

SelfInformed

Published by the National Association for the Self-Employed

November 2017

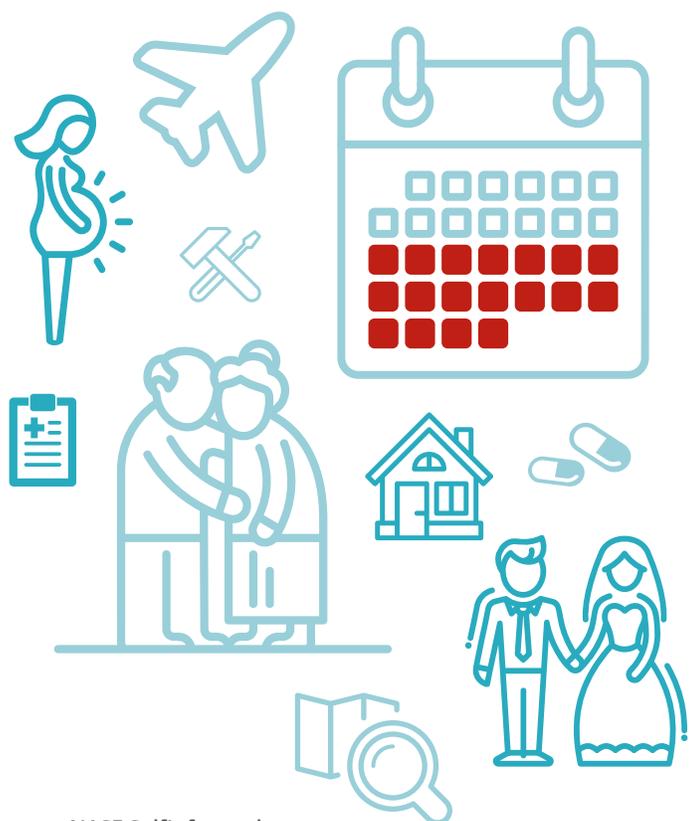
Member Spotlight

**Nicole
VanHaaren**



What Small Business Owners and Employees Need to Know about

LEAVE OF ABSENCES



Once a person leaves the corporate world and enters the realm of small business, either as a small business owner or as an employee, he/she encounters new sets of regulations or lack of. This is certainly true when examining laws and guidelines pertaining to taking leave of absences. This article will address this topic from three perspectives: 1) the owner's perspective of his own leave of absence, whether that be temporary or of indeterminate length 2) the owner's perspective when a key employee requests a leave of absence, and 3) the employee's perspective when considering their right to take a leave of absence.

Owner Takes Leave—Temporary

A business owner has always faced challenges when it comes to deciding when and how to take a vacation, get married, or attend a birth.

In an article entitled “**It Takes a Little Work to Take a Vacation**” by Anna Field, the author offers four useful tips for the owner to be well situated when taking a leave.

- 1. Prepare Your Staff**—Have staff take the lead on important assignments before the owner departs.
- 2. Manage Client Expectations**—Assure the client that the same quality of work will be performed in their absence and give them the name of at least one contact person.
- 3. Take Leave Around Slow Periods**—Plan the trip when business is light.
- 4. Set A Schedule**—Set aside a particular time each day to make calls or check e-mail.

Plan a trip when business is light.



Owner Takes Leave—Indeterminant

What happens when a family business owner becomes ill or disabled and how is the company protected if cash reserves cannot cover day-to-day expenses? An entrepreneur, including one who is starting a business or growing a business, in looking to protect themselves, family members, and the business, may think of life insurance as primary protection when he becomes ill or disabled. He should also be considering disability insurance.

Donita Leeson, in her article “**What You Need to Know to Protect Your Small Business if You Get Seriously Sick or Injured**”, recommends considering these disability insurance options.

- **Short and Long-Term Disability Policies**—A disability policy usually pays between 50 and 70 percent of a salary for a pre-determined time period. Disability plans vary significantly based on health condition, age, income, occupation and desired length of term.

- **Business Overhead Insurance**—This insurance covers items like rent, payroll, and inventory purchases.
- **Buy-Out Insurance**—This agreement is between the business owner and a second party/purchaser in which proceeds from a disability insurance policy fund a buy-sell agreement. This enables the purchaser to buy out the owner's share of the business.

