

THE COMPLIANCE WATCH 2023

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**"PEOPLE ARE AN
ORGANISATIONS
MOST VALUABLE
ASSET AND THE
KEY TO ITS
SUCCESS."**

-Dave Bookbinder



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UCS POV | SHOULD MATERNITY BENEFITS EXTEND BEYOND CONTRACT EXPIRY PERIOD?

SHAIJU MATHEW, CHIEF OPERATING OFFICER

According to the Honourable Supreme Court judgment on Dr. Kavita Yadav vs. Ministry of Health & Family Welfare dated 17th August 2023, maternity leave should be provided to contract employees even if the period for which an employee claims such benefits exceeds the contractual period. The Supreme Court overruled the judgment given by the Central Administrative Tribunal and High Court on this matter.

Formerly, the High Court had given the judgment in favour of the employer citing the clause requiring the payment of maternity benefits at the rate of average daily wages "for the period of her actual days of absence." The High Court noted that the term "actual absence" was used for maternity leave and that the employee would return when the number of days of absence was completed. The contract period is pre-supposed and the employee is not expected to be present post the termination of the contract.

The Honourable Supreme Court judgment has overruled the **Lower Courts judgments in this matter on the basis of certain provisions under the Maternity Benefit Act**



- Section 12(2) (a) of the Maternity Benefit Act 1961, contemplates entitlement to the benefits under the Act even for an employee who is dismissed or discharged at any time during the pregnancy who would have been entitled to maternity benefit or medical bonus (unless on the ground of misconduct). Based on the said clause, the Supreme Court has stated that such benefits can travel beyond the terms of employment. The Court also cited a similar case (Female Daily Workers vs. Municipal Corporation of Delhi (2000) 2 SCC 223), in which the daily workers were also extended Maternity Benefits as extended to any regular workers. The same judgment was based on discrimination.
- The Supreme Court also referred to section 5(3) of the Maternity Benefit Act, which provides a benefit if the applicant woman dies after giving birth for the entire term the employee would have otherwise been entitled to. Therefore, the Court's opinion is that the Act intends to provide the maximum benefit to the employee, and considering Sec.27 of the Maternity Benefit Act, the Act supersedes any agreement or contract of service deemed inconsistent with the Maternity Benefit Act 1961.

In this particular matter, the Supreme Court has concluded that the appellant fulfilled the entitlement criteria and has directed the payment of Maternity Benefit as prescribed under the Act which is beyond the contract period. **The Companies will have to be conscious of this judgment to avoid any exposure on the said subject. This order by the Honourable Supreme Court may lead to challenges at execution level. It may also negatively impact hiring of women on short term contracts etc.**

ESIC, LABOUR MINISTRY NOT FULLY PREPARED TO PROVIDE EXTENDED COVERAGE UNDER THE CODE ON SOCIAL SECURITY: PARLIAMENTARY PANEL

The Parliamentary Standing Committee (PSC) on Labour, headed by veteran Biju Janata Dal (BJD) MP Bhartruhari Mahtab, has asked the Union government to strictly monitor the activities of the Employees State Insurance Corporation (ESIC), so that social security benefits reach more workers. In a report submitted in Parliament during the special session last week, the panel reviewed the ESIC's applicability and benefits under the Employees State Insurance Scheme (ESIS), functioning of ESI Hospitals, management of the corpus fund, and recommended guidelines for organising special awareness campaigns about the scheme.

The panel said there is a need for reviewing the provisions relating to coverage, contribution, entitlement of the wages, and the wage limit for coverage under the ESIS. With the passage of time, the committee said, wages have increased and the last revision of the wage ceiling was effected from January 1, 2017. The prevailing wage limit of ₹176 per day for exemption from paying contribution was effected from September 6, 2019. The panel recommended the setting up of an expert committee for suggesting the changes required in the provisions so that the coverage and the number of insured persons could be increased.

The panel expressed concern that both the Labour Ministry and the ESIC are not fully geared up to provide extended coverage as envisaged under the Code on Social Security.



“The Committee are of the considered view that preparatory work for implementation of the plan of action already identified by ESIC viz. conduct of extensive surveys; collection of data from Government Departments; identification of common business identifiers for establishments by the ESIC in consultation with EPFO; use of Aadhaar for identification of members/insured persons, etc. need to be undertaken in right earnest,” the report said.

Considering the shortage of manpower and lack of proper infrastructure in the ESIC, the panel asked the Centre to fill up the vacancies in hospitals and dispensaries. “If required, the Recruitment Rules be amended and restructuring, wherever considered necessary, be done so as to have requisite manpower in position and thereby enable in meeting the stipulations of the Code on Social Security,” the report added. The ESIC had accorded approval for initial investment starting at 5%, and gradual increase up to 15% in Exchange Traded Funds (ETF). The panel noted that the expansion of the ESIC requires a substantial amount of funds. “The Committee expect that whatever roadmaps the Corporation has been working on is for the optimum benefit for

the most deserving workers of the organised and unorganised sectors whose requirements should be given utmost importance by the Ministry. The Committee are of the opinion that before making changes in the percentage of the amount of the investment, the Corporation should make diligent efforts to address these issues so as to meet the requirements of the Insured Persons," the report said.

