

ALERT

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 **CalChamber**
CALIFORNIA CHAMBER OF COMMERCE

Latest Draft Prop. 65 Rules Take Steps Backwards



The latest proposed revisions to the state's Proposition 65 warning regulations are problematic and unworkable, the California Chamber of Commerce and a broad coalition explain in

a letter to the agency leading the rule drafting.

The revisions proposed by the Office of Environmental Health Hazard Assessment (OEHHA) take several steps backwards by introducing several new and extraordinarily problematic concepts that previous drafts never contemplated, the

CalChamber and coalition comment.

The CalChamber-led coalition includes more than 200 organizations that collectively represent nearly every major business sector on which OEHHA's proposal would have a direct impact.

The coalition has been working with OEHHA over nearly three years now and noted that the state of the current proposal, issued on March 25, 2016, "is particularly concerning given the late stage of this regulatory process." The deadline for OEHHA to finalize the rule is November 27, 2016.

Undermines Calls for Reform

The coalition points out that the current draft proposal undermines the Gov-

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Job Killer No. 20 Stalls on Assembly Floor



A day after being added to the California Chamber of Commerce job killer list, a bill dealing with release clauses fell short of votes needed to pass the Assembly.

AB 2748 (Gatto; D-Glendale) is deemed a job killer because it would eliminate incentives to settle lawsuits and would instead expose businesses to multiple rounds of litigation by creating statutory prohibitions on "release" clauses in settlements pertaining to "environmental disasters."

AB 2748 is the 20th bill on the job killer list. It received just 30 votes (versus 32 against) on May 5. The author can bring the bill up for reconsideration until June 3.

California's public policy has long been to encourage settlement over litigation in the interest of efficiency and economy for the courts and for the parties involved. AB 2748, however, would instead require that otherwise resolvable claims be fully litigated at great expense to the parties, the courts and the public.

According to CalChamber's letter of opposition, AB 2748 impedes the ability of litigants to reach a settlement related to environmental disasters and, in turn, encourages disputes to be fully litigated by statutorily prohibiting parties' ability to waive Civil Code Section 1542 in settlement agreements. Civil Code Section 1542 is a general release clause and the ability to waive it is one of the pri-

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CalChamber International Luncheon Focus on Mexico's Energy Reform, Investment



Mtro. Leonardo Beltrán Rodríguez, undersecretary of planning and energy transition for the Mexico Ministry of Energy, discusses Mexico energy reforms at a May 3 CalChamber luncheon. At left is Mark Jansen, chair of the CalChamber Council for International Trade. [Story on Page 5.](#)

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Labor Law Corner

How to Use Pregnancy Leave in Conjunction with Other Leave Laws



Sunny Lee
HR Adviser

How can we accommodate an employee's request for additional time off to care for her son when she has just returned from pregnancy disability leave (PDL)?

The answer to that question depends on whether the employee is eligible for Family Medical Leave Act (FMLA) or California Family Rights Act (CFRA) leave.

If your company is covered under FMLA and CFRA, then you may use those leave laws to accommodate the

employee's request, provided she is eligible for the leave and has time available per the allocation of 12 weeks use during the preceding 12 months.

Many employers not covered by FMLA/CFRA opt to provide a personal time off policy to cover these types of absences as well. Consult with counsel to determine the policy that works best for your organization.

Concurrent Leaves

If the employee was eligible for FMLA when she went out on the PDL, then you would run FMLA with PDL. At the end of the PDL, when she is released to return to work, she may still have FMLA time remaining that you would then run concurrently with the 12 weeks of CFRA leave that she is entitled to take after her PDL.

If the employee was not eligible for FMLA when she went out on the pregnancy leave, but is now eligible because she has either completed her 1 year of employment with you or has now worked the 1,250 hours during the 12 months before her request, then she is eligible for the additional leave under CFRA.

(Remember, the time off work on a leave, such as pregnancy leave, still counts toward her 1 year of employment.)

California Family Rights Act

If the employee has already used all of her CFRA time for baby bonding, then she is not eligible for another leave until such time as your FMLA policy dictates that

she would be eligible for another leave.

If she used only a portion of the CFRA time for baby bonding, then she has the remaining time that she may use for this purpose.

