



**Testimony on Bill No. 200303
Before the Committee on Public Health and Human Services
Council of the City of Philadelphia
Presented by Terry L. Fromson
On Behalf of Women's Law Project and Community Legal Services
June 22, 2020**

The Women's Law Project ("WLP") and Community Legal Services ("CLS") strongly support passage of Bill No. 200303, which would amend Philadelphia's Promoting Healthy Families and Workplaces law ("paid sick leave law") to establish leave time for public health emergencies. We thank the sponsors for introducing this important bill and this committee for giving me the opportunity to participate in this hearing.

The WLP is a nonprofit, legal advocacy organization based in Philadelphia and Pittsburgh that seeks to advance the legal, social, and economic status of all people regardless of gender through impact litigation, public policy advocacy, community education, and individual counseling. Our work involves efforts to improve the economic status of women, particularly those who are the most marginalized because of racism and other forms of discrimination. Women continue to bear the brunt of childcare and family caregiving activities, which have become increasingly difficult when schools, daycares, and adult caregiving institutions have closed during the COVID-19 ("coronavirus") pandemic, while they are also providing essential services, working remotely, or experiencing job loss.

Community Legal Services joins us in this testimony and in supporting this legislation. Both CLS and WLP are members of the Coalition to Respect Every Worker (CREW) and have been closely involved in the design and drafting of this legislation.

This pandemic has exposed gaps in our existing laws, including Philadelphia's paid sick leave law, and has exacerbated long-standing disparities in economic security that harm women and people of color. The federal Families First Coronavirus Response Act (FFCRA), which provides up to 80 hours of emergency paid sick and family leave related to the coronavirus, leaves out many people. It excludes workers at private companies with 500 or more employees, permits emergency responder and health care employers to opt out, and provides an exemption for businesses with under 50 employees that allows employers to deny leave related to school closings or lack of child care.

Some workers may have access to some degree of paid leave under their companies' policies and/or Philadelphia's paid sick leave law, but when coronavirus struck, they may not have accrued the time. In addition, many workers need more time than the city paid sick days law currently provides, which is up to 40 hours of paid or unpaid leave on an accrual basis.

In this current crisis, some workers may be eligible for unemployment compensation or other assistance, but there are many barriers to obtaining it. In a pandemic where many offices overseeing these services are operating remotely, people without internet access have difficulty accessing the assistance, and people with internet access have found overloaded websites and customer service lines. Even if individuals succeed in obtaining assistance, it is often not enough to provide for their families during a pandemic.

These challenges and gaps in the law affect women and people of color the most. For example, an analysis by the Kaiser Family Foundation has found that 75 percent of the 17.7 million health care workers in the United States who are either excluded or exempted from the new federal emergency paid sick and family leave law are women, and nearly 40 percent are people of color.¹ This lack of coverage for people of color working on the frontlines is particularly disturbing in light of the data showing that black and brown people are dying at higher rates from COVID-19-related complications because of systemic racism that has resulted in a higher incidence of underlying health conditions, exposure to the virus, food insecurity, and lack of access to health care, among other barriers.²

Many workers who are excluded from federal pandemic paid leave are performing essential services. This includes not just health care workers but also grocery and pharmacy workers, many of whom are women of color and minimum wage workers at large corporations exempted from the federal law. They often lack sufficient paid leave and, as essential workers, are helping the rest of us while they fall ill or die from COVID-19.³

Workers in Philadelphia need Bill 200303 to become law because they have an immediate need for expanded paid sick days and expanded family leave for themselves and for their family members. Unpaid sick days, which the city's law currently allows for employers with under ten employees, is simply not enough in a society where so many people live paycheck to paycheck.⁴ If a worker with symptoms is sent home without pay, will that worker even report symptoms to her employer? Nor is 40 paid hours sufficient in this moment; this is the number of paid sick days the ordinance currently allows individuals working for employers with 10 or more employees to accrue.

The bill before this committee today will correct these problems. It will provide paid leave to covered individuals when they are unable to work during a public health emergency for the following reasons:

- Experiencing symptoms related to the emergency and seeking a medical diagnosis;

¹ Michelle Long & Matthew Rae, Kaiser Family Foundation, *Gaps in Emergency Paid Sick Leave Law for Health Care Workers* (June 17, 2020), available at <https://www.kff.org/coronavirus-covid-19/issue-brief/gaps-in-emergency-paid-sick-leave-law-for-health-care-workers/>.

² APM Research Lab, *The Color of Coronavirus* (June 10, 2020), available at <https://www.apmresearchlab.org/covid/deaths-by-race>.

