

## **MENOPAUSE IN THE WORKPLACE - GUIDANCE**

### **Statement of intent**

The Trust is committed to ensuring the health, safety and wellbeing of all employees, including, in this context, members of staff suffering from menopause-related symptoms. It is recognised that the menopause is an important occupational and equality issue, and similarly recognised that all policies are inclusive of all gender identities.

### **Aim**

The aim of this guidance is to help provide support, through advice and direction, to all employees who may be affected by symptoms related to the menopause; to raise awareness of such symptoms amongst management and staff; and to create an environment where employees who are adversely affected feel confident to raise issues about their symptoms and to ask for adjustments at work should this be appropriate.

For help and support staff should contact a member of the HR team. HR should be the first point of contact for anyone needing advice, or someone to initially talk to if they are not comfortable in raising the subject directly with their line manager.

In addition, staff can contact the Employee Assistance Programme, Education Support, which is a free service to all GHAT employees. The contact number for this service is 08000 856 148.

### **Management guidance**

From 22 February 2024: new guidance has been issued by the Equality and Human Rights Commission (EHRC) setting out employers' legal obligations and the possible support options in the workplace under the Equality Act 2010. This advice is designed to provide practical tips on making reasonable adjustments and fostering positive conversations about the menopause and related symptoms.

Gender-specific health and wellbeing needs are becoming a higher priority among employers. Following a number of employment tribunal decisions against employers, it has become increasingly important to ensure that they are supporting perimenopausal, menopausal and postmenopausal staff to manage the legal risks to the employer that may be applicable if affected elements of the workforce are treated unfairly or discriminated against because of the menopause. There are over thirty recognised symptoms of menopause, which range from cognitive, physical and psychological. These symptoms (which of course can also occur as a result of other medical conditions) include fatigue, irritability, anxiety and/or mood disturbances, poor concentration, the need for more toilet breaks, recurring UTIs etc.

ACAS guidance states: *'The menopause is a natural stage of life which affects most women and other people who have a menstrual cycle. This can include:*

- I. trans people – 'trans' is an umbrella term used to describe people whose gender is not the same as the sex they were assigned at birth*
- II. people with 'variations of sex development' (VSD) – some people might prefer to identify as intersex or use the term 'differences in sex development' (DSD)*

*It's important for employers to be aware of all of the people who might go through the menopause and menopause symptoms and to support them all equally'.*

### Points to note

- The new guidance states that employers have a 'responsibility to protect staff going through menopause' as, according to the Chartered Institute of Personnel and Development (CIPD), two-thirds of working women between the ages of 40 and 60 with experience of symptoms reported that these caused a negative impact on their work life (and CIPD also noted that many experience menopausal symptoms at a much younger age).

- It should be noted that the menopause is not, in itself, protected under the Equality Act. However, it can be captured by discrimination protection in terms of age, sex and disability. There are growing numbers of tribunal claims which suggest employers are falling short in meeting their legal obligations.
- The EHRC has stated that if menopause symptoms have a long-term and substantial impact on an individual's ability to carry out normal day-to-day activities, they may be considered a disability. Under the Equality Act 2010, an employer will be under a legal obligation to make reasonable adjustments, and must not discriminate against the worker.
- The EHRC also states that workers experiencing menopause symptoms may be protected from less favourable treatment related to their menopause symptoms on the grounds of age and sex. The employer will also be under a legal obligation to not directly or indirectly discriminate because of the disability or subject the employee to discrimination arising from disability.

## **Best practice guidance**

### Supportive culture

The Trust must engender a culture where employees feel able to approach their managers to explain the aspects of their work that they are struggling to manage alongside their menopausal symptoms – this will mostly help them continue to attend work because they are being supported to do so.

Managers must be able to talk to staff about the condition sensitively (and may need training on this aspect as it is important that managers are confident and comfortable in such situations). The way to encourage menopausal employees to ask for help if they need it is to show, in the behaviour of managers and the organisation as a whole, that such employees will be treated with dignity and respect.

Where a menopausal employee does not feel able to talk about their condition at work, they may feel that they have no option but to take time off, leading to further costs (sickness absence/cover etc) and potential disputes with their organisation.

