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# Menopause In The Workplace



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# Thank you: Our Talk Today....



- Menopause: The broad picture
- Why are talking about it
- The Legal framework
- Government consultations
- Current legal position
- What employers can and should do
- What employees can and should do
- Why it matters
- Questions

# What is the Menopause?

Menopause is generally defined as 12 months after the woman's last period; but it is often referred to mean the symptoms experienced before, during and after menopause.

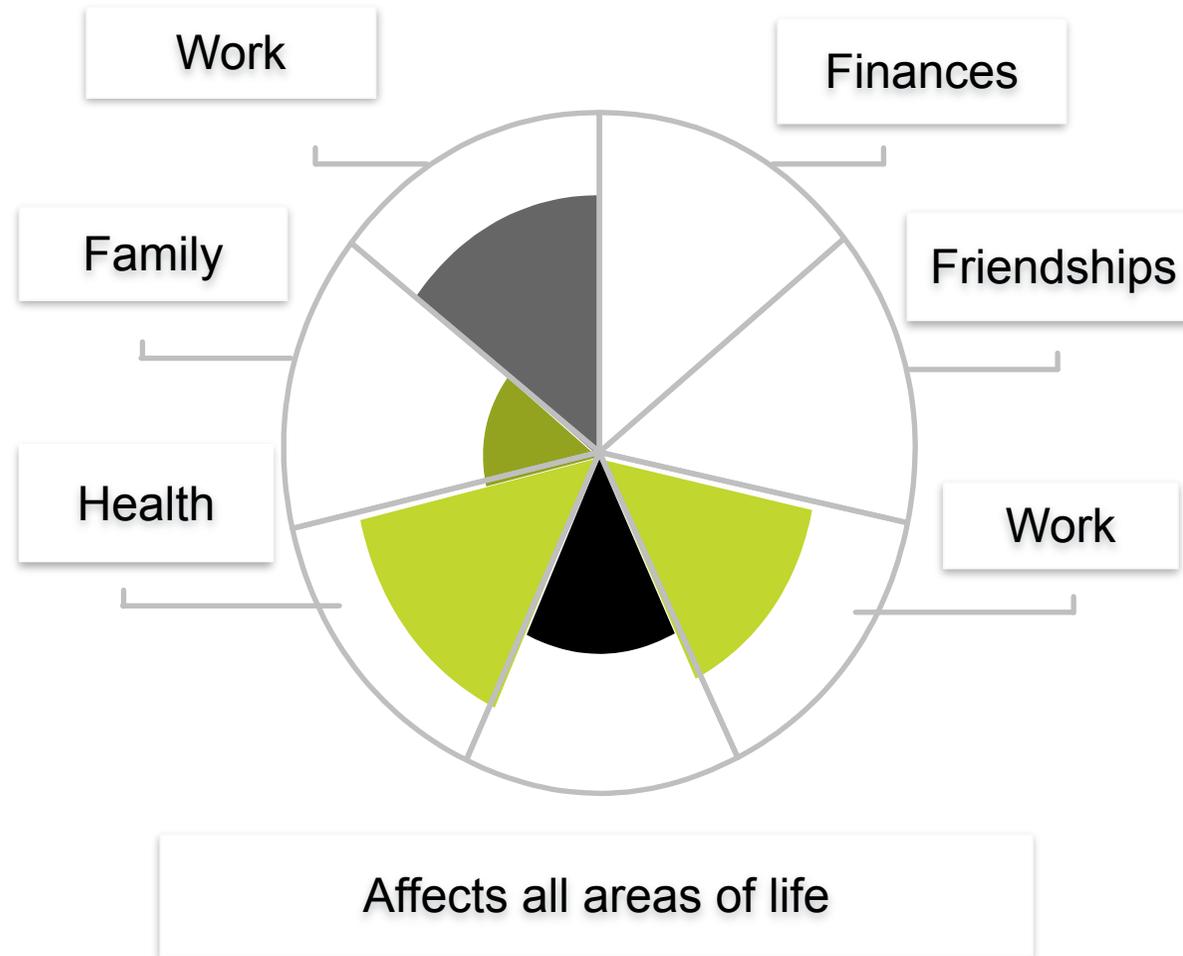
“Perimenopause” means "around menopause" and refers to the time during which the body makes the natural transition to menopause marking the end of the reproductive years

Perimenopause is also called “the menopausal transition”. Women start perimenopause at different ages

## Menopause: Impact at (and of) Work

Pushes "highly skilled and experienced" women out of work, with knock-on effects on...

