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tmta talk

A publication of the Tooling, Manufacturing & Technologies Association

FROM ROB'S ROOST
BY ROB DUMONT
PRESIDENT & CEO

Victory Through Effort!

When President Obama signed the Patient Protection and Affordable Care Act (42 USC 18001) into law in March of 2010 a number of other actions were triggered. Among these were certain changes to the Internal Revenue Code having to do with reporting requirements.

Under current law a business making payments to a service provider (payee), other than a corporation, in the aggregate of $600 or more for services in the course of a trade or business in a year is required to send an information return (Form 1099) to the IRS (and to the service provider-payee as well) stating the amount, as well as the name and address of the recipient of the payment.

The new law made changes to IRC §6041. Among these, businesses would be required to issue the Form 1099 to all persons and businesses, including corporations, for which aggregate annual payments amount to $600 or more.

The TMTA, along with numerous other organizations, quickly mounted an effort to convince Congress to repeal the so called "1099 requirement".

George Buhaj President of TMTA member company **Avon Broach & Production Company** (and a member of the Board of Directors of the TMTA) said "…any unnecessary burden on small business is a huge detriment to rebuilding our economy and getting people back to work."

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tmta Calendar of Events

April 2011

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20	TMTA Board of Directors Annual Meeting and Open House at VisTaTech Center
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Visit www.thetmta.com for detailed, up-to-date information on all events

Health News

TMTA Insurance Agency

Blue Cross Blue Shield Blue Care Network of Michigan

BCBSM Updates Groups to MOS

BCBSM has targeted May 2, 2011 as the date for all group policies to move to their new Michigan Operating System (MOS). If your group is scheduled for this move, you will receive correspondence from BCBSM in the mail shortly that contains a timeline for your group's transfer.

The MOS will process claims, bill premiums, maintain membership and manage benefits for BCBSM customers. Groups will receive a new 13 digit group/division number replacing the current 8 digit numbers. BCBSM will mail new ID cards to the subscribers' homes within 45 business days of the group's transfer. Group invoices will also look different. You will receive a brochure with your first bill that explains the changes.

For groups with Master Medical benefits, the reimbursement process will change in that payments made under MOS will be sent directly to the provider rather than to the subscriber. Master Medical benefits will not change. Subscribers with Master Medical coverage will receive a letter notifying them of the new payment method in advance of the transfer.

Converting to a new operating system is an extremely complex process and BCBSM is committed to assisting your group through this transition. BCBSM feels the new system will allow them to serve customers better and more efficiently.

"Essential Benefits" Annual Dollar Changes

The Patient Protection and Affordable Care Act (PPACA) requires that annual dollar limits on essential benefits be restricted and eventually removed beginning with the plan year starting on or after September 23, 2010, which for most BCBSM and BCN groups is January 1, 2011.

Remember that PPACA's prohibition is on annual **dollar** limits and has no impact on annual **frequency** limits. While the government has yet to define "essential benefits," it has identified categories of essential benefits including: prescription drugs, mental health treatment, substance abuse treatment, office visits, office diagnostics, preventative services, immunizations, etc.

BCBSM and BCN will remove all annual dollar limits on applicable essential benefits on July 1, 2011 for groups with standard certificates and riders with a retroactive effective date based on the group's plan year (usually January 1, 2011).

Following July 1, 2011, BCBSM and BCN will retroactively adjust claims, with the exception of pharmacy, that have been paid on or after the beginning of a group's plan year. After July 1, 2011, members will have the option of resubmitting rejected pharmacy claims if they reached the annual dollar maximum.

IRS Clarifies W-2 Health Coverage Reporting

The IRS has issued guidance on the portion of the health care reform law requiring employer-sponsored health coverage reporting on Form W-2s. Originally the law called for health coverage costs to be reported on W-2s beginning in 2011. Notice 2010-69 delayed the enforcement until the 2012 tax year making 2011 reporting optional.

Notice 2011-28 consists of 31 question and answers related to W-2 reporting. These include:

- Subject to various exceptions, employers will be required to report the aggregate cost of all health coverage in box 12 of Form W-2 using code DD.

