

Your Employment Equality Rights Explained

Guide to the Employment Equality Acts 1998-2011



Coimisiún na hÉireann um Chearta an Duine agus Comhionannas

Irish Human Rights and Equality Commission

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Equality Acts 1998-2011



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an Duine agus Comhionannas**

Irish Human Rights and Equality Commission

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The Irish Human Rights and Equality Commission (IHREC) was established under statute on 1 November 2014 to protect and promote human rights and equality in Ireland. It promotes a culture of respect for human rights, equality and intercultural understanding and works to eliminate human rights abuses and discrimination.

Contents

1 | 1. Introduction

3 | 2. The Scope of the Employment Equality Acts

- 4 | What are the aims of the Employment Equality Acts?
- 4 | Who is protected under the Acts?
- 5 | What aspects of employment are covered by the Acts?
- 5 | What are the nine grounds?
- 7 | What is discrimination under the Employment Equality Acts?
- 7 | What are the different types of discrimination?
- 8 | What about employment equality in advertising?
- 9 | Is the right to equal pay covered in the Acts?
- 9 | How do the Acts protect against harassment and sexual harassment?
- 9 | What is harassment and sexual harassment?
- 10 | Disability – What are 'appropriate measures'?
- 11 | What are examples of appropriate measures?
- 11 | What is a 'disproportionate burden'?
- 12 | What is 'positive action'?
- 13 | What is 'victimisation'?
- 13 | What is 'vicarious liability'?

15 | 3. General exemptions – when the Employment Equality Acts do not apply

- 16 | Are there exemptions to the Employment Equality Acts?
- 16 | What are the exemptions that apply to all types of employment?
- 17 | What are the exemptions in relation to certain kinds of employment?
- 19 | Are there exemptions based on the nine grounds of the Acts?

23 | 4. State bodies that oversee the equality laws and decide claims

25 | 5. How do I make a claim?

- 26 | Step 1: Deciding whether to bring a claim
- 27 | Step 2: At the Workplace Relations Commission
- 28 | Step 3: Results
- 29 | Obeying the ruling – enforcement
- 29 | Are gender claims different?
- 30 | Can I appeal a decision?

31 | Appendix A

- 32 | The role of the Irish Human Rights and Equality Commission
- 32 | Information and support
- 33 | Legal Assistance

1. Introduction

Introduction

The Irish Human Rights and Equality Commission (IHREC) was established on 1 November 2014 as an independent statutory body to protect and promote human rights and equality in Ireland. We have a specific role to work to combat discrimination and promote equal opportunities in the areas covered by the Employment Equality Acts. We also have a role to provide information on the Acts.

This booklet tells you about the main terms of the Employment Equality Acts 1998 – 2011 (The Acts). These Acts aim to protect workers against certain types of discrimination, harassment and sexual harassment that could occur in the course of their working life. The legislation promotes equality in the workplace and bans discrimination across nine different grounds (categories). These nine grounds will be explained in this booklet.

If you want more detailed information about the Employment Equality Acts, you can find the Acts online at www.ihrec.ie or www.irishstatutebook.ie

The Employment Equality Acts do not cover discrimination in everyday living outside employment – there are separate Equal Status Acts in place for that and a separate information booklet covering the Equal Status Acts 2000-2012 is available online at ihrec.ie

This booklet only gives information – it is not a legal document.

2. The Scope of the Employment Equality Acts

The Scope of the Employment Equality Acts

What are the aims of the Employment Equality Acts?

The Employment Equality Acts 1998-2011 aim to:

- promote equality;
- ban discrimination across nine grounds;
- ban sexual and other harassment;
- ban victimisation;
- make sure suitable facilities for people with disabilities are available in relation to access to employment, advancing in employment and taking part in training; and
- allow positive action to ensure everyone gets full equality across the nine grounds.

Who is protected under the Acts?

The Acts apply to:

- full-time, part-time and temporary employees;
- public and private sector employment;
- vocational training bodies;
- employment agencies; and
- trade unions, professional and trade bodies.

The Acts also extend in certain circumstances to:

- self-employed people;
- partners in partnerships; and
- State and local authority office-holders.

What aspects of employment are covered by the Acts?

