



**WORKMATTERS**  
The natural choice for human resources

# NEWSMATTERS

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## WELCOME TO THE FIRST NEWSLETTER FOR 2022

Our newsletter is issued to you quarterly to ensure that you can be kept up to date with employment issues. We will offer helpful hints on how to handle situations within the workplace, please feel free to give us a call for both guidance and support no matter what the issue.

Firstly we look at the changes in national minimum wage which will affect your business during 2021 followed by a brief look at the legislation planned for 2022/23. An update on some changes to the Employment Tribunals.

This month we have given you information on the hot topic of the Menopause.

We think you'll find the articles very interesting. Please call us on **01442 870742** to discuss any of these articles and see how we can help you and your business more effectively in the field of Human Resources. Alternatively have a look at our website [www.workmattershr.co.uk](http://www.workmattershr.co.uk) and email us from there or on [carolinebrode@gmail.com](mailto:carolinebrode@gmail.com).

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# CHANGES TO NATIONAL MINIMUM WAGE IN 2022

## National Minimum Wage Rates

This will increase from £8.91 to £9.50 for workers aged 23 and over (national living wage).

The other rates will increase as follows:

Workers aged 21-22: from £8.36 to £9.18 an hour

Workers aged 18-20: from £6.56 to £6.83 an hour

Workers aged 16-17: from £4.62 to £4.81 an hour

Apprentice rate: from £4.30 to £4.81 per hour

## Proposed Statutory Family Rates (SMP, SPP, SAP, SPBP & SShPP)

The rate for 2022/23 for statutory maternity (SMP), paternity (SPP), adoption (SAP), parental bereavement (SPBP), and shared parental leave (SShPP) is set to increase from £151.97 to £156.66 per week.

SSP is also set to increase from £96.35 to £99.35 per week.

The average earnings an employee has to earn to be entitled to these payments is set to increase from £120 to £123 per week; this will be the first increase in this rate for 2 years.

It is expected that these rates will increase on 3rd April 2022 although SSP is likely to be on 6th April 2022.

## Action Points for Employers

### Keep a Record

There is a requirement under the NMW Regulations to maintain sufficient records to evidence that the NMW has been paid for at least the last 3 years. It is a criminal offence not to do so. As an added incentive, there is a presumption that an employee has not been paid the NMW unless an employer can prove to the contrary.

### Be Mindful of 'Salary Sacrifice'

For example, this may be where employees opt for increased pension contribution or childcare vouchers by way of deduction from their gross salary. If so, it is important that this must not take the employee's average hourly pay below the NMW. The Government has confirmed (following concerns that this denies the lowest paid the benefit of the tax breaks brought by a salary sacrifice scheme), that, whilst an employer caught paying below the NMW on this basis alone would not be subject to a penalty, they could still be 'named and shamed'.

### Consider Your Employees' 'Working Time'

This may or may not be applicable depending on your sector. The concept of 'working time' does not necessarily just mean the time spent by the employee doing his/her job. For example, if there are any mandatory steps for an employee at the beginning or end of their working day, e.g. security checks or drug and alcohol tests, these processes may be included in working time. Additionally, staff working through unpaid breaks may raise issues as they are not being paid for working time.

# FORTHCOMING / RECENT CHANGES

## 1. 24th December 2021

The deadline for care home workers and volunteers that have provided a self-certification of exemption from the COVID vaccine must confirm their exemption status via the NHS pass by 24th December 2021.

## 2. 31st December 2021

All claims under the SSP rebate scheme, closed on 30th September 2021, must be made by this date in order for the employer to get money back under this scheme.

## 3. 1st April 2022

If successfully passed through Parliament, this is likely going to be the date from which all those working on the frontline in health and social care, or ancillary to it, must be vaccinated.

## 4. 5th April 2022

From this date, employers must revert to in person checks of right to work in the UK documentation.

National Living Wage will rise by 6.6%, from £8.91 per hour to £9.50 per hour.

## 5. Dates to be confirmed

A duty requiring employers to prevent sexual harassment will be introduced, including explicit protections from third-party harassment. The time limit for bringing related claims will be looked at and possibly extended to six months.

New law prohibiting confidentiality clauses in contracts or settlement agreements from preventing disclosures to the police, regulated health and care or legal professionals to be introduced.

Laws on criminal record disclosures to be amended, reducing the disclosure period for sentences lasting four years or less.

Redundancy protection for new parents to be extended.

New law introducing right for all workers to request a more predictable and stable contract after 26 weeks' service to be introduced and requiring compensation for shifts cancelled at short notice.

