

# The Global Era of the Woman: Female-specific issues in the workplace

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# Presented by



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# Agenda

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- Medical and related cultural issues impacting women at work– including menstruation, menopause, endometriosis, and reproductive technologies
- Return to work following parental leave, lactation accommodation and workplace flexibility for parents and carers of elderly parents
- Wellness for women in the workplace and the direct link to productivity
- What employers around the world are doing (and are required to do)

# Women, transgender and non-binary people who menstruate

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Globally, females age 15+ in labor markets increased dramatically over the last 50 years

Women about half the total U.S. labor force.

Women , transgender and non-binary people who menstruate:

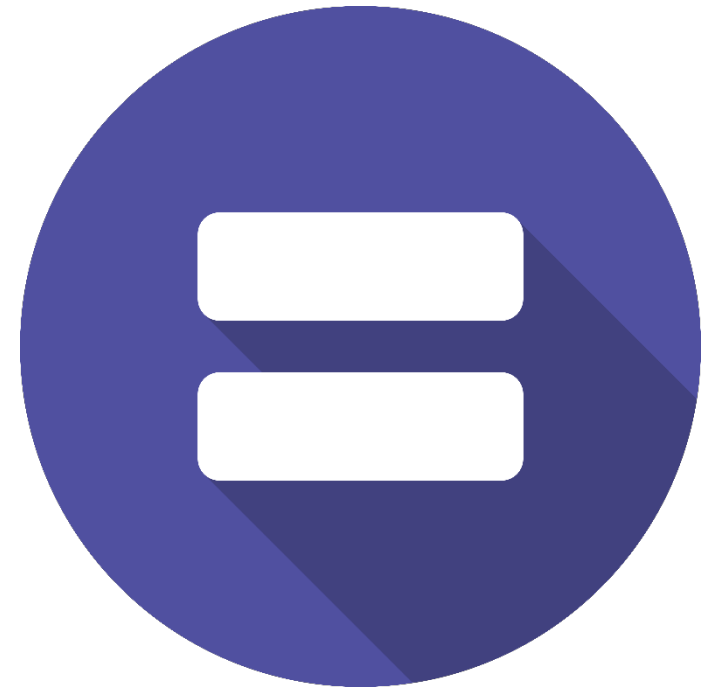
- Start at age 8-15 until 45-55 on average
- 24-28 day cycle, 2-8 day period

**Inconvenient, costly, embarrassing, taboo/considered repulsive, sometimes debilitating**

- 20% dysmenorrhea (significant pain)
- **Menopause symptoms can last 4-8 or many more years**

# Menstruation Equity A New Era of Activism

- Demands for:
  - eliminating sales tax
  - ready access to feminine products free or affordable products (period poverty awareness)
  - education about reproductive health
  - safe products, transparent labeling of chemical contents
- Cultural shifts
  - normalizing
  - destigmatizing
  - concept of dignity
- Workplace change, application of legal protections



# Menstrual Equity

- Period poverty
- Access to free menstrual products in shelters, schools, prisons, workplaces
- Safety and disclosure of ingredients
- Tax abolished or reduced
  - (CA only for 2 years) CT, FL, IL, OH, NJ, NV, NY, PA, RI, MD, MA, MN and UT also Denver, CO
  - Kenya, Canada, India, Colombia, Australia, Germany.





# CULTURAL SHIFTS

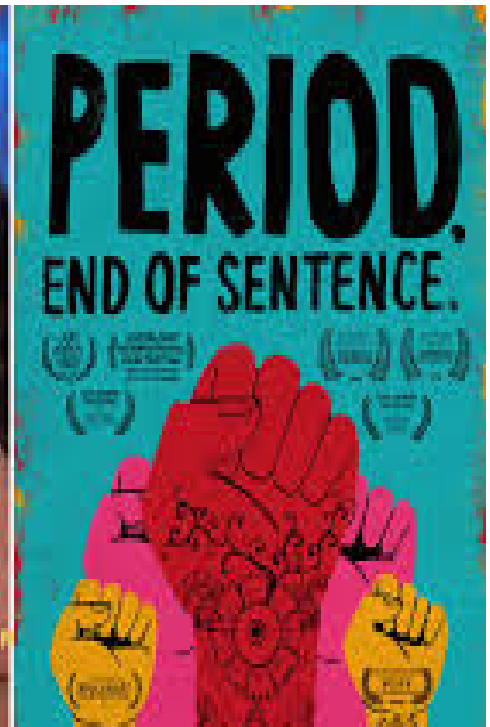
Period Pride, Breaking Stigmas, Normalizing Images



# Taboo Busters & Embracing the Positive



"I can't believe a film about menstruation just won an Oscar!"





