

April 21, 2020

BY E-Mail: foiarequests@dol.gov

U.S. Department of Labor
Office of the Secretary
Washington, D.C.

Re: Freedom of Information Act Request

Dear FOIA Officer:

Citizens for Responsibility and Ethics in Washington (“CREW”) makes this request for records pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and Labor Department regulations.

Specifically CREW requests:

1. All documents and analysis that support the following provisions of the Department of Labor’s temporary rule implementing the Emergency Paid Sick Leave Act and Emergency Family and Medical Leave Expansion Act, passed as part of the Families First Coronavirus Response Act (FFCRA), 85 FR 19326-57, and as explained in the Department of Labor’s Questions and Answers guidance document, *available at* <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>:
 - a. The documentation employers may require employees to provide in order for an employee to qualify for paid sick or family leave;
 - b. The requirement that the employer “has work for” the employee to perform in order for the employee to access paid sick or family leave benefits;
 - c. The requirement that paid sick leave be taken in full-day increments; and
 - d. The definition of “health care provider” for purposes of determining which employees may be exempted from paid sick and family leave by their employers; and
2. All communications with any outside individuals or groups concerning the provisions of the temporary rule and guidance specified in paragraph 1.

Please search for responsive records regardless of format, medium, or physical characteristics. We seek records of any kind, including paper records, electronic records, audiotapes, videotapes, photographs, data, and graphical material. Our request includes without limitation all correspondence, letters, emails, text messages, facsimiles, telephone messages, voice mail messages, and transcripts, notes, or minutes of any meetings, telephone conversations, or discussions. Our request also includes any attachments to emails and other records, as well as those who were cc’ed or bcc’ed on any emails.

If it is your position any portion of the requested records is exempt from disclosure, CREW requests that you provide it with an index of those documents as required under *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973). In the event some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. *See* 5 U.S.C. § 552(b). If it is your position that a document contains non-exempt segments, but that those non-exempt segments are so dispersed throughout the document as to make segregation impossible, please state what portion of the document is non-exempt, and how the material is dispersed throughout the document. *See Mead Data Central v. U.S. Dep't of the Air Force*, 566 F.2d 242, 261 (D.C. Cir. 1977).

Fee Waiver Request

In accordance with 5 U.S.C. § 552(a)(4)(A) and Department of Labor regulations, CREW requests a waiver of fees associated with processing this request for records. The subject of this request concerns the operations of the federal government, and the disclosures likely will contribute to a better understanding of relevant government procedures by CREW and the general public in a significant way. *See* 5 U.S.C. § 552(a)(4)(A)(iii). Moreover, the request primarily and fundamentally is for non-commercial purposes. *See, e.g., McClellan Ecological v. Carlucci*, 835 F.2d 1282, 1285 (9th Cir. 1987).

Congress passed the Families First Coronavirus Response Act (FFCRA) to expand paid sick leave and family medical leave protections for workers in light of the current coronavirus pandemic. The Department of Labor is responsible for issuing guidance and formulating regulations implementing significant portions of the law, including the Emergency Paid Sick Leave Act and Emergency Family and Medical Leave Expansion Act. As has been reported in the news and as detailed in an April 1, 2020 letter from members of Congress, the Department of Labor's temporary rule implementing the expanded paid sick leave and family medical leave, as well as its informal guidance, contradict the plain language of the FFCRA and violate congressional intent by significantly narrowing workers' ability to access benefits. *See* Letter from Sen. Patty Murray and Rep. Rosa L. DeLauro to Sec. Eugene Scalia (Apr. 1, 2020), available at <https://bit.ly/3czrTZm>; Emily Cochrane, Claire Cain Miller, and Jim Tankersley, *Trump Administration Scales Back Paid Leave in Coronavirus Relief Law*, New York Times (Apr. 2, 2020), available at <https://nyti.ms/2Khlkjp>; Isaac Scher, *The Trump administration issued a new rule that blocks guaranteed paid sick leave for 75% of American workers*, Business Insider (Apr. 3, 2020), available at <https://bit.ly/2KgWe2O>. The requested records would help inform the public about the Department of Labor's implementation of the FFCRA, particularly the extent to which the Department was subject to outside influence in implementing interpretations of provisions of the law that have the effect of restricting worker access to paid sick leave and expanded family medical leave benefits.

CREW is a non-profit corporation, organized under section 501(c)(3) of the Internal Revenue Code. CREW is committed to protecting the public's right to be aware of the activities of government officials, to ensuring the integrity of those officials, and to highlighting and working to reduce the influence of money on politics. CREW uses a combination of research, litigation, and advocacy to advance its mission. CREW intends to analyze the information

responsive to this request and to share its analysis with the public through reports, press releases, or other means. In addition, CREW will disseminate any documents it acquires from this request to the public through its website, www.citizensforethics.org. The release of information obtained through this request is not in CREW's financial interest.

CREW further requests that it not be charged search or review fees for this request pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II) because CREW qualifies as a member of the news media. *See Nat'l Sec. Archive v. U.S. Dep't of Defense*, 880 F.2d 1381, 1386 (D.C. Cir. 1989) (holding non-profit a "representative of the news media" and broadly interpreting the term to include "any person or organization which regularly publishes or disseminates information to the public").

CREW routinely and systematically disseminates information to the public in several ways. CREW's website receives tens of thousands of page views every month. The website includes reports on and analysis of newsworthy developments regarding government ethics, corruption, and money in politics that CREW has published to educate the public about these issues. In addition, CREW posts documents it receives under the FOIA on its website, and those documents have been visited hundreds of thousands of times.

Under these circumstances, CREW satisfies fully the criteria for a fee waiver.

Conclusion

If you have any questions about this request or foresee any problems in fully releasing the requested records, please contact me at (202) 408-5565 or lbeckerman@citizensforethics.org. Also, if CREW's request for a fee waiver is not granted in full, please contact our office immediately upon making such a determination.

Where possible, please produce records in electronic format. Please send the requested records to me either at lbeckerman@citizensforethics.org or at Laura Beckerman, Citizens for Responsibility and Ethics in Washington, 1101 K St., Ste. 201, N.W., Washington, D.C. 20005. Thank you for your assistance in this matter.

Sincerely,

/s/ Laura C. Beckerman

Laura C. Beckerman
Sr. Counsel for Operations and Litigation