

DECEMBER 2011-

JANUARY 2012

Trainings & Events
(Central Standard Time)

**Accessibility Online
Webinar Series**

Accessible Schools

December 1st, 2011 1-2:30 CT
The 2010 ADA Accessibility Standards and the Architectural Barriers Act (ABA) Accessibility Standard apply to many types of schools in the public and private sectors, including primary, secondary, trade schools and colleges and universities . This session will provide an overview of requirements in the ADA and ABA standards for newly constructed and altered school facilities and their related elements and spaces such as student laboratories, assembly seating, assistive listening systems, and much more. For more information visit: [For more Information Visit: Accessibility Online Webinar Series](#)

**ADA Audio Conference
Series**

**Open Dialogue with the
Department of Justice**

December 13, 2011 1-2:30 CDT
The revised Title II and III regulations have been in effect for over six months with more compliance dates looming in 2012. Join us for an update on DOJ's Enforcement and Guidance Activities and pose your questions to our speaker. This is an interactive session and you are encouraged to bring your tough issues and concerns forward. Learn from what others may be experiencing and the questions and issues that they may have as well.

VOLUME 8 ISSUE 3

News from the Federal Agencies

U.S. Access Board

Access Board Extends Comment Period for Proposed Rights-of-Way Guidelines

The U.S. Access Board has reopened the public comment period on proposed guidelines for accessible public rights-of-way to February 2, 2012. The original comment deadline was November 23, 2011. This action is being taken in response to requests from government and trade associations, for additional time to submit comments on the rule.

U.S. Equal Employment Opportunity Commission (EEOC)

Journal Disposition Settles EEOC Disability Discrimination Lawsuit

Journal Disposition, the former operator of IPC Print Services, Inc., a full-service print, manufacturing and distribution company in St. Joseph, Mich., and employing at least 200 people, has agreed to settle a disability discrimination suit brought by the U.S. Equal Employment Opportunity Commission (EEOC) for \$55,000. The EEOC's lawsuit, Case No. 1:10-CV-00886, filed in U.S. District Court for the Western District of Michigan, charged that Journal Disposition terminated a long-time employee who had been diagnosed with cancer because he exhausted his time under its short-term disability insurance policy. The policy provided 26 weeks of leave within a rolling 12-month period. Prior to the exhaustion of his leave, the employee returned back and began working part-time hours while he received chemotherapy. He was able to perform all of the essential functions of his job. When the employee's benefit was exhausted under the policy, the company summarily terminated him and made him eligible for rehire once he was able to work full-time, the EEOC said. At the time of the discharge, the EEOC said, the employee made an accommodation request to continue working part-time until his chemotherapy ended about five months later.

[Read more about Journal Disposition Settles EEOC Disability Discrimination Lawsuit](http://www.eeoc.gov/eeoc/newsroom/release/11-17-11a.cfm) at <http://www.eeoc.gov/eeoc/newsroom/release/11-17-11a.cfm>

Injunction Entered Against AutoZone Requiring Reasonable Accommodation Of Disabilities

A federal court has ordered AutoZone, Inc., a leading auto parts retailer, to reasonably accommodate the disabilities of its retail employees throughout central Illinois, the U.S. Equal Employment Opportunity Commission (EEOC) announced today. Entering final judgment in a disability discrimination suit brought by the

For more information visit [ADA Audio Conference site](http://www.ada-audio.org/Schedule/) at <http://www.ada-audio.org/Schedule/> or call (877) 232-1990.

Accessibility Online Webinar Series

Accessible Golf Courses

January 5th, 2012 1-2:30 CT

The 2010 ADA Accessibility Standards and the Architectural Barriers Act Accessibility Standards address the design and construction of golf courses.

Technical provisions address teeing grounds, putting greens, teeing stations at driving ranges, course weather shelters, golf car rental areas, bag drop areas, and course toilet rooms. Special criteria permit the use of a "golf car passage" in lieu of the traditional accessible route to connect these spaces within the boundary of the course.