Aspects of employment that are covered include:

- job advertising;
- equal pay;
- access to employment;
- vocational training and work experience;
- terms and conditions of employment;
- promotion or re-grading;
- classification of posts;
- dismissal; and
- collective agreements.

What are the nine grounds?

The Gender ground:

You are entitled to equal treatment at work whether you are a man, a woman or a transgender person. Special protection is provided for pregnant employees and in relation to maternity leave.

The Civil Status ground:

You are entitled to equal treatment at work whether or not you are:

- single;
- married;
- separated;
- divorced or widowed; or
- in a civil partnership, or formerly in a civil partnership, that has ended by death or been dissolved.

The Family Status ground:

You are entitled to equal treatment at work under the 'family status ground', if you are:

- the parent or the person responsible for a child under 18 years; or
- the main carer or the parent of a person with a disability who requires ongoing care. A main carer has to live with the person they are caring for.

The Sexual Orientation ground:

You are entitled to equal treatment at work whether or not you are gay, lesbian, bisexual or heterosexual (straight).

The Religion ground:

You are entitled to equal treatment at work no matter what your religious beliefs are or if you hold no religious beliefs.

The Age ground:

You are entitled to equal treatment at work if you are any age so long as you are over the legal school-leaving age.

The Race ground:

You are entitled to equal treatment at work no matter what your race, skin colour, nationality or ethnic origin is.

The Traveller community ground:

You are entitled to equal treatment at work if you are a member of the Traveller community.

The Disability ground:

You are entitled to equal treatment if you have a disability. There are different types of disability such as a physical disability (e.g. unable to walk or to see), intellectual disability or learning disability (e.g. dyslexia). Certain

mental health issues may also be a form of disability. Disability could also mean that you suffer from a particular medical condition, which is potentially chronic, long-term, debilitating or that gets worse over time.

What is discrimination under the Employment Equality Acts?

Broadly speaking, discrimination means that you receive different and less favourable treatment to other people because of who you are. However, all forms of discrimination that could occur might not be covered by the Employment Equality Acts.

Discrimination has a specific meaning in the Acts and there are different types of discrimination covered.

What are the different types of discrimination?

Direct discrimination is when a worker is treated less well than another worker in the same situation or circumstances under any of the nine grounds covered in the Acts.

Direct discrimination can also be, for example, an order given by a manager to a worker to discriminate against another worker.

Indirect discrimination happens where a worker or group of workers or job applicants are treated less favourably as a result of requirements that they might find hard to satisfy.

Example

If a job advertisement states that applicants have to be of a certain minimum height, this may put women at a particular disadvantage. The rationale for this requirement has to be objectively justified. The Acts require the employer to prove that the requirement is also necessary for the job in question, in order not to be discriminatory.

Discrimination by association happens when a person is treated less favourably simply because they are associated with or connected to another person who comes under the nine grounds.

Example

If someone is being harassed at work because one of their family members is gay, they are being discriminated against simply because they are related to a gay person. This is discrimination by association.

Discrimination by imputation happens when a person is treated less favourably because they are labelled as belonging to one of the categories covered by the nine grounds.

Example

If it is incorrectly assumed that a worker is a member of the Traveller community and is treated less favourably on this basis, this is discrimination by imputation.

What about employment equality in advertising?

It is illegal under the Acts to publish or display an employment-related advertisement that gives the impression that certain people or groups would be excluded or not favoured.

Example

If a shop advertised for a 'young, energetic sales girl', men and older people might consider themselves discriminated against.

The Irish Human Rights and Equality Commission is the relevant body to contact to in relation to alleged discriminatory advertising.

Is the right to equal pay covered in the Acts?

Yes. The Acts protect a person's right to equal pay for equal work. Equal work is also called 'like' work – in other words, a person's work duties might be slightly different to someone else's but the work they do is of the same value to the employer. It is a term of everyone's contract of employment that they are entitled to equal pay for 'like' work.

Equal pay claims can be taken on any of the nine discriminatory grounds.

How do the Acts protect against harassment and sexual harassment?

Under the Employment Equality Acts 1998-2011, sexual harassment and harassment of an employee (including agency workers and trainees) in the workplace are against the law.

This includes sexual harassment and harassment by:

- co-workers;
- the employer; or
- clients, customers or other business contacts of the employer including anyone the employer could reasonably expect the worker to come into contact with.