- The cost of health coverage will generally include both employer and employee contributions, whether or not excluded from income for federal tax purposes. Special rules come into play with flex credits through a section 125 cafeteria plan.

- Coverages exempt from the reporting requirement include: health FSAs; HRAs; stand-alone dental coverage; stand-alone vision coverage; HSAs and Archer MSAs; long-term care; on-site medical clinics; and church and government plans. An employer that makes contributions to a multi-employer health plan (a jointly trusted plan subject to collective bargaining agreements) is also not required to report the cost of that coverage.

- Three methods to calculate W-2 amounts are:
  - What is charged for the COBRA premium (less the 2 percent administrative fee);

- The total premium charged for fully insured policies; or
- A modified COBRA premium where an employer subsidizes the cost of coverage or determines cost by applying the cost of coverage in a prior plan year.

- Employers will not be required to report this information with respect to individuals who would not otherwise be provided a W-2 for the year, such as retirees, former employees with no W-2 compensation, and COBRA Qualified Beneficiaries.

- Employers required to file fewer than 250 W-2s in 2011 are excused from the reporting requirement until the 2013 tax year.

- Since the earliest that employers must report health costs is January 2013, an employee who terminated in 2012 and requests a W-2 earlier than January 31, 2013, the W-2 need not include the required information in Box 12.

For more information on health coverage W-2 reporting requirements, Notice 2011-28, or W-2 reporting in general, visit the IRS website at **www.irs.gov**.

April is National Cancer Control Month

By Presidential proclamation, April is National Cancer Control Month. Miracles in medical research have helped us understand how to prevent, detect, and treat cancer more effectively. Despite this progress, cancer continues to kill more Americans than any other malady but heart disease. National Cancer Control Month is meant to "commit to the battle against cancer and emphasize the promise of medical research and the healthy steps American can take to protect themselves."

Cancer control efforts encourage healthy lifestyles, promote cancer screening, increase access to quality cancer care, and improve quality of life for cancer survivors. The National Cancer Institute (NCI) funds and supports a variety of cancer control research initiatives and projects.

To help control cancer, take the following steps:

- Quit Smoking. There is a strong link between tobacco use and many types of cancers. If you or someone around you smokes, quitting can greatly reduce your risk of developing cancer. There are many programs to help smokers quit including the NCI Smoking Quitline (1-877-44U-QUIT) and BCBS's Quit the Nic program.

- Cancer Screening. Cancer screenings may help lower your risk of developing certain cancers and can help find cancer at an early stage, before symptoms appear and when it may be most treatable. You should talk with your healthcare professional about appropriate cancer screening tests for you. Screening tests include: physical exam, laboratory tests, imaging procedures, and genetic testing.

- Eat a Healthy Diet. Eating a healthy diet may reduce your risk of developing cancer and other serious illnesses. A healthy diet includes fruits and vegetables (especially dark green, red and orange), whole grains, fat-free or low-fat dairy products, lean meats, fish, beans, eggs, and nuts and is also low in salt, solid fats, refined grains, sugars, and alcohol.

- Increase Physical Activity. Physical activity is associated with a reduced risk of colon, breast, and other cancers. Increasing your physical activity may help reduce your risk of developing these cancers.

The NCI has an online database called Physician Data Query (PDQ). PDQ is designed to make the most current, credible, and accurate cancer information available to health professionals and the public. PDQ contains peer-reviewed summaries on cancer treatment, screenings, prevention, genetics, complementary and alternative medicine, and supportive care; a registry of cancer clinical trials from around the world; and directories of physicians and professionals who provide genetics services, and organizations that provide cancer care. To access the PDQ, visit the NCI website at **www.cancer.gov/cancertopics/pdq**.

With declines of over thirty percent, employment levels in U.S. manufacturing have fallen more than any other sector of the economy. My thoughts on this issue were printed in The Des Moines Register last week.

How To Bring Manufacturing Jobs Back To America

by: Tom Pauken

A front page story in Sunday's Des Moines Register addresses the closing of the Electrolux plant in Webster City and the loss of 850 manufacturing jobs which will be moved to Juarez, Mexico. As the article points out, "the four counties in the Webster City area…have experienced a 32.1% drop in manufacturing jobs" since 2000. That mirrors what's taken place across the U.S. which has lost one-third of its manufacturing jobs during the same period of time. That's more than 5.6 million good American jobs that have been shipped overseas, outsourced, or simply gone away.