If the Trust adopts a supportive approach to employees suffering from menopausal symptoms, the organisation will also avoid costly grievance or disciplinary proceedings and potential employment tribunal claims. It should be noted that where an employee is experiencing menopausal symptoms they have a certain responsibility for their own health and wellbeing, and should be open to having conversations with line managers or any other appropriate person.

There is an implied duty of trust and confidence between employer and employee, which would include the employer taking action to facilitate continued employment with an organisation by means of making reasonable adjustments when that employer knows that their employee is suffering with menopausal symptoms.

In relation to statutory protection of employees suffering from the menopause, the Health and Safety at Work Act 1974 states that where reasonably practical, employers must ensure the health and safety, both physically and mentally, of their employees and this would usually require drafting an appropriate risk assessment.

### **Discrimination**

**Sex** – employees can suffer sex discrimination:

- (a) if they are the subject of banter/jokes in relation to their condition: under the Equality Act this could amount to harassment or sexual harassment
- (b) if the menopausal employee is not working to the expected standards (eg a related drop in performance) they could claim gender discrimination if their menopausal or peri-menopausal symptoms are not taken as seriously as if a man had similar symptoms and his work was affected.

**Disability** – where an employee has a disability, then the law states that an employer must make reasonable adjustments. ACAS provides an example of a reasonable adjustment for a menopausal employee as recording sickness absence for menopausal related symptoms separately from other sickness absence.

**Age** – employees are protected against unfair treatment in the workplace because of their age and the menopause predominately affects women in their mid-forties to mid-fifties. Employers should take care in not allowing age considerations to affect their recruitment and redundancy processes. If an employee is put at a disadvantage or treated less favourably at work because of menopause-related absences meaning, for example, that they miss out on a promotion or training, this could again amount to unlawful discrimination by reason of gendered ageism.

**Gender reassignment** – ACAS states *'if an employer puts an employee or worker at a disadvantage or treats them less favourably because they have, or someone thinks they have, the protected characteristic of gender reassignment, this could be discrimination'*.

### Measures to support staff

Employers should consider how the person's job role and responsibilities could make their menopause symptoms harder to deal with, for example if:

- they work long shifts
- they cannot take regular toilet breaks
- their job requires a uniform which may cause discomfort
- their job does not have much flexibility.

The guidance sets out how employers can mitigate the impact of menopause on women at work. Suggestions include:

- providing rest areas and quiet rooms (and, additionally, ensuring that workplace practices do not worsen the experience of a menopausal employee: for example, there may be a requirement to assess the availability of cold drinking water for menopausal employees, and the adequacy of toilet and bathroom facilities)
- giving an option to take rest breaks during the day
- introducing cooling systems or fans for women experiencing hot flushes (for example, assessment of the temperature in the workplace, and potentially at relevant workstations, to see whether it can be adjusted)
- relaxing uniform policies and/or providing cooler clothing by exploring options to improve the design and fabric used to make the uniforms more adaptable to changes in body temperature
- promoting flexibility of location and, where reasonably practical to do so, giving a menopausal employee the option to change their workstation
- varying shift patterns where possible to accommodate the employee's preferred start and finish times
- When considering a referral to occupational health, where an independent specialist may recommend a range of workplace adjustments to help support an employee in the context of their job role.

There is no 'one size fits all' approach when supporting an individual going through the menopause and relevant options should be made available where possible.

The guidance suggests having conversations about menopause with staff. Accordingly, employers should encourage a culture where workers feel able to talk about their symptoms and ask for adjustments to their work when indicated by the intrusiveness of their symptoms.

It is also incumbent upon the employee to help themselves in ways such as eating an appropriate diet and exercising other healthy lifestyle choices, including seeking advice from a medical practitioner when indicated. Employers should consider signposting employees to various external organisations for those who feel too embarrassed to openly discuss the matter within the workplace.

A risk assessment should include environmental factors, including the temperature and ventilation of the workplace; whether toilet facilities and cold drinking water are easily accessible; whether there is somewhere suitable for staff to rest if needed; and (if applicable) the material and fit of any uniform. This assessment forms the basis on which to discuss any adjustments that may be indicated to minimise and, where possible, remove any health and safety risks.

### **Points of contact**

If an employee requires support but does not feel able to contact their line manager, they can contact a member of the HR team to discuss support options.

**Remember - failing to support those staff who may be suffering from menopause-related symptoms can potentially give rise to a number of practical and legal risks.**