

MENOPAUSE AND THE WORKPLACE: WHAT DO EMPLOYERS NEED TO KNOW?

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*Thank you for joining
The webinar will begin shortly*

Menopause at work: What employers need to know

LUNCHTIME WEBINAR – 7 SEPTEMBER 2022

Menopause has long been a taboo subject, not talked about at home let alone in the workplace. However, in recent years it has started to come out of the shadows. An array of high-profile women have talked about their experiences and we've seen interest from Parliament, with the prospect that further legal protections will be introduced.

In advance of World Menopause Day on 18 October 2022, our lunchtime webinar will explain steps employers can take to support staff going through the menopause.

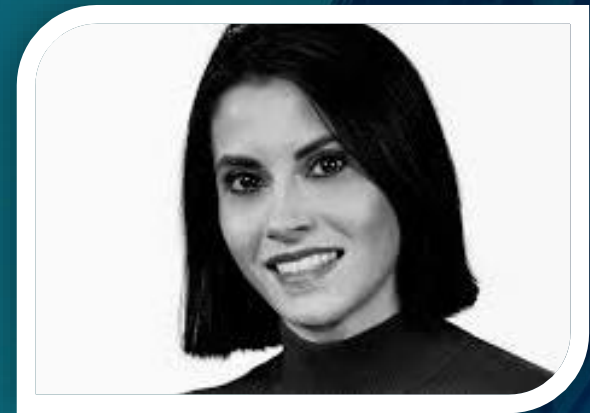
Our expert team will discuss the following issues:

- What is the menopause and what are the symptoms?
- Who is affected by the menopause?
- Should menopause be viewed as a workplace issue?
- What types of workplace problems may arise?
- What legal protections do menopausal workers currently have?
- What can we learn from recent Employment Tribunal disputes about the menopause?
- Is the law in this area going to change? What should good employers be doing now to support menopausal workers?
- What sorts of things should go into a workplace Menopause Policy?

Date: Wednesday, 7 September 2022

Time: 12.00pm – 12.50pm

Please click [here to register](#) for the webinar.



Amanda Steadman,
Principal Knowledge
Lawyer



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Associate

What is the menopause and why is it a workplace issue?

What is the menopause?

Which phase?	What is it?	When does it happen?
Perimenopause	Hormonal changes that begin around five years before the menopause.	40 – 50 (average is age 45).
Menopause	Stopping of the menstrual cycle for a period of one year or more which occurs because the ovaries stop producing eggs. In turn, this leads to major hormonal changes.	45 – 55 (average is age 51).
Post-menopause	Menopausal symptoms that persist for around four years after the menopause.	Four years post-menopause (ending on average at age 55).

What are the
symptoms?



Common physical symptoms

Hot and cold
flushes /
night sweats

Fatigue

Joint pain

Migraines

Abdominal
pain

Breast pain

Irregular
and/or heavy
periods

Urinary
problems

Heart
palpitations

Light
headedness /
dizziness

Gynaecological
problems

Tinnitus

Hair loss /
thinning

Dry eyes,
mouth, skin
and hair

Weight gain

Common non-physical symptoms

Insomnia

Low mood /
irritability

Anxiety

Panic attacks

Poor memory

Difficulty
concentrating

Loss of libido

Who is affected by the menopause?

- **All cisgender women** (typically between ages 45 – 55).
- Primarily a women's health issue, but not exclusively – it may also affect:
 - trans men;
 - trans women;
 - non-binary people; and
 - intersex people.

Should menopause be viewed as a workplace issue?

Women in the 40 – 55 age bracket are the fastest growing demographic in the workforce. By end of 2022, 1 in every 6 British workers will be a woman over 50.

Increasing this demographic dovetails with the diversity and inclusion agendas of many organisations (e.g. to close the gender pay gap most organisations need to increase female representation at senior level).

Around 60% say the menopause had a negative effect on them at work in some way. 900,000 have left the workforce due to the menopause.

What types of workplace problems may arise?

Increased
sickness
absence

Dips in
performance

Conduct
issues

Difficulty
functioning as
usual at work

Harassment

**What legal protections do
menopausal workers
currently have?**

“The current law does not serve or protect menopausal women”

The House of Commons Women and Equalities Committee, 28 July 2022

Health and safety

Health and Safety at Work Act 1974	Employer's duty to ensure health, safety and welfare of all workers.
Management of Health and Safety at Work Regulations 1999	Employer's duty to assess risks and take remedial measures.
Implied duty of care	Employer's duty to take reasonable care of health and safety (breach of which could give rise to a personal injury claim).
Employment Rights Act 1996	Protection from dismissal and detriment for certain health and safety reasons and/or blowing the whistle about health and safety matters.

