

UK employment: Let's talk about the "M" word: harnessing positive momentum on menopause in the workplace

In brief

It's recently been [said](#) that *"the 'M word' finally became a hot topic in 2021"*.

And since we published our first [article](#) on this topic back in September 2020, it's clear that many businesses, governments and regulators have publicly recognised menopause as a health priority and - albeit belatedly - started to take positive steps to break historic taboos and encourage support, particularly in the workplace.

64% of respondents to Part II of our recent [Mind the Gap series](#), which seeks to build a holistic view of inclusion and diversity initiatives from global employment leaders, confirmed that their organisation has implemented some form of menopause policy. 74% of those without such a policy plan to implement one within the next two years.

In this update, we've summarised the key recent developments in this area, what's on the radar over the coming months and some top tips for those employers considering menopause-related initiatives of their own.

In this issue

Key takeaways

[Why it matters: the business case continues to grow](#)

[Recent developments of note for employers](#)

[Recent case law](#)

[What's on the horizon?](#)

[Getting it right: top tips](#)

Key takeaways

- Awareness of menopause is gaining momentum in the workplace. Governments and employers are beginning to take steps to break taboos and implement support for those affected.
- We have seen an increase in reported cases where claimants have successfully brought menopause-related discrimination claims based on the protected characteristics of age, sex and/or disability under the Equality Act 2010.
- The UK government has been reviewing existing legal protections in respect of menopause and changes to the law could be on the horizon.

There are a number of proactive steps employers could be taking in the meantime, including the implementation of a bespoke menopause policy, education initiatives and dedicated contact points.

Why it matters: the business case continues to grow

Various statistics released over the last 18 months have continued to underscore the potential impact of menopause symptoms on business activities, including:

- There are close to 4 million women at an age most likely to experience menopause (around 45-55) in work in the UK, a fast growing population comprising those who are often at or close to the peak of their skills and experience within their industry.
- A recent [survey](#) by the UK's Women and Equalities Committee suggests that 31% of women have missed work due to menopause symptoms, but only 11% have actually asked for workplace adjustments. Of those who did not request adjustments, the most frequent underlying reasons were either *"I was worried about the reaction of others"* (26%) and *"I didn't know who to speak to"* (11%).



- 24% of UK-based individuals between the ages of 45 to 67 would consider leaving their jobs due to a lack of support around menopause symptoms, citing it as the second most impactful life event on their career to date, only just behind having children.¹
- Research by the Chartered Institute for Professional Development suggests that almost one million women have actually left their jobs due to menopausal symptoms (CIPD 2021).
- Overall, this leads to menopause-related productivity losses can amount to more than \$150 billion a year globally.²

It seems these stark figures have woken governments, regulators and businesses up to the need to address a clear public health and productivity challenge which has until recently been ignored as a societal taboo.

Recent developments of note for employers

The UK government has sought to prioritise menopause support as part of its Women's Health Plan, which has already led to the establishment of a bespoke "Menopause Taskforce". Made up of ministers and clinicians from across the UK, the Taskforce first met in February 2022 to set out its aims of tackling the broad issues surrounding the menopause, such as ensuring treatments are accessible, reducing ongoing stigma associated with symptoms and improving support networks, both in and out of the workplace.

These goals align with the publication of a government commissioned **report** in November 2021, which emphasised the need for employers to take an active role in developing solutions by building support mechanisms into workplace practices. Its recommendations include emphasising the importance of menopause awareness amongst line managers and appointment of menopause "champions" within businesses to ensure a discrete and knowledgeable point of contact is always on hand.

In turn, many organisations across the public and private sectors have begun to implement policies, guidance and initiatives aimed at building awareness of menopause as part of their broader D&I strategies. Channel 4, a UK broadcaster, was an early adopter of a bespoke policy setting out support structures and guidance for managers in 2019. In October 2021, ASOS implemented a policy which envisages flexible working and the ability to take short notice leave for those experiencing menopause, as part of a broader "health related life events" policy.

