

Menstrual leave – a (period) pain for employers or a positive step to keep people who menstruate in the workplace?

08 June 2022

Spain has recently approved draft legislation which proposes that workers who suffer from severe period pain should be entitled to 3-5 days' medical leave per month, which would be paid for by the state. The legislation has not yet been passed, but if it is, then it would make Spain the first European country to provide a legal entitlement to menstrual leave. Calls are now being made for similar provisions to be made in the UK.

Under current UK law, employees who are unable to work due to severe period pain or other period related symptoms are generally required to take sick leave. However, Statutory Sick Pay (SSP) is not payable for the first 3 days of absence. It is likely that most people needing time off due to their periods will not be off work for longer than 3 days at a time. Therefore, if their employer does not offer enhanced contractual sick pay, then they would not be entitled to any pay at all during this time. If the employee requires sick leave every month, then their loss of earnings could be significant.

In addition, there is a greater risk that employees taking time off sick for period related reasons could hit sickness absence triggers more quickly. This could give rise to an indirect sex discrimination claim particularly if the employer is aware of the reason for the employee's absence. However, many employees do not feel comfortable talking to their employer about their periods in general. This could also be linked to the employee's fertility and/or menopause and may affect other categories of employees who menstruate, but who do not identify as women. Some may also be afraid that requesting time off for periods would make them appear weak or less capable in some way.

Employers may therefore not be aware of the scale of the issue in their workforce. In reality, according to UK based period charity Bloody Good Period, 73% of people who menstruate report having struggled to do their work in the way they want because of their period. 79% cite pain as a reason, although this is not the only symptom that could affect an employee's ability to work effectively.

There are a number of countries across the world who provide some form of similar entitlement, such as Japan, Taiwan, Zambia, South Korea and Indonesia. However, it is rare in much of the Western world, including in Europe and the United States.

There are many benefits of introducing some form of menstruation leave, as well as ensuring that employees who need to take time off receive appropriate pay and are not penalised for taking time off as a result of their periods. For example, it will help certain employees to feel included and valued in the work force, which could help to create loyalty and engagement. It would also mean that employees are not having to work through considerable pain, which would enable them to be more productive at work.

The benefit would be particularly felt by those suffering from certain conditions, such as endometriosis, and could benefit those suffering painful effects of menopause. It may also enable people to be more open about their periods and the symptoms that they experience as a result. In addition, it may not actually lead to more employees taking time off as many may already be doing so without being as clear on the reason for their absence.

On the other hand there is the risk that such a system would be open to abuse. For example, how would an employer know that someone was genuinely suffering from severe period pain? Although the proposal in Spain is that a doctor's note would be required to take the menstrual leave, this may not be particularly effective in practice, as the doctor would be reliant on the employee informing them that they are menstruating and suffering from severe symptoms. Individuals could also start to see the time off as an entitlement to be used up, rather than being available if they needed it. If this is the case, then there would be a rise in employees taking time off work.

There is the risk that the introduction of menstrual leave will make some employers less willing to employ women. Of course, this would amount to discrimination, but it may be difficult to establish that this is the reason why a particular candidate was not chosen for a role. Some also argue that introducing this leave is unfair to male employees. However, given this is only intended to address severe symptoms of periods, which only affect those employees who menstruate (which may not even include all women in a workforce), it is unlikely that this argument would hold much sway.

It remains to be seen whether the introduction of menstrual leave would encourage employees to be more open about their period, or if they would remain reluctant to ask to take menstrual leave. In addition, the need for a specific menstrual leave may be significantly reduced by the increased introduction of hybrid working where employees can choose to work from home on those days that they are particularly affected by their period symptoms.

There are currently no plans for the UK to introduce menstrual leave, but many will be watching the passage of Spain's draft bill with interest. If more countries do look to introduce similar leave, then it is likely that the UK will follow suit. In any event, the discussion around menstrual leave certainly encourages employers to look more closely at the leave that their employees are taking and consider if more can be done to support those employees who menstruate.

Key contact



Mark Hickson

Head of Business Development

onlineteaminbox@brownejacobson.com

+44 (0)370 270 6000

Related expertise

Employment

Employment and pensions for public sector

Employment services for corporates

Employment services for financial services and insurance

Employment services for healthcare

HR services for schools and academies