



REFRESHING LAW

Down to Earth

Menopause and the workplace

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Transgender/Non-binary

- There will be some people who are menopausal who aren't identifying as women
- Correct terminology – menopausal people





What are the legal issues?

- Health and Safety
 - Your duties to risk assess
 - Wellbeing
- Discrimination
 - Sex
 - Disability
 - Age



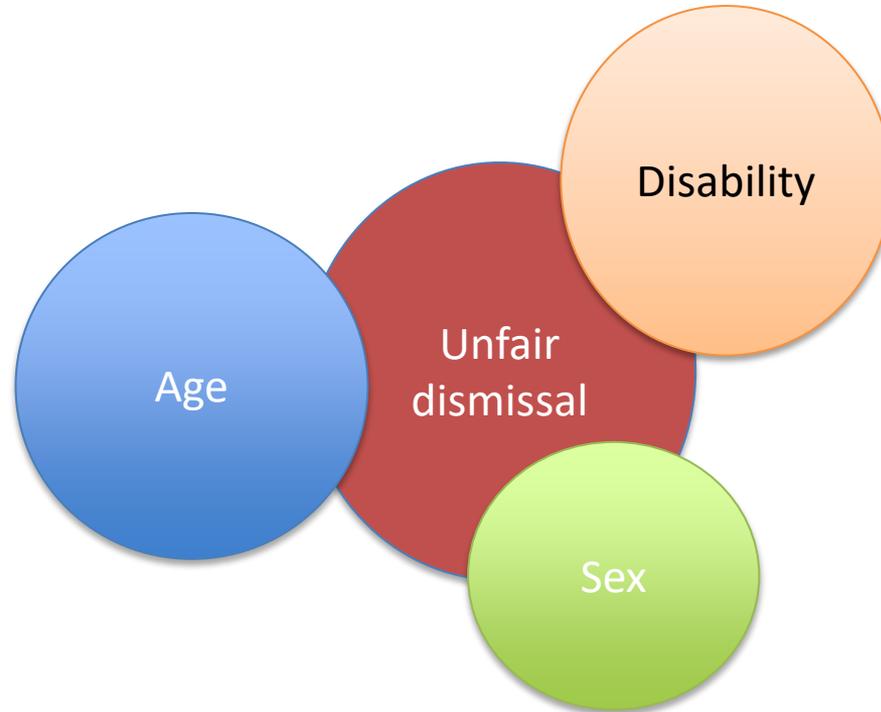


What are the legal issues?

- Performance
 - Attitude

- Conduct
 - Lateness
 - Making mistakes





THE LEGAL SIDE OF THINGS





Is it a disability?

- Equalities Act 2010 – definition of a disability
“a physical or mental impairment which has a substantial or long-term adverse effect on the person’s ability to carry out normal day to day activities”

Donnachie v Telent Technology Service Ltd

Preliminary finding of ‘disability’: *“the effect of her menopausal impairment on her day-to-day activities is more than minor or trivial”*





Reasonable adjustment?

- Duty to make RA under Equality Act 2010
- Discussion
 - Personal case by case basis
 - No stereotypes or assumptions





Davies v Scottish Courts and Tribunals Service

- Conduct dismissal – lying/issue around tablets in a jug
- Unfair dismissal
- S15 Equality Act 2010 ‘discrimination arising in consequence of her disability’
- £19,000





Merchant v BT PLC

- Performance management
- GP letter explaining M affect her concentration
- Line Manager failed to explore the issue/came to judgement based on wife's experience
- Unfair dismissal and sex discrimination





Indirect sex and disability discrimination

- Uniform policy may place ladies at disadvantage
 - Keeping cool
 - Hiding sweat
- Standard working pattern
- Requirement to work from office





Harassment on grounds sex/age/disability

- if she is subjected to unwanted conduct which violates her dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment for her.

Kownacka v Textbook Teachers Ltd

Partial finding of harassment: MD showed “*lack of insight, sensitivity and empathy*” which had the effect of creating “*an offensive environment*”





Other issues:-

- Performance management
- Sickness management
- Conduct management

- Risk s15 Equality Act 2010 claims?

- Trust and confidence – constructive dismissal





The prescription

- Talking about it – culture of openness, valuing everyone
- Treat it as a proper ‘project’
 - Women make up x% of our workforce
 - Impact on bottom line
 - What percentage of leavers are 40-60?



CIPD menopause pledge

- Recognise that the menopause can be an issue in the workplace and that women need support
- Talk openly, positively and respectfully about the menopause
- Commit to actively support and inform employees affected by the menopause





Steps you can take

- Educate
- Working environment





Flexible working

- *Make it clear it can be used for this reason?*
- *Be aware this may be in the background when request received*





Health and Safety

- *Include in risk assessments – what measures can we take to alleviate issues?*





Sickness

- *Adjust policies and disciplinary approach*
 - Separate menopause policy?





Diversity and Inclusion

- *Amend diversity and inclusion policies*





Don't

- Make assumptions
- Focus on the problem – find a solution
- Share information without consent
- Offer medical advice but signpost to sources of support





Menopause Policy

- What it is for
- What the menopause is
- Encouraging conversations
- Risk assessments
- Support and adjustments including EAP
- Things the employee can do to help?





What we asked government for

- Protected Characteristic
- Action plans
- Flexible working presumption
- Funded information campaign
- Clinical pathway and training





Government attitude

- A national champion to produce a report every 6 months on progress





Other sources of advice

- Centre for Ageing Better – guide to becoming an age-friendly employer www.ageing-better.org.uk
- Business in the Community toolkit for employers www.age.bitc.org.uk
- CIPD posters and guides www.cipd.co.uk
- www.menopausecafe.net
- National Rail
- RDPI Midlife Matters info@rdp-int.com



- **TUC guidance on the menopause**
www.tuc.org.uk/sites/default/files/TUC_menopause_0.pdf
- **NHS information pages**
www.nhs.uk/Conditions/Menopause/Pages/Introduction.aspx
- **British Menopause Society** www.thebms.org.uk/
- **Menopause Matters** www.menopausematters.co.uk
- **The Daisy Network** www.daisynetwork.org.uk
- **The Fawcett Society**
<https://www.fawcettsociety.org.uk/menopauseandtheworkplace>





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