



Helping working families make it work.

Legal Rights for Child Caregivers in D.C. (August 2020)

1. **Child caregivers are employees**, not independent contractors. Child caregivers who are engaged on a routine and/or weekly basis to provide in-home care for one or more children are employees. See I.R.S. Publication 926 (2020) (Household Employers' Tax Guide).
2. The employer of a child caregiver must **pay employer taxes and report earnings**. See I.R.S. Publication 926 (2020); for D.C. requirements, see also, <https://does.dc.gov/service/reporting-questions>.
3. Employers of child caregivers must treat child caregivers like employees by:
 - **Paying minimum wage (\$15/hour) and overtime (\$22.50/hr)** for hours worked over 40 in a week. See D.C. Code §§32-1001, et seq.; see also, D.C. Code §§32-1301 et seq.
 - Covering them under a **workers' compensation insurance** policy. See D.C. Code §§32-1501 et seq.
 - Paying taxes for D.C. **unemployment insurance benefits**. See D.C. Code §§51-101 et seq.
 - Paying taxes for D.C. **paid family leave insurance benefits**. See D.C. Code §§32-541 et seq.
4. Child caregivers are also entitled to **paid sick and safe leave**, at least 3 days per year for full-time work. See D.C. Code §§32-531 et seq.
5. Child caregivers who are expectant mothers are entitled to **workplace accommodations** and **time off to recover from childbirth**. See D.C. Code §§32-1231.01 et seq.

Legal Rights for Child Caregivers in D.C. During the COVID-19 Pandemic

Child caregivers have additional rights and protections during the public health emergency:

6. **Safety**. Employers of child caregivers must provide them with **masks** and must require that anyone over the age of two who is in the work area of the child caregiver wears a mask during work hours. Child caregivers have the right to refuse to work if others in their work area are not wearing masks. Employers may require that their child caregivers inform them if they test positive for COVID-19. See Mayor's Order 2020-080,

<https://coronavirus.dc.gov/maskorder>. See also, Protecting Businesses and Workers from COVID-19 Emergency Amendment Act of 2020 (A23-384) (August 13, 2020).

7. **Time Off because of Exposure to COVID-19 and Caring for Loved Ones with COVID-19.**

For child caregivers who:

- have symptoms or test positive for COVID-19; or
- are ordered by a medical provider to stay home because of an increased risk of contracting COVID-19; or
- have to care for loved ones who have been quarantined because of COVID-19;

the employer must provide up to **two weeks (80 hours) of paid sick leave** (through 12/31/2020) and up to an **additional 14 weeks of job-protected unpaid leave** if the child caregiver has been employed at least 30 days. See Families First Coronavirus Response Act, <https://www.dol.gov/agencies/whd/pandemic/ffcra-employer-paid-leave>. See also, D.C. Family Medical Leave Act, D.C. Code §§32-501 et seq. (with expanded provisions in effect during the public health emergency).

- **Two weeks of paid leave insurance** is also available to child caregivers diagnosed with COVID-19. (Child caregivers must apply to the D.C. government to receive these benefits.) See D.C. Code §§32-541 et seq.
- **Six weeks of paid leave insurance** is also available to child caregivers caring for a loved one who is diagnosed with COVID-19. (Child caregivers must apply to the D.C. government to receive these benefits.) See D.C. Code §§32-541 et seq.
- Child caregivers who are unable to work for COVID-related reasons and have exhausted paid benefits from their employer may also apply for **unemployment benefits** through December 31, 2020. (Child caregivers must apply to the D.C. government to receive these benefits.) See D.C. DOES's "CARES Act Frequently Asked Questions (April 8, 2020)," https://does.dc.gov/sites/default/files/dc/sites/does/publication/attachments/DOES_CARES%20Act%20FAQs.pdf.

8. **Time Off Needed due to Lack of Childcare.**

For child caregivers who need time off to care for their own children because of COVID-related school and daycare closures, the employer must provide **up to two weeks (80 hours) of paid leave at 2/3 of the child caregiver's regular payrate**, through December 31, 2020. See Families First Coronavirus Response Act, <https://www.dol.gov/agencies/whd/pandemic/ffcra-employer-paid-leave>.

- Child caregivers who have been employed for at least 30 days may receive up to **twelve weeks of paid leave** at this rate for childcare-related leave through

December 31, 2020.* See Families First Coronavirus Response Act, <https://www.dol.gov/agencies/whd/pandemic/ffcra-employer-paid-leave>.

- Under D.C. law, child caregivers may take an **additional 4 weeks of job-protected unpaid leave** for childcare purposes, for a maximum of 16 weeks of leave for the duration of the public health emergency. See D.C. Family Medical Leave Act, D.C. Code §§32-501 et seq. (with expanded provisions in effect during the public health emergency).
- Child caregivers who are not working because of lack of childcare due to the pandemic may also draw **unemployment benefits** through December 31, 2020 if they have used up the paid leave provided by the employer. (Child caregivers must apply to the D.C. government to receive unemployment benefits.) See D.C. DOES's "CARES Act Frequently Asked Questions (April 8, 2020)," https://does.dc.gov/sites/default/files/dc/sites/does/publication/attachments/DOES_CARES%20Act%20FAQs.pdf.

If you are a child caregiver in D.C. and have questions about your legal rights, please contact First Shift Justice Project at (240)241-0897 or intake@firstshift.org.

More resources for child caregivers and their employers related to COVID-19 are available at: domesticemployers.org and domesticworkers.org/

* Employers with fewer than 50 employees may seek a "small business" exemption, but per guidance from the U.S. Department of Labor it is unlikely to be available to employers of domestic workers.