FFCRA program.³⁵

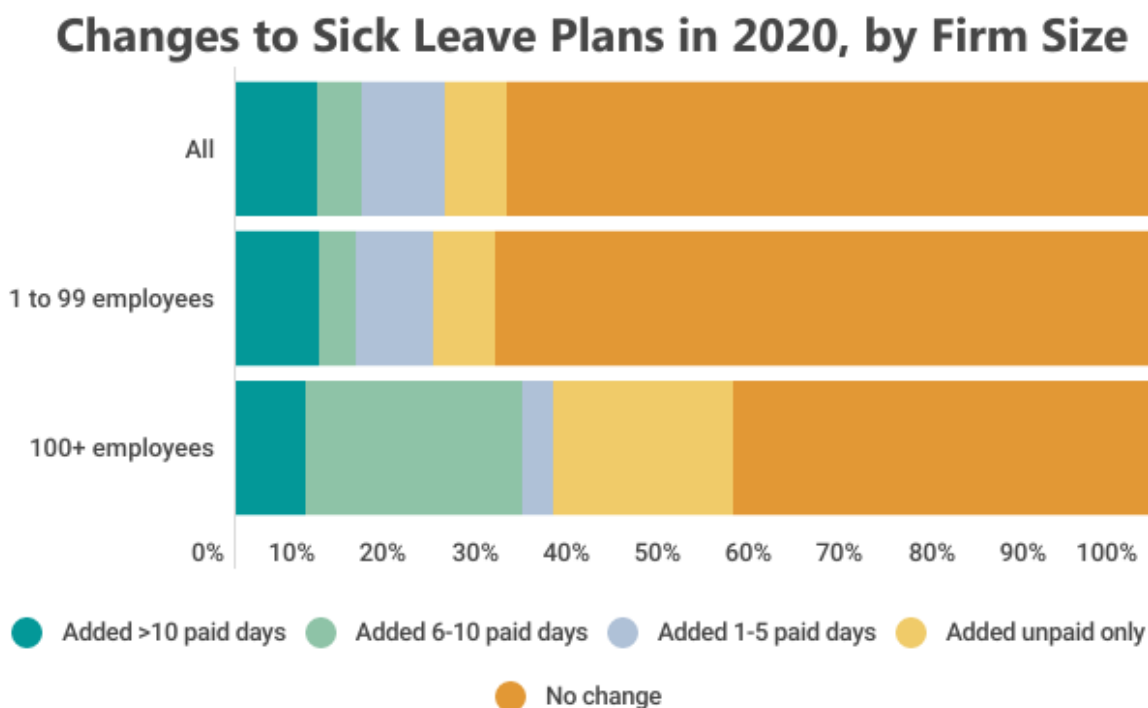
Limited, Temporary Expansion of Employer Leave Policies

Available evidence suggests that FFCRA did cause some employers to increase their paid sick leave benefits, whether to comply with the law (for employers under 500 employees) or because the law created some form of indirect pressure such as market competition over benefits or norm-setting (for larger non-covered employers). However, further research would be needed to confirm that it was FFCRA that caused these policy changes, rather than pressure from workers or the public, new state and local laws mandating leave, or other factors. Importantly, even though the tax credits continued to be available throughout 2020 and 2021 for employers who voluntarily provided paid sick and family leave, most of the increases in leave access seem to have been temporary.

As of March 2020, 25 percent of private sector workers had no paid sick leave, and among the other 75 percent, the median number of days available was just six³⁶ – far

short of the two weeks recommended for quarantine or recovery from even a mild case of COVID-19. The Bureau of Labor Statistics found that between March and May 2020, 25 percent of establishments made changes to their sick leave plans (see Chart 1). About 9 percent of establishments overall added more than ten paid sick days, exceeding FFCRA’s requirement. Another 5 percent (4.1 percent of smaller employers and 27.5 percent of larger employers) added between six and ten days, potentially meeting FFCRA’s standard.³⁷ However, the majority of employers reported not adding any additional paid sick leave.

Chart 1. Share of establishments reporting changes to paid and unpaid sick leave and number of paid sick days added.



Most employers that expanded sick leave benefits – 90 percent – reported that these changes would be temporary.³⁸ In fact, by March 2021, the National Compensation Survey found that 77 percent of private-sector workers had paid sick leave, up only two points from the previous year, and this increase was not concentrated among smaller employers.³⁹

These limited expansions may also have left behind some of the workers least likely to have had paid sick and family leave previously. A large-scale study of workers at large

service-sector employers, such as Walmart, Kroger and McDonald's, found that only 17 percent reported any increase in access to paid time off, and these increases were concentrated at firms that had already offered some paid sick leave. Women of color were least likely to report gaining access to paid time off (13 percent, compared to 14 percent of white women, 18 percent of men of color and 21 percent of white men).⁴⁰