New law to increase break in continuous employment from one week to four weeks to be introduced.

New law preventing deductions from tips to be introduced.

New legislation to clarify employment status tests to be introduced.

Expected to come into force by April 2022, stronger enforcement powers for certification officers for trade unions to be introduced, as well as wider proactive investigatory powers.

New law introducing tribunal sanctions where organisations commit repeated breaches to be introduced.

Extension of shared parental leave to grandparents.



# EMPLOYMENT TRIBUNAL ON MENOPAUSE DISABILITY

## Rooney v Leicester City Council

The recent EAT case of **Rooney v Leicester City Council** appears to be only the second case at appeal level addressing disability discrimination arising from menopause symptoms.

In order to be classified as disabled under the Equality Act, a person must have a physical or mental impairment which has a substantial and long term adverse effect on their ability to carry out normal day to day activities.

Ms Rooney's solicitors made a claim to the Employment Tribunal on her behalf for constructive dismissal and unpaid holiday pay, overtime and expenses. Unbeknownst to Ms Rooney, her solicitors had included a statement that, amongst other things, she accepted that her work-related stress and menopause symptoms were not disabilities. Ms Rooney then made a second claim herself for disability and sex discrimination, harassment and victimisation related to her treatment arising from her menopause symptoms. She applied to have her first claim amended to remove the statement that she accepted she was not disabled.

The Tribunal then decided to hold a preliminary hearing to decide, amongst other things, whether her constructive dismissal, disability and sex discrimination claims should be struck out. The employment judge decided that Ms Rooney

was not suffering from a disability in relation to her symptoms of menopause, her depression or her anxiety, and her claims of harassment and victimisation were also dismissed. Her sex discrimination claim was struck out as having no reasonable prospect of success. She appealed to the EAT.

The EAT allowed the appeal, finding that the Tribunal has fallen into several errors. One of the errors was the process adopted by the Tribunal when it decided that Ms Rooney's symptoms did not have more than a minor or trivial effect on her day to day activities, despite Ms Rooney having given detailed evidence to the employment judge about both the physical symptoms (sweating, hot flushes, palpitations, fatigue, headaches and urinary problems) and the impact upon her day to day activities, including forgetting to attend events, meetings and appointments, losing items, forgetting to lock her car, or apply the handbrake, leaving her house unlocked and leaving the cooker and iron on. The employment judge had not stated that he found that these claimed adverse effects were untrue.

The EAT remitted the case back to a differently constituted Employment Tribunal to carry out a careful factual analysis of whether Ms Rooney was a disabled person at the relevant time. It also found that the employment judge had misapplied the law in weighing what Ms Rooney

could do against what she could not, and had not directed himself as to the statutory definition of 'long-term'. The EAT also upheld the appeal against the striking out of the sex discrimination, harassment and victimisation claims.

It does appear that the Employment Tribunal significantly overstepped the mark in this case. A discrimination claim should only be struck out as having no reasonable prospect of success in the clearest of cases, and it is hoped that this EAT decision will assist Tribunals to treat menopause symptoms seriously.

This case is a reminder, among other issues it raises, for employers to deal sensitively with health and well-being issues that impact employees in the workplace and of the legal duty to put in place reasonable adjustments where an impairment amounts to a disability under the Equality Act 2010.

The impact of menopause in the workplace has recently been thrown into the spotlight following two recent inquiries, including the recent House of Commons Women and Equalities Committee inquiry.

Whilst there is no statutory obligation for employers to have a menopause policy, doing so may give employees confidence in how employers will deal with these issues when they arise, and managers certainty in how these issues should be addressed.

## MENOPAUSE AND THE WORKPLACE

After decades of being a taboo subject, menopause is finally being discussed openly in everything from TV documentaries to parliamentary debates. Even the much-married Rod Stewart has waded into the debate, opining on the impact of menopause on his wife.

Finally, employers are also starting to become more aware of, and sensitive to, the issue of menopause and its impact in the workplace.

The scale of the issue is striking:

- More than three-quarters of menopausal women are now in employment;
- Menopausal women are the fastest growing demographic in the workforce;
- Three out of four women experience symptoms of menopause; one in four experience serious symptoms; and
- There have already been successful employment tribunals against employers focusing on menopause-related matters.

Employers must now have proper processes and policies in place to address the issue of menopause in the workplace.