Unfair dismissal

Employment Rights Act 1996

Protection from unfair dismissal:

- **Constructive dismissal:** an employer's repudiatory breach of contract may entitle the employee to resign and claim constructive unfair dismissal.
- **Express dismissal:** an employer needs a substantively fair reason for dismissal and must also follow a fair procedure prior to dismissal.

Discrimination – key points

- The Equality Act 2010 protects workers from discriminatory treatment on the grounds of nine protected characteristics.
- Menopause is not a standalone protected characteristic (yet).
- Currently, no ability to bring a “combined discrimination” claim based on two characteristics (e.g. *“I was discriminated against not because I am old, nor because I am a woman, but because I am an older woman”*).
- Protected characteristics most likely to be engaged are disability, sex or age.

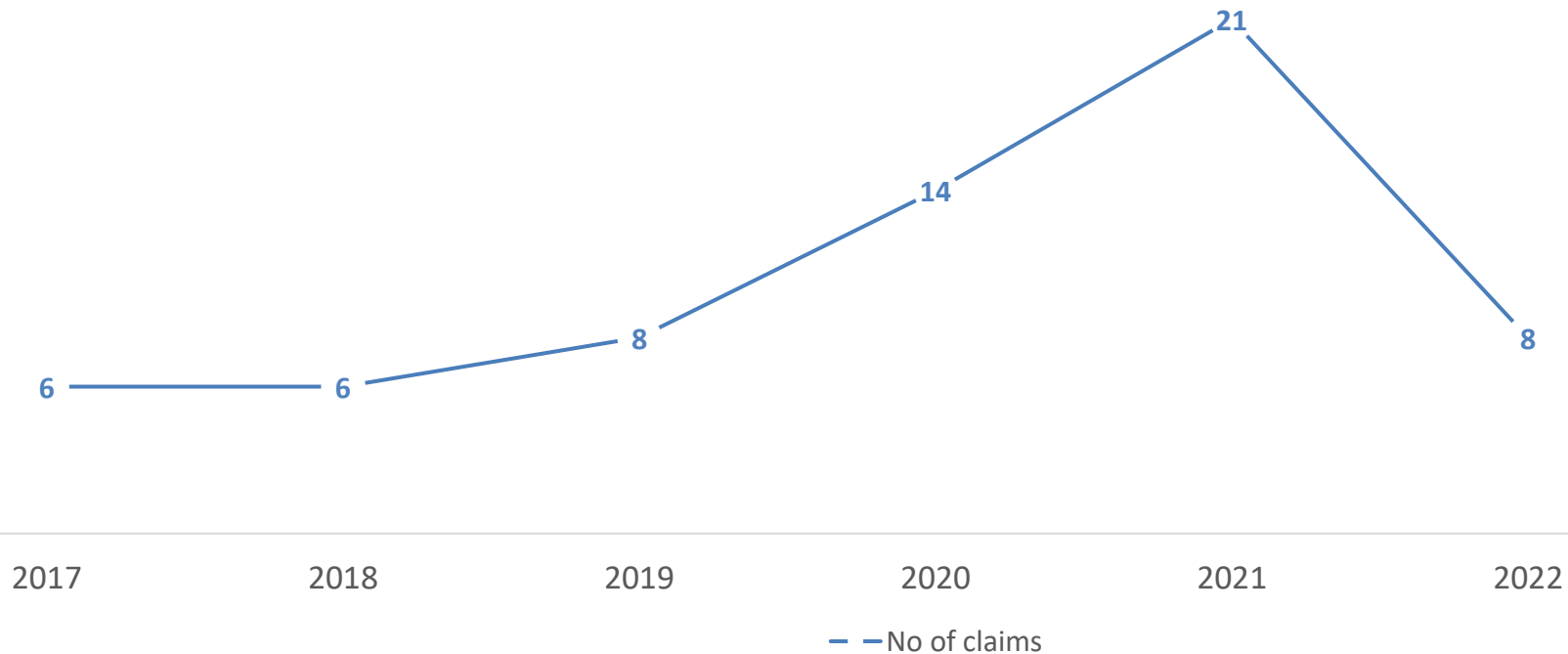
Discrimination – getting over the disability status hurdle

- To proceed with a disability discrimination claim, the claimant must show that:
 1. they suffer from a physical and/or mental impairment;
 2. that impairment has an adverse effect on their ability to carry out normal day-to-day activities;
 3. the effect is substantial; and
 4. the effect is also long-term (i.e. it has lasted, or is likely to last, for at least 12 months).
- “*No reason in principal why typical menopausal symptoms cannot have a relevant disabling effect*” - Donnachie v Telent Technology Services Ltd (ET, 2020).
- BUT only **five claimants** in five years have satisfied an Employment Tribunal that they were disabled by reason of their menopausal symptoms.