In the words of the late German economist Kurt Richebacher, "Essentially all (U.S.) jobs losses are high-wage manufacturing, and most gains are in low-wage services. In essence the U.S. economy is restructuring downward, while the Chinese economy is restructuring upward."

This hollowing out of our manufacturing base also results in the United States running massive trade deficits with our trading competitors. We currently have trade deficits with 90 nations. In fact, our manufacturing trade deficit from 2000 to 2008 was $5.4 trillion.

A major cause for this decline is that the United States has the most onerous business tax system in the world with its 35 percent income tax rate and its 6.2 percent employer portion of the payroll tax. Our business tax system rewards private equity moguls for loading up American-based companies with lots of debt (debt is deductible under our current system of business taxation) while punitively taxing employment, capital investment, and savings—the engines of job creation and economic growth. Our existing tax system effectively exports prosperity, and American jobs overseas.

President Barack Obama proposes to fix the problem by "out-innovating" our trading competitors. But, as Andy Grove (a founder of Intel) has pointed out, it's "hard to innovate if you don't make." And the United States is not making much these days.

There is a common-sense solution available that addresses these massive trade deficits and loss of our manufacturing base. Under a proposal known as the Hartman Plan, the onerous corporate tax system would be replaced by a revenue-neutral, 8 percent business-consumption tax that would be border-adjusted.

This new approach to taxing business would raise just as much in revenue as, if not more than, the current system of taxation. All goods and services coming into the United States would pay the 8 percent tax while all exports would receive a comparable tax credit or tax abatement as an offset to its company's business-consumption tax. Suddenly, the United States would become competitive again with our trading partners. And we would start bringing jobs back home to America.

Most Americans don't realize that on average we are at an 18 percent tax disadvantage with our trading competitors, most of whom have their own version of a business consumption tax back home. For example, a U.S. manufacturing company trying to export into Germany is hit at the German border with a 19 percent tax while a German manufacturer selling its products in the U.S. gets a 19 percent tax credit or tax abatement back home. Germany has maintained a strong manufacturing sector even with a high-wage cost structure.

Let's not tinker around the margins. This is the right time to totally eliminate the existing corporate tax structure and replace it with an 8 percent business consumption tax. That would be a real economic stimulus plan that would bring jobs home to America, rebuild our manufacturing, lower our trade deficits and put Main Street producers back in charge of the American economy.

Tom Pauken is Chairman of the Texas Workforce Commission and author of "Bringing America Home."

EEOC Releases Final Regulations to ADAAA

President Bush signed the Americans with Disabilities Act Amendments Act (ADAAA) on September 25, 2008. It went into effect on January 1, 2009 and on March 25, 2011 the Equal Employment Opportunity Commission (EEOC) published its ADAAA final regulations. The final regs go into effect on May 24, 2011.

In enacting the ADAAA, Congress made it easier for an individual seeking protection under the ADA to establish that he/she has a disability within the meaning of the statute. Congress overturned several Supreme Court decisions that Congress believed had interpreted the

definition of "disability" too narrowly, resulting in a denial of protection for many individuals with impairments such as cancer, diabetes, and epilepsy. The ADAAA states that the definition of disability should be interpreted in favor of broad coverage of individuals.

The EEOC regulations implement the ADAAA—in particular, Congress's mandate that the definition of disability be construed broadly. The regulations keep the ADA's definition of the term "disability" as a physical or mental impairment that substantially limits one or more major life activities; a record (or past history) of such an impairment; or being regarded as having a disability. But the regulations implement the significant changes that Congress made regarding how those terms should be interpreted.