- the gender pay gap
- the pension gap
- the number of women in senior leadership positions



## Problematic symptoms

(80% have symptoms)

(1/4 severe)

- Irregular/heavy bleeding, hot flushes, weight gain, night sweats, insomnia, joint pain, loss of sex drive etc. loss of concentration and memory ('brain fog'), mood swings, loss of confidence, depression

## Lack of support and discrimination

(taboo, and lack of awareness)

- Reluctance for menopausal women to come into the office due to symptoms/embarrassment e.g. hot flushes, day time sweats, etc.
- There is also the stigma of menopause which crosses boundaries with sex/age discrimination
- The subject often prompts embarrassment in employers, employee and colleagues

## Loss of income/reduced work

(financial repercussions can be long term)

- Menopausal women can feel they need to leave work, reduce their hours, or take sick leave

“

I had no idea that the mental health challenges, the cognitive challenges that I faced, would absolutely knock me over [ ... ]

I went from kicking front doors in, literally, to hiding behind my front door. My husband had to take me to work with him because I could not function.

That is how **debilitating** it was.

(Inspector at West Midlands police)



# The Legal Framework



Can you name the 9 Protected Characteristics under the Equality Act 2010?

# How many did you get?

- 1 Sex
- 2 Age
- 3 Disability
- 4 Gender reassignment
- 5 Race
- 6 Pregnancy and maternity
- 7 Religion or belief
- 8 Marriage and civil partnership
- 9 Sexual orientation

# Protected characteristic & the menopause

- 1 Sex
- 2 Age
- 3 Disability
- 4 Gender reassignment
- 5 Race

# Direct and Indirect Discrimination

## EqA 2010 – Direct Discrimination

Less favourable treatment, including stereotypical assumptions

- Comparator needed for direct discrimination (actual or hypothetical)
- Problems of a comparator for early menopause
- Proportionate means of achieving a legitimate aim

## EqA 2010 – Indirect Discrimination

PCP puts a group with a protected disclosure at a particular disadvantage

- Problems of objective justification e.g H&S grounds
- Problems of formulating proportionate proving the PCP

# Disability Discrimination

## s 6 EqA 2010

Mental or physical impairment which has a long-term substantial adverse effect on normal day-to-day activities

## s 13 EqA 2010

Less favourable treatment because of disability

## Sched 1 para 5 EqA 2010

Effect is judged disregarding '*measures*' (e.g HRT) to treat

## s 15 EqA 2010

Something arising out disability. This requires (i) knowledge and (ii) can be objectively justified

## s 20 EqA 2010

Employer has a duty to make reasonable adjustments to accommodate the employee's ability to work but the employer must know about the disability

# Discrimination Cases

## Direct discrimination

***Merchant v BT: (UFD and Sex)*** employee's performance was affected by her menopause. Manager used his experience of his wife's symptoms rather than going to OH and dismissed her for poor performance

***A v Bonmarché Ltd:*** (age and sex). Employee's manager constantly belittled her about menopause and called her a 'dinosaur'

## Indirect discrimination

***Soklova v Humdinger*** where the ET held that the PCP was requiring women to wear a uniform buttoned up to the neck on a food processing line but the employer had justified it on grounds of Health & Safety

Also of interest claimant failed to prove particular disadvantage compared to men of the same age

# Disability Discrimination Cases

- ***Rooney v Leicester Council***

First EAT decision to consider discrimination and menopause. EAT held disability discrimination claim should not have been struck out without the ET considering the effect of the employee's menopausal symptoms

- ***Ibolya Kun v Cambridge University Hospital NHS Foundation Trust***

Employee disabled through menopause-related sensitivity to heat

- ***Davies v Scottish Courts and Tribunals Service***

Employee dismissed after acting in a confused way due to menopause, despite information about her symptoms in an OH report, ET held unfair dismissal and disability discrimination

- ***Donnachie v Telent Technology***

Employee's performance was affected by exhaustion prompted by night sweats. On a PH, ET held she was disabled