Workers' Leave Experiences

Unfortunately, workers' leave claims under the FFCRA leave program could not be directly or precisely measured, unlike most states' paid family and medical leave programs, which create administrative data records thanks to their centralized application processes, allowing for tracking of leave-taking patterns during the pandemic.⁴¹ While some data is available regarding employer utilization of tax credits, it is not known how many leaves these tax credits represent, what share were for leaves of different types or purposes or other more detailed data about the leaves for which tax credits were claimed.⁴²

Keeping those caveats in mind, evidence indicates that a small but meaningful share of workers did take emergency leave. One survey-based estimate found that 5.4 percent of workers nationwide (approximately eight million) used emergency sick leave in 2020.⁴³

Workers Valued Emergency Leave

Interviews with workers who took paid leave for COVID-19 illness or caregiving revealed several themes.⁴⁴

Workers who were able to take paid leave strongly appreciated it not only for its direct financial benefits, such as being able to pay bills or not lose a job, but also for supporting their health and family relationships.

For "Amina,"⁴⁵ a Black woman in her late twenties who worked in an engineering firm, paid leave provided irreplaceable time to care for her mother-in-law, who had since passed away:

"I had to take some time off and to take care of my mother-in-law, and take care of my kids and be there for them. [My mother-in-law] was quarantined. So I was there like, it was not really that I was sitting with her, you know she was quarantined. I just had to be there [...] Like, she needs a family member to be around just to hear our voice [...] and do things for her. [...] Taking a paid leave was for my family, thank God I was there for them."

"Keith," a Black man in his early thirties who worked in business administration, recounted a harrowing experience of extended hospital isolation when he developed

COVID-19. Even so, without paid leave he would have needed to find work while in the hospital:

"I was isolated and also taken care of by the hospital I was isolated in. It was a very, very, very bad experience. Being away from my kids and my home, I [...] was praying not to die. [...] [Without paid leave,] I would have felt very bad. I would have felt like quitting my job. I would also look out for a job while I was in the hospital. Look out for ways, a way to provide for my family."

Workers who had been sick with COVID-19 generally reported needing more than two weeks of leave, particularly if they had more than one caregiving issue arise during the year.

"Ruben," a Latino man in his 30s who worked in IT, had to take about three weeks off in spring 2020 when he fell ill with COVID-19, including a short hospital stay. That leave was paid, and he said it had been enough time to recover. But later in the year, his father got COVID-19 and needed care during his isolation. This time, his manager denied his request for leave:

"I informed my manager, but he just told me that I cannot take time off, you know. [...] I think [my employer] could have done more, you know. It wasn't exactly as I expected. I can say that I expected more. There wasn't too much support in that period."

Workers who had family caregiving needs were more likely to report challenges accessing leave than those with their own medical needs.

"Natasha," a Black woman in her mid-twenties, worked as a receptionist for a health care provider, and needed two months of leave to care for her grandmother while she was ill:

"I used to do like everything, from bathing, to feeding, to taking her to the hospital in, like, I did everything for her. [...] It was hard for me to explain to my supervisor that [...] my grandmother has got COVID. And [...] you find that most of the workplaces don't give paid leaves. So I had to convince them and tell them, you know, I'm the breadwinner. My grandmother depends on me. But after some time, we agreed and I got the paid leave. So at least I had some time to, some time with my grandmother, and at least I had some money to take care of her."

Limited Emergency Leave Left Significant Unmet Need

While emergency leave had significant value for workers who were able to take it, the estimated utilization rate is significantly smaller than the likely scale of need, and numerous sources point to a sizable amount of unmet need even while the program was in effect. Lack of systematic data makes it difficult to estimate how much unmet need was from workers who were simply ineligible for emergency leave, and how much

may have been due to lack of awareness, issues with employer compliance or exhausting the amount of leave provided.

In a survey of adults aged 18-64 about their behavior from March 2020 to late July 2020, 9 percent reported taking a leave from work for their own illness, 4 percent to care for an ill family member and 5 percent for child care. One-fifth to one-third of these leaves were not paid. 20 percent of respondents reported having needed leave but not taking it, most often because they could not afford to lose income or feared job loss or retaliation.⁴⁶ A survey of essential workers in late April to early May 2020 found that just one-third (34 percent) strongly agreed with the statement that they would receive some compensation if they took a day off of work because they had a fever, while just over one in ten (11 percent) strongly agreed that they would go to work with a fever.⁴⁷

A few workers interviewed reported losing their job due to COVID-19-related needs for which they were likely eligible for job-protected emergency leave. For example, "Tim," a Black man in his mid-20s who worked in IT, got sick with COVID-19 and also had to care for his grandfather.

"I had to take care of my grandfather. So you go on leave for only like two days, three days. And that persisted. Then I got COVID and you see, the hours you're working can't help them, the employer, no more. So he just told me that I needed to take the break so they can find someone better. Someone who can work. That's basically it. I lost my job."

The need for FFCRA-type leave persisted long after the program expired, particularly for low-paid workers and workers of color who are least likely to have employer-provided paid leave. For example, in mid-December 2020, 6.6 million adults were not working because they were sick with or caring for someone with COVID-19.⁴⁸ At the height of the Omicron wave in late 2021, this figure climbed to nearly 8.8 million, disproportionately Latinx and Black workers; less than half reported being able to use their regular income source to meet their spending needs.⁴⁹

Improving Agency Implementation and Enforcement

Stronger Enforcement Needed

One potential barrier to workers' utilization of leave is employers failing to follow the law. While WHD took some steps to enforce workers' rights to leave, more could have been done.

