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Menopause and the Equality Act

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While a natural transition in any woman's life, the menopause remains something of a taboo subject in the workplace. However, with menopause affecting one of the fastest growing demographic groups in employment, women aged between 45 – 60, employers would be well-advised to consider their approach to the topic, in order not to fall foul of anti-discrimination legislation.

Menopause affects different women in different ways. There is a range of potential symptoms, any or all of which can last for years. Symptoms can affect normal day-to-day activities directly (e.g. through headaches, loss of concentration, memory loss, depression or anxiety) or indirectly (e.g. through tiredness resulting from difficulty sleeping), and the cause may not be immediately obvious.

It is possible, therefore, that, depending on the severity of the symptoms, a woman going through menopause is protected, not only from sex discrimination due to her symptoms being related to her gender, but as a disabled person under s.6 Equality Act 2010. If so, an employer comes under a duty to make reasonable adjustments to avoid any disadvantage suffered by its employee. Dependant on the circumstances, that could be amendments to working times, changes to the role, or provision of support. It is possible that the issue is not raised by the employee. An employer is under a duty if it could reasonably be expected to know that the employee was both disabled and at a disadvantage. An employer cannot shut its eyes to the potential issue and can be criticised for not making enquiries if suspicions have been raised, so may have to consider sensitively approaching the question of adjustments, without necessarily waiting to be asked.

Further, an employer can be found to have discriminated against an employee if it treats her unfavourably because of something arising in consequence of the disability. For example, issuing a warning for poor performance, or attendance may be discriminatory, if those were the result of menopause. The employer does not need to know that menopause *caused* the poor performance, only that the employee was disabled because of it (including whether the employer could reasonably be expected to know that the employee was disabled). Again, employers should be on the lookout for menopause as a possible explanation.

In fact, performance management was the issue in the Employment Tribunal case of *Merchant v. BT plc*. The employee there had been performance-managed and was subject of a final written warning. Underperformance continued, and the employer came to decide whether to dismiss (or redeploy). The employee provided a letter from her GP, which advised of her menopause and its effect on her concentration. Her manager decided not to investigate the impact of menopause on her performance, and dismissed her. The Tribunal upheld her claim of unfair dismissal. It also found her dismissal to be direct sex discrimination. It found that she was treated less favourably than a man would have been in the same situation, *and* that the reason for that treatment was her gender.

The manager relied on his experience of his wife's menopause and her symptoms. This was a 'bizarre and irrational' approach according to the Tribunal, which stated that a man with comparable, non-female-related, symptoms would not have been treated in the same way. It is likely that this manager did not deliberately set out to disregard the symptoms, but he probably did make assumptions to which he was not entitled. Decisions, even if unconsciously made, can still amount to direct discrimination.

That case is another warning to employers not to overlook the impact of menopause in the workplace. Disability and sex discrimination are both live possibilities, and age discrimination is likely another. The above is a short note highlighting that menopause is an issue that should be taken as seriously as any other. Of course, every situation is different, and must be handled individually, albeit with the above in mind.

Increasingly employers are adopting specific policies and training managers to improve awareness of how menopause affects women and to promote open discussion between employees and their managers about their own experience and what support they may need.

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