Affordable rates for disability insurance can be attained if the owner is a member of an association or has access to group coverage. Examples of associations include:

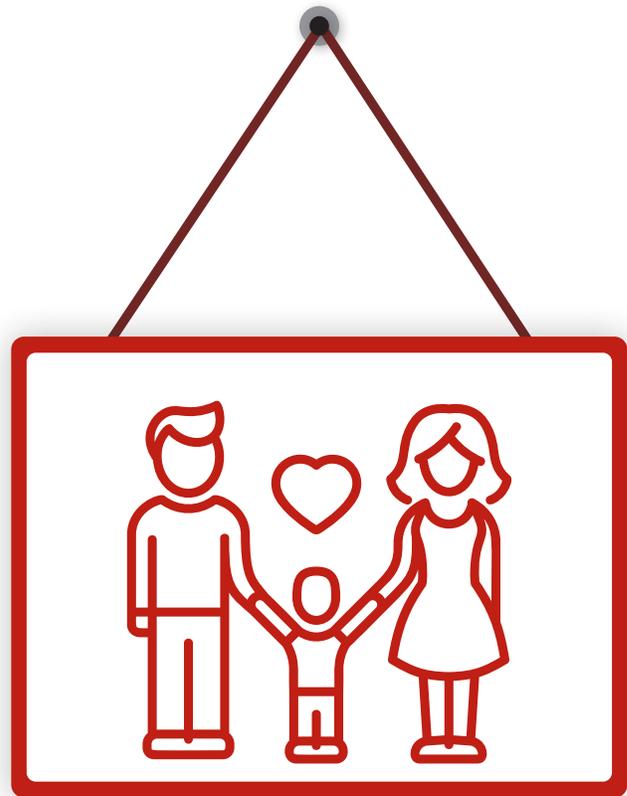
- National Association for the Self-Employed
- Freelancers Union
- National Association for Female Executives
- Small Business Service Bureau
- Writers Guild of America
- AARP Health
- Freelancers Union

Tips to lessen premiums include shortening the benefit period, increasing the waiting period before benefits commence, and omitting any unneeded coverage. Other strategies in locating the right policy involve comparison shopping, knowing one's average monthly income, applying when healthy, reviewing existing life and mortgage policies to check on the cost of adding a disability rider, and adding a cost of living (COLA) option to account for inflation.

Business owners having questions can always refer to the National Association for the Self-Employed or NASE who provide a broad range of benefits to assist entrepreneurs.

Employee Requests Leave of Absence

Discussions about employees taking leave of absences need to reference the **Family Leave and Medical Act (FMLA)**. FMLA requires the employer to grant employees up to 12 weeks of unpaid leave for family and health reasons such as the birth of a child, care of an employee or relative if ill, and situations involving military deployment. Regarding who qualifies for FMLA, the parameter most pertaining to small businesses is the requirement that any business with at least 50 employees within a 75-mile radius of the business must follow the



FMLA requires the employer to grant employees up to 12 weeks of unpaid leave for family and health reasons

FMLA. This begs the question, “Are small businesses with fewer than 50 employees required to follow the FMLA?” What about a micro business? How does a micro business owner handle employees taking leave with such a small staff?

There is no one pat answer to these questions. According to an article entitled “**FMLA Rules: What Small Businesses Should Know**” by Mike Kappel, the following contingencies need to be considered. If the business has less than 50 employees, it still may be required to follow FMLA if these conditions apply:

- **Fluctuating Worker Base**—if the business had at least 50 employees for 20 workweeks in the current or previous year.
- **Joint Employer**—if two employers share an employee's services or interchange employees or one employer acts in the interest of another employer in relation to an employee.
- **Integrated Employer**—if the employer has two or more businesses with common management,

interrelated operations, centralized control of labor relations, and a degree of common ownership or financial control.

A business owner with less than 50 employees, although not required to offer FMLA leave, can still offer it to its employees. Although FMLA is a federal law, **some states have laws that expand coverage**. Certain states also have **paid sick leave legislation**.

Paid Leave Statistics

It is interesting to note that there is data indicating small business employers (in this case, fewer than 100 employees) offer paid leave. The U.S. Department of Labor Bureau of Labor Statistics article **“Paid Leave in Private Industry over the**

Past 20 Years” by Robert W. Van Giezen contributes the following chart. It offers breakdowns by type of paid leave for the years 1992 and 2012. (See the following page).