The Department of Labor (DOL) chose to stay enforcement immediately after the law went into effect, only beginning enforcement action on April 18, 2020. As of September 16, 2020, WHD reported having received 4,233 FFCRA paid leave complaints, 82 percent

of which resulted in a compliance action. WHD also appears to have initiated 4 compliance actions.⁵⁰ Of the 3,463 compliance actions WHD has undertaken, the enforcement action used in the vast majority (2,811) is conciliation, another 623 involve office audits, 12 limited investigations, and just 17 full investigations. As of September 16, 2020, 2,398 (69 percent) of all compliance actions had been concluded.⁵¹ A review of DOL press releases finds that through the end of 2021, WHD had identified FFCRA paid leave violations affecting 260 employees at approximately 63 employers and had restored just over \$250,000 in back wages to individuals who were wrongfully denied leave.⁵²

It is difficult to estimate a baseline for enforcement of a new law implemented during a pandemic, but comparing the number of complaints made to much longer-standing wage and hour laws with much broader public awareness suggests that workers have faced difficulty accessing leave. Over the decade before the pandemic, WHD had typically completed 10,000 to 12,000 cases with minimum wage violations each year, and a similar number of cases with overtime violations⁵³ and addressed approximately 1,200 to 2,000 FMLA complaints (although this number has declined in the past few years).⁵⁴ Compared to a typical year for FMLA, WHD fielded two to three times as many worker complaints about FFCRA leave. It seems likely that without the legally mandated right to leave established by FFCRA, and enforcement by WHD, few of these workers would have been granted their paid leave time or reinstatement to their job.

Evidence from legal services similarly points to employer compliance with leave laws being a significant issue. Litigation tracking by the firm Fisher Philips found that in 2020, issues related to remote working and leave were the most common type of employment litigation related to COVID-19.⁵⁵ In an analysis of calls to its legal helpline, A Better Balance reports receiving several hundred calls related to leave needs, with a disproportionate share coming from workers of color.⁵⁶

This evidence, while limited, suggests that the financial incentive of FFCRA tax credits was not enough on its own to encourage all covered employers to provide paid sick or family leave to workers in need during the pandemic. Workers' need for legal protections and support from WHD when seeking emergency sick and family leave appears comparable to the needs faced for other health and caregiving needs under FMLA. If the emergency paid sick and family program is extended, it will be critical to renew its anti-retaliation and job protection provisions as well as the employer tax credits. In addition, both workers and employers would likely benefit from additional outreach and compliance support.

Low Public Awareness Limits Program Benefits to Workers and Employers

Workers and employers also needed to know about FFCRA leave in order to fully benefit from it, but public awareness appears to have been generally low. In an April 2020 poll,

26 percent of U.S. adults reported hearing “not much” and 20 percent “nothing at all” about emergency paid sick and child care leave.⁵⁷ Another survey conducted between October and December 2020 found about 45 percent of workers had heard of federal emergency sick leave.⁵⁸ Public knowledge of other laws can be much higher: for example, about three-quarters of workers – and 85 percent of eligible employees – are aware of the Family and Medical Leave Act.⁵⁹

The Wage and Hour Division (WHD) of the Department of Labor reports having conducted 2,160 outreach events as of September 16, 2020, such as webinars, presentations and compliance consultations,⁶⁰ and that approximately 18,000 public service announcements had been aired on radio, on television and online as of October 12, 2020.⁶¹ Information was not provided on the numbers of employees or employers reached; whether particular regions, communities, industries or occupations were targeted; in which language outreach was conducted or other relevant information that would help determine potential gaps in outreach efforts.

Jessica: “Did you know that Congress had passed a law requiring employers to provide paid time off for Covid-19?”

“Tim”: “I think I just heard it from you. Maybe I should sue someone?”

Employer Experiences with Emergency Leave

Workers needing paid sick days and paid family and medical leave to manage pandemic-related health and caregiving needs was a common experience for employers, survey evidence shows. But while employers clearly needed policy support to address those needs, the evidence indicates that the design of the FFCRA emergency paid sick days and paid family leave program fell short for many employers, particularly smaller firms. In the absence of an existing federal program for paid leave or a permanent baseline standard for paid sick days, the FFCRA approach – requiring employers to create a new paid sick days benefit and administer paid family leave, and offering tax credits to cover their costs – did allow the new program to stand up quickly. But the data show that having an existing state paid leave program to build on top of in an emergency offers a model that responds faster and is more favorable for employers and workers.

