

# Menopause, Employment Law and Reasonable Adjustments - Summer 2022

## Female Menopause, employment law and reasonable adjustments

Operational Managers and HR teams need to understand the female menopause, its symptoms, impact and what reasonable adjustments should be considered to support those affected.

Delegates on our employment law and equality courses often ask about it so we thought it useful to release this short briefing document so support a wider audience.

### 1. Introduction

The menopause is a natural event in most women's lives during which they stop having periods and experience hormonal changes such as a decrease in oestrogen levels.

It usually occurs between the ages of 45 and 55 and typically lasts between four and eight years. However, each woman's experience will differ, and menopausal symptoms can occasionally begin before the age of 40. Perimenopause, or menopause transition, begins several years before menopause. Women may start to experience menopausal symptoms during the final two years of perimenopause.

The "male menopause" (sometimes called the Andropause) is an unhelpful but often used term. Males may, experience symptoms that appear outwardly similar to those experienced by women and at a similar age BUT they are not related to a drop in testosterone levels so not technically a menopause. The symptoms can interfere with everyday life and happiness, so it is important to find the underlying cause and work out what can be done to resolve it."

This briefing focusses on the female menopause but in the interests of balance more detail regarding the male Andropause (menopause as it is often, albeit incorrectly, called) is covered in section 9

### This briefing note considers the female menopause: -

- Symptoms
- Suggested Internal and External Support Ideas
- Reasonable Adjustments that might be needed
- Laws related to the Menopause
- Discrimination and Equality issues
- GDPR and Data Protection
- Landmark Cases

### 2. Symptoms can include

- Hot flushes and night sweats
- Anxiety.
- Dizziness and fatigue.
- Memory loss.
- Depression and headaches.
- Recurrent urinary tract infections.
- Joint stiffness, aches, and pains.
- Reduced concentration; and heavy periods.

Each of these symptoms can affect an employee's comfort and performance at work.

All businesses and organisations have a duty to provide a safe working environment for all employees and therefore will usually commit to ensuring that adjustments and additional support are available to those experiencing menopausal symptoms.

### 3. **Suggested Internal and External Support**

The aim should be to facilitate an open, understanding working environment.

All employees can be asked to attend a training session on the menopause/health issues including the menopause to increase awareness.

Managers will benefit from attend this session as well as additional training to help provide effective to support to employees who are going through the menopause.

Employees are generally encouraged to inform their line manager that they are experiencing menopausal symptoms at an early stage to ensure that symptoms are treated as an ongoing health issue rather than as individual instances of ill health.

Early notification will also help line managers to determine the most appropriate course of action to support an employee's individual needs.

Employees who do not wish to discuss the issue with their direct line manager may find it helpful to have an initial discussion with a trusted colleague or another manager instead.

They can also raise the issue with HR/occupational health if they need support.

Many organisations signpost external sources of help and support for employees and managers, including information on:

- [Menopause matters](#), which provides information about the menopause, menopausal symptoms, and treatment options.
- the [Daisy Network](#) charity, which provides support for women experiencing premature menopause or premature ovarian insufficiency; and
- the [Menopause Café](#), which provides information about events where strangers gather to eat cake, drink tea, and discuss the menopause

On a broader but related scale Hen-pecked is one of the UK's largest, fastest-growing websites for women, They say their mission is give women a place to have their say, sparking discussion, promoting healthy debate and, they hope, bringing about positive change. The have a big focus on the Menopause.

ACAS has also published [guidance](#) to help employers and managers support staff who are affected by menopause symptoms at work. Since its original publication in October 2019, it has received approximately 85,000 unique page views.

#### 4. Reasonable adjustments that might be needed

##### ***Temperature control***

An organisation should strive to achieve a comfortable working temperature for employees, allowing flexibility within its dress code where reasonable. Air conditioning systems, chilled water and desk fans should be provided as appropriate

##### ***Flexible working***

Most organisations recognise that difficulty sleeping is a common symptom of the menopause. To reflect this, as well as the impact of other common symptoms, companies should aim to facilitate flexible working wherever possible. Requests for flexible working could include asking for:

- A change to the pattern of hours worked.
- Permission to perform work from home.
- A reduction in working hours; or
- More frequent breaks.