What is harassment and sexual harassment?

Harassment is any form of unwanted conduct related to any of the nine discriminatory grounds. Sexual harassment is any form of unwanted verbal, non-verbal or physical conduct of a sexual nature.

Both types of harassment are:

- behaviour which damages the victim in terms of their dignity; or
- places them in a hostile situation and/or environment.

The unwanted conduct might take the form of:

- actions;
- gestures;
- spoken words;
- written words;
- emails;
- text messages; or
- pictures.

Sexual harassment or harassment of an employee is discrimination by the employer. It is up to an employer to prove that they took reasonable steps to prevent the victim from being harassed or sexually harassed.

There is a *Code of Practice on Sexual Harassment and Harassment at Work* that has been approved by the Minister for Justice and Equality. This is available from the Irish Human Rights and Equality Commission at www.ihrec.ie

Disability – What are ‘appropriate measures’?

An employer must take ‘appropriate measures’ to meet the needs of disabled people in the workforce. This means they must make arrangements that will enable a person who has a disability to:

- have equal opportunities when applying for work;
- be treated the same as co-workers;
- have equal opportunities for promotion; and
- undertake training.

What are examples of appropriate measures?

Appropriate measures are effective and practical changes the employer puts in place to enable employees with a disability to carry out their work on an equal footing with others. These include:

- adapting the premises or the equipment, for example, installing wheelchair ramps, providing special computers for the visually impaired, installing loop systems, and so on;
- offering flexible working times;
- providing training or other supports that might help;
- adjusting an employee's attendance hours or allowing them to work from home; or
- assigning an employee certain tasks, and substituting others for equivalent duties, in consultation with the employee.

The employer is not obliged to provide anything that the person would normally provide for themselves.

Example

An employer would not be expected to provide hearing aids for a person with impaired hearing.

An employer might not have to provide these types of appropriate measures if it meant that the employer would suffer a 'disproportionate burden'.

What is a 'disproportionate burden'?

In order to establish what a 'disproportionate burden' is for the employer, several things are taken into account. These include:

- the financial cost of the measures involved;

- other costs involved, for example, staff time or impact on productivity; and
- the size and financial resources of the employer's business.

Before an employer can claim that providing reasonable accommodation measures or facilities would place them under a 'disproportionate burden', they must look at the possibility of obtaining public funding, grants and so on. If help is available to them, it might make the changes possible.

Many reasonable accommodation measures would not necessarily have a cost implication such as flexible work arrangements or facilitating part-time work.

What is 'positive action'?

Under the Acts, 'positive action' means that the employer can take steps that are not required under the law to promote equality for all their workers.

Example

It would be a 'positive action' on behalf of an employer if they provided a childcare facility on the premises. This might give someone with a young family the same opportunity of employment as someone without children.

Another example might be the rostering of staff in a way that facilitates the observance of their religious beliefs or religious celebrations.

What is 'victimisation'?

Under the Acts, it is 'victimisation' if an employer penalises an employee because they have made a complaint under either the Employment Equality Acts 1998–2011 or the Equal Status Acts 2000-2012.

Victimisation is against the law.

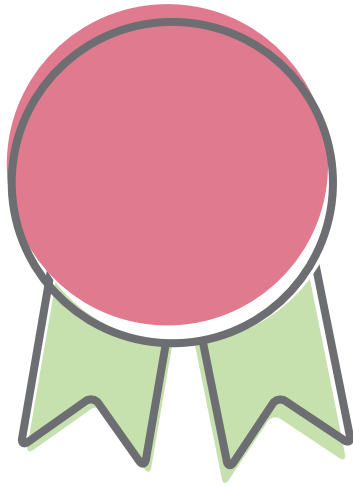
It is victimisation if an employee is dismissed or penalised in some other way if they have:

- made a complaint of discrimination to the employer;
- been involved in any discrimination proceedings;
- helped a colleague to make a claim;
- been penalised as a result of an unfair comparison with a colleague known as a 'comparator' (see below);
- acted as a witness in legal discrimination proceedings;
- taken a discrimination claim to court under the Acts; or
- informed an employer that they intend to do any of the things mentioned in any of these points.