A Significant Share of Employers Experienced Workers Needing Emergency Leave

Similar to data on workers' needs, there is little systematic data available about the number of employers that had employees take emergency leave. But surveys suggest that at a substantial share of employers, one or more employees took leave for FFCRA-

type purposes in 2020. A Morning Consult survey of small business owners conducted in April 2020 found that just over six in ten reported at least one employee had taken leave for personal illness because of COVID-19, and six in ten that at least one employee to care for a child or ill family member.⁶² Asking more specifically about FFCRA experiences, an NFIB survey of small employers found that as of August 2020, shortly after the expiration of the program, one in five (21 percent) reported having at least one employee take paid sick leave or paid family leave through the FFCRA.⁶³ GAO also found that one business community representative reported that the paid leave tax credits were helpful with employee retention as well as firms' finances.⁶⁴

Tax Credit Utilization Was Low, Especially by Small Employers

Given that workers' use of sick and family leave was common, employers' utilization of FFCRA tax credits for emergency leave was notably low. GAO reports that for the entire 2020 tax year – including both the period of mandated emergency leave from April to July and the remainder of the year, when employers could claim credits for voluntarily provided leave – 1.5 million employers claimed \$9.8 billion in tax credits.⁶⁵ This total is less than 10 percent of the \$105 billion CBO anticipated when the mandatory program was initially scored.⁶⁶ There were approximately 5.2 million private sector firms with fewer than 500 employees in 2020,⁶⁷ meaning only around one-quarter of employers covered by the law claimed a credit.

GAO could not determine an uptake rate due to a lack of data on employer eligibility. However, an analysis prepared for the Office of Tax Analysis estimates that between 3.7 and 6.8 percent of employers claimed a tax credit for emergency leave in 2020. This analysis also found that larger employers were more likely to claim a credit (up to the employer size threshold for eligibility), suggesting that a tax credit model for funding paid leave was particularly unhelpful for the smallest employers.⁶⁸ GAO also found that several of the industries most affected by the pandemic were not among the highest claimants of the tax credit.⁶⁹

It is important to note that low tax credit uptake by employers does not necessarily mean that their workers were not taking emergency paid sick days or family leave. Indeed, a survey by the National Federation of Independent Business (NFIB) found that as of mid-August, just three in ten small employers who had had an employee take leave (30 percent) reported having claimed a tax credit or advance refund.⁷⁰ Tax credit filings may thus undercount the number of employers that provided FFCRA leave. This gap suggests a mismatch between the intent of the policy – to provide paid leave necessary to workers and public health in a way that did not overburden employers – and the outcome.

Uptake of the paid leave tax credit could be depressed for a number of factors. One possibility is that emergency legislation established several programs simultaneously

that may have covered some overlapping purposes. For example, employers who used PPP funds to cover leave expenses would not have been eligible to claim paid sick and family leave tax credits for the same leave expenses.

Employers may also have experienced barriers to understanding and/or applying for the tax credits. GAO found some evidence of low awareness about the credits among employers as well as workers.⁷¹ Business groups also reported to GAO that businesses did not want to devote resources to filing for the paid leave tax credits.⁷² Employers (particularly those without professional tax assistance) may have found the tax paperwork confusing or onerous, or have had concerns about whether accessing this credit would affect their tax liability in unexpected ways or may not be fully aware of the program. However, the Office of Tax Analysis estimate did not find evidence that use of tax preparers increased likelihood of claiming a credit.⁷³

Other factors that could potentially have contributed to low tax credit use (compared to initial projections) relate to limitations on workers' ability to use emergency sick and family leave. For example, when the bill was initially scored, it was not yet known that DOL would interpret potential exemptions for health care providers and first responders so expansively in its regulations, meaning many more workers were exempted than initially contemplated. DOL regulations and guidance also limited eligibility in other ways, for example restricting parents from using child care leave for virtual school if in-person school was offered.⁷⁴

Finally, unanticipated factors related to the pandemic's course and its economic effects – in particular the depth and persistence of shocks to employment – may have meant that fewer workers than initially anticipated still held jobs from which they could take leave. In this case, many workers who would otherwise have taken sick or family leave might have been shifted onto the unemployment system, if eligible. The regulations may also have contributed to this interaction by specifying that workers were not eligible for emergency paid leave if their worksite was closed, even for a brief period, or if the employer did not have work available on a scheduled work day. In such a situation a sick worker with mounting medical expenses would have been incentivized to simply apply for unemployment insurance or other assistance.

State Paid Leave Insurance Programs: An Alternative Approach for Longer Leaves

As of early 2020, four states – California, New Jersey, New York and Rhode Island – already had statewide paid family and medical leave programs in place. These programs operate as social insurance programs covering most workers and employers, in which a small payroll tax (generally not experience-rated) supports an insurance fund that pays out benefits directly to eligible workers. In most states, a state agency reviews claims, relieving employers from most of the administrative burden of the program. Because the worker's leave benefit is paid out of the insurance fund, small employers do not

need to pay out of pocket, and may instead be able to use the amount saved to "top up" the employee's benefit, or to cover additional expenses incurred due to the employee's absence.