More significant legal changes may also be on the horizon; the UK's Women and Equalities Committee is conducting an inquiry covering the extent of discrimination faced by women in the workplace, including whether existing legal protections are fit for purpose.

The Chair of that committee, Caroline Nokes, has made her feelings clear, stating that menopause "is ignored in the legislation". There is clearly much to do on awareness raising and building support networks, but we have seen an increase in reported cases where Claimants have relied upon the protected characteristics of age, sex and/or disability under the Equality Act 2010. It remains to be seen whether a change in law will materialise. In the meantime, we have discussed a number of these new cases below:

Recent case law

- **Rooney v Leicester City Council** (EA-2020-000070-DA; EA- 2021-000256-DA): Here, the Employment Appeal Tribunal held the lower Tribunal had been wrong to hold that menopause symptoms including insomnia, stress, migraines, hot flushes, memory loss and palpitations which had been present for over two years were not substantial enough to constitute a disability. In this case, the employee had complained to her manager about the impact of hot flushes on her work, who had dismissed them on the basis that "he gets hot in the office too". The matter was remitted to a differently constituted Tribunal.
- **Donnachie v Telent Technology Services Ltd** (ET/13000005/20): An employee experienced hot flushes, night sweats and palpitations which contributed to fatigue, anxiety and memory/concentration difficulties at work. Her symptoms were

¹ More than 1m UK women could quit their jobs through lack of menopause support, The Guardian, January 2022

² Many Women Exit Workforce for a Little-Talked About Reason, Bloomberg, June 2021



exacerbated by stress. Her employer argued that these were typical features of the menopause, so did not have the "substantial" impact necessary to meet the definition of disability under the Equality Act 2010. The Tribunal rightly disagreed; it could not see any reason why typical menopause symptoms could not amount to a disability and confirmed that the impact of symptoms should be assessed on an individual level.

- **Best v Embark on Raw** (ET/3202006/20): The Tribunal held that a manager had harassed a female employee on the basis of her age and sex by asking her whether or not she was menopausal in circumstances where she had made it clear she did not want to discuss the topic. The Claimant also alleged that the same manager had suggested that she "must be in her menopause", but the Tribunal was unable to find - on the balance of probabilities - that these alleged comments had taken place (although if they had it is likely they would have also constituted acts of harassment).

What's on the horizon?

There appears to be significant appetite for further development of the protections available to those experiencing menopause symptoms within the UK government. But pending the outcome of the Women and Equality Committee consultation, it remains to be seen whether this will translate into legislative change:

- It has been suggested that the ongoing consultation could recommend an amendment to the Equality Act 2010 to make menopause a protected characteristic in itself. This seems unlikely to occur at this stage, given the relatively broad concepts of age, sex and disability which already trigger protection (particularly if these could be combined as below).
- The government-commissioned report referenced above recommends that section 14 Equality Act 2010 is enacted (a provision which has remained dormant thus far). This would prohibit "dual discrimination", namely direct discrimination based on a combination of two protected characteristics, including age, race, gender reassignment, sex, sexual orientation and disability. This would facilitate more targeted claims based on an individual's specific characteristics, opening further doors to those who may experience - but do not fit stereotypical views of - the menopause, such as younger women, trans men, intersex and non-binary individuals.
- Some MPs and action groups have long pushed for a legal obligation to implement mandatory menopause policies, particularly amongst larger employers. Others have recommended that Employee Assistance Programmes should expressly advertise menopause awareness, training and support as part of their offering.
- Employers have a general duty to ensure the health, safety and welfare of employees at work, which should, in theory, cover the full spectrum of health related issues including menopause. A recent discussion as part of a Women and Equalities Committee session went further and covered the potential for mandatory risk assessments covering menopause; this might need to cover general workplace factors such as temperature controls, rest areas and access to drinking water.

While we wait for further details on potential reform, employers can take a number of proactive steps in this area based on recent developments and current market best practice.

Getting it right: top tips

- **Implement a menopause policy:** Many organisations across different sectors have now implemented or are actively considering the introduction of bespoke menopause policies. This might cover information on symptoms, support/education networks and the way in which an employer will accommodate menopause related issues, including under sickness absence and flexible working policies.