What can we learn from recent Employment Tribunal disputes about the menopause?

Prevalence of menopause-related claims over the last five years

NUMBER OF DECISIONS ON THE EMPLOYMENT TRIBUNAL REGISTER CONTAINING THE WORD “MENOPAUSE” BETWEEN 2017 AND 2022



A closer look...



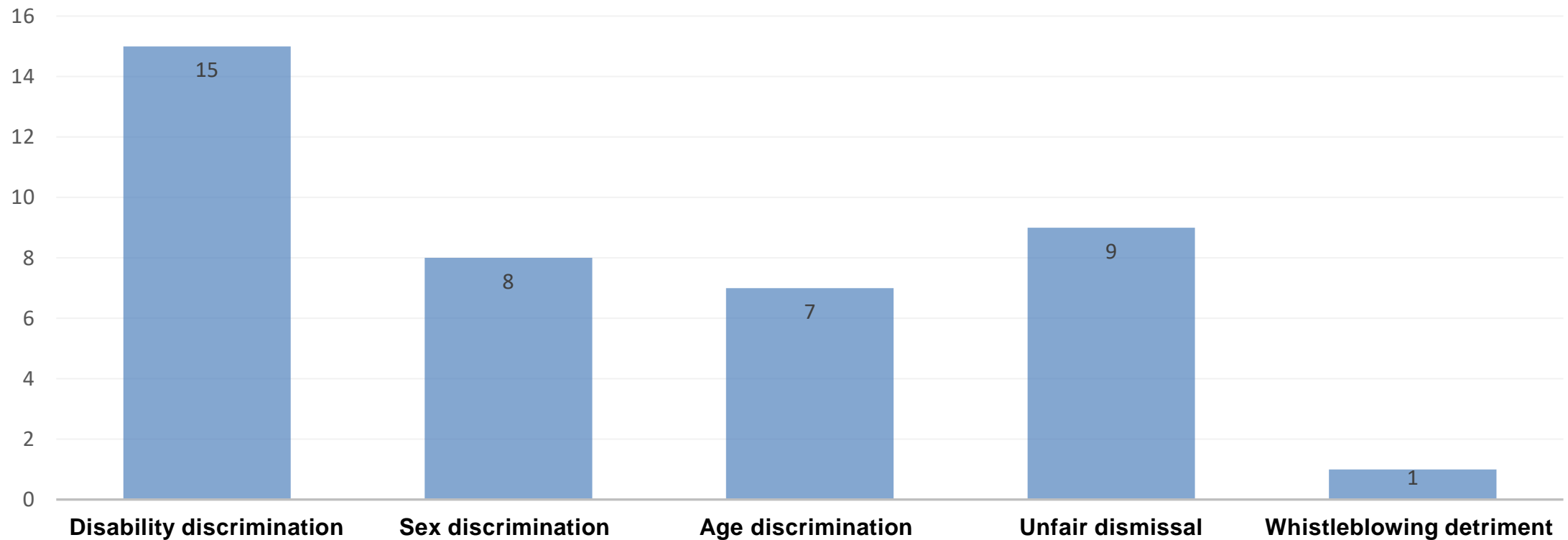
- 63 out of c.91,000 Employment Tribunal decisions between 2017 – 2022 contain the word “menopause”:
 - 21 decisions – menopause features as a minor background issue only.
 - 6 decisions – applications to extend time / amend claim.
 - 8 decisions – preliminary decisions on claimant’s disability status only.
 - **28 decisions – full merits hearing decisions where menopause was a material issue.**
- Out of those 28 decisions:
 - 6 claims succeeded in full.
 - 3 claims succeeded in part.
 - 19 claims either dismissed or succeeded on grounds unrelated to the menopause.

Why so few claims?

- Lack of awareness of existing employment rights.
- Inability to identify a pathway for bringing a claim which has reasonable prospects of success.
- Unwillingness to “rock the boat” or fear of losing job.
- Inability to access or fund legal advice.
- Unwillingness to embark on stressful, expensive and uncertain litigation.
- Claims may be started but settled before a hearing.

Which claims were pleaded?

**NUMBER OF CLAIMANTS PLEADING THESE CLAIMS
(OUT OF 28 FULL MERITS HEARING DECISIONS BETWEEN 2017 - 2022)**



Four issues were at the root of all the claims

Issue 1 - Failure to investigate and give appropriate weight to symptoms when taking dismissal decisions.