The regulations implement Congress's intent to set forth predictable, consistent, and workable standards by adopting "rules of construction" to use when determining if an individual is substantially limited in performing a major life activity. These rules of construction are derived directly from the statute and legislative history and include the following:

- The term "substantially limits" requires a lower degree of functional limitation than the standard previously applied by the courts. An impairment does not need to prevent or severely or significantly restrict a major life activity to be considered "substantially limiting." Not every impairment will constitute a disability.
- The term "substantially limits" is to be construed broadly in favor of expansive coverage, to the maximum extent permitted by the terms of the ADA.
- The determination of whether an impairment substantially limits a major life activity requires an individualized assessment.
- With one exception ("ordinary eyeglasses or contact lenses"), the determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures, such as medication or hearing aids.
- An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.
- In keeping with Congress's direction that the primary focus of the ADA is on whether discrimination occurred, the determination of disability should not require extensive analysis.

As required by the ADAAA, the regulations also make it easier for individuals to establish coverage under the "regarded as" part of the definition of "disability." As a result of court interpretations, it had become difficult for individuals to establish coverage under the "regarded as" prong. Under the ADAAA, the focus for establishing coverage is on how a person has been treated because of a physical or mental impairment (that is not transitory and minor), rather than on what an employer may have believed about the nature of the person's impairment.

The regulations clarify, however, that an individual must be covered under the first prong ("actual disability") or second prong ("record of disability") in order to qualify for a reasonable accommodation. The regulations clarify that it is generally not necessary to proceed under the first or second prong if an individual is not challenging an employer's failure to provide a reasonable accommodation.

The final regulations differ from the Notice of Proposed Rulemaking (NPRM) in a number of ways. The final regulations modify or remove language that groups representing employer or disability interests had found confusing or had interpreted in a manner not intended by the EEOC. For example:

- Instead of providing a list of impairments that would "consistently," "sometimes," or "usually not" be disabilities, the final regulations provide the nine rules of construction to guide the analysis and explain that by applying those principles, there will be some impairments that virtually always constitute a disability. The regulations also provide examples of impairments that should easily be concluded to be disabilities.
- Language in the NPRM describing how to demonstrate that an individual is substantially limited in "working" has been deleted from the final regulations and moved to the appendix. The final regulations also retain the existing familiar language of "class or broad range of jobs" rather than introducing a new term, and they provide examples of individuals who could be considered substantially limited in working.
- The final regulations retain the concepts of "condition, manner, or duration" that the NPRM had proposed to delete and explain that while consideration of these factors may be unnecessary to determine whether an impairment substantially limits a major life activity, they may be relevant in certain cases.

With the final regulations in place, employers subject to the ADA (15 or more employees) will need to be ever more cautious about denying accommodation requests, as more and more individuals will fall under the statute as having a "disability."

For more information, visit the EEOC website at **www.eeoc.gov/laws/statutes/adaaa_info.cfm** or **www.ada.gov**.

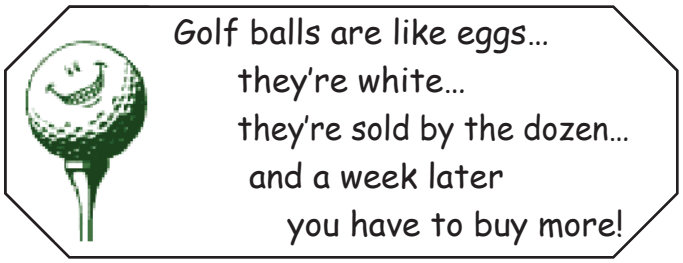
FLSA Anti-Retaliation Applies to Oral Complaints

On March 22, 2011, the U.S. Supreme Court held that the Fair Labor Standard Act's (FLSA) anti-retaliation provision protects employees who file oral complaints by ruling in favor of the plaintiff in *Kasten v. Saint-Gobain Performance Plastics Corp.* In a 6-2 vote (with Justices Scalia and Thomas dissenting and Justice Kagen recusing herself), the Court ruled that workers can still sue if they believe they have suffered retaliation after making an oral, rather than a written, FLSA complaint.

Kevin Kasten lost his job after four time clock violations. He complained that the time-clock was difficult to access and, as a result, was the reason for his time clock problems. The employee had used the employer's internal grievance procedure to call attention to the time clock placement issue, first talking to his shift supervisor and later telling a human resources manager and an operations manager that he thought the time clock location was illegal and the company would lose in court if sued. He asserted that the location of the time clock prevented employees from receiving credit for time spent "donning and doffing" their work-related protective clothing and gear. That such time is compensable under the FLSA was clarified in an earlier lawsuit against the company by the same employee.

