



MENOPAUSE HEALTH AND SAFETY and THE LAW

UNITE THE UNION

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UNITE women members will at some time reach the menopause. This is also called "the change" - perhaps more accurately, as this life change is not a sudden, but a gradual, process. While it is not an illness, and while women can experience the menopause in different ways, it brings with it physical changes to the body and a host of symptoms, many of which are uncomfortable and can seriously affect women both at home and at work.

A TUC survey of safety reps found that only about one employer in five offers advice and information on the menopause and only one safety rep in 50 said that their health and safety policy dealt with issues related to the menopause. The menopause is not an illness. But it most certainly poses many workplace health and safety issues.

The menopause is also still a "taboo" subject which women may find difficult to raise when they are having difficulties at work because of it. Often women may not even be aware that the symptoms they are experiencing are because of the menopause so representing menopausal women members at work can be a difficult and a sensitive issue but it's one that we need to understand and more importantly be ready to act on.

Often simple workplace adjustments can help, and employers should understand their obligations under the Health and Safety at Work Act 1978 and provide these for women who need them. Women should not be forced out of the workplace or unnecessarily have to reduce their hours, further widening the gender pay gap, due to Menopausal symptoms.

Policies and pledges need to follow through into action as Unite demand employers understand their responsibilities and start to promote the numerous benefits of menopause-friendly workplace. Unite aims to raise awareness and help women members experiencing the menopause at work through our network of safety reps and shop stewards by preventing discrimination and making changes to our working environments which can benefit everyone.

This briefing, alongside our Model Agreement and Risk Assessment Checklist will help you to talk about this issue with confidence.

MENOPAUSE – UNION SAFETY REPS

What safety reps and shop stewards can do:

1. Make sure your employer is complying with health and safety legislation – for example ensuring a comfortable workplace temperature, and adequate ventilation, consulting with workers, carrying out risk assessments and operating safe systems of work.
2. What particular health and safety issues may affect menopausal women in your workplace?
3. Could welfare facilities be improved? Ensure that there are good rest facilities and a quiet area, easily accessible cold drinking water and adequate and suitable sanitary facilities for women (and men) which are situated within easy reach of workstations.
4. Does your health and safety policy cover gender issues such as the menopause? If not, negotiate a policy.
5. Are all managers, supervisors and safety reps trained to deal with menopause issues sensitively and fairly in the workplace?
6. Are workers (and managers) provided with information, advice and training about the menopause?
7. Are there adequate notice boards to enable information to be displayed?
8. Ask your employer to help raise awareness and also encourage health promotion in the workplace.
9. Negotiate improved occupational health provision. A good in house OH department should be concerned about preventing injuries and ill-health, raising health awareness and arranging for health screening. For smaller workplaces without in-house provision, encourage your employer to arrange external occupational health provision.
10. Use your rights to ensure that a gender-sensitive approach to the menopause is taken when dealing with risk assessments.
11. Does your sickness and absence policy treat menopausal workers fairly and provide for paid time off for medical appointments or treatment?
12. Will flexible working patterns help menopausal women in your workplace?
13. Negotiate flexible rest and toilet breaks.
14. When considering shift working be aware that there may be health issues that should be considered. Ensure that night workers are offered health assessments as required under the Working Time Regulations 1998 and that canteen, rest and other facilities are all available equally to both day, and night workers.

MENOPAUSE- WHAT IS THE LAW

What is the law?

Health and Safety at Work etc Act 1974

Employers are required to protect the health, safety and welfare of all their employees. They have a duty to provide a safe workplace and safe systems of work. This is also a common law duty. The employer must also ensure, so far as reasonably practicable, the welfare of all their employees while they are at work.

Safety Representatives and Safety Committees Regulations 1977

These confer a number of rights and functions on trade union elected safety representatives including representation of workers' views on health and safety, raising health and safety concerns with the employer, inspection of the workplace, investigating accidents and dangerous occurrences, consultation, information, to call for the setting up of a safety committee when two request this in writing, facilities to enable them to carry out their functions, and paid time off to carry out their functions and for training.

Workplace (Health, Safety and Welfare) Regulations 1992

These regulations are important in the context of the menopause. They cover a wide range of workplace requirements including maintenance, ventilation, temperature, access and egress, lighting, cleanliness of the workplace, sanitary and washing facilities, eating facilities and restrooms, changing facilities, drinking water, space in workrooms, workstations and seating requirements, employers' duty to protect employees from effects of sunlight and provision relating to disabled workers.

Health and Safety (Display Screen Equipment) Regulations 1992 (as Amended in 2002)

The Regulations require workstation assessments, risk assessments, provision of breaks or changes of activity for Display Screen Equipment users. Workstation requirements also cover work environment issues including sufficient space to change position and vary movements, ensuring that any equipment does not produce excess heat that would cause discomfort to operators and establishing an adequate level of humidity. Radiation must also be reduced to negligible levels.

Personal Protective Equipment (PPE) at Work Regulations 1992 (as Amended in 2002)

PPE should only be necessary if other methods of controlling the risks are not adequate. If PPE is necessary, then it should offer adequate protection for its intended use, those using it should be trained on its safe use, it should be properly maintained and fit the wearer. The state of health of the wearer should be taken into account and

members should, if possible, be given a choice of suitable PPE. It should also be personal to the wearer.

