

MAY 2019

Disability Discrimination – Menopause

Mandy Davies v Scottish Courts & Tribunal Service case no 5/4104575/2017

A recent case has been seen as ground-breaking after particular menopausal symptoms have been classed as a disability by a tribunal for the first time.

What happened?

Mandy Davies had been suffering with the menopausal symptoms and chose to keep working. She was prescribed medicine for a bout of cystitis that she kept on her desk and added to her water jug throughout the day. On one occasion when she returned from an adjournment two men were drinking the water from the jug and she became concerned they had consumed her medication and brought attention to the fact.

Mandy was invited to a Health & Safety meeting, when it was found that she had not shown the “values and behaviours” expected of the staff, had shown no remorse and had brought embarrassment to the organisation. It was decided Mandy had deliberately misled officials about the water. A subsequent disciplinary procedure led to Mandy being dismissed for gross misconduct.

The judge ruled that the process was not carried out correctly as the H&S meeting exceeded its remit and that Mandy was legitimately confused about the water. Mandy Davies was awarded £19,000 and to be able return to her job, however she is still to return to work as the SCTS plans to appeal the decision.

Can menopause be classed as a disability?

Symptoms of menopause including memory loss, severe bleeding, anxiety and similar may permit these symptoms to be considered a disability provided they are long term and have a substantial effect on normal day-to-day activities.

What you can do as an employer

Be aware of your own workforce. The average age a woman goes through the menopause is 51, but for some it could naturally happen earlier, or as a result of surgery or illness. It's also worth noting that symptoms could start years before the menopause.

Things to consider:

- Having a positive and open attitude towards the menopause so that women don't feel embarrassed to talk about their symptoms at work.
- Offering flexible working – some women may need more breaks or may be struggling to sleep at night, both of which can affect their working hours
- Making adjustments to clothing for women who need to wear a uniform – changing the fabric or providing additional uniforms could help women feel less embarrassed if they are experiencing hot sweats
- Training staff – especially managers, on how the menopause can affect women in the workplace

Simple changes can make a huge difference to a woman's well-being at work. Reducing their stress could lead to an improved performance – a win win situation!

Employment Law Updates

Are your payroll figures up to date? Here's a quick checklist of recent increases.

National Minimum Wage and National Living Wage increases from 1 April 2019:

Age	New minimum
25 and over	£8.21
21 to 24	£7.70
18 to 20	£6.15
Under 18	£4.35
Apprentice	£3.90

Pensions auto-enrolment contribution increases from 6 April 2019:

Contributor	New contribution
Employee	5% (from 3%)
Employer	3% (from 2%)

Did you know?

- Employees working for 6 hours or more are entitled to a 20 minute break.
- Part time employees have the same employment rights as full time employees.
- If employers receive a flexible working request, they must consider it.
- Workers under the age of 18 shouldn't be asked to work more than 8 hours a day.
- Employers must check if staff have the legal right to work in the UK.

Changes in the gig economy – Employment status

Employee, worker or self-employed?

A tribunal has ruled that a group of 27 National Gallery lecturers were workers rather than independent contractors in a landmark case involving the gig economy in the public sector. This follows other high profile recent cases including Uber and Pimlico Plumbers concerning employment status.

What happened?

The art experts, who provided tours and lectures to the National Gallery, made a claim for unfair dismissal and wanted to be recognised as employees after being released in October 2017 without consultation or benefits. The judge ruled that the lecturers should be classed as workers rather than independent contractors; however he rejected the claims of the lecturers that they were employees of the Gallery.

What's the difference in employment status?

Workers fall between being an employee and someone who is self-employed. Employees can claim unfair dismissal. This was rejected by the judge, however worker status does mean the NG27 are entitled to certain employment rights such as the National Minimum Wage and paid holiday leave. In this case the lecturers were given training, were subject to continuous assessment and could not subcontract their services, all of which the judge indicated pointed to a worker status rather than self-employed. The fact that they were able to decline work without penalty led the judge to decide they were not full employees of the Gallery.

This case highlights the importance of understanding the differences between an employee, worker and self-employed person.

Mental Health in the workplace

The Government's Department of Health advises that one in four of us will experience mental ill health at some point in our lives. Staff experiencing mental ill health in your workplace can impact on employees and your business. Taking steps to promote positive mental health and support those experiencing mental ill health is a good way to ensure companies get the best out of all staff.

How can employers raise awareness and promote positive work / life balance?

- Create a mental health plan to outline support available
- Develop mental health awareness through information and support
- Train line managers to spot the signs of mental ill health and how to support staff experiencing mental ill health.
- Encourage conversation and offer appropriate adjustments through regular reviews with line managers.
- Provide good working conditions and ensure a good work / life balance and opportunities for development

Staff with good mental health are more likely to have good attendance levels, be engaged in their work and perform well.

Holiday Entitlement: Use it or lose it?

Some employers make provision for employees, within their contracts, to carry over unused holiday leave, others state that leave not taken will be lost. In UK employment law there is no automatic right for unused holiday leave to be carried over from one leave period to another.

However, if companies adopt the 'use it or lose it' approach a recent European ruling may be something to be aware of. A German employee won their claim for unpaid holiday pay in relation to holiday not taken 6 years previously. The European CJEU court ruled that the employee was entitled to compensation for the lost holiday as the employer did not take adequate steps to ensure the employee was aware the holidays would be lost if not requested.

What does this mean for UK businesses?

Companies can continue to adopt the 'use it or lose it' approach, but should consider how they implement this. Good practice would be to provide employees with plenty of notice, in writing, and keep a record of doing so. The 'use it or lose it' approach does not apply to maternity leave or for employees on long term sick leave.

For any more information about anything in this newsletter please get in touch using the details below.