

Menopause – what are the employment law implications?

What steps can employers take to minimise any discrimination relating to menopause?

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Menopause has become a hot topic in the press recently, and claims brought in the employment tribunal are on the rise. In fact, according to data from Menopause Experts Group, there were 16 tribunals that cited menopause in 2020, up from 6 in 2019 and 5 in 2018. Although this would imply that menopause is an emerging issue, it's more likely that as menopause has become more openly discussed, the taboo is lessening.

But how does menopause interact with employment law, and what types of claims could be brought that are connected with menopause?

Whilst menopause itself is not a protected characteristic itself, discrimination due to menopause could be arguable under the protected characteristics of disability, age and sex.

To date the most common type of menopause claim seen to date has been that of disability discrimination. In terms of menopause amounting to a disability, the usual legal test for whether a health condition, or symptoms of a health condition meet the legal definition of a disability applies. As such, this will continue to be tested on a case by case basis, looking at the specific impact of the symptoms on the affected individual. However, if this test is met, an individual can bring a variety of claims connected with a disability, including Direct Discrimination, Indirect Discrimination, Discrimination Arising from Disability, Failure to make Reasonable Adjustments and Harassment.

Of course, discrimination claims connected with menopause can be brought alongside any other employment tribunal claims, including constructive dismissal if the treatment is sufficient to amount to a fundamental breach of contract.

As such, employers need to be aware of their approach to menopause within the workplace, as well as ensuring they are challenging assumptions that may be made. For example, it may be assumed by an employer that only women aged 45-55 may experience menopause symptoms. However, individuals with different gender identities may experience menopause, and individuals outside of this age bracket may be affected by menopause, either naturally or a result of medical treatment, including as a side effect of some cancer treatments.

What steps can employers take to minimise any discrimination relating to menopause?

You can create and implement a menopause policy in the workplace, to raise awareness and discourage discrimination. You can also implement training on menopause for all employees to allow them to become better informed.

There have also been publicised examples of some employers offering flexible working, or paid menopause leave, or making specific changes to uniforms. Such policies will vary by employer and will often be identified after discussions prompted by the increased awareness of menopause within the workforce.

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