Employees should discuss such requests with their line manager/HR.

Depending on the circumstances, requests are usually approved on a permanent or temporary basis.

#### 5. Law relating to the Menopause

- Health and Safety at Work etc Act 1974
- Employment Rights Act 1996
- Equality Act 2010
- Data Protection Act 2018
- Management of Health and Safety at Work Regulations 1999 (SI 1999/3242)
- Flexible Working Regulations 2014 (SI 2014/1398)
- General Data Protection Regulation (2016/679 EU)

#### 6. Discrimination and Equality Issues

The Government has indicated it is sympathetic to amending the Equality Act in order to take account of the legal case authorities and social awareness of the detriments caused to women with menopausal symptoms. The Equality Act covers the situation indirectly through the Protected Characteristic of Disability, but the thinking is that the “Menopause” in its own right should become a 10<sup>th</sup> Protected Characteristic in that statute. And this has implications for GDPR and specifically processing Sensitive Data.

The menopause can, depending on the severity of the symptoms, amount to a disability for the purposes of the Equality Act 2010. Employers must ensure that they do not treat employees less favourably than others as a result of a disability and must also make reasonable adjustments as required to ensure that disabled employees are not disadvantaged as a result of their disability.

Employers must also ensure that employees experiencing the menopause are not indirectly discriminated against. For example, a requirement to wear a uniform made of uncomfortable, synthetic

fabric could indirectly discriminate against an employee experiencing regular menopausal hot flushes on grounds of disability, sex, and age.

The Equality Act 2010 also contains provisions on harassment. Harassment is defined as unwanted conduct related to a relevant protected characteristic that has the purpose or effect of violating a person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment. Employers may be liable for the actions or comments of employees. It is therefore important to ensure that employees receive adequate training on appropriate behaviour.

## **7. Data Protection Implications**

Any organisation must process any personal and sensitive data collected in accordance with its data protection policy. Data collected from the point at which the organisation becomes aware of a menopausal issue should be held securely and accessed by, and disclosed to, individuals only for the purposes of providing the necessary support.

One of the other principles is that of data minimisation, which requires organisations to delete data once it is no longer necessary to process it. In light of this, line managers should record only the personal information required to manage any issues arising from the menopause and ensure that this information is not kept longer than necessary.

## **8. Landmark Cases**

- Merchant v British Telecom (2012)
- Davis v Scottish Tribunal Service (2018)
- Mrs A v Bon Marche Ltd (2019)

A note on each of these follows below:

### **Merchant v British Telecom (BT) (2012)**

Ms Merchant was being performance-managed for capability concerns. Her manager had received a report from her GP which indicated there were health issues related to menopause. He chose to disregard medical evidence and dismissed her for poor performance. He also made the additional mistake of relying on his own personal experience of his wife having undergone the menopause. Rather than relying on fresh medical evidence he relied on anecdotal evidence. The tribunal found against BT, as the manager had failed to follow the capability policy which referred to seeking medical evidence. It also concluded BT would not have treated a male in comparable circumstances suffering with failed concentration in the same way.

### **Davis v Scottish Tribunal Service (2018)**

Ms Davies works as a court officer. She was perimenopausal and had significant symptoms. To treat cystitis, she was prescribed granulated medication to put into water. When she briefly left the court, two male court users were seen drinking water. Her jug had been emptied and she reached the conclusion they had been drinking her water. She spoke to them and explained that they were drinking her medication, at which point one of them started ranting. The Court conducted a Health and Safety investigation and concluded that Ms Davies had not "shown any remorse and had not shown the values of the organisation." She later amended her story to say because her water was pink, she was mistaken as the men had been drinking clear water. Nonetheless, she was dismissed for gross misconduct despite an occupational health report which confirmed that she had perimenopausal symptoms which affected

her memory and concentration. What they had clearly failed to do was consider evidence of the impact menopause had with regard to her behaviour and concentration. Mrs Davies was reinstated and awarded £19,000£14,000 of that was back pay and £5,000 due to injury of feelings