# Period Shaming and Destigmatizing at Work

- “Someone’s moody”
- Angry, irrational, crazy
- Expressions of disgust, discomfort
- Requiring discretion?
- Disclose having periods, PMS
- Shut down negative discourse
- Raise awareness
- Don’t conceal tampons, pads
- “We should feel free to talk about our periods as much as we want — and we should never try to censor someone else who does the same.”



# Menstruation and Menopause UK Law

- **UK Equality Act 2010**
  - sex, age, disability protected
- **Potential claims** of unfair dismissal, sex disability and age discrimination
  - direct discrimination
  - indirect discrimination arising from a disability
  - failure to make reasonable adjustments
  - victimisation, and/or
  - harassment
- **Tribunal cases**
  - Merchant v BT PLC (2012) sex
  - Davies v SCTS (2018) disability
- Flexible working rights
- Statutory Sick Pay
- Unfair dismissal protection
- Health & safety duty of care
- Gender pay gap
- Government Equalities Office review (2017)
- Union position e.g. Unison

# Menstruation and Menopause US Law

- **Potential Claims/Protections**

- Title VII of the Civil Rights Act, as amended by Pregnancy Discrimination Act ("PDA")
  - Protects all discrimination "BECAUSE OF SEX," which the PDA defines to include "pregnancy, childbirth, and "RELATED MEDICAL CONDITIONS."
  - Title VII is silent as to whether uniquely female condition, such as menstruation and menopause, fall within its coverage.
  - Open question: Is menopause, which represents the termination of a woman's ability to get pregnant, a condition "related to pregnancy"
- Americans with Disabilities Act (ADA)
- Age Discrimination in Employment Act (ADEA)
- Similar state and local anti-discrimination and leave laws
- Limited case law addressing if the PDA protects menopause or related conditions.

# *Coleman v. Bobby Dodd Inst., Inc.*

(M.D. Ga. 2017)

- **Facts:**

- Coleman worked as an E-911 call taker.
- She was pre-menopausal and experienced periods of uncontrollably heavy menstrual bleeding.
- Onset of heavy menstrual bleeding was unpredictable.
- On two occasions, Coleman was unable to control her menstrual bleeding:
  - First incident, she soiled her office chair, and her employer disciplined her.
  - Second incident, she soiled the carpet on her way to the bathroom.
- Terminated for “failing to maintain high standards of personal hygiene.”



# ***(cont.) Coleman v. Bobby Dodd Inst., Inc.***

(M.D. Ga. 2017)

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- **Reasoning:**

- *"Non-frivolous argument can be made that it is unlawful for an employer to treat uniquely feminine condition, such as excessive menstruation, less favorably than similar conditions affecting both sexes, such as incontinence."*
- NOT what Coleman argued – She argued the fact that her termination would not have occurred "but for" a uniquely feminine condition is a violation of Title VII because it was "BECAUSE OF SEX."

- **Ruling:** DISMISSED - Court found this alone is insufficient.

- Coleman's excessive bleeding was related to pre-menopause, not pregnancy or childbirth.
- Terminated for being unable to control bleeding and soiling company property.
- No allegations of male comparators who similarly soiled company property and were treated more favorably.



# *Batancourt v. Margaritaville Hollywood Beach Resort* (S.D. Fla. 2019)

- **Facts:**

- Female server determined that her monthly menstrual cycle started earlier than expected.
- Asked her manager to leave work to clean herself and change clothes.
- Her manager rejected this request and required her to work her entire shift despite her *"deteriorating hygienic state."*
- Her manager called her *"nasty"* and told her to *"never show up for work like that again."*
- Plaintiff resigned because of the humiliation she experienced in front of employees and customers who noticed her condition.