For example, if she used 6 weeks for baby bonding, then she has another 6 weeks available.

If she does not have any time remaining under FMLA or CFRA, then you would allow her to use any paid sick leave, kin care or paid time off that she would have available. After that, you would look to see if you have a personal leave policy in your employee handbook that she could use or whether by past practice you have granted other employees time off for a similar situation.

ADA Not Applicable

Because the time off request relates to the care of a child, you would not look at the Americans with Disabilities Act (ADA) or the California Fair Employment and Housing Act (FEHA) reasonable accommodation requirements, which apply only to employees.

For further questions in this area, contact the Helpline.

The Labor Law Helpline is a service to California Chamber of Commerce preferred and executive members. For expert explanations of labor laws and Cal/OSHA regulations, not legal counsel for specific situations, call (800) 348-2262 or submit your question at www.hrcalifornia.com.

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Seminars/Trade Shows

More at www.calchamber.com/events.

Labor Law

HR Boot Camp. CalChamber. May 10, Sacramento; June 7, Santa Clara; September 7, San Diego; September 22, Sacramento. (800) 331-8877.

Leaves of Absence. CalChamber. June 23, Huntington Beach; August 16, Sacramento. (800) 331-8877.

International Trade

Zhejiang-California Investment and Trade Cooperation Symposium. ChinaSF. May 9, Fremont. (415) 352-8837.

Beyond the Numbers: Air and Sea Cargo Trends. The Port of Los Angeles. May

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CalChamber Calendar

Capitol Summit/Host Breakfast:

May 17–18, Sacramento

International Forum:

May 17, Sacramento

Environmental Regulation Committee:

May 17, Sacramento

Water Committee:

May 17, Sacramento

Fundraising Committee:

May 17, Sacramento

Board of Directors:

May 18, Sacramento



CalChamber Hosts Workers' Compensation Seminar for Members

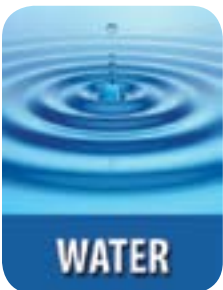


Preparing to start a CalChamber-hosted seminar examining the intricacies of handling workers' compensation claims are moderator Erika Frank (left), CalChamber vice president, legal affairs, and general counsel, and Chief Judge Paige A. Levy of the Division of Workers' Compensation.



Also presenting at the April 29 seminar, exclusive to CalChamber preferred/executive members, were Maria Sager (left), partner with Boxer and Gerson, LLP, representing injured employees in workers' compensation claims; and Yvonne Lang, partner with Pearlman, Borska & Wax, specializing in defense of workers' compensation claims.

Californians Boost Water Savings Rate, Keep Water Use Low



The average statewide water conservation rate doubled between February and March, according to the State Water Resources Control Board.

Californians conserved 24.3% in March 2016, compared to March 2013, the state water board reported this week. The board attributed the increased conservation to wetter weather, more sea-

sonal temperatures and "awareness that drought conditions could outlast existing water supplies."

In February 2016, the water conservation rate was 12% compared to February 2013.

Statewide cumulative savings from June 2015 to March 2016 totaled 23.9% compared to the same months in 2013, according to the board. The amount of water saved totals 1.3 million acre-feet.

The board also noted that average statewide water use remains low—66 residential gallons per capita per day in March 2016. That average is nearly a

third lower than water use in June 2015, when water conservation was made mandatory.

Since conservation became mandatory, average residential water use per person was the lowest in January 2016—61 gallons.

On February 2, the board extended its restrictions on urban water use through October 2016. The board is scheduled to consider revisions to the February 2 emergency water conservation regulations on May 18.

Staff Contact: Valerie Nera

Latest Draft Prop. 65 Warning Regulations Take Several Steps Backwards

From Page 1

ernor's calls for Proposition 65 reform by exacerbating the already-problematic Proposition 65 litigation climate and making compliance so difficult that the only protective measure businesses can take to reduce the inevitable threat of litigation is to "overwarn" about exposures that do not even exist.

