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LAWS OF NATURE

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Despite increasing pressure from support groups and a recommendation by the Women and Equalities Committee, the Government has rejected calls to make menopause a protected characteristic and to allow dual discrimination claims at employment tribunals. This adds ongoing challenge of menopause support in the workplace and what legal provisions can do to encourage progress in this space. There is little doubt that the Government's decision was a blow to the Women and Equalities Committee that had made the recommendation.

More women than ever before are operating in the workplace at all levels, so it is essential that there is support available and importantly, no room for discrimination when they are suffering from menopause and HRT side effects. Some legal provisions do exist to protect against discrimination and unjust practices protection, but these run a risk of being ambiguous and not going far enough. Despite the Government's refusal of the committee's recommendations, it is in an employer's best interest to focus on protecting this growing and vital cohort of today's workforce. Menopause affects half the population at some point in their lives and in certain industries, this entails a significant portion of the workforce. One survey of women aged 45-67 by childcare agency Koru Kids found that

a quarter (24 percent) were unhappy because of a lack of menopause support and 63 percent said their employer had no kind of policy in place. Without any proper support, it is a silent and highly corrosive issue that negatively impacts distinct employee demographics and employers alike. This is not an issue that is going to go away and it needs affirmative action that goes beyond a short-term, sticking plaster approach. An opportunity for progress was put forward with the proposed legislation changes, which included giving menopause sufferers protected characteristic status, alongside recommendations for model policies and a dedicated leave programme. However, one of the factors behind the Government's decision to not make

changes was that they view current legislative mechanisms as sufficient. This was a surprising decision given the current Government's commitment to growth and an expanded workforce. Conferring protected characteristic status would have gone a long way to provide the legislative catalyst that would progress the approach to supporting those with menopause and benefit employees and employers alike. So, what are the current legal provisions for menopause in the workplace?

Some protective measures do exist, but it could be said they are not clear-cut to provide meaningful support and protection. The current legal provisions chiefly sit under existing protected characteristics equality law - e.g. age/sex - with employees who have faced blatant hostility and direct discrimination able to

bring claims under these criteria. On top of age and sex, disability discrimination could be viewed as protective legislation for those with menopausal and peri-menopausal symptoms.

However, there is no definitive guide for employers to ensure that they are treating those with menopause with due consideration and in a way that ensures they are not being alienated. As an example, with disability discrimination, employers would recognise that there is a physical and mental condition that is substantial on a day-to-day basis. Under disability laws and protected characteristic status, there is a duty of care to support and provide reasonable adjustments. In its current status, with a medical diagnosis, someone suffering from menopause would have to prove to their employers that their symptoms are having a substantial impact on day to day lives even though hormone levels may fluctuate. To draw comparisons, employers and their legal representatives would look at cases where employees have been diagnosed with certain conditions that are covered by the disability protected characteristic status. An example is Multiple Sclerosis (MS). After a diagnosis, patients face symptoms such as fatigue, depression, anxiety, brain fog and bladder problems. This will likely sound familiar

to menopause sufferers. Under the Equalities act, someone with MS is automatically protected. An employer must make reasonable adjustments to their role and provide tools or equipment to facilitate them remaining in role. If not, there is the strong potential for a legitimate discrimination claim. However, for those with menopause, even for those suffering the severest symptoms, it isn't as clear cut. There is no automatic right to adjustments and they would have to prove to their employer that such change is needed. This may be a significant barrier given social stigma to date.

As a protected characteristic, there would be safeguards and protection in place for employees who say that they are suffering from menopause. There might also be a legal duty for their employer to make reasonable adjustments and treat

them with due consideration. This would be applicable to workplace policies or rules that can potentially negatively impact people with menopause disproportionately, such as uniform requirements, bathroom permissions and rest policies. If the Government had agreed to protected characteristic status for menopause, it would have removed any ambiguity and doubt. As such, it would have gone a long way to ensure that those facing discrimination are protected. However, while it would have protected employees, there is little to suggest that protected status would have "opened the floodgates" to litigations. In fact, it is fair to assume the opposite. Making menopause a protected characteristic would have made significant progress for employers and employees, likely reducing the chance of discrimination claims.

Protected characteristics status would have provided the legislative fuel that would drive and accelerate the

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development of model policies and provide peace of mind to those affected, as it has done with other protected characteristics. It would have provided a different lens, one with greater due care and consideration, through which employers could consider how they approach issues facing employees. For example, for employees in trust-based roles like cashiers and clerks, errors that are down to menopause-related brain fog might have previously been viewed as gross misconduct. Progressive employers might now factor in whether they were suffering symptoms. So rather than

sacking or disciplinary measures, they might now offer support. Protected status would have helped make this level of diligence universal. At present, if someone is at a disadvantage because of work policies they would look to disability or sex discrimination. The question of disability as a fact then arises and in relation to sex discrimination, male comparators would have to be identified. Both requirements would be a bar to seeking redress.

Progress is being made, but the fact remains that menopause is still treated with a cavalier attitude. To make meaningful change, the stigma needs to be removed. A combination of protected status and the resulting more proactive, considerate approach would have gone a long way to support this. It is a missed chance by the Government, but with greater awareness and a renewed focus on menopause, there is now a golden opportunity for employers to lead change and buck the traditional trend for 'legislation first, change second'. Contrary to the Government's recommendation, model policies (including special leave) would help eradicate the short-termism that would otherwise do little to stop employees from leaving the world of work. Shamefully, almost 900,000 women in the UK left their jobs because of menopausal symptoms. As of last year, many employers are already committed to building an inclusive workplace and legislation/protected characteristics have helped shaped this. But in the absence of any progress in providing the legislative shield for people with menopause, employers can go even further to build true inclusivity by ensuring those suffering face no anxiety, or stigma. This will help preserve the workforce, support wellbeing and generate business growth potential.

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