EEO CONNECTION

Statewide EEO Coordinators Message

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A New Beginning or Continue the Momentum?

At the start a New Year, I think about whether I want to make any New Year resolutions. If you're like me, I make them and by the end of January, they're forgotten. Well, this year, I didn't make any. I simply pledged to always do my best no matter what it is. I do reflect on the previous year though - what was good and not so good, what I did well and not so well. I then make adjustments accordingly.

When it comes to work, before the end of the year, my team and I meet and discuss our accomplishments of the year and plan new goals for the following year. The projects and work that is going well, we continue the momentum. The things that need a fresh start, we begin again.

For us in fair practices/EEO roles, now is the time to do a self-audit of your agency's EEO program to determine if you are meeting your compliance requirements and have good best practices in place. Also, this is the time to determine what needs a new beginning and where you should continue the momentum. Have you done your New Year reflection? Will you continue the momentum or start a new beginning? Let's make 2019 our best YEAR yet.

In the pages to come, we've featured Kirsten Williamson, Director of Program Equity/EEO/ADA Compliance Officer at Maryland Military Department (page 3). Ford Motor Company awarded a former employee nearly \$17 million for workplace discrimination and retaliation. Read about this case in the "Noteworthy Rulings" section. EEOC and the Justice Department have signed an MOU to prevent and address harassment of employees in State and Local government (page 8). Learn why the "Regarded as Theory" sacks the University of Southern Mississippi in the ADA Corner on page 12. Check out the upcoming meetings and trainings beginning on page 16. There is so much more, so turn the page.

Enjoy,

Glynis Watford Statewide EEO Coordinator

Office of the Statewide EEO Coordinator Mission

- Administer and enforce state and federal equal employment opportunity laws and policies.
- Promote a work environment free of any unlawful discrimination, harassment, and retaliation.
- Assist in building a well-diversified workforce for Maryland State Government employees and applicants.



OSEEOC FEATURE



Photo: Kirsten M. Williamson, Director of Program Equity/EEO/ADA Compliance Officer, Maryland Military Department

Kirsten Williamson began her role as Director of Program Equity/EEO/ADA Compliance Officer with Maryland Military Department in October 2016. Kirsten says that her role is a multifunctional position ensuring compliance with Title VII and corresponding State of Maryland regulations, as the Department's American with Disabilities Act (ADA) Coordinator, Assistant Fair Practices Officer and Personnel Administrator for the Freestate ChalleNGe Academy.

In August 1994, Kirsten began working with the State of Maryland at the Maryland Port Administration (MPA) as a receptionist, a HR generalist and eventually as the Manager of Recruitment and Examination. She was with the MPA for seventeen (17) years. Later in June 2013, she transferred to the Department of Public Safety and Correction Services (DPSCS) as a Management Advocate. In that role she was responsible for handling grievances, complaints, investigations, along with litigating appeals before the Correctional Officers Bill of Rights (COBR) Board and the Office of Administrative Hearings (OAH). The experience gained at both agencies was quite rewarding as she had the opportunity to ensure compliance, equity and fairness in the application of policies within her capacity, whether it be conducting recruitment or dealing with grievances, complaints, investigations or hearings.

Kirsten holds a bachelor's degree from the University of Baltimore in Computer Information Systems but has always worked in the areas of Human Resources and EEO. She looks forward to working with her colleagues in EEO as she continues to grow and expand in this line of work.

Ask the OSEEOC Team

1. QUESTION

How many trainings should the Equal Employment Opportunity Officers, Fair Practices Officers and ADA Coordinators attend per year?

OSEEOC ANSWER:

There is no set number of trainings required; however it is strongly encouraged that EEO professionals attend training as often as possible in order to stay current on the latest EEO changes and updates. Take advantage of the free trainings hosted by the OSEEOC team, which are outlined in our newsletter.

2. QUESTION

Who should an employee file their bullying complaint with when it is a non-equal employment opportunity matter?

OSEEOC ANSWER:

According to the State of Maryland, Bullying in the Workplace policy, an employee who feels they have been a victim of bullying that is not because of the individual's age, ancestry, color, creed, gender identity and expression, genetic information, marital status, mental or physical disability, national origin, race, religious affiliation, belief or opinion, sex, sexual orientation or any other protected status, should file a complaint with their appointing authority or agency head/Secretary, as appropriate.