### **Mrs A v Bon Marche Ltd (2019)**

Senior supervisor at the retailer and had worked there a long time. Her manager started a bullying campaign, ridiculing her as she was going through menopause. He called her a dinosaur and encouraged other staff to laugh at his comments. During a restructure, her post was unaffected, yet others were encouraged to apply for her role. She suffered some significant sickness absence but did manage to return to her role on a phased basis working shorter hours. However, the claimant's manager placed her on a full shift for the following week. She resigned and suffered a complete breakdown due to harassment and bullying she had endured. She was successful in her claim of age and sex discrimination. She was awarded £28k.£10,000 was for loss of earnings, £18,000 was injury to feelings as a result of the serious bullying and harassment she had suffered

## **9. The Male Menopause**

Advice and guidance from the NHS WEBSITE

<https://www.nhs.uk/conditions/male-menopause/>

"The "male menopause" (sometimes called the andropause) is an unhelpful term sometimes used in the media. This label is misleading because it suggests the symptoms are the result of a sudden drop in testosterone in middle age, similar to what occurs in the female menopause. This is not true. Although testosterone levels fall as men age, the decline is steady at less than 2% a year from around the age of 30 to 40, and this is unlikely to cause any problems in itself. A testosterone deficiency that develops later in life, also known as late-onset hypogonadism, can sometimes be responsible for these symptoms, but in many cases the symptoms are nothing to do with hormones.

Some men develop depression, loss of sex drive, erectile dysfunction, and other physical and emotional symptoms when they reach their late 40s to early 50s.

Other symptoms common in men this age are:

- Mood swings and irritability
- Loss of muscle mass and reduced ability to exercise
- Fat redistribution, such as developing a large belly or "man boobs" (gynaecomastia)
- A general lack of enthusiasm or energy
- Difficulty sleeping (insomnia) or increased tiredness
- Poor concentration and short-term memory

These symptoms can interfere with everyday life and happiness, so it is important to find the underlying cause and work out what can be done to resolve it."

### **9.1 Causes of the Male Menopause -The Midlife Crisis**

A "midlife crisis" can also be responsible. This can happen when men think they have reached life's halfway stage. Anxieties over what they have accomplished so far, either in their job or personal life, can lead to a period of depression. Other possible causes of the "male menopause" include:

- lack of sleep
- a poor diet

- lack of exercise
- drinking too much alcohol
- smoking
- low self-esteem

## **9.2 Late-onset hypogonadism**

In some cases, where lifestyle or psychological problems do not seem to be responsible, the symptoms of the "male menopause" may be the result of hypogonadism, where the testes produce few or no hormones. Hypogonadism is sometimes present from birth, which can cause symptoms like delayed puberty and small testes. Hypogonadism can also occasionally develop later in life, particularly in men who are obese or have type 2 diabetes.

This is known as late-onset hypogonadism and can cause the "male menopause" symptoms. But this is an uncommon and specific medical condition that is not a normal part of ageing. A diagnosis of late-onset hypogonadism can usually be made based on your symptoms and the results of blood tests used to measure your testosterone levels.

## **9.3 What to do**

If you are experiencing any of these symptoms, see your GP. They will ask about your work and personal life to see if your symptoms may be caused by a mental health issue, such as stress or anxiety. If stress or anxiety are affecting you, you may benefit from medication or a talking therapy, such as cognitive behavioural therapy (CBT). Exercise and relaxation can also help.

## **9.4 The legal position**

It is important to stress the point in 6 above.

The UK Government and the House of Commons Select Committee on Equalities have been specific. Any changes to the Equality Act will relate to the Female Menopause only. This would not preclude a man suffering detriments under the male menopause from taking legal action, but the courts would have to determine if the Equality Act, as amended, would allow the case to be heard. If it were heard and succeeded, it would become a caselaw authority. Governments generally change original statutes in the face of court decisions such as the one hypothesised here.

Legal advice on any discrimination case should always be taken before embarking upon litigation!