

## MENOPAUSE AND WORKPLACE: WHAT ARE THE IMPLICATIONS UNDER FRENCH EMPLOYMENT LAW?

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Recent cases brought before British employment tribunals have highlighted that menopause may be a ground to claim unfair dismissal or even gender discrimination. This also led to the launch of an inquiry from the UK Parliament's Women and Equalities Committee entitled "*An invisible cohort: Why are workplaces failing women going through menopause?*"

Not unlike British employment law, menopause is not specifically referred to in French employment law. However, as opposed to the current awareness on this topic by media and current litigations in the UK, menopause has never to our knowledge, been raised before French employment tribunals in unfair dismissal or discrimination cases.

French companies, especially those belonging to international groups, might have to consider this issue, when asked to implement policies, similar to those in place in the UK, on gender in the workplace. As this topic remains taboo, legal background must be taken into account to avoid pitfalls.

*How is menopause taken into account under French Employment law?*

A straight forward answer is that this topic is not taken into account. This means basically that an employer should not take the initiative to raise this issue, e.g. during review meetings or as part of a policy. This might indeed lead to complaints from employees considering that questions around menopause violates their intimacy (article 9 of the French Civil Code) or even amount to gender or age discrimination (Court of Appeal, Douai, April 30, 2010 - n° 09/02090 and Court of Appeal, Chambéry, September 22, 2016 - n° 15/02589).

*Caution is therefore required.*

Building on the experience raised by British case law, one might however think about situations where menopause will have to be taken into account as part of the HR processes.

*How can menopausal symptoms be taken into account in the workplace?*

Among other symptoms, an employee may experience hot flashes, tiredness or irritability, forgetfulness or concentration issues, slowed metabolism, headaches or anxiety which might affect her performance or ability to perform her duties.



Should employees actually complain about their difficulties at work due to menopausal symptoms, employers should consider the following rules:

- ⇒ As a general principle, employers are required to ensure the employees' safety and protect their physical and mental health (articles L.4121-1 and L.4121-2 of the French Labour Code). This obligation imposes upon the employer to adapt roles or working conditions to reduce the risks inherent to the company's activity.
- ⇒ If an employee is unable to perform her duties due to physical or mental health issues, the employer should not directly take measures. The recommended action would be to refer to the occupational physician who is in charge of assessing any required adaptation of the role or working conditions of individual employees due to their health.
- ⇒ Employers need to comply with the occupational doctor's recommendations. Failure to comply may result in the employer's liability.

Considering current legislation, our recommendation would be to refrain from directly bringing up the topic of menopause into official policies or during meetings with employees. Conversely, any complaints made by an employee in this respect should be taken into account to take all necessary steps as described above and avoid any adverse consequences on the employment (demotion, performance related issues having an effect on the remuneration, harassment, etc.).



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