3. QUESTION

If a new employee had been granted a reasonable accommodation with their previous agency and has requested the <u>same</u> accommodation with a new agency, is it necessary for the new agency to request medical information?

OSEEOC ANSWER:

If the requestor's disability and/or need for an accommodation is not obvious or not already known, you are entitled to ask for and receive medical information showing that the requestor has a covered disability that requires accommodation. However, when a disability is obvious (clearly visible) or already known (the individual previously provided medical documentation showing that the condition met the Rehabilitation Act definition), medical documentation may not be required. Previous medical documentation may be requested from the former agency to substantiate that the employee has a disability. The ADA Coordinator will determine whether additional medical information is needed to process the current request.

NOTEWORTHY RULINGS

FEDERAL CONTRACTOR AGREES TO PAY \$72,000 IN BACK WAGES TO SETTLE ALLEGED HIRING DISCRIMINATION FOUND IN U.S. DEPARTMENT OF LABOR INVESTIGATION

Crothall Laundry Services Inc. has agreed to pay \$72,000 in back wages after a routine compliance evaluation by the U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) found alleged systematic hiring discrimination violations at its Rome, Georgia worksite.

OFCCP found that - beginning in 2013 - Crothall Laundry Services Inc. discriminated against 36 female applicants in the hiring and selection process for production positions. OFCCP also cited recordkeeping violations at the Rome facility, and found the company failed to make good-faith efforts to recruit African American employees.

Crothall Laundry Services Inc. has agreed to pay the back wages and interest, as well as extend job offers to nine affected class members. To ensure future compliance, the company is obligated to evaluate and revise its hiring and selection policies; develop job-related qualification standards for production positions; and examine and improve its efforts to recruit qualified females and minorities.

"Federal contractors must ensure their pay practices do not discriminate," said Office of Federal Contract Compliance Programs Southeast Regional Director Samuel B. Maiden, in Atlanta. "The U.S. Department of Labor remains committed to holding companies with federal contracts accountable in ensuring equal employment opportunity at their facilities.

Read more at: https://www.dol.gov/newsroom/releases/ofccp/ofccp20181113



NOTEWORTHY RULINGS

EX-FORD EMPLOYEE AWARDED \$17M IN DISCRIMINATION CASE

DETROIT — A jury has awarded nearly \$17 million to a former Ford engineer who sued the automaker for discrimination because he says two supervisors repeatedly berated and criticized him for his Arab background and accent.

On March 28, a federal jury in Michigan ruled that Faisal Khalaf was subjected to workplace discrimination and retaliation after he reported the abuse, the Detroit Free Press reported. Khalaf was born in Lebanon and holds a PhD in industrial engineering. He worked for the automaker for more than 15 years.

One of Khalaf's supervisors would slam his fist on a table and scream at him for his English, according to Laughbaum.

"There was a high-level executive at Ford Motor Co. that my client reported to ... that would be rate him and criticize him week after week about his English," said attorney Carol Laughbaum.

"It wasn't a matter of 'Please, can you repeat this?' but 'What is wrong with you? Why don't you understand this?'" she said.

The jury awarded Khalaf \$15 million in punitive damages, \$1.7 million in retirement and pension losses, and \$100,000 for emotional distress for the actions of Ford supervisors Bennie Fowler and Jay Zhou.

Read more at: https://nypost.com/2018/04/05/ex-ford-employee-awarded-17m-in-discrimination-case/



NOTEWORTHY RULINGS

EEOC WINS JURY VERDICT AGAINST FAVORITE FARMS FOR SEXU-AL HARASSMENT AND RETALIATION

Farmworker Sexually Assaulted and Retaliated Against for Reporting the Misconduct, Federal Agency Charged

TAMPA, Fla. - A federal jury rendered a verdict on Dec. 19, 2018 awarding \$850,000 in compensatory and punitive damages to a female farmworker at Favorite Farms in Dover, Fla., who was raped by her supervisor and reported it to police and management that same day, the U.S. Equal Employment Opportunity Commission (EEOC) announced.