This session will review these specifications and highlight the impact on newly constructed, altered, and existing golf courses. For more information visit

[Accessibility Online Webinar Series](#)

ADA Audio Conference Series

Refresh on the 2010 ADA Standards

January 17th, 2012 1-2:30 CDT

March 15th is just around the corner. Effective March 15, 2012 new construction and alterations undertaken by entities covered by the ADA will be required to comply with the 2010 ADA Standards.

Many conferences, workshops and webinars have been devoted to training design professionals, business owners, state and local government officials and advocates about these changes. Yet, the ADA National Network continues to field

EEOC, the court also held the company liable for \$415,000 in damages and lost wages and \$9,045 in litigation costs.

On June 3, 2011, a federal jury found that AutoZone violated the Americans With Disabilities Act (ADA) when it failed to accommodate the disability of a sales manager at its Macomb, Ill. store. At trial, the EEOC presented evidence that the employee was required to perform cleaning tasks that violated his medical restrictions and resulted in an injury and severe physical pain. The sales manager, who worked at the company until 2003, is disabled with permanent back and neck impairments. Under the ADA, a reasonable accommodation may include the elimination or modification of a non-essential job duty, or the transfer of a non-essential job duty to another employee.

In an order dated Nov. 8, 2011, the court granted the EEOC's post-trial request for an injunction, in part, finding that "the conduct of the defendant's managerial employees at the highest level was clearly an intentional violation of the ADA" and that there was a "possibility of future infractions." The injunction applies to all of the company's retail stores within the Central District of Illinois, a federal judicial district encompassing 46 Illinois counties. AutoZone will also be required to report all requests for reasonable accommodations in that region to the EEOC for a period of three years, and to maintain records of the company's responses to such requests for a period of four years.

The court rejected a request by AutoZone to reduce the jury's award of compensatory and punitive damages below the statutory maximum of \$300,000. Citing evidence of the sales manager's "near daily pain for 6 months and ... need for physical therapy and other medical attention," the court upheld the jury's award of \$100,000 in compensatory damages. The court reduced the jury's punitive damages award from \$500,000 to \$200,000, in order to bring total damages within the \$300,000 statutory cap. The court declined to reduce the award any further, however, noting that it was supported by evidence that the company's managers "knew of but chose to ignore their obligations under the ADA" to accommodate the employee's disability. The court additionally found AutoZone liable for \$115,000 in lost wages, and \$9,045 in litigation costs incurred by the EEOC.

[Read more about Injunction Entered Against AutoZone Requiring Reasonable Accommodation Of Disabilities](http://www.eeoc.gov/eeoc/newsroom/release/11-15-11.cfm) at <http://www.eeoc.gov/eeoc/newsroom/release/11-15-11.cfm>

G2 Secure Staff Pays \$30,000 to Resolve EEOC Disability Discrimination Lawsuit

An Irving, Texas-based staffing company will pay \$30,000 and furnish other relief to resolve a disability discrimination lawsuit filed by the U.S. Equal Employment Opportunity Commission (EEOC), the agency announced. The EEOC sued G2 Secure Staff, LLC in September 2011, charging that the company unlawfully refused

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inquiries from individuals who either do not understand how the new standards will impact them or are unaware of the changes. With less than 2 months before the compliance date this session is designed to give an overview of the major differences between the 1991 ADA Standards and the 2010 ADA Standards. Join this session to refresh your understanding of the new standards and how they apply to you.

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ADA Legal Webinar Series

The ADA in the Healthcare Setting

January 18th, 2012 1-2:30 CDT

Over the years, the healthcare setting has been the source of significant ADA litigation and has raised some unique issues. The Department of Justice is also primed to issue new regulations on equipment in healthcare settings. This session will review the range of litigation brought against healthcare providers including employment discrimination cases brought by healthcare workers, as well as ADA litigation brought by patients involving issues such as communication access.

For more information visit [ADA Legao Webinar Website site](http://www.ada-legal.org/Webinar/ADALegal/Schedule/) at <http://www.ada-legal.org/Webinar/ADALegal/Schedule/> or call (877) 232-1990.

to accommodate a disabled applicant who needed an accommodation during the hiring process and subsequently denied him employment because of his disability.

According to the EEOC's complaint, Sharif K. Thompson has end-stage renal disease, a condition in which his kidneys no longer function and he is not able to urinate.

