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March 26, 2020

The Honorable Eugene Scalia  
Secretary of Labor  
U.S. Department of Labor  
200 Constitution Ave., NW  
Washington, DC 20210

RE: Fair Implementation of New Emergency Leave Rights

Dear Secretary Scalia:

I am writing on behalf of the 1.4 million members of the American Federation of State, County and Municipal Employees (AFSCME) regarding the emergency sick and family leave rights created in the recently enacted Families First Coronavirus Response Act (FFCRA). These temporary leave rights are a critical component of our nation’s response to the COVID-19 pandemic and intended to protect workers, their loved ones, their co-workers and their communities. I urge you to implement the FFCRA in a manner that provides the right to as much job-protected paid leave for as many workers as possible.

AFSCME’s members serve in hundreds of occupations across the nation—from nurses to corrections officers, child care providers to sanitation workers—providing the vital services that make America happen. AFSCME advocates for fairness in the workplace, excellence in public services and freedom and opportunity for all working families. Our members include government workers, as well as employees of private-sector hospitals, social services agencies and other community-focused organizations.

As with any new law, you will be making determinations about the meaning of the newly enacted requirements and exercising discretionary authority granted to you by Congress. As the Department of Labor (DOL) moves forward issuing regulations and guidance and enforcing the FFCRA, I urge you to exercise your authority to maximize the rights of and protections for working people. Any regulations and guidance you issue should:

- Limit employers’ power to deny paid leave to workers — The FFCRA allows covered employers to exclude “health care providers” and “emergency responders” from eligibility for emergency sick and family leave and grants you the authority to issue regulations for excluding them from eligibility. It is essential that you clearly define and narrowly limit which occupations are

**American Federation of State, County and Municipal Employees, AFL-CIO**

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included within each of these categories. In addition, you should establish guardrails requiring employers who want to use this exclusion to have comparable paid leave policies in place. Further, you should provide that employers may not deny these workers emergency paid sick leave while requiring them to take other leave for COVID-19 related reasons, such as the need to quarantine after potential exposure on the job.

As you know, the Occupational Safety and Health Administration identifies health care providers and emergency responders as being among the workers at increased risk of exposure to the coronavirus on the job because of their repeated exposure to infected patients. Extensive reporting has documented the many health care providers and emergency responders who have contracted and even died from COVID-19. Because of the critical role they play, it is essential that they get the paid leave they need to treat themselves and their families and to prevent spread of the disease to patients and others.

- Require emergency leave in addition to, not instead of workers' other leave — The FFCRA gives eligible employees the right to these temporary forms of emergency leave to meet the unprecedented circumstances we now face. I urge you to issue rules and guidance clearly providing for an employee's right to emergency paid sick leave in addition to other leave an employee has a right to under a collective bargaining agreement, an employer's policy or other laws, along with the employee's right to choose how to sequence emergency paid sick leave and other leave to which the employee is entitled. Similarly, with respect to the paid portion of emergency family leave, I urge you to issue guidance affirming an eligible employee's right to choose whether and how to sequence this new form of paid leave and other forms of leave to which an employee may be entitled in this circumstance.
- Expand the circumstances in which leave can be used — The FFCRA grants the Secretary of Health and Human Services (HHS) the authority, in consultation with you and the Secretary of the Treasury, to specify as reasons for emergency sick and family leave any other conditions that are substantially similar to the reasons enumerated in the Act. I urge you to work with the Secretaries of HHS and Treasury to recognize other circumstances in which workers will be entitled to temporary emergency leave. At a minimum, this should include the closure or unavailability of a caregiving provider for an adult child with a disability; and the need for a vulnerable household member to quarantine to avoid exposure to the coronavirus, on the recommendation of a health care provider.

In addition to addressing the issues described above, I encourage you to limit the ability of small business to opt out of the FFCRA's leave requirements; clarify employees' right to take incremental emergency paid sick and emergency family leave; and explain the potential interplay between leave required under the FFCRA, regular unemployment insurance and new unemployment benefits created as part of the Coronavirus Aid, Relief and Economic Security (CARES) Act.

Our nation is at a moment of great peril and need that demands much from each of us. With so many working people going above and beyond what is asked of them—putting themselves and their families at risk in the process—I am asking you to do for them what is in your power. I urge you to implement this new law to provide a right to paid leave to the maximum extent permitted under the law and your authority.

Sincerely,

A handwritten signature in black ink that reads "Lee Saunders". The signature is written in a cursive, flowing style.

Lee Saunders  
PRESIDENT

cc: Cheryl Stanton, Administrator, Wage and Hour Division  
John Pallasch, Assistant Secretary for Employment and Training