The evidence at trial showed that management at Favorite Farms, which primarily grows strawberries, failed to properly investigate the complaint, and instead sent the victim home from work without pay the next work day. Favorite Farms took no action against the harasser, leaving him to supervise women in the fields, despite evidence that this was not the first complaint of sexual harassment. Instead, Favorite Farms continued retaliating against the victim and forced her to take a leave of absence.

Such alleged conduct violates Title VII of the Civil Rights Act of 1964. The EEOC filed its suit (Civil Action No. 8:17-cv-01292-JSM-AAS) in U.S. District Court for the Middle District of Florida after first attempting to reach a prelitigation settlement through its conciliation process.

The Tampa jury of seven returned a unanimous verdict finding that the victim was entitled to compensatory damages of \$450,000 and punitive damages in the amount of \$400,000.

Read more at: https://www.eeoc.gov/eeoc/newsroom/release/12-21-18.cfm



EEO SPOTLIGHT

EEOC And Justice Department Sign Memorandum of Understanding to Prevent and Address Harassment of Employees in State and Local Governments

WASHINGTON - The U.S. Equal Employment Opportunity Commission (EEOC) and the Department of Justice's Civil Rights Division signed a new Memorandum of Understanding (MOU) to prevent and address workplace harassment in state and local government. The EEOC and the Justice Department seek to enhance the effectiveness of the nation's equal employment opportunity enforcement in the state and local government sector to ensure the efficient use of resources and a consistent enforcement strategy. The EEOC has ramped up its role as enforcer, educator, and leader on harassment in the workplace, and this MOU enhances those efforts.

EEOC Acting Chair Victoria A. Lipnic and Assistant Attorney General Eric Dreiband signed the MOU on December 21 in Washington, D.C.

"I am pleased to be able to renew our work with the Department of Justice in this regard," said Acting Chair Lipnic. "Harassment at work can have a devastating impact on people. The employees in the public sector deserve as much of our attention on this issue as those in the private sector." Lipnic added, "I especially want to thank EEOC Commissioner Charlotte Burrows for her attention to issues in this sector. I look forward to using her years of experience at the Department of Justice to help us move forward with our important work."

"All Americans are entitled to work with dignity in a place that is free of unlawful and discriminatory harassment," said Assistant Attorney General Eric Dreiband. "Last February, the Justice Department's Civil Rights Division launched an initiative to fight sexual harassment in the workplace. We are also diligently working to prosecute cases of racial and other forms of illegal discrimination. Through our strong partnership with the EEOC, we will continue to identify harassment claims, prosecute lawbreakers, seek relief for victims, fight to eliminate harassment from the workplace."

Read more at: https://www.eeoc.gov/eeoc/newsroom/release/12-21-18a.cfm



EEO SPOTLIGHT

EEOC RAMPS UP OUTREACH AND ENFORCEMENT TO ADDRESS WORKPLACE DISCRIMINATION

The U.S. Equal Employment Opportunity Commission (EEOC) responded to a significant increase this past fiscal year in calls, emails and online inquiries concerning potential discrimination claims and high demand for its new Respectful Workplaces Training Program. The increased demand is reflected in over 554,000 calls and emails to the EEOC and more than 200,000 inquiries concerning potential discrimination claims. The launch of a nationwide online inquiry and appointment system as part of the EEOC's <u>Public Portal</u> resulted in a 30 percent increase in inquiries and over 40,000 intake interviews.

"Many people in thousands of workplaces around the country depend every day on the work of the EEOC. I am proud to say that the EEOC met the increased demand for our expertise, for information and training, and for strong enforcement to combat all forms of discrimination, including sexual harassment," said Victoria A. Lipnic, Acting Chair.

Other fiscal year 2018 highlights include:

The EEOC's outreach programs reached 398,650 individuals, providing them with information about employment discrimination and their rights and responsibilities in the workplace. To address persistent workplace harassment, the EEOC conducted more than 300 Respectful Workplaces trainings that reached over 9,800 employees and supervisors in the private, public and federal sectors.

Read more at: https://www.eeoc.gov/eeoc/newsroom/release/11-9-18.cfm



EEO SPOTLIGHT

WOMAN WHO 'DRESSES TOO MUCH LIKE A MAN' GETS FIRED

A 32-year-old woman from Long Island in New York, filed a discrimination lawsuit against a timeshare company who allegedly fired her for "dressing too much like a man."