- ***Rose v CMP***

Employee's inability to work nights is not normal day-to-day activities

# Other Discrimination and legal obligations

Gender  
Reassignment

Menopause affects women including trans women who may stop or reduce hormone treatment and/or who still produce testosterone

Race

Evidence suggests that there may be some variations in the average age at which the menopause takes place between women of different ethnic backgrounds

Harassment

Unwanted conduct which has the purpose or effect of violating a person's dignity or creating an intimidating degrading environment

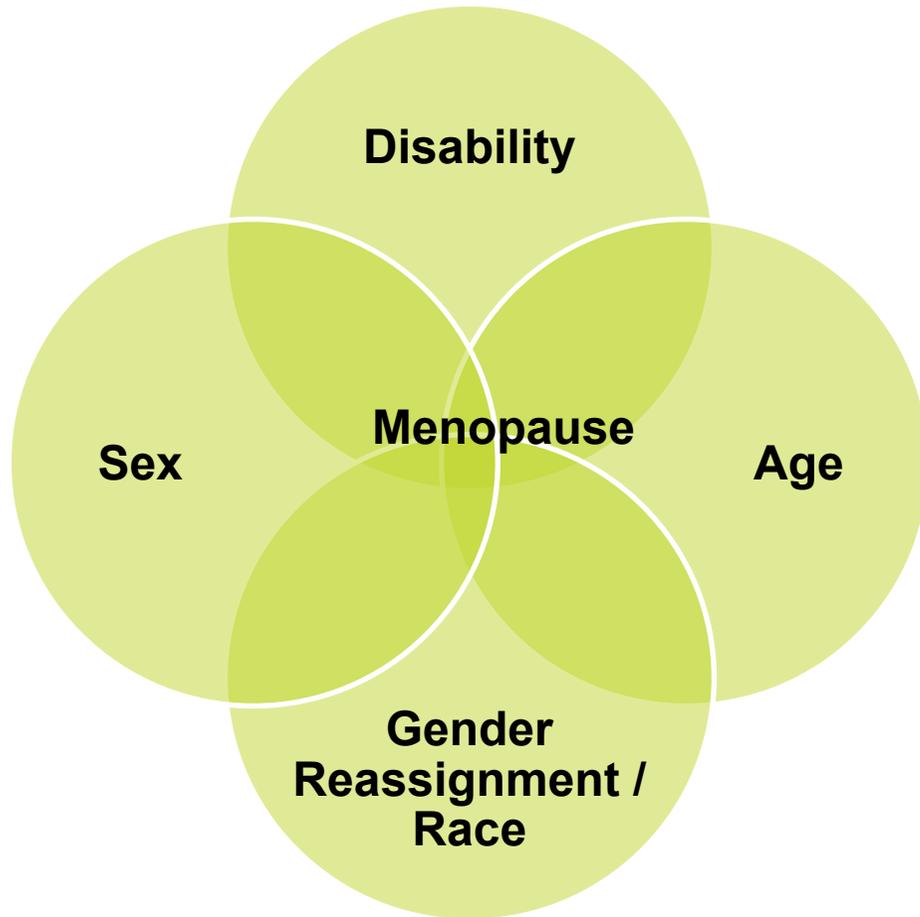
Victimisation

Where employee does a protected act or is suspected of doing one or about to do one and is subject to a detriment

Health & Safety  
at Work Act 1974

Employers must ensure the health and safety of all their employees and provide adequate information, instruction, training, and supervision to enable a safe work environment

# Does the current legislation fit?



Lawyers view is a resounding no

Described as 'shoehorning'

Sex and Age easily defended

Disability bar too high

# Reforming the Legal Framework

<b>2017</b>	Research by the Government Equalities Office (GEO)
<b>2019</b>	CIPD 3 in 5 woman effected survey
<b>July 2021</b>	The Government commission an independent report on women's 'working lives'
<b>Oct 2021</b>	Government Cross Party Menopause Taskforce established
<b>25 Nov 2021</b>	Menopause and the Workplace: Report published
<b>18 July 2022</b>	The Government published a Response to Nov 2021 report
<b>12 Jan 2023</b>	Menopause and the workplace: 2023 Government Response

# 2023 Government Response to 2021 Report

Ambassador in principle but downgraded to a 'champion', no 6 month reporting required