[Read more about G2 Secure Staff Pays \\$30,000 to Resolve EEOC Disability Discrimination Lawsuit](http://www.eeoc.gov/eeoc/newsroom/release/11-8-11a.cfm) at <http://www.eeoc.gov/eeoc/newsroom/release/11-8-11a.cfm>

Comfort Suites To Pay \$132,500 For Disability Discrimination Against Clerk With Autism

Tarsadia Hotels, doing business as Comfort Suites, a hotel developer and operator in California, will pay \$132,500 and implement substantial changes to settle a disability discrimination lawsuit that the U.S. Equal Employment Opportunity Commission (EEOC) filed on behalf of hotel clerk with autism. The EEOC charged that a front desk clerk at the Comfort Suites Mission Valley Hotel in San Diego was denied a reasonable accommodation, disciplined and ultimately fired in 2008 due to his disability. The clerk, who has autism, had prior hotel experience in a similar position, where his work earned him a positive recommendation. Shortly after starting at Comfort Suites, he sought free job coach services from the state. A job coach would have helped the clerk learn to master his job by using autism-specific training techniques. However, Tarsadia refused to allow the assistance of a job coach and then fired him.

[Read more about Comfort Suites To Pay \\$132,500 For Disability Discrimination Against Clerk With Autism](http://www.eeoc.gov/eeoc/newsroom/release/11-7-11a.cfm) at <http://www.eeoc.gov/eeoc/newsroom/release/11-7-11a.cfm>

Maverik Agrees To Pay \$115,000 To Settle EEOC Lawsuit For Disability Discrimination

Maverik, Inc., doing business as Maverik Country Stores, a billion-dollar company operating approximately 200 gas station/convenience stores in 10 western states, will pay \$115,000 and furnish other relief to settle a lawsuit filed by the U.S. Equal Employment Opportunity Commission (EEOC), the federal agency announced today. The lawsuit, filed on Sept. 30, 2010 in federal court in Cheyenne, Wyo., charged Maverik with violating the Americans With Disabilities Act (ADA) by allegedly failing to accommodate and then firing an HIV-positive bakery clerk.

[Read more about Maverik Agrees To Pay \\$115,000 To Settle EEOC Lawsuit For Disability Discrimination](http://www.eeoc.gov/eeoc/newsroom/release/11-7-11.cfm) at <http://www.eeoc.gov/eeoc/newsroom/release/11-7-11.cfm>

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EEOC Intake, Relief Obtained and Charges Resolved Hit Record Highs in 2011

The U.S. Equal Employment Opportunity Commission (EEOC) finished fiscal year 2011 with a ten percent decrease in its pending charge inventory-the first such reduction since 2002, achieved the highest ever monetary amounts through administrative enforcement, and received a record number of charges of discrimination, the agency reported in its annual Performance and Accountability Report (PAR) filed today. The EEOC received a record 99,947 charges of discrimination in fiscal year 2011, which ended Sept. 30, the highest number of charges in the agency's 46-year history. EEOC staff also delivered historic relief through administrative enforcement-more than \$364.6 million in monetary benefits for victims of workplace discrimination. This is also the highest level obtained in the Commission's history. The fiscal year ended with 78,136 pending charges-a decrease of 8,202 charges, or ten percent. In previous years, the pending inventory had increased as staffing declined 30 percent between fiscal years 2000 and 2008.

[Read more about EEOC Intake, Relief Obtained and Charges Resolved Hit Record Highs in 2011](http://www.eeoc.gov/eeoc/newsroom/release/11-15-11a.cfm) at <http://www.eeoc.gov/eeoc/newsroom/release/11-15-11a.cfm>

Sysco Oklahoma Settles EEOC Disability Discrimination Suit for \$82,000

Sysco Oklahoma LLC., a leader in food distribution, will pay \$82,000 and furnish other relief to settle a disability discrimination lawsuit filed by the U.S. Equal Employment Opportunity Commission (EEOC), the agency announced. The EEOC had charged that Sysco subjected a disabled employee to unlawful medical inquiries, demands and, ultimately, termination on the basis of her disability.

