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Comments for US Department of Labor Online Dialogue on Providing Expanded and Family Medical Leave to Employees Affected by COVID-19

Submitted to Department of Labor at: <https://ffcra.ideascale.com/>

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These comments are submitted on behalf of the National Down Syndrome Congress (NDSC). NDSC is the country's oldest national organization for people with Down syndrome, their families, and the professionals who work with them. We provide information, advocacy and support concerning all aspects of life for individuals with Down syndrome, and work to create a national climate in which all people will recognize and embrace the value and dignity of people with Down syndrome.

In this unprecedented time where the entire country has been upended due to the COVID-19 pandemic, people with Down syndrome and their families are hurting in countless ways. Just as families are grappling with the loss of access to childcare and school-based services for younger children, there are many adults with Down syndrome community with intellectual disabilities and other challenging health conditions that rely on daily services that are no longer available. Without access to these services, family caregivers are doing their best to provide this essential daily care, many at the expense of their own jobs.

The Families First Coronavirus Response Act extended emergency paid leave to caregivers who need to stay home to care for a child whose school is closed or whose childcare provider is unavailable. This past week, DOL issued a temporary rule implementing the paid leave provisions of the Family First Act that extended emergency paid leave to parent caregivers who need to provide care to an adult family member with a disability because their care worker is sick or their day program has closed using its authority to "ensure consistency" within the paid leave provisions of the Families First Act.

We would like to thank DOL for issuing this temporary rule. The rule did not, however, provide emergency expanded family and medical leave to caregivers who need to stay home to care for people who are under orders to self-isolate due to a disability or other underlying health condition. As of now, such caregivers are only eligible for paid sick leave. We believe that DOL can and should use its authority to ensure that the leave provided to caregivers in the Act is consistently applied to all caregivers (not just parents) who need to

take leave due to their unexpected additional responsibilities in the wake of the COVID-19 pandemic. In the Down syndrome community, adult siblings often fulfill the role of caregivers and should be given the same rights and benefits as parents who step into this role.

Furthermore, while parent caregivers providing care to an adult family member with a disability because their care worker is sick or their day program has closed are allowed to take intermittent leave if their employer agrees, such intermittent leave is not provided to caregivers who need to stay home to care for people who are under orders to self-isolate due to a disability or other underlying health condition. DOL says this is because in the context of people providing care to family members due to program closures or a sick care worker “the absence of confirmed or suspected COVID-19 in the employee’s household reduces the risk that the employee will spread COVID-19 by reporting to the employer’s worksite while taking intermittent paid leave. This is not true, however, when the employee takes paid sick leave for other qualifying reasons.” However, if the “concern related to COVID-19” that causes a caregiver to remain home is that the person they are caring for is “particularly vulnerable to COVID-19” but that person does not have and is not suspected to have COVID-19, that caregiver is also at reduced risk of spreading COVID-19 because they also don’t have confirmed or suspected cases in their household. We ask that intermittent leave be applied consistently to ensure any caregiver taking paid leave for a qualifying reason that does not involve a confirmed or suspected COVID-19 case be provided the same leave flexibilities.

Thank you for the opportunity to provide this input. Please contact Heather Sachs, NDSC Policy & Advocacy Director, with any questions at heather@ndscenter.org.