The term 'comparator' is used, for example, when someone takes a case against an employer on the basis of not being appointed to a certain position because they are female; their 'comparator' would then be the male colleague who got the job.

What is 'vicarious liability'?

'Vicarious liability' means when someone is legally responsible for someone else's actions. Employers are liable for any act of discrimination by an employee in the course of their employment unless the employer can prove that they took reasonable steps to prevent the discrimination. An employer also has a duty under the Acts to protect their employees in relation to discrimination or harassment coming from third parties such as service users, contractors and, suppliers.



3. General exemptions – when the Employment Equality Acts do not apply

General exemptions – when the Employment Equality Acts do not apply

Are there exemptions to the Employment Equality Acts?

Yes. There are some general exemptions that apply to all types of employment and there are also exemptions that apply to certain kinds of employment. In other words, some forms of discrimination are allowed.

This booklet aims to give information about the most common exemptions, but there could be others that might apply to you if you're making a claim of discrimination. If you need further information, agencies that can help you are listed at the end of this booklet.

What are the exemptions that apply to all types of employment?

Capacity and competence

This means that an employer is not obliged to hire someone who is unable to do the job properly.

However, if someone with a disability would be able to do the job if reasonable adjustments were made to the workplace, the employer should make the adjustments.

Example

A person with a physical disability might be able to take on a driving job if a company vehicle was modified to suit them.

Educational, technical or professional qualifications

Under the Acts, employers are allowed to reject job applicants who do not hold the qualifications that are generally accepted as being necessary for the job.

Benefits in respect of an employee's family

The Acts allow employers to provide certain benefits to employees who have families.

Example

Providing childcare facilities, holding family events and so on is permitted.

What are the exemptions in relation to certain kinds of employment?

Officers or servants (employees) of the State

Under the Acts, it is not discrimination if some employees in these categories are required to fulfil special requirements, for example, they might have to:

- hold Irish citizenship;
- live in a particular area; or
- be proficient in the Irish language.

Examples of civil and public servants:

- members of An Garda Síochána;
- members of the Defence Forces and Civil Servants
- local authority employees;
- health service employees; and
- employees of further education and training institutions, etc.

Primary and post-primary teachers

The Acts allow employers to require that teachers have a proficiency in the Irish language.

Defence Forces

Under the Acts, the Defence Forces are allowed to treat employees differently on grounds of age and disability.

Employment in another person's home

This relates to workers providing a personal service in a person's private home, for example, childminding, care services and so on, where the employment affects the private or personal life of those residing in that home. The person employing the worker is not subject to the Employment Equality Acts when recruiting such an employee.

Example

A woman might prefer to have a woman in a personal caregiving role in her home and this is allowed under the Acts.

Once the person is employed, though, they are entitled to regular terms and conditions of employment and may not be discriminated against.

An Garda Síochána and the Prison Service

Both the Gardaí and the Prison Service can assign certain tasks to either men only or women only. These tasks relate to privacy issues (such as body-searching), controlling violent individuals or crowds and rescuing hostages.

These services are also allowed to have a minimum height requirement that is different for men than for women. They are allowed to recruit more employees of one gender than the other if more employees of that gender are needed in the service at that time.

Are there exemptions based on the nine grounds of the Acts?

Yes. The Acts allow for employees to be treated differently in certain circumstances.

You can be treated differently on the following grounds:

All grounds

The Acts allow for people to be treated differently on any of the nine grounds if they do not meet a particular requirement that is essential for the job. For example, it might be reasonable to exclude people over the age of 60 from a job that demands a high level of physical fitness.

The Gender ground and the Civil Status ground

The Acts allow for benefits to be conferred on women employees who are pregnant or breastfeeding and this is not discrimination on the gender ground.

In Ireland, there are separate laws regarding Maternity Protection and Adoptive Leave. Anything that is legal under that legislation is not discrimination on the civil status ground.

The Age ground

The Acts allow for employees to be treated differently on the age ground in several circumstances. For example:

- an employer may set a minimum age up to 18 years when recruiting and they may offer a fixed-term contract to a person over the compulsory retirement age;
- occupational benefits (such as illness benefits or severance pay) can be different for individual employees based on their age, however, this different treatment only applies on the age ground;

- An employer can set different ages for the retirement of employees;
- In Ireland, there are separate laws such as the Protection of Young Persons (Employment) Act 1996 and the National Minimum Wage Act 2000. Anything that is legal under those rules is not discrimination on the age ground.