Chakia Harvell is seeking \$1.5 million (around P79.8 million) in damages from Wyndham Vacation Ownership, as reported by the *New York Post* on Nov. 4. The company has yet to issue a statement on the matter, as of this writing.

Harvell said her managers, despite knowing that technical difficulties hindered her from clocking in on a company iPad, fired her for supposed tardiness. She claimed, however, that her being late is not the actual reason why she was dismissed — the company allegedly had a problem with her "unfeminine" clothing.

Harvell, who has stated she is a lesbian, recalled that during her job interview, a manager allowed her to wear a tie, blazer and trousers at the office, the report said. But when she started working in the office, a human resources (HR) officer pulled her aside to discuss her clothing.

"She would just mention, 'Did you go back to the guidelines as far as the dress code?" Harvell was quoted as saying. "And the next day, she'd say, 'I sent the email again, did you get to the dress code part?"

Read more at: https://newsinfo.inquirer.net/1050539/woman-who-dresses-too-much-like-a-man-gets-fired



Family Healthcare Network Settles EEOC Disability and Pregnancy Discrimination Suit for \$1.75 Million

Family HealthCare Network will pay \$1.75 million and furnish other relief to settle a systemic disability and pregnancy discrimination suit filed by the U.S. Equal Employment Opportunity Commission (EEOC). The Visalia, Calif.-based health care company operates over 20 health care sites in Tulare, Kings and Fresno Counties.

According to the EEOC's lawsuit, Family HealthCare used its rigid leave policies and practices to deny reasonable accommodations to its disabled and/or pregnant employees, refusing to accommodate them with additional leave and firing them when they were unable to return to work at the end of their leave. In some instances, Family HealthCare discharged individuals before they had even exhausted their approved leave and failed to rehire them when they tried to return to work.

Such alleged conduct violates the Americans with Disabilities Act (ADA) as well as Title VII of the Civil Rights Act of 1964, as amended by the Pregnancy Discrimination Act (PDA), and Title I of the Civil Rights Act of 1991. The EEOC filed suit in U.S. District Court of the Eastern District of California (EEOC v. Family Healthcare Network, Case No. 1:18-cv-00893-DAD-BAM) after first attempting to reach a pre-litigation settlement through its conciliation process.

In addition to the \$1.75 million in monetary relief, the three-year consent decree requires Family HealthCare to retain an EEO monitor to review and revise the company's policies, as appropriate. The company will also implement effective training regarding preventing discrimination and harassment based on disability and/or sex-pregnancy for the owners, human resources and supervisory personnel and staff. Additionally, Family HealthCare will develop a centralized tracking system for employee requests for accommodations and discrimination complaints. The company is also required to submit regular reports to the EEOC verifying compliance with the decree.

Read more at: https://www.eeoc.gov/eeoc/newsroom/release/12-06-18.cfm



UNITED STATES: "REGARDED AS" THEORY SACKS UNIVERSITY

On November 14, the United States District Court for the Southern District of Mississippi <u>allowed</u> a student's claim against the University of Southern Mississippi (USM) to proceed to discovery. USM had recruited the student to play football, offering a full scholarship. The student has only one kidney, but when he arrived on campus, USM's Student Health Services Center cleared him to play without restrictions. As he started practicing with the team, the student told a team trainer that he had one kidney. The trainer sent the student to the team physician, who refused to clear the student to play for fear of creating potential liability for the institution, even though the student's doctor (who he consulted for a second opinion under USM's applicable policies) cleared him to play with no restrictions and the student offered to sign a liability waiver. Because USM would not allow him to play for the football team, the student sued for disability discrimination.

USM sought to dismiss the lawsuit, arguing that the student could not show that he was "disabled" within the meaning of the disability discrimination laws because having one kidney did not substantially limit any major life activities. The Court rejected USM's effort to dismiss the lawsuit, finding that the student could make a viable claim as being "regarded as" disabled by the institution. Under the "regarded as" definition, an institution can be liable simply by knowing of a physical impairment and making an adverse decision based on that impairment; a plaintiff pursuing such a theory does not need to show any substantial limitation of any major life activity.