Management of Health and Safety at Work Regulations 1999 (as Amended in 2003)

One of the most important health and safety regulations. Among other things they require employers to carry out risk assessments – that is a careful examination of what could cause harm to people at work so that they can consider the precautions to be taken to control and preferably prevent injury.

Working Time Regulations 1998 (as amended in 2003)

They cover issues such as holidays, breaks and working hours. They define night workers and require employers to offer free health assessments for night workers.

Equality Act 2010

The Equality Act 2010 designates protected characteristics to age, disability, gender re-assignment, marriage and civil partnership, pregnancy and maternity, race, religion and belief, sex and sexual orientation. It is unlawful to discriminate against people who have protected characteristics under the Act. The menopause is not an illness or a disability, but in some situations it may be possible to rely upon the Equality Act 2010.

The Equality Act 2010 prohibits direct and indirect sex discrimination so it may be possible to rely upon the Equality Act 2010 to protect women members from unfair treatment or harassment. The Act also outlaws discrimination on the grounds of age, and similarly may be relevant.

Unite ensures that positive action for Menopausal women takes place in the workplace so they do not have to seek change and justice via the tribunal service. However, there are a growing number of cases being taken to the Employment Tribunal and to the Employment Appeal Tribunal for example:

Sex discrimination

In Merchant v BT Plc, Ms Merchant was dismissed following a final warning for poor performance. She had previously given her manager a letter from her doctor explaining that she was “going through the menopause, which can affect her level of concentration at times”.

In dismissing her, the manager chose not to carry out any further medical investigations of her symptoms, in breach of BT’s performance-management policy. The tribunal upheld her claims of direct sex discrimination and unfair dismissal and held that the manager would never have adopted “this bizarre and irrational approach with other non-female-related conditions.”

Disability discrimination

Davies vs Scottish Courts and Tribunal Service SCTS (2018) Thought to be the first disability discrimination case on menopause.

The employee worked as a court officer for the Scottish Courts and Tribunal Service. She was suffering from a host of menopause-related symptoms and had been prescribed medication for cystitis. She kept the granulated medication in her desk to be dissolved in water. However, on returning to her desk after a court visit, she found her personal items had been moved and the water jug on her table was empty. Concerned to see two men drinking water, she alerted them to the fact it could potentially contain medication.

Although it transpired the medication was not in the water – which would have turned pink if so – the health and safety team subjected her to a rigorous investigation. The tribunal found this went far beyond the issues it should have been examining. Her company put her through a disciplinary action and ultimately dismissed her on grounds of gross misconduct – which she unsuccessfully appealed.

The tribunal's ruling was that the claimant was unfairly dismissed and subjected to disability discrimination. The tribunal ordered reinstatement to her post, £14,000 compensation for her loss of pay between the period of dismissal and reinstatement, plus £5,000 in respect of injury to feelings.

In *Donnachie v Telent Technology Services Ltd*, the tribunal considered whether an employee's menopause symptoms amounted to a disability. Ms Donnachie experienced hot flushes seven or eight times a day, which were regularly accompanied by palpitations and feelings of anxiety. She also experienced night sweats, fatigue, and memory and concentration difficulties. Ms Donnachie was prescribed HRT patches by her GP, which improved her symptoms, but they persisted, particularly when she was under pressure.

Ms Donnachie's employer argued that she merely suffered from typical menopausal symptoms and therefore the impact on her was not substantial. However, the employment judge, held that Ms Donnachie was disabled by reason of menopause or symptoms of menopause, stating: "I see no reason why, in principle, 'typical' menopausal symptoms cannot have the relevant disabling effect on an individual."

The difficulties experienced by menopausal workers in establishing that their symptoms amount to a disability is illustrated by the recent case of Rooney v Leicester City Council. Despite setting out Ms Rooney's comprehensive list of symptoms and the adverse effects on her day-to-day activities, the tribunal concluded that the effects were only minor or trivial.

Rooney appealed this decision and the Employment Appeal Tribunal (EAT) held that the tribunal had "erred in law in holding that [Rooney] was not a disabled person at the relevant time". The EAT found it difficult to understand how the tribunal had concluded that Rooney was not disabled, when the tribunal had not expressly contested the evidence about Rooney's symptoms.

Age discrimination

There are very few cases argued as age discrimination claims. The most notable case is A v Bonmarche Ltd (In administration), which was also a sex discrimination case. Ms A had worked in retail for 37 years and was a high achiever. Her situation at work changed around May 2017 when she began to go through the menopause. Ms A's male manager would demean her and humiliate her in front of other staff who were younger than Ms A and would laugh at the manager's remarks. The manager also called Ms A "a dinosaur" in front of customers and continually criticised her unreasonably.

Ms A contacted higher management regarding her manager's treatment of her, but no action was taken. She suffered a breakdown in November 2018 and her manager was threatening towards her when she returned to work leading to her resignation. She made a claim to the employment tribunal on the basis that she had suffered harassment and bullying in relation to both age and sex discrimination, and she was awarded £28,000.

It is evident that tribunals are treating menopause symptoms seriously and employers should do the same to avoid litigation and a negative impact on workplace relations.

**Please consult your Regional Women's and Equalities
Officer for advice**