Mixed grounds

Under the Acts, vocational or training bodies are allowed to give different treatment in relation to fees and allocation of places to people who are nationals of an EU member State.

Vocational and training bodies are allowed to give different treatment in relation to age and nationality when awarding sponsorships, scholarships, grants and so on. However, the award must be in keeping with the traditions of the institution.

For example, a scholarship paid for by a foreign embassy might only be available to students from that country. Universities or other third-level institutions can give different treatment on the age ground in relation to allocating places to mature students.

The Religion ground

Under the Acts, certain religious, educational and medical institutions can give different treatment on the religion ground. Certain employees or job applicants might receive favourable treatment if it were necessary to maintain the religious ethos of the institution.

These institutions can also take action against an employee without discriminating if they work against the established standards and traditions of the institution.

These institutions can also reserve places on certain teaching and nursing courses if the education and health authorities consider this necessary to keep up the numbers of teachers and nurses.

The Race ground

Anything that is legal under the Employment Permits Acts 2003-2014 is not discrimination on grounds of nationality.

The Disability ground

Under the Acts, employers are allowed to offer different pay rates to disabled workers if their disability means that they cannot do the same amount of work in the same time as a co-worker without a disability.



4. State bodies that oversee the equality laws and decide claims

State bodies that oversee the equality laws and decide claims

There are two State bodies responsible for ensuring that the equality laws are promoted and upheld – the Irish Human Rights and Equality Commission and the Workplace Relations Commission.

The Irish Human Rights and Equality Commission (IHREC)

The IHREC may represent a person bringing a discrimination claim and more generally it is responsible for promoting respect for equality and human rights in Ireland.

The Workplace Relations Commission (WRC)

The WRC is similar to a court and it has the power to investigate, judge and decide on equality cases.

Equality claims are also judged on appeal by the Labour Court and there is then a limited right of appeal on a point of law to the High Court. An appeal to the High Court does not deal with the facts of the case, but instead decides on the law relevant to the complaint.

All claims (with the exception of claims on the gender ground which can start in the Circuit Court) must pass through the WRC first.

5. How do I make a claim?

How do I make a claim?

Step 1: Deciding whether to bring a claim

Right to look for information

If you believe you have experienced discrimination at work, you may write to your employer and tell them you feel you have been badly treated. Even though your employer might not be the actual person who discriminated against you or harassed you, they are responsible. You may ask for certain information which might help you to decide whether or not to carry on with your claim. This could include details of pay scales or statistics on gender or nationality of employees.

Your employer is not obliged to reply, but, if they don't, it means that an adjudication officer might view this failure to reply as seriously as if the employer supplied false, misleading or inadequate information.

Your employer is not obliged to disclose confidential information. If you're requesting information from your employer, you use Forms EE2 and EE3, which are available from:

Workplace Relations Customer Service

Department of Jobs, Enterprise & Innovation,
O'Brien Road,
Carlow.

Lo-call: 1890 80 80 90

You can also download the forms from www.workplacerelations.ie

Time limits

You must make your complaint of discrimination or harassment within six months of the date of the latest act of discrimination. The six-month time limit can be extended up to 12 months by an adjudication officer of

the WRC if he or she considers there is a good reason to do so. The form used for making a complaint to the WRC is EE.1.

Note: A parent or guardian can make a claim on behalf of a person with an intellectual or psychological disability.

Step 2: At the Workplace Relations Commission

Mediation

This is where the Director General of the WRC appoints a mediation officer to help settle the dispute. The mediation officer will be a neutral person and will give both parties an equal chance to give their side of the dispute. This may be done at a meeting or by other means. Both you and your employer must agree to this. The job of the mediation officer is to work with both parties to help them reach an agreement and settle the claim. If a settlement is reached through mediation, the terms of the settlement are legally binding.

Adjudication

If the case is not dealt with by mediation or the mediation fails, the case will be referred to an adjudication officer who will investigate the claim and make a decision.

Investigations are held in private – that is, there are no members of the public present.

The adjudication may be based on the written evidence of both parties or may involve an oral hearing. The adjudication officer will issue a decision which is legally binding.