Small Business Maternity Leave Policy

When it comes to maternity leave policy, small business owners run up against even more regulations. Christy Hopkins, in her article **“Small Business Maternity Leave Policy and Laws—With Examples”**, outlines parameters affecting maternity leave.

The two primary factors determining whether a business is required by law to provide maternity leave are 1) the size of the company and 2) the location of the business.

Table 1. Access to paid holidays, vacations, sick leave benefits, and other paid leave benefits for private industry workers, 1992–1993 and 2012 (In percent)

Characteristic	Paid holidays	Paid vacations	Paid sick leave ¹	Paid personal leave	Paid funeral leave	Paid jury duty leave	Paid military leave	Paid family leave ²
All workers								
1992–1993	77	82	50	15	57	64	30	2
2012	77	77	61	37	60	63	33	11
Full-time workers								
1992–1993	86	92	58	16	65	73	36	2
2012	90	91	75	44	71	73	39	13
Part-time workers								
1992–1993	36	40	16	7	24	27	8	1
2012	40	35	23	16	29	32	15	4
Establishments with fewer than 100 workers								
1992	70	75	44	10	42	48	17	2
2012	69	69	52	27	47	51	21	8
Establishments with 100 workers or more								
1993	84	90	59	20	77	83	47	3
2012	87	86	73	49	76	77	47	15



BUSINESS SIZE

There is no federal law requiring a company to provide maternity leave if the business has fewer than 50 employees. However, if a business has 15 or more employees, it is required to adhere to the federal **Pregnancy Discrimination Act (PDA)**. This Act “prohibits discrimination against employees and applicants on the basis of pregnancy, childbirth, and related medical conditions.” In businesses with fewer than 15 employees, although there is no federal law directed at discrimination, a pregnant employee could still sue the owner if she is treated differently from other employees in similar situations—and courts have usually ruled in favor of employees in lawsuits involving discrimination regardless of the size of the company.

BUSINESS LOCATION

Companies with fewer than 50 employees may still be required by state law to provide maternity leave. Twenty-one states plus Washington D.C. have **state-specific maternity law requirements**. Four states, California, New Jersey, Rhode Island, and New York (set to join January 2018) offer publicly-funded maternity leave via temporary disability programs, paid for by payroll taxes.

Employee Perspective

If a small business employee has questions regarding whether they can take a leave of absence, they should consider the following.

- The employer has employee notification requirements.
- The employee must submit proper medical certification if that is the operating factor.
- Even if FMLA does not apply, the answer could be found in the employee handbook.
- If the employee still has questions, they can consult an attorney.

Conclusion

As described in the first part of the paper, the small business owner is not without options when it comes to taking a leave, whether that leave is temporary or of an unknown duration. Although there is no silver bullet answer to whether an employee can take leave if the company has less than 50 employees, there are certain protections in specified situations.

In building a business, a small business owner can benefit by offering FMLA leave even if not required for these reasons: 1) reduced employee turnover which carries with it reduced recruitment and retraining costs 2) millennials, being the largest generation in the U.S. workforce, are very likely to expand their families and will need leave 3) good leave practices will engender improved worker productivity and commitment to their work and 4) these practices will distinguish the company when it comes to attracting new talent. ■

Bibliography

- Field, A. It takes a little work to take a vacation. *The New York Times*. 2012. Retrieved from www.nytimes.com/2012/07/05/business/smallbusiness/how-to-take-a-real-vacation-while-running-a-business.html
- FMLA (Family and medical leave). *United States Department of Labor*. n.d. Retrieved from <https://www.dol.gov/general/topic/benefits-leave/fmla>
- Hopkins, C. Small business maternity leave policy & laws - with examples. *Fit Small Business*. 2016. Retrieved from fitsmallbusiness.com/maternity-leave-policy/
- Kappel, M. FMLA rules: what small businesses should know. *Patriot Software*. 2016. Retrieved from <http://www.patriotsoftware.com/payroll/training/blog/what-small-businesses-should-know-about-fmla-rules/>
- Leeson, D. What you need to know to protect your small business if you get seriously sick or injured. *Kabbage*. 2015. Retrieved from <https://www.kabbage.com/blog/what-you-need-to-know-to-protect-your-small-business-if-you-get-sick-or-injured>
- State family and medical leave laws. *National Conference of State Legislatures*. 2016. Retrieved from www.ncsl.org/research/labor-and-employment/state-family-and-medical-leave-laws.aspx
- The pregnancy discrimination act of 1978. *The United States Equal Employment Opportunity Commission*. App 10/31/1978. Retrieved from <http://www.eeoc.gov/laws/statutes/pregnancy.cfm>
- Van Giezen, R.W. Paid leave in private industry over the past 20 years. *United States Department of Labor Bureau of Labor Statistics*. 2013 2(18). Retrieved from <https://www.bls.gov/opub/btn/volume-2/paid-leave-in-private-industry-over-the-past-20-years.htm>



