Serious about equality at work? Then it’s time to look after menopausal women.

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Employment Law News

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Serious about equality at work? Then it’s time to look after menopausal women.

International Women’s Day on 8 March 2021 puts the spotlight on equality for women, including in the workplace. By 2022, one in every six British workers will be a woman aged 50 or

over – a woman very likely to be on her journey through the menopause. Given that this phase of a woman's life can be physically and emotionally turbulent, what should employers be doing to support employees to remain well, effective and happy at work?

What is the menopause, perimenopause and post-menopause?

Most people know that the menopause is the natural change experienced by women relating to the stopping of the menstrual cycle for a period of a year or more. The menopause typically occurs between 45 to 55 years of age, but it can occur earlier. In the UK, the average age for a woman to reach the menopause is 51 years of age. What's perhaps less well known is that in the years leading up to the menopause, a woman's body is already starting to change – this phase is known as the perimenopause. The perimenopause typically starts four or five years before the menopause itself.

Many women experience the perimenopause and menopause as a difficult and stressful time in their lives and it is common to suffer from a variety of debilitating symptoms. In addition, most women continue to experience these symptoms for up to four years after their menopause – this phase is known as the post-menopause. Therefore, an average woman's menopause journey will span a ten-year period, beginning at around 46 years of age and ending at around 55 years of age.

What are the symptoms of the menopause?

The symptoms of the perimenopause, the menopause and the post-menopause are the same, although the range and severity of symptoms suffered will vary for each individual and may change over time. The TUC reports that around 80% of women experience noticeable symptoms and around a third of women find them difficult to deal with on a day-to-day basis. There is also evidence to suggest that stress can worsen some symptoms.

The symptoms include the following:

· Anxiety / panic attacks · Migraines / headaches · Heart palpitations · Insomnia · Night sweats · Hot flushes · Light headedness /dizziness · Fatigue · Low mood / irritability	· Loss of concentration · Poor memory · Irregular and/or heavy periods · Joint stiffness · Urinary problems · Gynaecological problems · Dry eyes, mouth, skin and hair · Hair loss / thinning · Weight gain

Why should employers care about the menopause?

Currently, around one out of every eight British workers is a woman over 50, and by 2022 this will increase to around one in six. Given that a third of menopausal women experience severe symptoms, managing the impact of the menopause is something that most employers will need to grapple with at some point.

It's clear from the list of the symptoms that the menopause has the capacity to have a significant impact on a woman's health and general wellbeing. Not only can these symptoms adversely affect a woman's performance at work, they can lead to periods of sickness absence. One survey suggests that up to 14 million working days are lost each year in the UK due to the menopause. In extreme cases, it may even lead to the woman leaving employment. Therefore, it's in an employer's interests to support women through this period of their lives and avoid these negative outcomes where possible.

Employers should also be mindful of the risk of discrimination against a menopausal woman on the grounds of sex, age and/or

disability. This could arise in a number of ways, for example:

- Jill is menopausal and her performance dips as a result of loss of concentration, fatigue and poor memory. She is placed on a performance improvement plan (a PIP). Jack's performance has also dipped as a result of "long COVID" symptoms but he is not placed on a PIP. This could amount to **direct sex discrimination**.
- Emma's manager insists that team meetings take place early in the morning before the working day starts. Emma is menopausal and suffers from insomnia, night sweats and loss of concentration. She finds it extremely difficult to attend the early meetings and when she does attend, she struggles to participate effectively. The practice of holding the meetings early in the morning could amount to **indirect sex discrimination**.
- Lisa's colleagues know she is going through the menopause and make jokes about it such as leaving a fan and a bag of ice on her desk and asking if she remembers what day it is. These jokes could amount to **harassment related to sex and/or age**.

More recently, Tribunals have been prepared to conclude that women suffering from menopausal symptoms are disabled for the purposes of the Equality Act 2010, meaning they are protected from **disability discrimination**. For example, in the case of Davies v Scottish Courts and Tribunals Service (2018), a Tribunal concluded that a woman suffering from a range of perimenopausal symptoms (namely heavy bleeding, cystitis, light headedness, loss of concentration and feeling emotional) was disabled. Her dismissal for conduct which had arisen out of those symptoms was discriminatory.

Similarly, in the case of Donnachie v Telent Technology Services Ltd (2020), a Tribunal decided that "typical" menopausal symptoms could amount to a disability, and that treatment for those symptoms (such as hormone replacement

therapy) should be disregarded for the purposes of this assessment. In that case, the woman suffered from a range of symptoms including hot flushes, disturbed sleep, fatigue, memory and concentration problems and anxiety.

Importantly, where an employee is disabled, the employer has a positive duty to make "reasonable adjustments" to remove or reduce any substantial disadvantage suffered by that employee compared to others. For menopausal women, this could include things like ensuring the workplace is cool and well ventilated, adjusting start and finish times, allowing additional breaks and providing access to counselling services.

What can employers do to support women going through the menopause?

The good news is that there are lots of things employers can do to support this valuable cohort of employees to remain well, effective and happy at work.

- **Conduct health and safety checks and take steps to minimise risk:** Employers have duties to take care of the health, safety and wellbeing of all employees. This includes a duty to assess risks to health and safety in the workplace and takes steps to minimise those risks. As far as the menopause is concerned, this means employers should take steps to ensure that symptoms are not made worse by the workplace or working practices and, where necessary, make changes to help women manage their symptoms whilst working. This might include things like keeping the workplace cool, providing cold drinking water and making a restroom easily available.
- **Bring in a menopause policy:** It's a good idea for employers to introduce a specific policy setting out its approach to menopause at work. A policy like this can help raise awareness of the issue amongst the wider

workforce by explaining what the menopause is and the symptoms that women experience. It can also normalise the issue by encouraging staff to have open conversations and to provide support to affected colleagues. The policy can also explain the company's approach to risk assessments and workplace adjustments.

- **Provide training for line managers:** Employers should also roll out training to line managers to ensure they understand what the menopause (and peri and post menopause) is and be able to spot symptoms. This understanding will help managers have discussions with affected employees in a supportive and sensitive manner. Such training should also set out the legal duties and risks that arise and what kinds of support can be offered.

- **Manage sickness absence or dips in performance carefully:** Sickness absences and dips in performance should be handled with care, and support should be in place to minimise the impact of menopausal symptoms wherever possible. This may include making temporary or permanent changes to the woman's job role, such as changing responsibilities or reducing hours. In particular, employers need to bear in mind the risk of discrimination, especially disability discrimination, when recording levels of sickness absence. Disability-related sickness absence should be recorded separately from other sickness absence and should usually be disregarded for the purposes of managing sickness absence.

- **Consider having a menopause champion in the workplace:** Larger employers may wish to consider introduce a key contact or "champion" with expertise on the issue for affected employees to talk to (e.g. a member of HR). As well as being a figurehead for the issue in the organisation, the champion can do other things such as

help raise awareness, run training, review risk assessments and lead a support network.

If you would like to discuss how your organisation can support staff though the menopause, please contact Amanda Steadman (amandasteadman@bdbf.co.uk) or your usual BDBF contact.

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