Client Tip: This case serves as a stark reminder that institutions should not make decisions—whether in the employment or the student relations realm—based on its own perception of an individual's condition or its unsupported assumptions about how a condition might impact the individual.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances

Article by Robert G. Young, Bowditch & Dewey



Whole Foods Market to Pay \$65,000 To Settle EEOC Disability Suit

Whole Foods Market Group, Inc., doing business as Whole Foods Market, head-quartered in Austin, Texas, will pay \$65,000 and provide other relief to settle a disability discrimination lawsuit brought by the U.S. Equal Employment Opportunity Commission (EEOC). The EEOC had charged that Whole Foods Market violated federal law by failing to accommodate and firing an employee because of her disability.

According to the EEOC's lawsuit, Whole Foods hired Diane Butler in 2005 as a cashier for a facility in Raleigh, N.C. Butler has polycystic kidney disease, a genetic disease causing uncontrolled growth of cysts in the kidney, eventually leading to kidney failure. In 2009, while working for Whole Foods, Butler had a kidney transplant. The EEOC said that in December 2015, Butler missed work on two occasions because she had been hospitalized and needed to visit the doctor because of her kidney. The EEOC further alleged that although Butler informed Whole Foods that she needed time off due to her kidney impairment, the company nonetheless fired Butler because of her absences.

Such alleged conduct violates the Americans with Disabilities Act (ADA), which protects employees from discrimination based on a disability and requires employers to provide employees with disabilities with reasonable accommodations unless it would be an undue hardship. The EEOC filed suit in U.S. District Court for the Eastern District of North Carolina, Western Division (Equal Employment Opportunity Commission v. Whole Foods Market Group, Inc. d/b/a Whole Foods Market; Civil Action No 5:17-cv-00494-FL) after first attempting to reach a pre-litigation settlement through its conciliation process.

Read more at: https://www.eeoc.gov/eeoc/newsroom/release/11-5-18.cfm



Exide Technologies Sued by EEOC For Disability Discrimination

Exide Technologies, a global corporation headquartered in Milton, Ga., that manufactures, distributes and sells stored energy components, violated federal law when it rescinded its job offer to an applicant after it learned that he suffered from a medical condition, the U.S. Equal Employment Opportunity Commission (EEOC).

According to the EEOC's suit, on May 12, 2015, Exide made Gregory Greene a conditional job offer as a machine operator at its manufacturing facility in Columbus, Ga. When Greene went for a post-offer company physical, Exide learned he has chronic kidney disease. As a result of unfounded fears about his ability to perform the job safely, Exide unlawfully rescinded its job offer to Greene three days later, the EEOC said.

Such alleged conduct violates the Americans with Disabilities Act (ADA). The EEOC filed suit (EEOC v. Exide Technologies Inc., Civil Action No. 4:18-cv-00229-CDL) in U.S. District Court for the Middle District of Georgia, Columbus Division after first attempting to reach a pre-litigation settlement through its conciliation process. The EEOC is seeking reinstatement, back pay and compensatory and punitive damages for Greene, as well as injunctive relief designed to prevent future discrimination.

"An employer cannot refuse to hire a qualified applicant simply because of fears about a disability," said Antonette Sewell, regional attorney for the EEOC's Atlanta District Office. "The employer is required to first do an independent analysis about whether the employee's disability poses a direct threat of harm to himself or others. Rescinding a disabled applicant's job offer based on assumptions about the person and his disability violates federal law, and the EEOC is here for the rights of victims of such baseless discrimination."

Read more at: https://www.eeoc.gov/eeoc/newsroom/release/11-15-18a.cfm



DIVERSITY QUIZ

1. Susan B. Anthony's portrait appears on the U.S. dollar coin?			
Т	True	False	
Martin Luther King Jr. was born Michael Luther King Jr., but later had his name changed to Martin.			
	True	False	
3. Dr. Carter G. Woodson launched the annual February observance of "Negro History Week" in 1926, which became "Black History Month" in 1976.			
	True	False	
4. Susan B. Anthony played a pivotal role in the women's suffrage movement. Her work helped pave the way for the nineteenth amendment to the constitution giving women the right to vote.			
	True	False	
5. Martin Lu	ther King Jr. received the Nobel Peace	-	
		2. True 3. True 4. True 5. False (He was 35 years old)	
		1. True	

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Answers



Meetings & Trainings

January 2019

Romare Bearden: The Artist as Activist (Complementary w/ Museum Admission)

Hosted by: The Reginald F. Lewis Museum

Date: January 12, 2019 Time: 1 p.m.—3 p.m.

