

COMMENT ON TOM HVALA: WOMEN'S REPRODUCTIVE HEALTH NEEDS AND WORK – LIVED EXPERIENCES, TENSIONS, AND MOST IMPORTANTLY, SOLUTIONS

BETH GAZE
MELBOURNE LAW SCHOOL

• HLEN, CHLOE, and RUTH Seminar - 3 June 2025

• Presented by Tom Hvala and Dr Karin Hammarberg
PhD Candidates, Melbourne Law School

Labour law and reproduction

- Law assumes a gender neutral subject
- In practice this means a man (widely recognised in feminist critique of legal doctrine and legal method)
- Women's differences from men are not necessarily allowed for, leaving them as disadvantages for women
- The fight for feminist recognition in law has been the fight to remove those disadvantages
- Eg sex discrimination
- Work family conflict
- Ability to be treated as fully human (ie that women's rights matter as much as men's or 'gender neutral' rights).
- See eg our conditions of work

EG the University of Melbourne Enterprise Agreement 2024

- 'sex' appears once – in including a same-sex partner in the parental leave provisions
- Sexual harassment is referred to twice
- No other references to sex
- Where does that leave women given that reproduction is such a gendered undertaking?
- Esp reproductive technologies – where it is women's bodies that undergo the treatment and women who have to make time and effort available.

Which provision applies to leave for IVF / reproductive technologies?

- 1.21.2.1 Paid Personal Leave (also referred to as Sick Leave) is absence an Employee (with exception to one in Casual employment) is entitled to take without loss of pay due to personal illness or injury (including pregnancy related illness)
- 1.21.4 Unpaid Personal Leave
- 1.21.4.1 Where an Employee is absent due to personal illness or injury and the Employee has no accrued paid Personal Leave available, the Employee is entitled to Personal Leave on an unpaid basis
- After 3 decades, is this a satisfactory position?
- 1.22 SPECIAL LEAVE
- 1.22.1 The University is committed to supporting Employees who need extended paid absence to deal with certain personal matters at particular times in their lives.
- 1.22.2 In addition to Personal Leave set out at clause 1.21, Employees engaged under a Continuing or Fixed-Term employment contract can apply for special paid leave of absence (Special Leave) where their health, wellbeing, attendance or performance is impacted by:
 - 1.22.2.1 significant menstruation, perimenopause or menopause symptoms; or
 - 1.22.2.2 chronic ongoing health issues or medical treatment, to the extent that the Employee cannot reasonably perform work.

What is needed?

- Tom will research experiences and develop an approach to answering this question
- Fundamentally, we need women to be treated as if their needs were basic human needs, not special and particular needs. This debate has grumbled along under feminism for decades – sameness / difference
- Clearly there is difference, the issue is how to allow for it and still treat individuals equally and fairly?
- Can we be more imaginative than merely requiring same treatment for fairness? If so, what criteria can we use?
- Disability law provides some pathways forward.