Evidence from state paid leave programs indicates that this model has potential to guide a more nimble national policy for future pandemics or public health emergencies. For example, claims data from Rhode Island and California shows that workers were able to begin claiming pandemic-related leaves soon after the public health emergency began, and workers received benefits more quickly than the federal program was implemented.⁷⁵ Research on small employers in New York and New Jersey found that support for state paid leave programs actually increased after the onset of the pandemic, particularly among employers who had had an employee use the state program.⁷⁶

Conclusion and Recommendations

Emergency paid sick and family leave had a measurable public health impact by meaningfully expanding access to paid sick days and paid family leave early in the pandemic despite limited eligibility, the lack of a major public awareness campaign and delayed enforcement of the law. Aspects of the policy design were also challenging for employers, in particular the reliance on tax credits to fund the longer paid leave benefits, rather than as a supplement to a permanent core paid leave program, similar to state policies.

The specific health and caregiving needs FFCRA leave intended to address are not entirely in the past – outbreak waves and future pandemics will continue to periodically impact schools and workplaces, and a growing population is experiencing ongoing needs related to long COVID. And workers, their families and their employers will continue to need help navigating myriad other health and caregiving challenges, from births and adoptions to serious illnesses to end-of-life care. The United States needs tailored solutions for all of these needs: paid sick days for short-term and routine health care needs; paid family and medical leave for more serious health and care demands; and an emergency paid sick leave program that can layer on to these baseline programs when public health emergencies arise. Lessons learned from the nation's first national paid sick and family leave program can point the way forward to strong, sustainable and permanent policy solutions.

“People are being stretched thin everywhere. We're all taking the hit. [Not providing benefits to workers] going to hurt your employment. It's going to hurt your care. It's going to hurt literally everything. Because, like, sick workers can only work so much, and they need to be taken seriously. And this is not a negotiable issue. This is a fundamental human right.”

— “Katie”

Recommendations for Lawmakers

- Establish a permanent national paid sick days policy that ensures all workers, regardless of employer size, can earn and use paid sick days outside of a public health emergency.
- Establish a permanent national paid family and medical leave program that covers all workers, regardless of employer size. A publicly funded and administered model similar to state programs would provide coverage for workers' extended needs and shift some administrative burden from individual businesses to a public agency.
- Establish a permanent emergency paid sick days policy that covers all working people and immediately goes into effect when a public health emergency is declared. To make this policy easier to implement for small employers, it should offer tax credits that are immediately refundable, like in the CARES Act, and include funding for outreach, education, and technical assistance.

Recommendations for Administrators

- Ensure DOL conducts public education to ensure workers are aware of their rights in a broad range of languages, using a diversity of channels for outreach (including but not limited to community-based organizations), and targeting hard-to-reach communities.
- Ensure DOL and IRS conduct outreach and provide technical assistance to employers, particularly small employers, to ensure they understand their obligations to provide leave and can access tax credits in a timely way.
- Require DOL and IRS to collect and report data on employer uptake of tax credits, including analysis of use by employer size, industry and location, and about the number of employees, type of leave and amount of leave for which credits are claimed.

Special thanks to Kendyll Cole, Elisa Davila, Michelle Feit, Katherine Gallagher Robbins, Sharita Gruberg, Vasu Reddy and Gail Zuagar for their contributions to this brief.

¹ Families First Coronavirus Response Act, Pub. L. No. 116-127, 134 Stat. 178 (2020); Coronavirus Aid, Relief, and Economic Security (CARES) Act, Pub. L. No. 116-136, 134 Stat. 281 (2020).

² The American Rescue Plan (enacted January 2021) provided additional tax credits for small, midsize and some government employers who opted to provide leave for the same purposes and adding a tax credit for sick leave for workers receiving or recovering from a vaccination, but the requirement to provide leave was not renewed. See I.R.S. (2022, March). Tax Credits for Paid Leave Under the American Rescue Plan Act of 2021 for Leave After March 31, 2021. Retrieved 10 May 2023 from: <https://www.irs.gov/newsroom/tax-credits-for-paid-leave-under-the-american-rescue-plan-act-of-2021-for-leave-after-march-31-2021>

³ Pichler, S., Wen, K., & Ziebarth, N. R. (2020, October). COVID-19 Emergency Sick Leave Has Helped Flatten The Curve In The United States. *Health Affairs*, online first. doi: 10.1377/hlthaff.2020.00863

⁴ Byker, T., Patel, E., & Smith, K. (2022, November 3). *Families First Coronavirus Response Act: Effect on Paid Leave Taking During the Early Pandemic*. Washington Center for Equitable Growth working paper. Retrieved 10 May 2023, from <https://equitablegrowth.org/working-papers/families-first-coronavirus-response-act-effect-on-paid-leave-taking-during-the-early-pandemic/>

⁵ Goodman, L. (2021, November). *Take-up of Payroll Tax-Based Subsidies During the COVID-19 Pandemic*. Working Paper 121. Office of Tax Analysis. Retrieved 10 May 2023 from U.S. Department of the Treasury website: <https://home.treasury.gov/system/files/131/WP-121.pdf>