Menopause policies 'not necessary' information and education on 'good practice' will suffice

Menopause leave' policy not necessary there are other measures in place e.g. Wellbeing of Woman pledge

Brought in day one right to flexible working but wide range right to refuse still applies

HSE and EHRC guidance accepted in part

Enact 'Dual Discrimination' rejected as it would create 20 dual protected characteristic too onerous on employers

Consult on a new Menopause Protected Characteristic evidence does not support new legislation

# Current position:

No change in the legal position

Historically the number of claims which mention menopause have been low

- women are often at their lowest ebb and
- due to a lack of awareness (cause and legal options)

However:

- Heightened focus on menopause and the profile of potential claims
- Action through the Taskforce is already driving an increase in claims
  - Cases citing 'menopause' increased 44% from 2021
  - Mention of the word "menopause" in tribunal documents increased by 75%

# Exposure For Employers

## ■ Financial Costs

- To women themselves – pay gap, pension gap, personal financial freedom
- Loss of talent – Height of career, knowledge drain, cost of replacement
- Financial loss – through absence, lower productivity etc due to lack of support and prioritising
- Costs to UK economy - 14 million working days per year lost through absence

## ■ Legal risk and costs

- Grievances – due to lack of support, mismanaged due to lack of training
- Employment tribunal claims – due to above & lack of awareness, training, support, adjustments

## ■ Reputation

- Benefit for those organisations that are creating menopause-friendly workplaces
- Damage for those organisations that are not creating menopause-friendly workplaces

# Practical Support & Management

The need for practical adjustments, policies addressing menopause, education in the workplace and creating a supportive environment

1. Talking more openly about menopause within an organisation (at specific events for example) was often the first step
2. Refer to menopause in onboarding and/or induction processes
3. Access to information e.g small library of books on menopause
4. Visible menopause champions
5. Setting up virtual or face to face menopause cafes
6. Separate training sessions for those who may not be aware of the impact of menopause such as men and younger workers
7. Specific menopause policies and guidance from managers, peers and team members

# Practical Support for Employees

- REMEMBER:

- - This is your body and your decision
  - You are "highly skilled and experienced" and therefore valuable employee
  - This is in your employer's interest too

- BE BRAVE:

- Be Honest and Open
- Ask for support
- Be specific about your needs
- Don't take 'no' for an answer

- SPEAK UP:

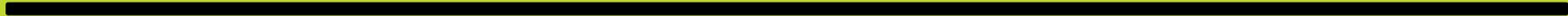
- Do your part to drive awareness
- Join support group in your private and professional networks
- Use your influence to secure workplace policy changes

- **Education**
  - Could be a one-off session and then included in onboarding processes. What is menopause/the symptoms? How can we support people with menopause? Signpost employees with how they can get help within the company...
  - Especially important for HR/line managers/those who may deal with conversations surrounding the menopause with employees
  - Talking about it helps break down stigma and can contribute to supportive workplace culture
  
- **Policies**
  - Useful to have a clear standalone policy on menopause, but it is not compulsory.
    - Easiest way for employees to get information and follow a fair process, makes employees feel the issue is being taken seriously and reassures HR/line managers of next steps
  - Revise workplace sickness absence and flexible working policies
    - Discount short-term absences caused by the menopause, consider additional sick leave for menopausal employees who require it, make sure HR/line managers understand reasonable adjustments, sickness leave policy and other relevant policies
  - Consider menopause leave
    - Or perhaps as part of a general workplace paid leave for 'life events' which could be used by those experiencing menopause
  - Could have menopause champions at work
    - It might be easier for employees to approach them instead of managers in the first instance
  
- **Medical evidence and Risk Assessment**
  - Do not ignore medical evidence/be afraid to get OH involved if appropriate. Consider employer's obligation to carry out regular risk assessments and make reasonable adjustments if appropriate.

Plan for Openness,  
awareness, support  
and training

Access to internal  
and external  
information

Review existing and roll  
out specific a  
menopause policies



Roll out mandatory  
training for all

Implement  
Workplace  
adjustments

Provide Free Support OH  
health/update PMI/Pay  
Prescriptions

# Why its important



■ MONEY



■ PEOPLE



■ RISK



■ TIME



■ EFFORT

# Questions?

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