

To what extent are menopausal women protected under law?

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In February 2024, the Equality and Human Rights Commission (EHRC) issued the guidance which set out an employer's legal obligations under the Equality Act 2010 to workers going through the menopause.

The guidance from the ECHR comes off the back of an increased campaign of awareness about the impact of the menopause on employees, and the extent to which employers should be supporting employees who may be struggling with symptoms.

There are still some employers who are uncertain as to whether the menopause itself is protected under the Equality Act 2010, and whether businesses could be discriminating against women or exposing themselves to other legal risk by not offering adjustments or other forms of support.

Whilst this article refers to women experiencing the menopause, employers should bear in mind that menopause is related to the menstrual cycle. Therefore, anyone with a menstrual cycle may experience menopause. In addition to women, this may also include people who do not identify as women, which can include trans and non-binary people.

Is the menopause really a business issue?

Aside from legal obligations as an employer (see below), a government report on menopause has identified that menopausal women are the "*fastest growing workforce demographic*". It is an increasingly

important issue for businesses of all sizes – most employers do not want to lose a large and experienced pool of talent if it can be avoided.

Legal obligations

The symptoms associated with the menopause can vary between individuals. The NHS lists a number of symptoms including hot flushes, headaches, low mood and anxiety, palpitations and joint pain. It estimates most symptoms last around 4 years, though one in four women will experience them for up to 12 years.

If symptoms are severe and have lasted, or are likely to last, for a period of 12 months or more then it is possible that the individual could meet the definition of disability under the Equality Act 2010. This means that, amongst other things, an employer has a duty to make reasonable adjustments. This point is highlighted in the EHRC guidance.

Historically, the numbers of employment tribunal claims based on menopause have been low given the numbers of women affected by symptoms and facing difficulties at work. Many women do not want to describe themselves as ‘disabled’ due to going through a natural stage of life and are therefore put off from bringing a disability discrimination claim, thinking this is the only/ main path for a claim given that direct menopause legislation has to date been resisted by the government.

However, even if the symptoms of the menopause do not meet the definition of disability, but performance is impacted due to the effect of symptoms, an individual could have a successful claim for unfair dismissal and/or sex or age discrimination.

A persistent failure to support menopausal women, particularly if adjustments are made which are reasonable for an employer to implement, could also give rise to a constructive dismissal situation.

How to help

There are a number of things that employers could do to support staff experiencing the effects of the menopause:

- Encourage openness. In the past, the topic may not have been discussed in the workplace. Promoting a culture where individuals feel comfortable discussing the subject will help employers support menopausal women.
- Be flexible in your approach to work. Depending on symptoms, it may be helpful to consider adjustments in hours or location of work.
- Signpost support. Some women may prefer to talk to mental health first aiders, HR or external bodies rather than their immediate line managers.
- Have clear policies. The EHRC guidance encourage employers to adapt their policies and practices accordingly, to ensure fairness and inclusivity in the workplace.

The increased awareness and guidance linking employers’ legal obligations and menopausal rights is to be welcomed and may change the numbers of women speaking up about the issue in the workplace. Employers who support their workforce are likely to see the benefits through lower sickness absence,

higher retention and fewer employee relations issues.