[Read more about Sysco Oklahoma Settles EEOC Disability Discrimination Suit for \\$82,000](http://www.eeoc.gov/eeoc/newsroom/release/12-5-11.cfm) at <http://www.eeoc.gov/eeoc/newsroom/release/12-5-11.cfm>

Butterball Sued By EEOC For Harassment, Firing Of HIV-Positive Employee

The U.S. Equal Employment Opportunity Commission (EEOC) charged in a lawsuit filed today that Butterball, LLC, a Garner, N.C.-based turkey processing company, violated federal law by subjecting an employee to a hostile work environment based on the fact that she has Human Immunodeficiency Virus (HIV), and firing her because of that disability.

[Read more about Butterball Sued By EEOC For Harassment, Firing Of HIV-Positive Employee](http://www.eeoc.gov/eeoc/newsroom/release/12-01-11.cfm) at <http://www.eeoc.gov/eeoc/newsroom/release/12-01-11.cfm>

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Dodge's Chicken To Pay \$190,000 To Former Employee Fired After Seizures

D&H Company, Dodge Brothers, Inc., and Giant Oil Company of Arkansas, Inc., doing business as Savings Station Dodge Stores and Dodge's Chicken Store, will pay \$190,000 to settle a disability lawsuit filed by the U.S. Equal Employment Opportunity Commission (EEOC), the agency announced. In its lawsuit, the EEOC charged that the companies denied the store leader of their Dodge's Chicken Store 631 in Hot Springs, Ark., a reasonable accommodation after she had seizures. Because her doctor restricted her from driving, she requested that the employer allow another employee to conduct daily competitor gasoline price surveys while she handled that employee's in-store duties.

[Read more about Dodge's Chicken To Pay \\$190,000 To Former Employee Fired After Seizures](http://www.eeoc.gov/eeoc/newsroom/release/11-28-11.cfm) at <http://www.eeoc.gov/eeoc/newsroom/release/11-28-11.cfm>

U.S. Department of Justice (DOJ)

Settlement Agreement between the United States of America and Illinois State Police

The Justice Department alleged that the Illinois State Police (ISP) is engaged in a pattern or practice of discrimination by maintaining a policy where applicants for cadet job vacancies are automatically excluded from consideration for employment if the applicant has a hearing loss and was not permitted the use of assistive devices or if the applicant has diabetes mellitus which is controlled by the use of an insulin pump. The settlement requires the ISP to eliminate its policy of automatically excluding applicants for cadet jobs who use assistive devices such as hearing aids and also eliminate its policy of automatically excluding cadet job applicants who control their diabetes mellitus condition through the use of an insulin pump.

[Read more about Settlement Agreement between the United States of America and Illinois State Police](http://www.ada.gov/illinois_state_police.htm) at http://www.ada.gov/illinois_state_police.htm

New Project Civic Access Settlement Agreement Posted to Justice Department Web Site

The United States Department of Justice (DOJ) reached a new settlement agreement under Project Civic Access with Upshur County, TX. Project Civic Access works with counties, cities, towns, and villages to remove barriers that will foster compliance with the Americans with Disabilities Act (ADA). By eliminating physical and communication barriers Project Civic Access allows persons with disabilities to participate in the activities and services offered by their respective communities. The DOJ has conducted reviews in all 50 states, Puerto Rico and the District of Columbia and posted the agreements on the Project Civic Access website.

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[Read more New Project Civic Access Settlement Agreement Posted to Justice Department Web Site](http://www.ada.gov/upshur_co_tx_pca/upshur_co_tx_sa.htm) about at http://www.ada.gov/upshur_co_tx_pca/upshur_co_tx_sa.htm

Great Lakes In Focus

Safe Harbor

On September 15, 2010 the U.S. Department of Justice (DOJ) published revised regulations covering state and local governments (28 CFR Part 35) and places of public accommodations and commercial facilities (28 CFR Part 36). These regulations included the 2010 standards for accessible design. The 2010 standards are based on the U.S. Access Board's 2004 ADA/ABA guidelines with supplements. The revised regulations become effective on March 15, 2011. The 2010 standards become effective on March 15, 2012 but can be used immediately.