[Source : TheHindu](#)

NEW LABOUR LAWS MANDATE COMPANIES TO COMPENSATE FOR OVER 30 UNUSED LEAVES

In a significant move to acknowledge work-life balance, the government's new labour laws will have a few changes that will benefit employees in more than one way. One of the laws will mandate companies to compensate employees who have not claimed more than 30 days of leave. The Occupational Safety, Health and Working Conditions Code, 2020 defines an "employee" as a person who is employed to do any work, skilled or unskilled, manual or clerical, in or in connection with the business of an establishment, whether the terms of employment be express or implied.

The code also clarifies that "managerial or supervisory" employees are not covered by the definition of "employee". Managerial employees are those who are responsible for the overall management of the establishment, while supervisory employees are those who are responsible for supervising the work of other employees.

The four labour laws — Occupational Safety, Health and Working Conditions Code; Code on Wages; Industrial Relations Code; and Social Security Code — have been passed by Parliament and notified by the government. However, they have not yet come into force. The effective date of the laws has not yet been announced. The codes or laws are one of the most major economic changes implemented by the Modi government.



"Section 32 of the Occupational Safety, Health and Working Conditions Code, 2020 (OSH Code), has a number of conditions with respect to availing annual leave, carry forward and encashment. Section 32(vii) allows a worker to carry forward annual leave to a subsequent calendar year, up to a maximum of 30 days. In case at the end of the calendar year the annual leave balance exceeds 30, then the employee will be entitled to encash the excess leave and carry forward 30 days to the next year," Sowmya Kumar, partner at law firm INDUSLAW, said, according to an Economic Times report.

"As per the Occupational Safety, Health and Working Conditions Code, 2020, if the leave balance exceeds 30, the worker will be entitled to encash the excess leave. Such leave encashment will be done at the end of each calendar year.

The annual leave for workers cannot lapse under the labour codes and will have to be availed or carried forward or encashed. Currently, many organisations do not allow leave encashment on an annual basis as well as for the paid leave balance to exceed the carry forward limit," ET report quoted Puneet Gupta, partner (people advisory services) at EY India as saying. He further pointed out that the OSH Code's rules on yearly leave and leave encashment apply only to 'workers,' or personnel who do not hold managerial, administrative, or supervisory positions. Leave encashment is the compensation made by an employer to an employee for unutilized paid leaves at the time of retirement or resignation. Every salaried employee is entitled to a certain number of paid leaves each year under labour legislation. Employees are not required to use all of their accrued leaves, and many employers allow them to carry over unused leaves to later years.

[Source : BusinessToday](#)

MINISTRY OF LABOUR AND EMPLOYMENT TAKES STRIDES TOWARDS SWACHHATA AND EFFICIENCY

The Ministry of Labour and Employment is dedicated to institutionalizing Swachhata (cleanliness) and minimizing pendency within the ministry, its autonomous bodies, and field formations. Inspired by the vision of Prime Minister, the Ministry is steadfast in its commitment to creating a more streamlined and efficient government.

Progress Highlights (December 2022 - August 2023):

- 3699 Physical Files Weeded Out: Our rigorous efforts in decluttering and organizing records have resulted in significant progress towards a more efficient workflow.

- 100% Implementation of E-Office: Embracing modern technology, we have fully integrated the E-Office system to reduce paperwork and streamline processes.
- 96.95% Pending Public Grievances Disposed Of: Timely resolution of public grievances remains a top priority, and we are proud to have addressed a substantial number of them (124188 out of 128091)
- 98.70% Pending Public Grievance Appeals Disposed Of: Ensuring that the concerns of the public are heard and acted upon promptly is integral to our mission (27526 out of 27887)
- References from MPs: 77.5% references received from MPs have been disposed of (62 out of 80 receipts)
- Cleanliness campaign conducted on 1256 sites.

Looking ahead, the Ministry of Labour and Employment is gearing up for the upcoming Swachhata Campaign 3.0. Scheduled to take place from 2nd to 31st October 2023, this campaign is designed to further institutionalize cleanliness and reduce pending matters within the ministry, its autonomous bodies, and field formations.

Under the visionary leadership of Union Minister for Labour and Employment and the support of esteemed team, the Ministry is fully committed to the successful implementation of activities under Swachhata Campaign 3.0.



[Source : PressInformationBureau](#)

19.88 LAKH NEW WORKERS ENROLLED UNDER ESI SCHEME IN THE MONTH OF JULY, 2023

"9.40 Lakh young employees upto the age group of 25 years constitute new registrations.