⁶ U.S. Bureau of Labor Statistics. (2020, September). Employee Benefits in the United States: National Compensation Survey, March 2020 (Table 31, Private industry). Retrieved 10 May 2023, from <https://www.bls.gov/ebs/publications/pdf/employee-benefits-in-the-united-states-march-2020.pdf>

⁷ Lan, F., Wei, C., Hsu, Y., Christiani, D., & Kales, S. (2020, May). Work-related COVID-19 transmission in six Asian countries/areas: A follow-up study. *PLoS One*, 15(5): e0233588. doi: 10.1371/journal.pone.0233588; Fisher, K., A., Olson, S. M., Tenforde M. W., Feldstein L. R. et al. (2020, November). Telework Before Illness Onset Among Symptomatic Adults Aged ≥18 Years With and Without COVID-19 in 11 Outpatient Health Care Facilities — United States, July 2020. *Centers for Disease Control and Prevention Morbidity and Mortality Weekly Report*, 69(44): 1648-1653. doi: 10.15585/mmwr.mm6944a4

⁸ See National Partnership for Women & Families. (2022, November). *Paid Sick Days Improve Public Health*. Retrieved 10 May 2023, from <https://nationalpartnership.org/resource/paid-sick-days-improve-public-health/>

⁹ U.S. Bureau of Labor Statistics. (2020, September). Employee Benefits in the United States: National Compensation Survey, March 2020 (Tables 16 and 31, Civilian workers). Retrieved 10 May 2023, from <https://www.bls.gov/ebs/publications/pdf/employee-benefits-in-the-united-states-march-2020.pdf>

¹⁰ U.S. Census Bureau. (2020). *American Community Survey 1-Year Estimates 2019, Table DP03: Selected Economic Characteristics*. Retrieved 11 May 2023, from <https://data.census.gov/cedsci/table?q=dp03&tid=ACSDP1Y2019.DP03&hidePreview=false>

¹¹ Data is too limited to estimate access for Native American or Native Hawaiian and Pacific Islander workers, or subgroups of major racial/ethnic categories whose occupational segregation suggests they likely face inequities as well. U.S. Bureau of Labor Statistics. (2019, August). *Access to and Use of Leave: 2017-2018 Data from the American Time Use Survey (Table 1)*. Retrieved 11 May 2023, from <https://www.bls.gov/news.release/pdf/leave.pdf>

¹² Hawkins, D. (2023, January 9). Disparities in access to paid sick leave during the first year of the COVID-19 pandemic. *Journal of Occupational and Environmental Medicine*. Online first. doi: 10.1097/JOM.0000000000002784

¹³ Rogers, T., N., Rogers, C. R., VanSant-Webb, E., Gu, L. Y., et al. (2020, August). Racial Disparities in COVID-19 Mortality Among Essential Workers in the United States. *World Medical & Health Policy*, 12(3), 311-327. doi: 10.1002/wmh3.358; Zelter, J., Trangucci, R., Narahariseti, R., Cao, A. et al. (2020, November). Racial Disparities in Coronavirus Disease 2019 (COVID-19) Mortality Are Driven by Unequal Infection Risks. *Clinical Infectious Diseases*, ciaa1723, doi: 10.1093/cid/ciaa1723; For more about racial inequities in the pandemic's effects, see [Called to Care: A Racially Just Recovery Demands Paid Family and Medical Leave](#).

¹⁴ Rho, H. J., Brown, H., & Fremstad, S. (2020, April 7). *A Basic Demographic Profile of Workers in Frontline Industries*. Center for Economic and Policy Research. Retrieved 4 April 2023, from <https://cepr.net/a-basic-demographic-profile-of-workers-in-frontline-industries/>

¹⁵ Part-time workers were eligible for prorated amounts of leave based on their recent work schedule. U.S. Department of Labor. (n.d.) *Families First Coronavirus Response Act: Employee Paid Leave Rights*. Retrieved 4 April 2023, from <https://www.dol.gov/agencies/whd/pandemic/ffcra-employee-paid-leave>

¹⁶ For further analysis of the bill's provisions, see [New Emergency Legislation Provides Paid Sick Days and Paid Leave for Child Care for Millions](#).

¹⁷ U.S. Department of Labor. (n.d.) *Families First Coronavirus Response Act: Employee Paid Leave Rights*. Retrieved 11 May 2023, from <https://www.dol.gov/agencies/whd/pandemic/ffcra-employee-paid-leave>

¹⁸ U.S. Department of Labor. (n.d.) *Families First Coronavirus Response act: Questions and Answers (Question #64)*. Retrieved 11 May 2023, from <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions#64>

¹⁹ 29 U.S.C. § 2612(a)(1) (2022); 29 U.S.C. § 2611(7), (12), (13) (2022) (defining parent, spouse, and son or daughter).

