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Menopause and menstrual health in the workplace

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Context

- 15 million women in the UK menstruate - according to ONS, 72% of those were part of the workforce in 2020
- On average women menstruate for 40 years of their lives
- Remains taboo subject in some workplaces
- Endometriosis affects 1 in 8 women and can take years to diagnose

[Fawcett Society: Menopause and the Workplace](#) (2022)

- Women over 50 represent the fastest growing group in the workforce
- 1 in 10 women left their job due to menopause
- 44% say their ability to do their job is affected
- 80% said no support

One size does not fit all...



Legal landscape

- Management of Health and Safety at Work Regulations 1999 Reg 3
 - Legal duty to carry out a suitable and sufficient assessment of health and safety risks in the workplace
 - Consider the specific needs of those menstruating and those experiencing menopause
 - Focus should be on ensuring that the working environment will not worsen symptoms

Legal landscape - menstruation

- Currently no specific rights – if time off is required it will be general sick leave or holiday
 - Currently 3 waiting days for SSP means may result in financial hardship
 - Repeated time off could result in attendance warnings
 - Productivity may be affected
- Equality Act 2010
 - Sex discrimination?
 - Menstruation as a disability not yet considered by tribunals
 - Likely that endometriosis would be

Legal landscape - menopause

- Not a protected characteristic under Equality Act 2010
- Dual discrimination provision not in force
- Claimants relying on age, sex and disability
- Defending claims much more costly than putting in place support measures and avoids reputational damage

Disability discrimination

- Direct discrimination
- Indirect discrimination
- Discrimination arising from disability
- Duty to make reasonable adjustments
- Harassment and victimisation

Case law – sex discrimination

Merchant v BT plc ET/140135/11

- Manager did not take symptoms seriously
- Failed to deal with symptoms in the same way as other medical conditions
- Failed to refer to OH
- Made assumptions based on wife's experience
- Direct sex discrimination

Case law – age discrimination

- A v Bonmarche Ltd (In Administration) ETS/4107766/19
 - Ms A called "a dinosaur" in front of customers
 - continually criticised, relating her alleged poor performance to her menopause
- McCabe v Selazar Ltd ET/2200501/2021
 - CEO: "Calm down ... don't let the hormones get out of control"
- Thomas v Bibimoney Global Ltd ET/2204661/2022
 - Attributed views of senior employee to being 'menopausal'

Case law – disability

Davies v Scottish Courts and Tribunals Service [2018] 5 WLUK 156

- Employee on medication – personal items moved, including water jug containing medication
- Reacted badly to 2 men nearby drinking water – dismissed
- Investigation went well beyond normal remit – disability discrimination

Case law – disability

McMahon v Rothwell & Evans LLP and another ET/2410998/19

- Disabled due to menopausal symptoms
- Reluctance to talk about them meant employer didn't have requisite knowledge
- Dismissal related to disability but justified
- No breach of duty to make reasonable adjustments

Case law – disability

Lynskey v Directline Insurance Services Ltd ET1802204/2022

- Successfully claimed discrimination arising from disability and failure to make reasonable adjustments
- Experienced less favourable treatment including a disciplinary warning and failure to be awarded a payrise for performance reasons, despite employer knowing she was experiencing menopausal symptoms
- Awarded compensation of £64,645.07

Case law - endometriosis

South Gloucestershire Council v Hundal [2024] EAT 140

- Claimant was a fixed term worker who was disabled by virtue of her endometriosis
- Contract was terminated early due to 'sporadic' absences
- Discrimination arising from disability
- Dismissal was not a proportionate means of achieving a legitimate aim, the employer having failed to make reasonable adjustments

Case law - endometriosis

Berry v Anglican Water Services Ltd – 2603029/2022 and 2600436/2023

- Employer accepted disabled due to endometriosis, menopause, depression
- Absent due to having a hysterectomy and was contacted less than 3 weeks after this and asked to attend an absence management hearing - chased 3 times
- Contact held to be harassment

Labour government plans

- Employment Rights Bill
 - Larger employers will be required to produce equality action plan supporting workers going through the menopause
 - On 27 November adding menstrual problems and menstrual disorders to the definition of “matters related to gender equality” to be included in equality action plans
- Labour party had previously proposed to enact Equality Act 2010 provisions on dual discrimination, but not included in Employment Rights Bill or Next Steps document

Menopause policy

- Raise awareness of potential issues and make a policy statement
- Offer support and adjustments such as:-
 - Equality Act reasonable adjustments
 - Health and Safety at Work Act adjustments
 - Occupational Health driven

Practical solutions

- Raise awareness in the workplace providing information to all staff
- Provide training for managers on supporting employees going through menopause or menstrual health problems
- Put in place a menopause policy
- Consider having a menopause champion
- Ensure support extends to all age groups who may be suffering from menopause or menstrual health difficulties
- Have an open door

Practical solutions

- Reasonable adjustments
 - Physical workplace adjustments
 - Adjusting tasks
 - Adjusting sickness absence procedures
 - Flexible working
 - Access to quiet space
 - Temperature control eg desk fans
 - Access to period products

Many adjustments are no or low cost

Resources for employers

- [EHRC Menopause in the workplace: Guidance for employers](#)
- [BS 30416:2023 Menstruation, Menstrual Health, Menopause](#)
- [BSI Little book of menstruation, menstrual health and menopause](#)
- Acas [Managing the menopause - Menopause at work](#)
- CIPD Menopause at work: A guide for people professionals
- Faculty of Occupational Medicine [Guidance on menopause and the workplace](#)



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Questions?