

Parliamentary Committee calls for the introduction of robust menopause discrimination laws

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The Women and Equalities Select Committee has completed its inquiry into the impact of the menopause in the workplace and called for major reforms in this area, including making menopause the tenth protected characteristic in the Equality Act 2010. We take stock of the recommendations in our latest briefing.

What was the purpose of the menopause inquiry?

On 23 July 2021, the House of Commons Women and Equalities Select Committee (the **Committee**) opened an inquiry into the impact of menopause in the workplace. The purpose of the inquiry was to receive evidence on current workplace practices and views on whether existing discrimination legislation sufficiently protects workers going through the menopause, or whether more needs to be done. Currently, discrimination against workers going through the menopause is only covered by the Equality Act 2010 where it is connected to one of the existing nine protected characteristics such as age, sex and disability. The inquiry also looked at whether employers should be compelled to put in place workplace menopause policies.

The inquiry closed on 17 September 2021 and the Committee published its report on 28 July 2022. The inquiry received over 80 written submissions from the public, legal and medical experts, health organisations, trade unions and academics. Oral evidence was also taken from these groups and business representatives.

What recommendations for change have been made?

The Committee's report makes a number of recommendations in the fields of health, workplace and equality. In this briefing we consider the workplace and equality recommendations only.

Menopause Ambassador to lead the way in showcasing good practice to business

The report states that the Government has a key strategic role in helping businesses and should lead the way in developing and disseminating good practice on managing the menopause at work. The report asks the Government to appoint a "menopause ambassador" to work with stakeholders from business, unions and advisory groups to encourage and disseminate awareness, good practice and guidance to employers. The menopause ambassador should publish biannual reports on the progress made by businesses, including real life examples of good and poor practices.

It remains to be seen whether the Government will take forward this recommendation. However, in the meantime, it has already committed to [appointing "Menopause Employment Champions"](#) to spearhead a campaign outlining the benefits of recruiting and retaining menopausal workers.

Government should produce model menopause policies

Evidence to the inquiry was divided on whether workplaces should be legally required to have menopause policies. For example, the CIPD were opposed to compulsory policies, believing that this would promote a "tick box" approach instead of taking action aimed at securing real change on the ground.

The Committee was not persuaded that a legal requirement for every workplace to have a menopause policy would embed meaningful change. However, the report recommends that the Government produce a model menopause policy for employers, which should cover as a minimum:

- how staff can request reasonable adjustments and other support;
- advice on flexible working;
- sick leave for menopausal symptoms; and
- provisions for education, training and building a supporting culture.

Introduce Day 1 right to request flexible working

Flexible working was referred to repeatedly in the evidence before the inquiry as being particularly helpful for menopausal employees. Back in February 2021, the Committee had recommended the introduction of a “Day 1” right to request flexible working and later that year the Government opened a consultation on the issue. That consultation closed on 1 December 2021, but the response has yet to be published.

The report recommends that the Government should bring forward legislation before the end of the current Parliament to make the right to request flexible working a Day 1 right for all. In addition, the Government is urged to issue guidance encouraging employers to grant all reasonable requests for flexible working rather than placing the burden on the employees to justify their requests.

Large public sector employer should trial specific “menopause leave”

The report notes that menopausal symptoms can have a significant, and sometimes debilitating, impact on women at work, which often leads to periods of sickness absence. The presence of rigid sickness absence thresholds may trigger formal absence management processes which can lead to women leaving the workplace.

To counter this problem, the Committee asks the Government to work with a large public sector employer with a strong public profile to develop and pilot a specific “menopause leave” policy. The Government should publish proposals for a wider

roll out within 12 months of the commencement of the scheme.

New guidance on the law should be published

Despite there being existing legal obligations under health and safety and equality laws, the report notes that neither the Health and Safety Executive (**HSE**) nor the Equality and Human Rights Commission (**EHRC**) has published any form of guidance on their websites in respect of the menopause. The HSE's position is that they do not hear enough from people looking for this sort of guidance to justify producing it, however, they acknowledge that the lack of approaches could be down to embarrassment and/or lack of awareness of the legal obligations.

The report recommends that both the HSE and the EHRC publish guidance on the legal considerations when supporting employees experiencing menopause.

Commence dormant dual discrimination provisions in section 14 of the Equality Act 2010

Evidence to the inquiry was that because menopause is essentially an "intersectional" phenomenon (i.e. in the main it affects older women), the dormant dual discrimination provisions in the Equality Act 2010 should be enacted. Enacting these provisions would entitle a worker to complain of discrimination arising out of the combination of two protected characteristics, rather than one as is presently the case. This change would help menopausal workers who have typically found it difficult to succeed with complaints based on a single protected characteristic. The Committee took a robust approach on this issue, stating that the current law "does not serve or protect menopausal women" and that section 14 is "shelf ready" and should be commenced immediately.

However, this is the second time that the Government has been urged to commence the dual discrimination provisions to tackle the issue of menopause discrimination. In November 2021, the

Government-appointed “Roundtable of Older Workers” [recommended](#) that the Government enact the dual discrimination provisions. The Government rejected their recommendation, stating that the existing legal framework provided sufficient protection and further changes were not needed. Therefore, it seems unlikely that the Government will change tack in response to this latest recommendation.

Consult on making menopause the tenth protected characteristic in the Equality Act 2010

There was considerable support for creating a new protected characteristic of menopause on the basis that it would provide a direct and clear protection to those experiencing discrimination because of menopause. Some of those giving evidence pointed out the disparity between the way pregnancy and menopause are treated in the workplace. Pregnancy is legally protected, and menopause is not, even though all women will experience menopause but not all women will experience pregnancy. Some of those giving evidence also argued that if a new protected characteristic was created this should include a duty to make reasonable adjustments, in the same way that there is for disabled workers.

The Committee was persuaded that a new protected characteristic should be created. The report recommends that the Government urgently consult on introducing a new protected characteristic, including a duty to make reasonable adjustments for menopausal employees. The report recommends that this consultation should launch by the end of January 2023.

What are the next steps?

The Government’s response to the Committee’s report is due to be published by 28 September 2022. However, the extended period of mourning following the Queen’s passing may mean this date is pushed back. Given the previous statements on the

dual discrimination provisions, as well as the new Prime Minister's deregulatory agenda, it seems unlikely that the Government will back radical legal reform in this area. What seems more likely is that the Government will commit to producing template policies and encouraging the publication of new guidance.

If you would like to learn more about menopause and the workplace, including what you can do to support your affected workers, you can view BDBF's latest webinar on this topic [here](#).

[Menopause and the Workplace Report – 28 July 2022](#)

BDBF is a law firm based at Bank in the City of London specialising in employment law. If you would like to discuss any issues relating to the content of this article, please contact Principal Knowledge Lawyer Amanda Steadman (amandasteadman@bdbf.co.uk) or your usual BDBF contact.

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