Both the federal district court and the U.S. appellate court ruled in favor of the company on the grounds that the FLSA's anti-retaliation provision does not cover oral complaints. The Supreme Court agreed to hear the case because of disagreement among the circuits on whether oral complaints are protected. In overturning the lower court, the Supreme Court broadly interpreted the phrase "filed any complaint" to include both oral and written complaints. The Court acknowledged that this language "contemplates some degree of formality" and requires that the employer receive "fair notice that a grievance has been lodged" and the complaint "must be sufficiently clear and detailed for a reasonable employer to understand it."

Employers should carefully evaluate their policies to properly train managers to listen and to investigate complaints as well as retaining sufficient documentation to back up complaint investigations. As always, if you have any questions about your company's policy, consult with your legal advisor.



Inflation Talk

CPI-W Urban Wage Earners and Clerical Workers

Month	82–84	1967	57–59
Feb	**217.535**	**647.969**	**753.58***
Jan 2011	216.400	644.591	749.65*
Dec	215.262	641.200	745.71*
Nov	214.750	639.673	743.94*
Oct	214.623	639.296	743.50*
Sept	214.306	638.353	742.40*
Aug	214.205	638.052	742.05*
July 2010	213.898	637.138	740.98*

CPI-U All Urban Consumers

Month	82–84	1967	57–59
Feb	**221.309**	**662.943**	**770.99***
Jan 2011	220.223	659.692	767.21*
Dec	219.179	656.563	763.57*
Nov	218.803	655.438	762.26*
Oct	218.711	655.162	761.94*
Sept	218.439	654.346	760.99*
Aug	218.312	653.966	760.55*
July 2010	218.011	653.066	759.50*

Note: February 2011 CPI-W represents a 2.3% increase from one year ago; CPI-U a 2.1% increase.

* Base Year 1957–59 is no longer released. BLS has issued the following conversion factors from the 82–84 year:

CPI-W —.2886674 CPI-U —.2870447

(Rob's Roost continued from Page 1)

But, would the new reporting requirement that would come into effect in 2012 be a "burden on small business"?

In a letter of April 5, 2011, Senator Debbie Stabenow who in February of this year proposed an amendment to repeal the "1099 requirement" advised:

"Today, after the House of Representatives followed our lead, the repeal of the 1099 requirement for small business passed its final hurdle in Congress and will now be sent to President Obama for his signature."

And further "This IRS regulation would have required business owners to file a 1099 form with the IRS for every vendor from whom they buy products over $600. If the new regulation had not been repealed, 1099 filings for 40 million American businesses—most of them small businesses—could have increased by as much as 2000 percent."

Methinks that that would indeed have been a burden.

Thanks are due to Senator Stabenow for her leadership and commitment to the repeal effort as well as to Representative David Camp (R-4th MI) who led the effort in the House. This example of a bipartisan work ethic is to be applauded and hopefully it will stand as an example of how the "people's work" can be advanced if politicians can put aside partisan politics and advance the causes of their constituents.

To be fair I must add that the measure had substantial bipartisan support in the Senate as it passed by a vote of 87 – 12. When introduced in the House as HR 4 there were 273 cosponsors indicating substantial bipartisan support there as well.

The administration on April 5, 2011 in commenting on the passage of the repeal by the Senate said "…it was the right thing to do…" and further applauded the action as a strong indication of the President's willingness to work with both sides on issues.

This is a victory for the TMTA and all the many organizations who worked long and hard to achieve the repeal but most of all it is a victory for small businesses throughout the nation. It is strong evidence that we can and do provide value and make a difference!