Ask the Expert

Let the Talks Begin

No doubt by this time you have heard probably more than you would like about Tax Reform. On November 2nd, Republicans in the United States House of Representatives introduced legislation outlining new guidelines to simplify a very complicated tax code. The Democrats have weighed in with their feedback and adjustments, and as of press time the U.S. Senate was preparing to release their tax reform plan as well. Now...Let the Talks Begin.

It appears that the overall key points thus far are indeed centered on simplification. Reducing the number of tax brackets from seven down to four and reducing the number of itemized deductions while increasing the standard amount for all taxpayers is a very good start. The current discussion also includes eliminating the cumbersome Alternative Minimum Tax and eliminating the Estate or Death Tax over a number of years.

In addition to simplification, the current ideas also include reducing the overall tax rate on business income, including small business income, and expanding the options for expensing new business equipment in the year of purchase. These two pieces of tax reform will provide more after tax money in the hands of business owners which will lead directly to new investment, new growth, and new jobs.

The devil is always in the detail so the key benefits and the final agreement on tax reform is yet to be determined, and this is where you come in. It is critical during these talks that we all concentrate on making sure the small business voice is heard. We will continue to fight with our loudest voices for small business in D.C. but we need your voice even more. Regardless of which way you lean politically, it is important to let your congressional leaders know what is important to you. Please take a few minutes to let your voice be heard.

Go to NASE.org and navigate to the Legislative Action Center...type in your zip code, and you will see your specific congressional representative and both of your senators. Click on the email icon and tell them what is important to you. The talks have begun. Now is the time to be part of the discussion. ■



As always, don't forget that you are not alone. Bookmark our website at NASE.org as well as the IRS website at IRS.gov you will always be able to find the help you need.

New!



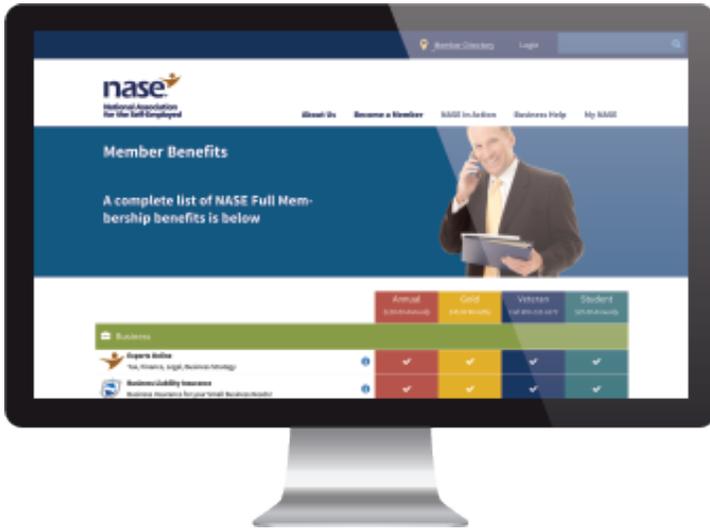
Member Benefits

Visit NASE.org to learn more about the following benefits!

NASE MEMBERSHIP—BENEFITS AT A GLANCE

A complete list of NASE membership benefits!

Visit [Benefits Page](#)



NEW!

Benefits at a Glance, printable PDF



Better health coverage – just a quote away.

Get a free health insurance quote today for you, your family and your business. Request a quote >

GET HELP ACCESSING HEALTH INSURANCE DURING OPEN ENROLLMENT!

Request a Health Insurance Quote Today!

New!



Member Benefits

Visit NASE.org to learn more about the following benefits!