# (cont.) *Batancourt v. Margaritaville Hollywood Beach Resort* (S.D. Fla. 2019)

- **Ruling:** DISMISSED – Plaintiff failed to plead sufficient facts to state a claim of sex discrimination
  1. **Failed to allege “qualified” for server position.**
    - Did not allege that she was trained to be a server, worked previously server positions without incident.
    - Did allege “perform[ed] and excel[ed] at the performance of essential functions assigned” to her by Defendant.
  2. **Failed to allege “adverse employment action”**
    - “Constructive discharge” occurs when an employer deliberately makes an employee’s working conditions intolerable and thereby forces her to quit.
    - Did not allege when she resigned from her position.
    - Did not allege when her manager made comments calling her nasty.
    - Only alleges that she felt embarrassed and humiliated.
  3. **Failed to allege male comparator**
    - Alleged “other servers who suffered non-gender related hygiene issues were permitted to leave (food poisoning, vomiting, bowel issues, other circumstances re bodily fluids).”
    - Did not allege those individuals were outside of her protected class.

# Menstrual Leave Controversy: the New “Woke Workplace” Right? ...Or Not?

- Legislation
  - Japan, Korea, some Chinese provinces, Zambia, Taiwan, Indonesia
  - Italy rejected proposal
  - Low take-up of leaves
- Sexist, reinforces negative stereotypes? Or..
- Promotes gender equality?



# Summary: UK Best Practices for Menopause

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- Open, inclusive culture
  - promote awareness of symptoms and options for support
  - communicate benefits of older female workforce
  - health and wellbeing champions
- Develop framework to manage
- Policy or plan menopause
- Cafeteria approach
- Manage health and sickness absence
- Good people management
- Flexible working

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Endometriosis affects an estimated 1 in 10 women during their reproductive years (ie. usually between the ages of 15 to 49), which is approximately 176 million women in the world



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Infertility is a global public health issue.  
About 10% of women globally have fertility issues.  
The **prevalence** of **infertility** varies widely by region and **country**, ranging from less than 6% to greater than 16% of women globally.  
More women than ever before are using IVF to get pregnant – approximately 2 to 4% globally.  
The average women undertaking IVF goes through approximately 3 rounds before achieving pregnancy.

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*Surrogacy is increasing. The numbers globally are unknown but it is estimated that thousands of potential parents each year attempt to start families via surrogacy.*

# Endometriosis

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- Silent disease – many women never know they have it
- Largely misunderstood and misdiagnosed
- So what is it?
  - Endometriosis is present when the tissue that is similar to the lining of the uterus (womb) occurs outside this layer and causes pain and/or infertility.
- Main issues are pain and infertility
- Often requires surgery and sometimes multiple surgeries

# Symptoms

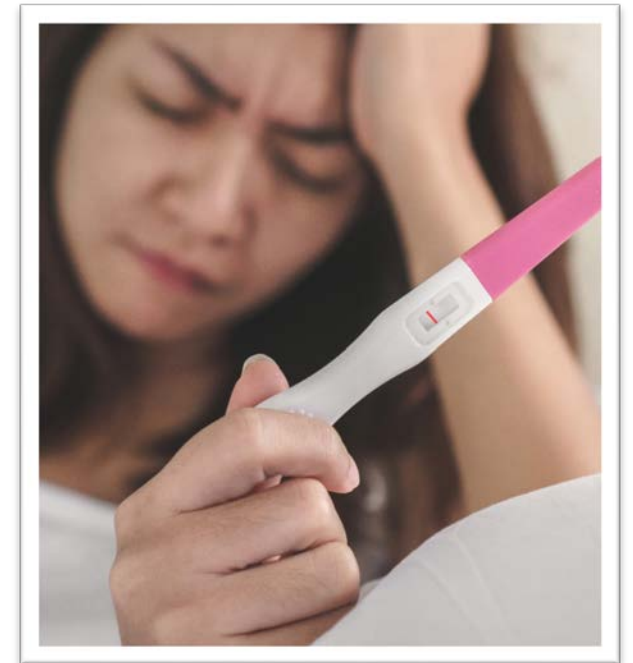
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- Fatigue – often worse than chronic fatigue.
- Severe pain including lower back and leg pain.
- Urinary issues.
- Heavy bleeding or irregular bleeding.
- Severe migrains.
- Nerve damage.



# Infertility – the facts

- Worldwide:
- 20% of women with infertility issues;
- 10% of pregnant women and
- 13% of women who have just given birth,
- experience a **mental disorder**.
- 20% of those attending primary health care suffer
- from **anxiety & depressive disorders**.





# The impact at work....

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- Symptoms can lead to problems at work
- Difficulty performing at the same level when symptoms arise
- Emotional distress/outbursts
- Leave impacts ability to succeed and obtain promotions
- Change how we think about women taking leaves and career breaks!
- We need women supporting other women and men supporting women as well.