Register at: https://www.eventbrite.com/e/romare-bearden-the-artist-as-activist-complementary-w-museum-admission-

tickets-53958700927

The Intersection of ADA, FMLA, and Workers' Compensation

Hosted by: Region 3 - Mid-Atlantic ADA Center

Date: Thursday, January 17th, 2019

Time: 2:00 p.m. - 3:30 p.m.

Register at: http://events.constantcontact.com/register/event?llr=zc9uq6cab&oeidk=a07efx1qnu775e19711

Short Cutz Program: Coming to America Hosted by: The Reginald F. Lewis Museum

Date: January 18, 2019

Time: 7 p.m. (Doors open at 6:30 p.m.)

Register at: https://www.eventbrite.com/e/short-cutz-program-coming-to-america-admission-10-tickets-53958828308

February 2019

Annual EEO/FPO Meeting

Hosted by: Office of the Statewide EEO Coordinator

Date: February 4, 2019 Time: 10:00 a.m.— 12:00 p.m.

Location: Maryland Department of the Environment

1800 Washington Boulevard Baltimore, Maryland 21230

Register at: https://goo.ql/forms/ITOZ1sxlYnlxsoEO2

Current Events in Accommodation (Webcast)

Hosted by: Job Accommodation Network

Date: February 12, 2019 Time: 2:00 p.m.- 3:00 p.m.

Register at: https://askjan.org/events/index.cfm?calview=eventdetails&dtid=E2B51AC0-BF90-49D9-

DBB4457D4EFB05A3

Meetings & Trainings

March 2019

Assistive Technology Basics (Webcast)

Hosted by: Job Accommodation Network

Date: March 12, 2019 Time: 2:00 p.m.- 3:00 p.m.

Register at: https://askjan.org/events/index.cfm?calview=eventdetails&dtid=4D6DFC48-D6D2-9B7B-

A243A2314E53631D

Equity Speaker Series # 2 LGBTQ+ Safe Spaces Workshop

Hosted by: Maryland Commission on Civil Rights

Date: March 13, 2019

Time: 9:00 a.m.— 12: 30 p.m.

Location: Maryland Nonprofits, 1500 Union Ave #2500, Baltimore, MD 21211

Contact MCCR directly at 410-767-8600 for more information.

Bi-Monthly Sexual Harassment Workshop for State Employees

Hosted by: Maryland Commission on Civil Rights

Date: March 15, 2019 Time: 9 a.m.—1 p.m.

Location: Maryland Realtors, 200 Harry S. Truman Pkwy #200, Annapolis, MD 21401

Register at: https://www.eventbrite.com/e/sexual-harassment-prevention-in-the-workplace-for-md-state-employees-

registration-50455865853

2019 DIVERSITY CALENDAR

JANUARY 2019

1/1- New Years Day 1/21—Dr. Martin Luther King Jr. Birthday

FEBRUARY 2019

Black History Month

2/1 —National Freedom Day

2/14 — Valentines Day

2/15 —Susan B. Anthony Day

2/18 —President's Day

MARCH 2019

National Women's History Month

3/6—Ash Wednesday

3/8—International Women's Day

3/17—St. Patrick's Day

RESOURCES FOR EEO PROFESSIONALS

Division of Rehabilitation Services (DORS)

http://dors.maryland.gov/Pages/default.aspx

Department of Labor

http://www.dol.gov/

Employee Assistance Program (EAP)

http://www.dbm.maryland.gov/employees/Pages/EAP.aspx

Equal Employment Opportunity Commission (EEOC)

http://www.eeoc.gov/

Job Accommodation Network (JAN)

https://askjan.org/

Maryland Commission on Civil Rights (MCCR)

http://mccr.maryland.gov/

Society for Human Resource Management (SHRM)

http://www.shrm.org/pages/default.aspx

Maryland Department of Disabilities

http://mdod.maryland.gov/Pages/Home.aspx

Out & Equal Workplace Advocates

http://outandequal.org/

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