²⁰ The IRS made provisions attempting to speed this reimbursement by allowing employers to defer payment of employment taxes up to the amount of qualified leave expenses, and by requesting advance payment of the tax credit, although only a minority of employers used these methods. See IRS. (2022, December 20). *COVID-19-Related Tax Credits for Paid Leave Provided by Small and Midsize Businesses FAQs*. Retrieved 11 May 2023, from <https://www.irs.gov/newsroom/covid-19-related-tax-credits-for-paid-leave-provided-by-small-and-midsize-businesses-faqs>

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²² See for example "[Department of Labor revises FFCRA regulations to address New York court's challenge](#)," DLA Piper, 30 September 2020.

²³ Glynn, S.J. (2020, April). *Coronavirus Paid Leave Exemptions Exclude Millions of Workers From Coverage*. Center for American Progress. Retrieved 11 May 2023, from <https://www.americanprogress.org/issues/economy/news/2020/04/17/483287/coronavirus-paid-leave-exemptions-exclude-millions-workers-coverage/>

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- ²⁵ An August 2020 report by the DOL Office of Inspector General found that DOL's own estimate of 9 million was likely understated. See [COVID-19: WHD Needs to Closely Monitor the Pandemic Impact on Its Operations](#).
- ²⁶ See note 23.
- ²⁷ Long, M., & Rae, M. (2020, June 17). *Gaps in the Emergency Paid Sick Leave Law for Health Care Workers*. Retrieved 11 May 2023, from Kaiser Family Foundation website: <https://www.kff.org/coronavirus-covid-19/issue-brief/gaps-in-emergency-paid-sick-leave-law-for-health-care-workers/>
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- ²⁹ Pichler, S., Wen, K., & Ziebarth, N. R. (2020, October). COVID-19 Emergency Sick Leave Has Helped Flatten The Curve In The United States. *Health Affairs*, online first. doi: 10.1377/hlthaff.2020.00863
- ³⁰ See [Paid Sick Days Improve Public Health](#).
- ³¹ Byker, T., Patel, E., & Smith, K. (2022, November 3). *Families First Coronavirus Response Act: Effect on Paid Leave Taking During the Early Pandemic*. Washington Center for Equitable Growth working paper. Retrieved 11 May 2023, from <https://equitablegrowth.org/working-papers/families-first-coronavirus-response-act-effect-on-paid-leave-taking-during-the-early-pandemic/>; see also Goodman, L. (2021, November). *Take-up of Payroll Tax-Based Subsidies During the COVID-19 Pandemic*. Working Paper 121. Office of Tax Analysis. Retrieved 11 May 2023 from U.S. Department of the Treasury website: <https://home.treasury.gov/system/files/131/WP-121.pdf>
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- ³⁶ U.S. Bureau of Labor Statistics. (2020, September). *National Compensation Survey: Employee Benefits in the United States, March 2020 (Table 34)*. Retrieved 11 May 2023, from <https://www.bls.gov/ncs/ebs/benefits/2020/employee-benefits-in-the-united-states-march-2020.pdf>
- ³⁷ U.S. Bureau of Labor Statistics. (2020, October). *National Compensation Survey: Supplemental data measuring the effects of the coronavirus (COVID-19) pandemic on sick leave plans. Tables 1 and 2, unpublished calculation by the National Partnership*. Retrieved 11 May 2023, from <https://www.bls.gov/ebs/factsheets/effects-of-coronavirus-on-sick-leave-policies.htm>. Data was not reported separately for employers above and below the 500-employee threshold. Another BLS source, the Business Response Survey conducted from July to September 2020, found just under 14 percent of private sector establishments reported increasing the amount of paid sick leave offered as a result of the pandemic. U.S. Bureau of Labor Statistics. (2020, December). *Business Response Survey to the Coronavirus Pandemic: 2020 Results of the Business Response Survey*. Retrieved 11 May 2023, from <https://www.bls.gov/brs/2020-results.htm>
- ³⁸ *Ibid*, Table 3.
- ³⁹ Access increased 3 percentage points among employers with 500 or more employees, compared to 2 percentage points among those with 50 or fewer employees. U.S. Bureau of Labor Statistics. (2020, September). *Employee Benefits in the United States: National Compensation Survey, March 2020 (Table 31, Private industry)*. Retrieved 11 May 2023, from <https://www.bls.gov/ebs/publications/pdf/employee-benefits-in-the-united-states-march-2020.pdf>; U.S. Bureau of Labor Statistics. (2021, September). *Employee Benefits in the United States: National Compensation Survey, March 2021 (Table 33, Private industry)*. Retrieved 11 May 2023, from <https://www.bls.gov/ebs/publications/pdf/employee-benefits-in-the-united-states-march-2021.pdf>
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<https://www.bostonfed.org/publications/community-development-issue-briefs/2022/good-if-you-can-get-it-benefits-and-inequalities-in-the-expansion-of-paid-sick-leave-during-covid-19.aspx>

⁴¹ For example, Rhode Island's Temporary Disability Insurance system publishes monthly reports on leave claims. See [Income Support Programs](#).

⁴² The tax forms employers provide to the IRS do not appear to collect such detailed information. See [IRS Form 7200](#) or [Form 941](#), lines 5a(i) and 5a(ii).