# Return to work following parental leave

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- Employees in Australia and New Zealand have the right to up to 24 months of unpaid leave. Both governments also provide a paid parental leave entitlement of up to 18 weeks pay for some employees at the national minimum wage.
- Many companies do top-up pay or provide a separate paid parental leave entitlement. There is a huge trend in Australia and NZ right now to offer about 3 months of paid parental leave to either parent – removal of the distinction of “primary/stay home parent”.
- Employees have complete job protection upon return to work by law – they must be placed in the same or a suitably comparable position upon return to work.

# Workplace Flexibility – in some countries its mandatory and the law!

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- **Australia:**
  - An employee has the **right to request a change to working arrangements** if they have 12 months continuous service and are parents of, or have responsibility for the care of, a child under school age, or a child with a disability under 18.
  - E.g. change to hours of work; patterns of work; change to work location
- **New Zealand:**
  - Employees can request a flexible working arrangement from day one.
  - Employer must respond in writing within 1 month of the request.
  - There is no limit on the number of requests an employee can make for a flexible work arrangement.

# Employee Wellness and the link to productivity

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- Why is Employee Wellness important?
  - Harvard are predicting that depression will be the number 1 global illness by 2030  
***“The average person spends the majority of their life at work and about half of the population cites work as their biggest stressor”***, Dr Ellie Cobb, Psychologist NYC.
  - Employers need to focus on this now
- The connection between engagement and performance is well established. Multiple studies have shown that engaged teams outperform competitors in productivity, profit and employee retention and employee wellness has been shown to directly improve the bottom line.
- Harvard Business Review reported that, on average, employers who invested in health and wellness initiatives saw \$6 in health care savings for every dollar invested globally.
- Not all wellness initiatives are equally effective so you need to know your workforce, communicate with the employees and determine their needs.
- To attract diverse candidates you need to be thinking about diverse policies and practices.

# Employee wellness and the link to productivity continued....

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- Gallup studies have shown that making employee engagement central to a company's business strategy significantly improves profitability.
- A 2017 University of California study found that companies offering employee wellness programs saw a significant rise in productivity amongst employees.
- Consider flexibility in working arrangements. A Gallup study conducted in 2017 showed that the average worker is willing to accept 8% less pay for the option to work from home.
- Concerns around working from home arrangements are that productivity will decrease. This is inconsistent with the evidence which shows that working from home arrangements generally increase productivity and reduce business overheads – the 2017 Gallup study showed an average increase in productivity of 4.4%.



# It makes business sense!

- So.....it makes business sense!
  - Consider: pet-friendly workplaces
  - Providing healthy snacks
  - Practice gratitude
  - Provide exercise classes on-site
  - Launch a step competition
  - Sponsor mediation and counseling sessions
  - Host an anxiety workshop



Opening dialogue around employee health and wellness is a start. Research shows that employees, particularly female employees, want to be able to communicate about issues and stresses that are impacting their lives. Communication is key to improving engagement and employee wellness.

What are companies doing globally in this space.....



Paid IVF

3 months' paid  
parental leave

25 days of paid nanny  
services per year



Netflix is the first  
company to offer  
12 months fully paid  
parental leave to  
either parent



Salesforce  
supports equal  
pay for men and  
women. They have  
paid over 8 million  
to close pay gaps.

# Pacesetters for gender equality



- Primary carers: 26 weeks paid Parental Leave
- Secondary carers: 16 weeks paid Parental Leave
- Pay Equity Ambassador



- Primary carers: 18 weeks paid Parental Leave
- 3 months minimum tenure for paid Parental Leave
- Superannuation on paid & unpaid parental leave

# Pacesetters for gender equality



- Gender pay gap in Dec 2018 was less than 5%
- Comparative industry average gender gap is 18.5%
- Women make up 50% of Senior Leadership



- 20 weeks Paid Parental Leave for primary carers
- Zero minimum tenure to take paid parental leave
- Mental Health programs



- 26 weeks Paid Parental Leave for primary carers
- 13 weeks Paid Parental Leave for secondary carers
- Zero minimum tenure to take paid parental leave & superannuation on both paid & unpaid parental leave

# What some other companies are doing globally.....

Paid transgender reassignment surgery

Paid IVF/reproductive technology

Contribution towards adoption

On-site childcare

Newborns at work

Pets at the workplace

Pet parent leave

Splitting traditional roles for employees to pursue passion projects

# Thoughts?



# Thank You!