State and local government facilities and elements newly constructed or altered in compliance with the 1991 ADA standards or the Uniform Federal Accessibility Standards (UFAS) do not have to be modified in order to come into compliance with the 2010 standards 35.150(b)(2)(i). Facilities and elements of places of public accommodations newly constructed or altered in compliance with the 1991 standards do not have to be modified in order to come into compliance with the 2010 standards 36.304(d)(2)(i). This is what is known as "safe harbor" in the revised regulations.

The safe harbor provided in § 35.150(b)(2)(i) does not apply to those elements in existing facilities that are subject to supplemental requirements (i.e., elements for which there are neither technical nor scoping specifications in the 1991 Standards). Elements in the 2010 Standards not eligible for the element-by-element safe harbor for state and local governments include:

- (A) Residential facilities dwelling units, sections 233 and 809
- (B) Amusement rides, sections 234 and 1002; 206.2.9; 216.12
- (C) Recreational boating facilities, sections 235 and 1003; 206.2.10
- (D) Exercise machines and equipment, sections 236 and 1004; 206.2.13
- (E) Fishing piers and platforms, sections 237 and 1005; 206.2.14
- (F) Golf facilities, sections 238 and 1006; 206.2.15
- (G) Miniature golf facilities, sections 239 and 1007; 206.2.16
- (H) Play areas, sections 240 and 1008; 206.2.17
- (I) Saunas and steam rooms, sections 241 and 612
- (J) Swimming pools, wading pools, and spas, sections 242 and 1009
- (K) Shooting facilities with firing positions, sections 243 and 1010
- (L) Miscellaneous
 - (1) Team or player seating, section 221.2.1.4
 - (2) Accessible route to bowling lanes, section. 206.2.11
 - (3) Accessible route in court sports facilities, section 206.2.12

The safe harbor provided in § 36.304(d)(2)(i) does not apply to those elements in existing facilities that are subject to supplemental requirements (i.e., elements for which there are neither technical nor scoping specifications in the 1991 Standards).

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Elements in the 2010 Standards not eligible for the element-by-element safe harbor are:

- (A) Residential facilities and dwelling units, sections 233 and 809
- (B) Amusement rides, sections 234 and 1002; 206.2.9; 216.12
- (C) Recreational boating facilities, sections 235 and 1003; 206.2.10
- (D) Exercise machines and equipment, sections 236 and 1004; 206.2.13
- (E) Fishing piers and platforms, sections 237 and 1005; 206.2.14
- (F) Golf facilities, sections 238 and 1006; 206.2.15
- (G) Miniature golf facilities, sections 239 and 1007; 206.2.16
- (H) Play areas, sections 240 and 1008; 206.2.17
- (I) Saunas and steam rooms, sections 241 and 612
- (J) Swimming pools, wading pools, and spas, sections 242 and 1009
- (K) Shooting facilities with firing positions, sections 243 and 1010
- (L) Miscellaneous
 - (1) Team or player seating, section 221.2.1.4
 - (2) Accessible route to bowling lanes, section 206.2.11
 - (3) Accessible route in court sports facilities, section 206.2.12

On or after March 15, 2012, public entities must comply with the 2010 Standards in making architectural changes to achieve program accessibility and for all new construction and alterations.

On or after March 15, 2012, public entities must consider the supplemental requirements (such as swimming pools, play areas, and fishing piers) in the 2010 Standards to assess compliance with program accessibility.

From September 15, 2010, to March 15, 2012, if the elements in a business serving the public (public accommodation) do not comply with the requirements for those elements in the 1991 Standards, the elements must be modified, to the extent readily achievable, using either the 1991 Standards or the 2010 Standards. The public accommodation must use only one standard for removing barriers in the entire facility. For example, it cannot choose the 1991 Standards for accessible routes and the 2010 Standards for restrooms.

On or after March 15, 2012, elements in a facility that do not comply with the 1991 Standards' requirements for those elements (for example where an existing restaurant has never undertaken readily achievable barrier removal) must be modified using the 2010 Standards to the extent readily achievable.

