

## The Pregnant Pause

WHEN AN ARKANSAS FLORIST FOUND OUT HER DESIGN room manager was pregnant, she was overjoyed — and worried.

Her designer, who had been with the store for 16 years, was put on bed rest at six months pregnant. She had just two weeks of earned vacation, and her husband had just been fired from his job. So the florist, who asked to remain anonymous for this article, did the only thing she could think of to support her employee: She laid her off.

“I had to lay her off so she could get paid. I don’t know if it was the right thing to do, but it was the morally right thing to do,” she says.

As soon as her designer had the baby, however, she came back to the shop, as planned, where the position was still open and waiting for her upon her return.

Legal? Probably not, says Nancy Cornish, attorney and labor law expert at Kissinger & Fellman in Denver, who adds that employers can always leave jobs open for employees, but laying them off so they can collect unemployment could be considered “scamming the state.”

But it’s the kind of “creative” solution some small business owners feel forced to devise, when balancing the medical needs of pregnant employees with the daily needs of the business.

### The Rules

In some senses, the law is fairly black and white about how to handle pregnancy and maternity leave: The federal Family and Medical Leave Act (FMLA) says any organization with 50 or more employees must give up to 12 weeks unpaid leave to employees who’ve been with the company at least a year. And the Pregnancy Discrimination Act (PDA), which falls under the Civil Rights Act of 1964, says if you have at least 15 employees, you must treat pregnant employees the same as other employees on the basis of their ability or inability to work.

Some states set their own statutes: In Colorado, for instance, businesses of any size can’t discriminate against pregnant women as described in the PDA. And, believe it or not, some states even allow discrimination against pregnant women. (For more information about your state laws, go to [www.ncsl.org/programs/employ/fmlachart.htm](http://www.ncsl.org/programs/employ/fmlachart.htm).)

### Be Consistent

For small businesses not covered by FMLA or in states without PDA regulations, decisions about how to handle an employee pregnancy are more subjective, says Cornish. For instance, losing a key designer for a 12-week maternity leave is certainly better than losing her forever. On the flip side, a requested maternity leave from a less than stellar employee might be just the “out” an employer was hoping for.

Tread very carefully, says Cornish, advising that small-business owners treat pregnancy as a temporary medical condition.


“How would you treat someone in your shop who calls you and says, ‘I got in a car accident last night and I’m going to be

## Babies R Us?

Kathy Dudley, owner of The Bloomery in Butler, Pa., says she can relate to all the new mothers she and other florists have employed during her 10 years in business, because she is one herself.

After giving birth to her daughter in February, Dudley took six weeks off while her employees took care of the store. Now the baby has her own spot at the shop.

“I am fortunate enough that, since I own the business, I can take her to work with me, and she has a crib, swing, etc., in my office,” Dudley says. “But, not all parents have that luxury, especially when they are employees.”


Allowing employees’ children into the shop is a separate situation from family leave. While letting a parent bring a child to the shop might help keep a shop fully staffed, it could significantly increase its exposure to a liability claim, says John Hodapp, senior vice president of agency operations at Hortica Insurance. “I would be greatly concerned about children being injured, especially considering the probable lack of constant supervision — particularly in light of the fact that a busy flower shop is hardly an environment well suited to providing appropriate child care,” he adds.  — K.K.

out for a few weeks?’” she asks. “Treat your people that are pregnant the same way. I think it’s really important, regardless of what law applies, for employers, no matter their size, to deal with temporary medical conditions of their employees.”

The key, Cornish says, is consistency. Let’s say you have two pregnant employees, and one is ultimately more valuable to the business than the other, so you want to give her more time off. “That’s really dangerous,” Cornish says. “You don’t want to treat one pregnant employee different than another pregnant employee.”

There are other options small businesses can consider when designing a leave policy, says Steffany Stern, policy analyst at The National Partnership for Women & Families. “Some companies choose to just comply with the FMLA even though they don’t have to,” she says, which includes offering unpaid leave but keeping the employee covered under health insurance.

Stern says some businesses that are competing for skilled employees can consider adopting short-term disability programs, offering short-term paid leave or leave with only partially paid wages.

“In the end it’s really just up to the company to design [a policy] because there’s no [universal] legal guidelines,” Stern says. 

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