Issue 2 - Poor discussions about menopause by managers.

Where are employers going wrong?

Issue 3 - Inappropriate and/or harassing comments by colleagues.

Issue 4 - Failure to make adjustments.

Issue 1 - Failure to give appropriate weight to symptoms when taking dismissal decisions

Solicitor who dishonestly backdated documents was unfairly dismissed because employer failed to allow her to present medical information on impact of menopause on her conduct.

Factory worker who breached alcohol at work policy was unfairly dismissed because employer failed to ask further questions about menopause or refer her to OH after she had raised the issue as part of her defence.

Court officer who misled members of public and was confused in her accounts of what happened was unfairly dismissed because employer failed to take into account the impact of menopausal symptoms on her conduct.

Store assistant who took menopause-related sickness absence suffered disability discrimination when employer dismissed for absence – should have considered alternatives to dismissal.

Issue 2 - Poor management of discussions about menopause by managers

Male manager stopped an employee from discussing menopause, labelling it *“lady issues”* and *“girly stuff”*.

Male manager stopped an employee from discussing menopause, saying it was *“too much information”* and directed her to a female member of staff.

Manager asked a sick employee whether she might be menopausal during a wellbeing telephone call.

Employee asked if her anxiety was caused by the menopause during a group meeting.

Employee asked to discuss her menopausal symptoms in front of male colleagues during a hearing.

Very senior employee told in a meeting to *“Calm down...don’t let the hormones get out of control”*.

Issue 3 - Inappropriate and/or harassing comments by colleagues

Employee going through an early menopause told that it was “*no big deal*” that she would not be able to conceive.

Employee told that she was taking a line of questioning the wrong way because she was menopausal and that she should go on HRT.

Employee told that she had not been allocated shifts because she was “*too fat*” (where her weight gain was linked to her menopause).

Intrusive questioning of an employee about her menopausal status, suggesting that she had made mistakes because of it and told that her husband would soon start looking at younger women.

Employee told she was struggling with tasks because she was menopausal and ridiculed in front of colleagues and customers.

Issue 4 - Failure to make adjustments

Refusal to lower the air temperature, which exacerbated an employee's hot flushes.

Requirement to work in an environment which was too cold, which exacerbated an employee's cold flushes.

Requirement to wear a uniform buttoned up to the neck, which exacerbated an employee's hot flushes.

Requirement to work in a bakery area, which exacerbated an employee's hot flushes.

Requirement to work long hours including early starts and late finishes, which disadvantaged a menopausal worker suffering from fatigue.

Learning points for employers from these decisions

- Improve knowledge and understanding of the menopause and its symptoms within your organisation.
- Ensure health and safety risk assessments consider the risks in the workplace to menopausal workers.
- Take steps to remove, or minimise, any identified health and safety risks.
- Proactively make reasonable adjustments for any menopausal workers who are (or you think may be) disabled.
- Train managers on how to handle sensitive conversations, and ask questions, about menopause.
- Include menopause in dignity at work / anti-harassment training for all staff.
- Investigate whether a menopausal worker is disabled before taking any action against them.
- If disabled, consider whether the proposed action can be justified. If not disabled, ensure a fair process is followed before issuing any sanction.

What does the future hold?

Recent recommendations for change

1. Menopause Ambassador to showcase good practices to employers.
2. Produce model menopause policies for employers to adopt.
3. Introduce a Day 1 right to request flexible working.
4. Public sector to trial special “menopause leave”.
5. New guidance from the HSE and EHRC on menopause and the law.
6. Enact the dual discrimination provisions in the Equality Act 2010.
7. Urgent consultation on introduction of menopause as the 10th protected characteristic (including a duty to make reasonable adjustments).

What can employers do now to support menopausal workers?

- Train your line managers and the wider workforce.
- Raise awareness (e.g. webinars).
- Set up a menopause network.
- Appoint menopause champions.
- Secure senior leadership “buy in”.
- Make adjustments to help affected workers.
- Manage sickness / performance / conduct issues carefully.
- Include in private medical insurance / employee assistance programmes.
- Introduce a menopause policy.

What sorts of things should go into a menopause policy?

1. Define the three menopause phases and explain who is affected.
2. Explain the range of physical and non-physical symptoms.
3. Explain how affected workers are protected in law.
4. Encourage open conversations.
5. Specify training to be provided to line managers and the wider workforce.
6. Explain approach to risk assessments and adjustments.
7. Explain interaction with other relevant policies (e.g. sickness / flexible working).
8. Signpost networks and other sources of support.

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