GET HELP ACCESSING DENTAL INSURANCE DURING OPEN ENROLLMENT!

[Request a Dental Insurance Quote Today](#)



360 COVERAGE PROS

Powered by Gallagher Affinity

Business Insurance & Compliance Tools

A comprehensive suite of essential business insurance products and tools designed to help protect your small business from unexpected risks, exposures and cyber crime. Programs are exclusively designed for NASE members and the small business industry. NASE members receive special rates, coverage options and all programs are available all online. Members can get quotes and coverage in effect quickly and easily. For more information, [click here](#).



NASE ANNUAL MEMBERSHIP

Call Customer Service and ask about the NASE Gift a Membership offer.

Use discount code NASE2017 when signing up your friends and family.

Call 1-800-232-6273
(7:00 a.m.–6:00 p.m. CST)

Developing Self-Employment



Nicole VanHaaren is the owner of **Vanhaaren Designs** located in Olivet, Michigan. Vanhaaren Designs provides web and graphic designs for personal and professional use. When Nicole is not busy raising her two children, she can be found creating websites from the ground up or editing images and color schemes. Providing superior customer service is her main focus when working with clients.

When and why did you join the NASE?

I joined the NASE three years ago. I joined to better understand what it means to be self-employed and learn more about managing business and researching the best possible tools to help further my business.

What inspired you to enter the field you are in?

What inspired me to enter the field I am in is my love of customer service and computer programming. I love being able to work with clients one on one to achieve what they are looking for to represent their own business on the internet.



When and why did you start your business?

I started my business five years ago. Why I started my business was to be able to be more available for my children. My oldest son has several disabilities that have made it hard to try and work full time. With having my own business it makes it easier to be there for my son and still do what I love for my career.

What challenges have you faced in your business?

The challenges I have faced are other businesses doing web site designing and the budget to put money into advertising. I have overcome my first obstacle by offering word of mouth discounts, and working with clients budgets to beat the higher priced competition.

How do you market your business?

I pay for advertisements through local business in my area. I pass out cards, ask clients to recommend me to other people. I will also attend networking meetings and exchange information with other self-employed professionals.

Do you have any employees?

Not at this time I do not. If and when my business becomes too much for me to handle on my own I will look into hiring.

What's the best thing about being self-employed?

Setting my own hours and working around my schedule for school and my children.

What's the best compliment you've ever received from a client?

That I communicate in a way that makes the person feel valued and appreciated.

What's your schedule like, what's a typical day for you?

A typical day for me is looking at my calendar, seeing what work I need to get done for my clients and of course what is going on with my children's schooling and my school schedule as well. After setting my business priorities for the day, I get my work done and then head into my part time job as an Education Assistant.

Any other information you would like to share?

It takes dedication and hard work to build a business. Always research your clients, how you will target your audience (marketing campaigns), and learning how to use social media to promote your business.



Trump Executive Order Includes Health Reimbursement Arrangements (HRAs)

Long championed by the NASE, Health Reimbursement Arrangements (HRAs) have become a significant tool for the self-employed and micro-business owner to use to offer a unique, innovative health care benefit.

In conversations with the Administration earlier this year, the NASE advocated for the expansion of HRAs. With the executive order, President Trump is requesting that the Departments of Labor, Treasury, and Health & Human Services within 120 days, “consider proposing regulations or revising guidance, to the extent permitted by law and supported by sound policy, to increase the usability of HRAs, to expand employers’ ability to offer HRAs to their employees, and to allow HRAs to be used in conjunction with nongroup coverage.”

The NASE believes strongly that HRAs are immensely important for employers to offer options and financial support to their employees in purchasing qualified health care expenses. Any move by the Administration to provide greater flexibility and more control over health care will help those in the small business community save, grow and expand, therefore helping to strengthen the overall economy.

The executive order also included instructions to evaluate the development and implementation of association health plans and the necessity to create short term, limited duration health plans.

The announcement of the executive order comes on the heels of what the Trump Administration sees as complete failure in repealing and replacing the Affordable Care Act, which they pushed as a “must do.” We can anticipate that the Trump Administration to issue further executive orders, directing the agencies of jurisdiction to evaluate ways in which they can change the ACA without legislative action by Congress. ■

Katie Vlietstra is NASE's Vice President for Government Relations and Public Affairs; You can contact her at kvlietstra@nase.org.