Those results will harm businesses, send the wrong message to consumers, and, more generally, will further worsen the reputation of Proposition 65 as a well-intended law that is overly abused by private enforcers who use the law solely for personal financial gain, the coalition writes.

Latest Proposal

OEHHA's proposed warning regulations will substantially change the way in which businesses provide the warnings required by Proposition 65. The coalition points out that OEHHA's proposal would:

- Flip the existing statutory burden on businesses by requiring them to affirmatively demonstrate that a warning is required;
- Substantially increase litigation by creating a new breed of "bad warning," litigation that does not exist today, wherein despite using the precise "safe harbor" warning content provided by OEHHA, businesses would nonetheless be challenged for failing to provide an adequate warning;
- Impose an unworkable, extraordinarily costly and elevated requirement on those providing warnings for environmental exposures;
- Infringe on businesses' constitutionally protected commercial speech and due process rights;
- Require, for the first time since Proposition 65's passage in 1986, two warnings for one product; and
- Eliminate the long-accepted method of transmitting warnings via owners' manuals, which typically contain the most significant safety information for many products.

Additionally, the proposal contains several ambiguities and drafting flaws that require clarification.

CalChamber's 24-page comment letter elaborates on these issues in great detail and, where applicable, proposes regulatory language to address them.

Because the proposal introduces entirely new concepts on which CalChamber has not yet had an opportunity to comment, the letter requests that OEHHA revise the proposal and circulate another draft for an additional round of

public review and comment.

CalChamber will continue to take the lead role on this regulatory proposal moving forward.

Staff Contact: Anthony Samson

Proposition 65 Background

Proposition 65, the Safe Drinking Water and Toxic Enforcement Act of 1986, is the most far-reaching consumer "right to know" law in the nation.

Proposition 65 requires California businesses with 10 or more employees to provide clear and reasonable warning before knowingly and intentionally exposing individuals to chemicals known to cause cancer and/or reproductive toxicity.

Governor Calls for Reform

In May 2013, noting that Proposition 65 has been abused by "unscrupulous lawyers driven by profit rather than public health," Governor Edmund G. Brown Jr. proposed certain reforms to strengthen and restore the intent of Proposition 65. Specifically, the Governor proposed to:

- end frivolous, "shakedown" lawsuits;
- improve how the public is warned about dangerous chemicals;
- strengthen the scientific basis for warning levels.

These proposed reforms, according to the Governor, were intended to eliminate the practice of bringing "nuisance lawsuits to extract settlements from businesses with little or no benefit to the public or the environment."

When to Warn

California allows a business to use a chemical without providing warning as long as exposure does not exceed a specified threshold level. The mere presence of a Proposition 65-listed chemical does not trigger the warning requirement; instead, the threshold question is whether the chemicals would expose persons at levels that would require a warning.

Of the more than 800 substances that are on the list of chemicals known to cause cancer, birth defects or other reproductive harm, OEHHA has developed threshold levels for only 300 chemicals to guide businesses in determining whether a warning is necessary. If the chemical is at or below the levels listed, the business has a "safe harbor" from providing a warning.

How to Warn

The current regulations allow businesses to prove they are providing "clear and reasonable" warnings by any means, but also set criteria to establish when the warnings will be deemed "clear and reasonable" for purposes of Proposition 65.

The regulations also lay out warning language and methods for occupational and environmental exposures, alcoholic beverages, and restaurants. Businesses using these so-called "safe harbor" warnings are protected from the threat of litigation and can carry out business with a sense of certainty.

Alternatively, the regulations allow businesses to provide warnings other than those specified, so long as:

- the method employed to transmit the warning is reasonably calculated, considering the alternative methods available under the circumstances, to make the warning message available to the individual prior to exposure; and
- the warning clearly communicates that the chemical in question is known to the state to cause cancer, birth defects or other reproductive harm.

Many businesses have successfully relied on these criteria in providing alternative "clear and reasonable" warnings and have done so without ever being sued.

CalChamber Luncheon Highlights Mexico's Energy Reform, Investment Opportunities



Mexico's energy reform and investment opportunities were the topic of discussion this week at a

California Chamber of Commerce International Luncheon Forum.

Nearly 100 guests attended the May 3 luncheon, part of the VII California-Mexico Advocacy Day organized by the office of Ambassador Alejandra Garcia Williams, Mexico's Consul General in Sacramento.