³ See Jocelyn Frye, *On the Frontlines at Work and at Home: The Disproportionate Economic Effects of the Coronavirus Pandemic on Women of Color* (Apr. 23, 2020), available at <https://www.americanprogress.org/issues/women/reports/2020/04/23/483846/frontlines-work-home/>

⁴ Danielle Paquette, *"I See No Way Out": Living Paycheck to Paycheck is Disturbingly Common*, Washington Post (Dec. 28, 2018), available at <https://www.inquirer.com/jobs/labor/i-see-no-way-out-living-paycheck-paycheck-is-disturbingly-common-20181228.html#loaded>

- Engaging in isolation or quarantine pursuant to a government order related to the emergency or medical advice due to concerns related to the emergency;
- Caring for another individual who is subject to a government order to quarantine or isolate related to the emergency or medical advice due to concerns related to the emergency;
- Caring for a child family member who is at home due to the closure of a school, daycare, or unavailability of childcare due to the emergency.

The amount of paid leave the bill provides is up to 112 hours of leave time over a 14 day period for covered individuals who work 40 or more hours per week and have been left out of the federal law. Covered individuals who work less than 40 hours a week and are not covered by the federal law will receive paid leave equal to the amount earnings received on average in a 14-day period. The bill also provides paid leave for individuals with variable work-week schedules and those who work for multiple employers. It provides methodologies to calculate the leave and pay, including for tipped workers.

Importantly, this bill provides paid leave to a variety of workers, including domestic workers, direct care workers, and gig workers during a public health emergency without regard to whether the workers are regarded as employees. Extending leave to these workers ensures that workers who are often left out of existing laws will benefit from paid leave during the pandemic, including workers who are often misclassified as independent contractors. This regularly happens to gig workers, like food delivery network company workers or transportation network company drivers or any other individuals who access work through an app. We believe they are employees under the relevant legal test,⁵ but this bill ensures that they are covered by specifically describing them.

The inclusion of a broad range of workers ensures that these workers are protected no matter how courts interpret the term “employee” in the future, and it is important to include them. Many of them are low-wage workers who cannot afford to take unpaid leave. As we know, Philadelphia has one of the highest poverty populations of U.S. cities, and our minimum wage workers are earning wages below the poverty rate with a minimum wage of \$7.25 and minimum tipped wage of \$2.83.⁶ Many of these workers are also women and people of color. For example, according to 2016 data, 84 percent of domestic workers in the Philadelphia metro area are women and 54 percent are people of color.⁷ Their average yearly income is only \$10,000, which is below the poverty line for a single-person household, and underscores how important it is for them to receive paid leave.⁸

As originally drafted, this bill was adding public health emergency leave as a permanent part of Philadelphia’s paid sick days ordinance. It has now been amended to lapse when the federal FFCRA lapses. We believe it should be made permanent and ask you to return to this subject in

⁵ See Robert Sprague, *Using the ABC Test to Classify Workers: End of the Platform-Based Business Model or Status Quo Ante?*, 11 Wm. & Mary Bus. L. Rev. 733 (2020).

⁶ PEW, *How Philadelphia’s Minimum Wage Compares With Other U.S. Cities* (May 20, 2020), available at <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2020/05/how-philadelphias-minimum-wage-compares-with-other-us-cities>.

⁷ Pilar Gonalons-Pons, Research Factsheet: Domestic Workers in Philadelphia and Pennsylvania, *Population Center Research Briefs* 1, available at https://repository.upenn.edu/cgi/viewcontent.cgi?article=1000&context=psc_briefs

⁸ *Id.*

the fall to accomplish that goal. Other jurisdictions foresaw pandemics in our future and incorporated such provisions in their laws when they were adopted. We were caught off guard this time and three months into this pandemic, many of Philadelphia's impacted workers have been without any paid leave. That should never happen again. We need to be prepared for future pandemics. And we need a permanent solution.

We do appreciate what this bill provides however, and hope it will be adopted in a timely fashion and provides needed assistance to workers in Philadelphia. This law will give Philadelphia a chance to correct injustices imposed on workers in this city, especially those who are low-income, women, or people of color. We must join the growing number of states and municipalities across the country that are passing similar measures to protect workers.⁹

Thank you.

⁹ *See, e.g.*, Colorado, Healthy Families and Workplaces Act, S.B. 20-205, 72nd Gen. Assemb., 2d Reg. Sess. (Colo. 2020); Los Angeles, CA, Supplemental Paid Sick Leave Due to COVID-19 Ordinance, No. 20-0147-S39; New York, NY, S08091, N.Y. Legis. Assemb., 2019-2020 (N.Y. 2020); San Francisco, CA, Public Health Emergency Leave Ordinance, No. 200355; San Jose, CA, COVID-19 Paid Sick Leave Ordinance, No. 30390; Seattle, WA, Paid Sick and Safe Time Ordinance, No. 124960; Seattle, WA, Paid Sick and Safe Time for Gig Workers Ordinance, CB 119793; Washington, D.C., D.C. Code Section 32-531.02a (2020).