Strike out (dismissal) of a claim

An adjudication officer can strike out (dismiss) a claim if they consider it was not valid – for example, made simply to irritate or annoy somebody

or not related to any of the nine grounds. A claim can also be dismissed if, after a year, it appears that the person making the complaint has decided to drop it.

Representation and costs

If you are making a complaint, you may represent yourself or you can choose to be represented by a lawyer, or a trade union. You may also be represented by some other person, but you must get the permission of the adjudication officer first. You do this at your own expense. Travelling and other expenses (except expenses of representatives) can be awarded against a person who gets in the way of an adjudication or an appeal or slows it down.

Step 3: Results

If the adjudication officer finds in your favour – in other words, if you win your claim, different types of orders can be made.

Equal pay claims

In equal pay claims, an order may be made that you receive equal pay in future. You may also get pay arrears for a maximum of three years.

Other discrimination claims

In the case of other discrimination claims, an order may be made that you receive equal treatment in future. You might also be awarded compensation for the effects of the discrimination that you have suffered. Compensation of up to a maximum of two years' pay can be ordered or €40,000 if that is greater.

Awards for those who are not employees

If you are not an employee, €13,000 is the maximum compensation you can be awarded. This applies for example if you are applying for a job. These rules about compensation apply even if there was discrimination

on more than one of the nine grounds. However, separate awards can be made for different forms of discrimination, for example, harassment or victimisation.

If you lose your job

An order can be made to fully reinstate you in your job or re-engage you if you lost your job. There may or may not be an order for compensation with this.

Action may be ordered

An order can be made that an individual or a group has to carry out a particular course of action.

Public service employment

There are specific procedures for claims of discrimination in relation to recruitment to the Civil Service, Local Authorities or the Defence Forces.

Obeying the ruling – enforcement

If settlement terms are not carried out as ordered by the Workplace Relations Commission or the Labour Court, the matter can be brought to the District Court, which will 'enforce' the decision – in other words, the Court will order that the settlement terms are carried out.

Are gender claims different?

Yes. Gender claims are the only discrimination claims that can be dealt with in the Circuit Court. If the issue at the centre of the gender claim is to do with equal pay, the Circuit Court can order pay arrears of up to six years. Also, there is no limit to the amount of compensation that may be ordered by the Circuit Court. However legal costs may be awarded against the unsuccessful party in the Circuit Court.

Can I appeal a decision?

Decisions of an adjudication officer, including decisions on time limits, may be appealed to the Labour Court not later than 42 days from the date of the adjudication officers' decision.

Where a decision is made by an adjudication officer or by the Labour Court on an appeal, either party to the dispute may appeal to the High Court on a point of law.

This means that there is a question about the interpretation of the law itself and is separate from the facts of your complaint. The Labour Court also has power to refer a case to the High Court on a point of law.

Appendix A

Appendix

The role of the Irish Human Rights and Equality Commission

The IHREC has a broad range of tasks under the Irish Human Rights and Equality Commission Act, 2014 in relation to human rights and equality. In relation to employment equality IHREC works towards:

- combating discrimination in employment in the areas covered by the Acts;
- promoting equality of opportunity in employment;
- providing information on the operation of the Employment Equality Acts 1998-2011;
- keeping the operation of the Employment Equality Acts 1998-2011 under review; and
- making recommendations for improvement to the Minister.

Information and support

The Irish Human Rights and Equality Commission provides information to the public on the Employment Equality Acts 2000-2011. These guides provide basic information on the Acts.

Additional information is available by contacting our **Public Information Centre** at:

Irish Human Rights and Equality Commission

16-22 Green Street,
Dublin 7.

Lo-call: 1890 245545

E-mail: publicinfo@ihrec.ie

Web: www.ihrec.ie

Legal Assistance

The IHREC can also provide legal assistance to claimants. IHREC will make a decision about whether or not it will do so according to its guidelines (available on request). If IHREC does not grant you legal assistance this does not stop you from bringing your case to the WRC. You can represent yourself or be represented by a lawyer, trade union or other representative.

Workplace Relations Customer Service

Department of Jobs, Enterprise & Innovation,
O'Brien Road,
Carlow.

Lo-call: 1890 80 80 90

Web: www.workplacerelations.ie



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