The mission of the advocacy day is to strengthen and expand the relationship between Mexico and the State of California in pursuit and integration of programs in energy efficiency, low-carbon energy, and use of advanced technology to produce renewable energy.

Mexico continues to be California's No. 1 export market, purchasing 16.2% of all California exports. California exports to Mexico amounted to \$26.8 billion in 2015, a 5.5% increase from 2014.

California-Mexico Advocacy Day

The objectives of the VII California-Mexico Advocacy Day are:

- Promote Mexico's investment opportunities on hydrocarbons and electricity to the California market, to implement a

strong partnership that will result in the economic development of both sides.

- Promote the exchange of technology and leading practices to strengthen the infrastructure of the energy sector in Mexico and cross-border electricity interconnections.

- Follow up on the agreements adopted during the September 2015 California energy sector trade and investment mission to Mexico.

Energy Partnerships

Mtro. **Leonardo Beltrán Rodríguez**, undersecretary of planning and energy transition for the Mexico Ministry of Energy, explained that the driver for having energy reform was that Mexico is going to become a net-energy importer within the next three to five years.

Right now Mexico is setting up and executing the reforms, which will put Mexico at the same level of competition as any country in Europe, Asia or any U.S. state, Beltrán explained.

When developing the framework for the energy reforms, Beltrán said, Mexico leaders asked, "How do we push ourselves to be competitive and being able to partner with, for instance, the great state of California."

In 2014, Governor Edmund G. Brown Jr. led a historic trade and investment mission to Mexico, organized by the CalChamber.

Governor Brown traveled to Mexico City, the political capital and financial center of Mexico, to build on the momentum initiated during his trade mission to China in 2013—expanding California's focus to its southern neighbor and largest export market.

During the 2014 trade mission, Governor Brown signed a comprehensive climate change pact with the Mexican government, as well as an agreement with Mexico Secretary of Energy Pedro Joaquín Coldwell to foster cross-border renewable energy investments.

The agreement will ensure that Mexico and California will work closely together to promote energy efficiency and renewable energy.

Among other things, the agreement calls on California and Mexico to work together on low carbon energy, clean technologies, biofuels and energy efficiency to enhance reliability and affordability of energy supplies.

Mexico Energy Reform

The main mandates of Mexico's energy reform/energy transition act are:

- Transition toward the sustainable use of energy;
- Gradual increase of clean energy in the national energy grid;
- Reduce the carbon footprint of the energy section; and

See CalChamber Luncheon: Page 7



Mtro. Leonardo Beltrán Rodríguez



Blair Swezey (left), senior director of U.S. market development and state policy for SunPower, and Ing. Marcos Valenzuela Ortiz, director of market administration for the National Center of Energy Control/Centro Nacional de Control de Energía (CENACE).

California Travel Industry Continues to Grow



The California travel industry has been growing steadily since the recession, according to a just-released report prepared for Visit California.

Total direct travel spending in California was \$122.5 billion in 2015, based on preliminary data, says the April 2016 report by Dean Runyan Associates.

The 2015 spending figure marks the sixth year of consecutive growth for the travel industry since the 2007–2009 recession, according to the report.

Travel spending increased 3.4% between 2014 and 2015 in current dollars and 4.9% in inflation-adjusted dollars. The report notes that the inflation-adjusted increase was greater due to the decline in motor fuel prices.

Other report highlights include the following:

- **Employment.** Employment directly generated by travel was 1,064,000 in 2015, a 3.7% increase over 2014. Travel-generated employment has increased by 4% per year since 2011.

- **Tax revenues.** The travel industry generated 4.2% of tax revenue in the 2015 fiscal year, even though gross domestic product (GDP) and employee earnings represent about 2.5% of the state economy.

Local tax revenue generated by travel was \$4.6 billion in 2015, a 7.8% increase from the previous year, driven by lodging sales. State tax revenue increased by 1.1% for the year to \$5.3 billion.

The report points out that most travel industry goods and services are taxed at the point of sale and a large share of the commodities (lodging and motor fuel) are taxed at rates that are greater than the general sales tax.

