

# Frequently Asked Questions

## Clinically Extremely Vulnerable

### Stone King LLP - 25 February 2021

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#### **Can / Should employees who live with a CEV individual come into the workplace?**

There is no instruction for this category of employee to remain at home and they can continue to attend the workplace where they cannot reasonably work from home. This is in line with the [national lockdown guidance](#) currently in place.

#### **An employee's GP has said it is safe for them to come into the workplace, but the shielding letter is still in place. What should we do?**

You should continue to follow the government's guidance on CEV as our view is that this guidance overrides any doctor's letter/advice if the shielding letter is still in place.

#### **I understand the employee can ask for the shielding decision to be reversed. Is it OK for the employee to come to work if the shielding letter has been withdrawn?**

If the employee is no longer officially required to shield the [national lockdown guidance](#) should be followed; if the employee cannot reasonably work from home then they can come into work. We suggest you ask for evidence from a GP / specialist confirming this is the case in relation to the specific employee.

#### **We have employees who have spent a long period of time shielding at home and are desperate to return to work as their mental health is really suffering. Can any concessions be made for these individuals?**

Our opinion is that the CEV employee should not come into work unless there were extremely compelling and exceptional reasons. If the employee does come into work then you as an employer are potentially exposed to claims for damages for personal injury and potential H&S prosecution. We suggest offering support for mental health whilst shielding as a preferable alternative.

#### **Can CEV staff return if they have been vaccinated? Is there a difference between 1 and 2 doses for this purpose?**

On the current guidance, even if the employee has had both doses of the vaccine, they must still continue to shield until the guidance is updated. This is due to the fact the government are analysing the effectiveness of the vaccines. This is also evidenced in the shielding [letters](#).

#### **Is there an end date in sight for shielding? Or even a review date?**

The current shielding [letters](#) are in place until at least 31 March 2021. There isn't currently any indication when this will be reviewed but, in any event, it will be reviewed before 31 March 2021 and either a new letter issued or new guidance outlined.

**Can we allow CEV staff to return on the basis that a full risk assessment has been carried out and we feel there are compelling reasons to allow that return? What about if they are not pupil facing, or can work with distance from their colleagues?**

No, at this time CEV employee should not attend work even if they are unable to work from home and even if they can be given non-pupil facing duties. As part of the risk assessment, the shielding guidance should be considered and adhered to.

**Can we ask CEV staff to sign a waiver if they want to return and would that be effective?**

No, you cannot contract out of your health and safety obligations even if the employee is willing or keen. Any waiver would not carry any substantive weight should a legal claim be brought against you as the employer.

**What should we pay CEV staff who cannot work from home or for whom we do not have work that they can do at home?**

We suggest that full pay is paid regardless of service, to ensure that there is no detriment suffered as a result of the requirement to shield. It should also be remembered that those in the CEV category may also meet the definition of disabled under the Equality Act and employers must also be alert to avoiding discrimination claims. There may of course be a furlough option for privately funded staff and for those in early years settings where there has been a reduction in your DSG grant, subject to the remaining furlough eligibility criteria.

**What about staff who have CEV children and need to stay at home for childcare purposes? Do we keep paying them even if they have used up parental leave and we have a need for them to be in school when full reopening happens?**

Theoretically of course, parents of CEV children can continue to attend the workplace where they cannot reasonably work from home in line with the national lockdown guidance but are likely to be unable to do so because they are required to provide childcare at home. The same hypothetical arguments over detriment and / or discrimination could potentially apply here, and we advise a very cautious approach if you are considering withdrawing pay from such individuals. Other leave that the employee may be able to take advantage of as appropriate includes annual leave, compassionate leave or further special leave. As above, there may be a furlough option if appropriate to the individual(s) in question.

**What about pregnant employees?**

Employers must take a more precautionary approach when considering the impact of on employees who are 28 weeks or more pregnant, or have an underlying medical condition. We recommend involving these employees in these conversations and an analysis should be undertaken as to whether social distancing is truly possible in the setting. Working from home should be explored but is not obligatory. Risk assessments should be carried out or specifically revised for these individuals and it is particularly work noting that it is recognised that younger pupils and those with complex needs will likely not be able to social distance. Therefore, if you have employees in the 28 week + category, or with underlying complications, you will need to look carefully at redeployment and / or homeworking.

**Will the RPA insurance provide indemnity from claims should we allow a CEV employee to attend work?**

There is a separate FAQ document available to download from the RPA claims website which provide clarity on this.

In summary, in circumstances where government advice is guidance rather than mandatory, if an employee elects to carry on working at the school the RPA cover will continue to apply and will indemnify the school to the extent that the school is legally liable to pay compensation or damages to an employee, i.e. it can be demonstrated that the school caused the injury to the employee person that has led to a

claim. The school will of course need to undertake and adhere to risk assessments that consider the health of the employee and this appraisal will be critical to defending any such claims.

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