⁴³ This may understate usage of FFCRA leave because public awareness of the program was relatively low. Jelliffe, E., Pangburn, P., Pichler, S., & Ziebarth, N. R. (2021, July 20). Awareness and use of (emergency) sick leave: US employees' unaddressed sick leave needs in a global pandemic. *Proceedings of the National Academy of Sciences*. 118(29), e2107670118. doi: 10.1073/pnas.2107670118

⁴⁴ The author conducted 20 interviews with workers who were either sick with COVID-19 or caring for a family member with COVID-19 between March and July 2020, about half of whom had taken paid leave and half of whom had not been able to take paid leave. Because worker awareness of the program was low, participants were selected whose employer at that time had fewer than 500 employees, and who reported that their employer had expanded leave during the program period, whether or not they were able to name FFCRA as the policy providing their leave.

⁴⁵ All participant names are pseudonyms.

⁴⁶ The survey did not collect data on the size of respondents' employers. NORC/University of Chicago survey of 3,518 working-age adults (age 18-64) conducted from July 23 to August 7, 2020. Rachidi, A. (2020, December). *Employment and Safety Net Survey, Wave I: Paid Leave and Childcare During the Pandemic*. American Enterprise Institute publication. Retrieved 11 May 2023, from <https://www.aei.org/wp-content/uploads/2020/12/Paid-Leave-and-Childcare-During-the-Pandemic.pdf>

⁴⁷ Essential workers included those working in social services, health care, protective services, food service, custodial/building maintenance, personal care, sales, installation and repair, and transportation. Hertel-Fernandez, A., Naidu, S., Riech, A., & Youngblood, P. (2020, June). *Understanding the COVID-19 Workplace: Evidence From a Survey of Essential Workers*. Roosevelt Institute publication. Retrieved 11 May 2023, from <https://rooseveltinstitute.org/publications/understanding-the-covid-19-workplace-evidence-from-a-survey-of-essential-workers/>

⁴⁸ U.S. Census Bureau. (2020). *Household Pulse Survey, Week 21, Employment Table 3. Educational Attainment for Adults Not Working at Time of Survey, by Main Reason for Not Working and Paycheck Status While Not Working: United States*. Retrieved 11 May 2023, from <https://www.census.gov/data/tables/2020/demo/hhp/hhp21.html>

⁴⁹ Analysis of U.S. Census Bureau Household Pulse Survey, in Mason, J. (2022, January). *Lack of Paid Leave Stifles Economic Recovery and Blocks Women's Return to Work*. Retrieved 11 May 2023, from National Partnership for Women & Families website: <https://live-national-partnership-for-women-dev.pantheonsite.io/wp-content/uploads/2023/02/lack-of-paid-leave-stifles.pdf?wpld=71067>

⁵⁰ U.S. Government Accountability Office. (2020, November). *COVID-19: Urgent Actions Needed to Better Ensure an Effective Federal Response*, p. 199. Retrieved 11 May 2023, from <https://www.gao.gov/assets/720/710891.pdf>

⁵¹ U.S. Government Accountability Office. (2020, November). *COVID-19: Urgent Actions Needed to Better Ensure an Effective Federal Response*, p. 201. Retrieved 11 May 2023, from <https://www.gao.gov/assets/720/710891.pdf>

⁵² Author's review of U.S. Department of Labor Wage and Hour Division press releases related to leave benefits for 2020 and 2021, accessed at <https://www.dol.gov/newsroom/releases>. Contact the National Partnership for more information.

⁵³ U.S. Department of Labor, Wage and Hour Division. (n.d.). *Fiscal Year Data for WHD: Fair Labor Standards Act*. Retrieved 11 May 2023, from <https://www.dol.gov/agencies/whd/data/charts/fair-labor-standards-act>

⁵⁴ U.S. Department of Labor, Wage and Hour Division. (n.d.). *Fiscal Year Data for WHD: Family and Medical Leave Act*. Retrieved 11 May 2023, from <https://www.dol.gov/agencies/whd/data/charts/fmla>

⁵⁵ Fisher Phillips. (n.d.) COVID-19 Employment Litigation Tracker and Insights. Retrieved 11 May 2023, from <https://www.fisherphillips.com/innovations-center/covid-19-employment-litigation-tracker-and-insights/index.html>

⁵⁶ A Better Balance. (2020, December). *Save Families First: Workers' Voices & the Need for Action*. Retrieved 11 May 2023, from <https://www.abetterbalance.org/ffcra-worker-voices/>

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⁶² Morning Consult/Bipartisan Policy Center survey of 502 small business owners conducted from April 8 to April 12, 2020. Retrieved 11 May 2023, from https://bipartisanpolicy.org/wp-content/uploads/2020/04/Topline_BPC_Small_Business_Owners_Executives_v1_LM.pdf

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- ⁷⁴ U.S. Department of Labor, Wage and Hour Division. (n.d.) *Families First Coronavirus Response Act: Questions and Answers (#99)*. Retrieved 11 May 2023, from <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions#99> This was a common circumstance for parents in many parts of the country in 2020, including in large school districts such as New York City, Los Angeles, and Chicago.
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