- **Visitation.** Room demand increased by 3.3% in 2015. Visitor arrivals on

domestic flights increased by 5.4% to 34.4 million. Overnight person-trips increased by 2.1%.

- **Origin.** Residents of other states and countries accounted for \$6 of every \$10 spent at California visitor destinations. The growth of spending by international visitors has been reduced, however, by the recent decline in the value of other currencies in relation to the dollar.

- **Secondary impacts.** As travel industry income is respend by businesses and employees, there are secondary effects. In 2015, the secondary impacts were 727,100 jobs with earnings of \$41.9 billion. Total (direct and secondary) employment was 1.8 million jobs with earnings of \$83.2 billion.

- **Gross domestic product.** The GDP of the California travel industry was \$62.3 billion in 2015.

Read the full report at <http://industry.visitcalifornia.com>.

Job Killer No. 20 Stalls on Assembly Floor

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many incentives for defendants to settle disputes and avoid prolonged expensive litigation.

CalChamber believes that parties should be permitted to enter into a mutually agreeable settlement to avoid prolonged litigation and thus promote the long-held California policy to encourage settlement over litigation; however, AB 2748 attempts to dictate contractual provisions and, in doing so, will guarantee an influx of litigation.

Indeed, when a business settles a claim with a party, the business should have certainty that the same party will not sue the business a day after a settlement is reached regarding a claim that could have been raised at the time of settlement. Yet, AB 2748 would essentially assure such an outcome, thereby eliminating the incentive to settle.

To view the job killer list, visit www.CAJobKillers.com. For updates, follow @CAJobKillers on Twitter.

Staff Contact: Anthony Samson

CalChamber-Sponsored Seminars/Trade Shows

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11, Los Angeles. (310) 732-7765.
Connect Your Small Business to the Global Marketplace. GO-Biz. May 12, Webinar. (916) 322-0694.

Sacramento Regional Global Trade Summit. Northern California-Sacramento Regional Center for International Trade Development. May 18, Sacramento. (916) 563-3219.

World Trade Center International Business Luncheon. Northern California World Trade Center. May 18, Sacramento. (916) 321-9146.

Overview of California's Small Business

Loan Guarantee Program. GO-Biz. May 19, Webinar. (916) 322-0694.
Select LA Investment Summit. World Trade Center Los Angeles. June 16–17, Los Angeles. (213) 622-4300.
SelectUSA Investment Summit 2016. SelectUSA. June 19–21, Washington, D.C. (202) 482-6800.
G-20Y Summit. G-20Y Association. September 21–25, St. Moritz, Switzerland.
2016 Public Forum on "Inclusive Trade." World Trade Organization. September 27–29, Geneva, Switzerland.

CAPITOL SUMMIT & SACRAMENTO HOST BREAKFAST

May 17-18, 2016

www.calchamber.com/2016summit-host



22 Local Chambers to Receive 2016 President's Circle Award



The California Chamber of Commerce has named 22 local chambers of commerce to receive the 2016 President's Circle Award.

The award, first presented in 2009, recognizes chambers for excellence in business advocacy and helping their members comply with California employment laws.

Representatives of the President's Circle chambers will be honored at the CalChamber Capitol Summit on May 17 in Sacramento.

Seven of the chambers have received the award all eight years it has been presented.

The 2016 recipients of the President's Circle award are as follows. Eight-year recipients are marked with an *:

- Greater Bakersfield Chamber*: Nicholas Ortiz, president/CEO;
- Camarillo Chamber: Gary Cushing,

president/CEO;

- Greater Conejo Valley Chamber*: Jill Lederer, president/CEO;
- Culver City Chamber*: Steven Rose, president/CEO;
- El Centro Chamber & Visitors Bureau*: Darletta Willis, CEO;
- Greater Fresno Area Chamber: Nathan Ahle, president/CEO;
- Lake Elsinore Valley Chamber: Kim Joseph Cousins, president/CEO;
- Long Beach Area Chamber*: Randy Gordon, president/CEO;
- Murrieta Chamber: Patrick Ellis, president/CEO;
- North Orange County Chamber: Theresa Harvey, president/CEO;
- Oakdale Chamber: Mary Guardiola, CEO;
- Oxnard Chamber: Nancy Lindholm, president/CEO;
- Palm Desert Area Chamber*: Laurie Baldwin, president/CEO;
- Porterville Chamber: Stephanie Cortez, CEO/president;