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The Docket

Michaels v Continental Reality Corp, DMd, September 26, 2011,

A federal district court in Maryland ruled against a morbidly obese computer network administrator in granting summary judgment on behalf of his employer. The Court ruled that the employee failed to sufficiently show that his employer terminated him because he was disabled as defined by the Americans with Disabilities Act (ADA).

The court held that the administrator was not disabled under the ADA even though he was obese. The court found no evidence that his condition substantially limited him in a major life activity. Additionally, the court noted even if the administrator was disabled under the ADA he had not shown that the employer failed to accommodate him. The record did not show any allegation that the employer even knew that the administrator allegedly had an ADA qualifying disability or that he was requesting an accommodation.

From the ADA Expert

Question:Q. My company conducts training around the country on a variety of topics geared towards business professionals. The trainings are open to the public and anyone can attend. We were contacted by an employer that is sending one of its employees to an up coming training. This employer informed me that the employee they were sending was deaf and we needed to provide an interpreter for the day long training session. Does our company need to provide an interpreter for this individual?

Answer:

The Americans with Disabilities Act (ADA) requires that places of public accommodation provide the same level of access to information to individuals with disabilities that is provided to individuals with out disabilities. For individuals that are deaf and hearing impaired that may require the use of auxiliary aids and services. This could include a qualified interpreters on-site or through video remote interpreting (VRI) services; notetakers; real-time computer-aided transcription services; written materials; exchange of written notes; telephone handset amplifiers; assistive listening devices; assistive listening systems; telephones compatible with hearing aids; closed caption decoders; open and closed captioning, including real-time captioning; voice, text, and video-based telecommunications products and systems, including text telephones (TTYs), videophones, and captioned telephones, or equally effective telecommunications devices; videotext displays; accessible electronic and information technology; or other effective methods of making aurally delivered information available to individuals who are deaf or hard of hearing.

The ADA does not require that a place of public accommodation provide an interpreter every time one is requested. A business should look at the duration, nature and complexity of the information that is being provided when determining if a

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qualified interpreter is needed to insure effective communication. For brief exchanges of information it may be possible to insure effective communication by writing notes. However, for a day long training session that is discussing complex information an interpreter is likely needed to insure effective communication. A business cannot require that an individual use a family member or companion as interpreter.

A business or place of public accommodation is not required to provide any auxiliary aid or service that would pose an undue burden or fundamentally alter the nature of the goods or services being provided. In the event where the provision of an auxiliary aid would result in an undue burden a business must look at other ways to provide effective communication that would not pose an undue burden or fundamentally alter the nature of the goods or services.

This question is interesting because not only does the place of public accommodation have a responsibility but the employer would also have responsibility under the law if they employ 15 or more employees. The ADA requires covered employers to provide reasonable accommodations to employees and applicants with disabilities when needed to provide equal access to the application process, allow an individual to perform the essential functions of the job or to provide equal access to any benefit associated with the job. If the employee is attending in his/her role with the employer or if this is a benefit of the employment then the employer has an obligation to provide a reasonable accommodation to this employee.

A covered employer does not have to provide any accommodation that would pose an undue hardship. An undue hardship would be something entailing significant expense or difficulty.

The fact that the employer may have an obligation to provide a reasonable accommodation does not lessen your business's obligations to insure effective communication with an individual that is deaf attending one of your company's trainings. Nor does the fact that your company has obligations lessen the obligations the employer has to provide a qualified employee with a reasonable accommodation. It may be possible for your company to share costs with the employer but the failure of either covered entity to meet its obligations under the ADA does not eliminate the other's responsibility under the law.

Suggested Resources

- Nondiscrimination on the Basis of Disability in Public Accommodations and Commercial Facilities
 - [Sec36.303 Auxiliary Aids and Services](#)

For more information visit
http://www.ada.gov/regs2010/titleIII_2010/titleIII_2010_regulations.htm#a104

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| | <ul style="list-style-type: none">• Questions and Answers about Deafness and Hearing Impairments in the Workplace and the Americans with Disabilities Act |
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For additional information contact the Great Lakes ADA Center by calling (800) 949-4232 (V/TTY) or via the [online contact form](#)

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