TMTA Endorsed Service Providers

Blue Cross Blue Shield/BCN
(Health insurance program)
TMTA contacts:
Dennis Campbell 248-488-0300
Elaine Burger-Laskosky 248-488-0300, ext. 1309

Encompass Energy Group
(Energy conservation program)
Provider contact:
Shel Rader 248-515-3217
Rick Wald 248-755-6523

Freedom One Financial Group
(401(k) Retirement program)
Provider contact:
John Young 248-620-8100

GlobalTranz — CarrierRate.com
(Freight discount program)
Provider contact:
Chad Hill 866-275-1407, ext. 130

John M. Packer & Associates
(Unemployment cost control program)
Provider contact:
Nathan Wiest 800-482-2971

Ralph C. Wilson Agency, Inc.
(Insurance management)
Provider contact for Benefits coverages:
Robert Farris 248-355-1414, ext. 109
Provider contact for P&C and WC coverages:
Jay Poplawski, 248-355-1414, ext. 158

Reliance Standard/Ameritas
(Life/Dental insurance programs)
TMTA contacts:
Dennis Campbell 248-488-0300
Stella Krupansky 248-488-0300, ext. 1310

SVS Vision
(Safety & Vision programs)
Provider contact:
Monica Dyja 800-611-3683 or **www.svsvision.com**

Schena Roofing & Sheet Metal Co., Inc.
(Commercial/industrial roofing contractor)
Provider contact:
586-949-4777

Staffworks Group
(Staffing needs)
Provider contact:
Bill Brann 877-304-9690

TMTA receives a benefit from some of its Endorsed Providers when you, as a member, patronize them. This is one way we are able to maintain the level of dues.

FYI
For Your Information

Homework Is Due

Just a reminder to return your **TMTA Member Services Directory (MSD)** information sheets and also your **TMTA Annual Hourly and Salary Wage Surveys** by the end of April.

It is important to you to participate in the TMTA MSD as it is distributed to companies nationwide as a resource of members and the services they provide.

The Hourly and Salary Wage Surveys are important as an indicators of trends within the association and the industry. Only those companies that participate in the surveys will be entitled to receive the respective survey results.

You may fax your forms to TMTA at 248-488-0500. If you have any questions, contact Ron at 248-488-0300, ext. 1306 or e-mail to ron@thetmta.com.

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Law Passed to Ban Workplace Ergonomic Standards

Governor Snyder signed into law a bill that amends the Michigan Occupational Safety and Health Act (MIOSHA) to prohibit promulgation of a state-specific ergonomic standards rule.

Senate bill 0020, sponsored by State Senator Rick Jones, passed through the Legislature in February and was signed by the Governor on March 22, 2011. While the bill prohibits a department, board or commission authorized to promulgate rules from mandating workplace ergonomic standards; it does allow the state, at the request of an employer, to provide guidance, best practices information and assistance to the employer for the implementation of voluntary ergonomics programs. Currently, California is the only state to have rules addressing ergonomics.

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TMTA 77th Annual Meeting & Open House

The 77th TMTA Annual Meeting & Open House will be held on Wednesday, April 20, 2011, at the VisTaTech Center at Schoolcraft College.

This FREE-to-members event will begin at 11:45 a.m. and attendees will have an opportunity to meet the TMTA Board of Directors, ask questions and provide input.

We look forward to seeing you there!

Mark Your Calendars For the TMTA 76th Annual Golf Outing & Dinner

The TMTA 76th Annual Golf Outing & Dinner will be held at the Fox Hills Golf Club in Plymouth, Michigan on Thursday, June 23, 2011. The event includes a continental breakfast during registration; a day of scramble style golfing with a shotgun start; lunch on the turn, beer and sodas on the course, and an open bar in the clubhouse; followed by our traditional evening of hors d'oeuvres, dinner and prizes galore!

This is an opportunity for our members to spend time together as well as to treat their customers to a wonderful day of golf, food and prizes.

If you are interested in becoming one of our event sponsors (which includes discount tickets and your company name displayed at a hole), contact Ron at 248-488-0300, ext. 1306 or e-mail to ron@thetmta.com.

Check your mail in the near future for your invitation and reservation form or check the TMTA website at www.thetmta.com for the most up-to-date forms and information to be posted soon.

Plan to join us again this year at one of the longest running annual golf events in the country!

tmta talk

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P.O. Box 9151
Farmington Hills, MI 48333
Phone (248) 488-0300
Fax (248) 488-0500
www.thetmta.com

President and CEO — Robert J. Dumont
Editor, Layout/Design — Elaine F. Burger-Laskosky

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