- Greater Riverside Chambers*: Cindy Roth, president/CEO;
- Roseville Chamber: Wendy Gerig, CEO;
- San Jose Silicon Valley Chamber: Matthew Mahood, president/CEO;
- The Chamber of the Santa Barbara Region: Ken Oplinger, president/CEO;
- Santa Maria Valley Chamber: Glenn D. Morris, president/CEO;
- Simi Valley Chamber: Gioia Goo-drum, president/CEO;
- Temecula Valley Chamber: Alice Sullivan, president/CEO;
- Torrance Area Chamber: Donna Duperron, president/CEO.

President's Circle award recipients published vote records of their state legislators on key business issues, generated letters to state elected officials on issues of interest to members and participated in the CalChamber compliance product resale program at an exemplary level.

Staff Contact: Cathy Mesch

CalChamber Luncheon Highlights Mexico's Energy Reform, Investment

From Page 1

• Align the mandate on climate change and the electrical industry.

Beltrán remarked that California is the eighth largest economy in the world and Mexico is the 13th largest, therefore it would make sense for both to partner in this endeavor.

"If we partner, then both of us, will become the fourth, the third, largest economy in the world," he said.

In closing, Beltrán said he looked forward to more collaboration with California as Mexico completes its energy transition.

"We have the political commitment, the legal framework—let's do it!"

Integration of Energy Markets

Ing. **Marcos Valenzuela Ortiz**, director of market administration for the National Center of Energy Control / Centro Nacional de Control de Energía (CENACE), explained that Mexico's goal is to be more integrated.

CENACE is responsible for the generation, marketing and transmission of energy in Mexico.

Through the Energy Reform Act, the electrical industry is rapidly transforming

Mexico, Valenzuela explained.

The reform presented big logistical challenges for CENACE.

For example, Valenzuela said, developing a long-term energy plan usually took an entire year; the reform gave them four months to develop one. Planning their auction, a process that can take three years, was done in 18 months.

CENACE recently approved 11 new renewable generation projects for a total of 2,100 megawatts of renewable energy.

According to the U.S. Energy Information Administration, external electricity trade is carried out through nine interconnections between the United States and Mexico. Valenzuela said Mexico is about to add a new interconnection with Arizona.

"From a planning perspective, we'd like to increase the integration between both countries," said Valenzuela.

Solar Investment

Blair Swezey, senior director of U.S. market development and state policy for SunPower, discussed the recent energy market reforms Mexico has undertaken to introduce both competition and customer choice into the electrical industry.

As a result, SunPower has grown in Mexico. In December, the company announced a partnership with nine Mexican airports to deliver 36 megawatts of solar to power airport operations. Recently SunPower was awarded 500 megawatts of power projects in Mexico's first electricity auction.

"This was a remarkable achievement that demonstrates the cost competitiveness of solar in Mexico," Swezey said.

Select Committee Hearing

The Senate Select Committee on California-Mexico Cooperation, chaired by Senator Ben Hueso (D-San Diego), also held an informational hearing on May 3 to examine existing collaboration and potential cross-border opportunities created by Mexico's energy reform and California's energy agreement with Mexico.

Trading Partner Portal: Mexico

For more information on California-Mexico trade and the slide presentations of the speakers, visit CalChamber's Mexico Trading Partner Portal Page at www.calchamber.com/mexico.

Staff Contact: Susanne T. Stirling

LIVE WEBINAR | THURSDAY, MAY 26, 2016 | 10:00 - 11:30 AM PT



PDL Obligations: What to Expect and How to Deliver

Do you know what California expects when an employee tells you she's pregnant? CalChamber's webinar on May 26 delivers specifics for managing pregnancy disability leave (PDL).

Strong legal protections are in place that require employers to reasonably accommodate employees and make PDL available. These regulations apply to any employer with five or more full- or part-time employees and to all California public-sector employers.

Cost: \$199.00 | Preferred/Executive Members: \$159.20



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