- **Educate the workforce:** Written policies can be a blunt instrument without broader workforce engagement. Communications should cover the importance of open conversations to help break down taboos and normalise conversations. Training/workshops should also be required, particularly amongst line managers, to help spot menopause-related issues and with a view to supporting affected individuals.
- **Highlight contact points:** Policies and associated training should introduce designated contact points for those seeking information and support on the issue. This may take the form of an external Employee Assistance Programme or internal "menopause champion" who has undergone additional training. Not only does a clear point of contact encourage openness, it also provides value to employers in assessing ongoing initiatives with the benefit of consolidated "live" feedback.
- **Watch out for hidden discrimination risks:** Introducing benefits specific to menopausal symptoms, such as additional leave or healthcare arrangements, may give rise to questions given that by definition, these would not apply to men. However offering benefits to meet a specific need that only impacts women is unlikely to be discriminatory in itself and should in any event fall within the positive action provisions of the Equality Act. Care should be taken to ensure that male colleagues who may require flexibility for other reasons (whether health related or otherwise) are treated consistently with women under the employer's broader flexible working arrangements, but there is no requirement to specifically mirror menopause policies and benefits.
- **Think intersectionally:** Take care to avoid stereotypes based on age, sex and the nature of any symptoms; no two people's experience will be the same and menopause can affect individuals in very different ways. Perimenopause can affect those in their 30s, for example. The impact of symptoms can also vary depending on an individual's other characteristics, such for trans men, those with disabilities and people of colour. Similarly, although trans women do not undergo the menopause, they may experience some similar symptoms as a result of treatment and changes to their treatment, and gender reassignment policies may need to address this.
- **Factor menopause into health and safety assessments:** Bespoke menopause risk assessments may not be mandatory (yet), but related issues arguably fall within employers' broader duty to ensure the health and safety of its workforce. Considerations may cover temperature regulation, the importance of ventilation and access to sanitary facilities/products including ensuring some single sex toilet/ washroom provision.
- **Consult with employees:** Close consultation with employee and affinity groups is an important part of framing any new menopause initiatives, and is particularly helpful in understanding different pressures and viewpoints.

If you would like further information, please contact the team members below or your usual Baker McKenzie contact.

Contact Us



Monica Kurnatowska
Partner
London
monica.kurnatowska
@bakermckenzie.com



Hannah Swift
Associate
London
hannah.swift
@bakermckenzie.com



Sam Rayner
Associate
London
sam.rayner
@bakermckenzie.com

© 2022 Baker & McKenzie. **Ownership:** This site (Site) is a proprietary resource owned exclusively by Baker McKenzie (meaning Baker & McKenzie International and its member firms, including Baker & McKenzie LLP). Use of this site does not of itself create a contractual relationship, nor any attorney/client relationship, between Baker McKenzie and any person. **Non-reliance and exclusion:** All information on this Site is of general comment and for informational purposes only and may not reflect the most current legal and regulatory developments. All summaries of the laws, regulation and practice are subject to change. The information on this Site is not offered as legal or any other advice on any particular matter, whether it be legal, procedural or otherwise. It is not intended to be a substitute for reference to (and compliance with) the detailed provisions of applicable laws, rules, regulations or forms. Legal advice should always be sought before taking any action or refraining from taking any action based on any information provided in this Site. Baker McKenzie, the editors and the contributing authors do not guarantee the accuracy of the contents and expressly disclaim any and all liability to any person in respect of the consequences of anything done or permitted to be done or omitted to be done wholly or partly in reliance upon the whole or any part of the contents of this Site. **Attorney Advertising:** This Site may qualify as "Attorney Advertising" requiring notice in some jurisdictions. To the extent that this Site may qualify as Attorney Advertising, PRIOR RESULTS DO NOT GUARANTEE A SIMILAR OUTCOME. All rights reserved. The content of this Site is protected under international copyright conventions. Reproduction of the content of this Site without express written authorization is strictly prohibited.