In order to do this, the starting point is for employers to create an environment where employees can talk about menopause openly and without embarrassment. It is, after all, a natural phase in every woman's life that needs to be normalised. The second point is to understand that all women experience menopause differently. Symptoms of menopause can be physical, such as hot flushes, headaches, poor sleep and erratic periods, or psychological, such as anxiety,

# MENOPAUSE AND THE WORKPLACE continued...

low mood, lack of confidence and poor concentration. Women may have all or none of these symptoms and they need to be able to speak openly to their line manager or HR team about how to approach any problems that may arise.

In general terms, employers have a duty to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all employees. In addition, and depending on the severity of the symptoms, menopausal symptoms may amount to a disability under the Equality Act 2010. It is important that employers ensure, therefore, that they do not treat employees less favourably than others as a result of a disability and must also make reasonable adjustments to ensure that employees are not disadvantaged as a result of their disability. These reasonable adjustments may include:

- Providing a fan;
- Flexibility in respect of working arrangements;
- Reallocation of workload; and
- Relaxation of dress code.

A Menopause Policy is intended to help raise awareness and understanding of menopausal symptoms in the whole workplace and encourage employees to discuss their own symptoms in a timely manner if the symptoms are affecting their work performance. The following helps to show employers what they should be considering when they put together a menopause policy:

## 1. Introduction

The Company is committed to providing an inclusive and supportive working environment for everyone who works here. This policy sets out the rights of employees experiencing menopausal symptoms and explains the support available to them.

Menopause is a natural part of every woman's life, during which they stop having periods and experience hormonal changes such as a decrease in oestrogen levels. Menopause isn't always an easy transition and can be a significant issue in the workplace for those affected but, with the right support, it can be much better. Not every woman will suffer with symptoms related to menopause, but supporting those who do will improve their experience at work.

## 2. Definition

Menopause is the time during a woman's life when menstruation periods permanently stop. It is defined as occurring when the individual has experienced no periods for 12 consecutive months and no other biological or psychological cause can be identified. Menopause usually occurs between the ages of 45 and 55 and typically lasts between four and eight years. However, each employee's experience will differ, and menopausal symptoms can sometimes begin before the age of 40. Perimenopause, or menopause transition, begins several years before menopause. An individual may start to experience menopausal symptoms during the final two years of perimenopause.

While symptoms related to menopause vary greatly, they commonly include:

- hot flushes;
- night sweats;
- anxiety;
- dizziness;
- fatigue;
- memory loss;
- depression;
- mood swings;
- panic attacks;
- insomnia;
- skin irritation;
- headaches;
- recurrent urinary tract infections;
- joint stiffness, aches and pains;
- reduced concentration; and
- heavy periods.

Each of these symptoms has the potential to affect an employee's comfort and performance at work.

## 3. Employee support

Employees are encouraged to speak to their line manager if they experience menopausal symptoms to ensure that symptoms are treated as an ongoing health issue rather than as individual instances of ill health. Line managers will maintain an open door policy so that employees feel comfortable in approaching them. Employees who do not wish to discuss the matter with their line manager may find it helpful to have an initial discussion with a trusted colleague or another manager instead. Confidentiality must be maintained at all times.

External support and help for individuals and managers can be found at:

- Menopause Matters ([www.menopausematters.co.uk](http://www.menopausematters.co.uk)) which provides information about the menopause, menopausal symptoms and treatment options;

- The NHS ([www.nhs.uk](http://www.nhs.uk)), which provides information and treatment options.

## 4. Reasonable adjustments

The Company has a duty to provide a safe working environment for all employees and commits to ensuring that suitable adjustments and additional support are available to individuals experiencing menopausal symptoms. The Company acknowledges that the menopause affects individuals in different ways and so no adjustment will be made without fully discussing it first.

Examples of adjustments include:

- conducting a risk assessment to identify any areas that are a detriment to individuals going through the menopause;
- changing the location of the employee so they are away from hot and cold spots around the office;
- implementing temperature control, such as access to a fan;
- allowing flexibility within the Company's dress code where reasonable;
- assessing how work is allocated;
- considering flexible working patterns e.g. changes to the pattern of hours worked, working from home or a reduction in working hours.

Once the adjustments are agreed, they will be regularly reviewed.



**Thank you for taking the time to read our Newsletter which I hope you found informative. An e-newsletter will be sent on a quarterly basis to help keep you up to date with current legislation changes, as well as giving you some helpful hints and tips to help your business run smoothly. A copy of the Newsletter is also available on our website [www.workmattershr.co.uk](http://www.workmattershr.co.uk)**

In the mean time please contact us if we can be of service to you or your company.

Have an enjoyable quarter and we look forward to issuing you with our next newsletter in the early part of April 2022.