Around 27,870 new establishments registered under ESI Scheme in the month of July, 2023

Benefits of ESI Scheme extended to 52 transgender employees in July, 2023"

The provisional payroll data of ESIC reveals that 19.88 lakh new employees have been added in the month of July, 2023.

Around 27,870 new establishments have been registered and brought under the social security umbrella of the Employees' State Insurance Corporation in the month of July, 2023, thus ensuring more coverage.

Data evidently reveals that more jobs have been generated for the youth of the nation as out of the total 19.88 lakh employees added during the month, 9.54 lakh employees up to the age group of 25 years constitute the majority of new registrations which is 47.9 % of the total employees.

Gender-wise analysis of payroll data indicates that net enrolment of female members has been 3.82 lakh in July, 2023. The data shows that a total 52 transgender employees have also got registered under ESI Scheme in the month of July, 2023. It shows that ESIC is committed to deliver its benefits to every section of the society.

The payroll data is provisional since the data generation is a continuous exercise

[Source : PressInformationBureau](#)



EPFO RECORDS HIGHEST PAYROLL ADDITION WITH 18.75 LAKH NET MEMBERS DURING THE MONTH OF JULY, 2023

EPFO's provisional payroll data released today highlights that EPFO has added 18.75 lakh net members in the month of July, 2023. The addition during the month is the highest since first publishing of EPFO payroll data from April, 2018 covering the period of September, 2017 onwards. A growing trend is continued since last three months with an increase of around 85,932 net members over the previous month of June, 2023.

The data indicates that around 10.27 lakh new members have enrolled during July, 2023 which is highest since July, 2022. Majority of new members joining EPFO are in the age-group of 18-25 years constituting roughly 58.45% of total new members addition during the month. This shows an increasing trend in youth enrollment, who are mostly first-time job seekers joining the organized sector workforce of the country. Payroll data demonstrates that approximately 12.72 lakh members exited but rejoined EPFO, which is the highest in last 12 months. These members switched their jobs and re-joined the establishments covered under EPFO and opted to transfer their accumulations instead of applying for final settlement thus, extending their social security protection.

Gender-wise analysis of payroll data shows that during July, 2023 around 3.86 lakh net female members have been added in the payroll. Around 2.75 lakh female members have come under the ambit of social security coverage for the first time.

State-wise analysis of payroll data denotes that net member addition is highest in the 5 states of Maharashtra, Tamil Nadu, Karnataka, Gujarat and Haryana. These states constitute around 58.78% of net member addition, adding a total of 11.02 lakh members during the month. Of all the states, Maharashtra is leading by adding 20.45% of net members during the month.

Month-on-month comparison of industry-wise data displays significant growth in the members working in establishments engaged in Trading-Commercial Establishments, Building & Construction Industry, Electrical, Mechanical and General Engineering Products. This was followed by Textiles, Financing Establishment, Hospitals etc. Of the total net membership, around 38.40% addition is from expert services (consisting of manpower suppliers, normal contractors, security services, miscellaneous activities etc.).

The above payroll data is provisional since the data generation is a continuous exercise, as updating employee record is a continuous process. The previous data hence gets updated every month. From the month of April-2018, EPFO has been releasing payroll data covering the period September, 2017 onwards. In monthly payroll data, the count of members joining EPFO for the first time through Aadhaar validated Universal Account Number (UAN), existing members exiting from coverage of EPFO and those who exited but re-joining as members, is taken to arrive at net monthly payroll.

[Source : PressInformationBureau](#)

MINISTRY OF LABOUR AND EMPLOYMENT SIGNS MEMORANDUM OF UNDERSTANDING (MOUS) WITH VARIOUS PRIVATE JOB PORTALS/EMPLOYERS

The Ministry of Labour and Employment signed Memorandum of Understanding (MoU) with leading private job portals, companies/employers and skill providers to integrate with National Career Service (NCS) portal of the Ministry here today. The objective of MoUs is to enhance employment opportunities and services for jobseekers on NCS portal.



The private job portals partnering with the Ministry of Labour and Employment will share their vacancies on NCS so that the NCS registered jobseekers can seamlessly apply for such vacancies. On behalf of Ministry of Labour and Employment, the MoUs were signed by Shri Amit Nirmal, Deputy Director General (Employment) in the presence of Smt. Arti Ahuja, Secretary Ministry of Labour and Employment and Shri Ramesh Krishnamurthi, Additional Secretary (Labour and Employment). The MoUs were signed with TeamLease HRtech (Freshersworld), Monster.com India Pvt Ltd referred as foundit, QUESS CORP Limited,

Delivery Track (VSS Tech), KARPAGA Assessment APP MATRIX Services Private Limited (HireMee), QUIKR INDIA Private Limited, TCS iON, and Firstjob.co.in to share their vacancies with NCS portal. These vacancies will enhance the employment opportunities to the NCS registered jobseekers. More than 30 lakh eShram registered workers of the unorganized sector who have joined NCS so far, would also be benefitted from this partnership.

The Ministry of Labour and Employment also signed an MoU with TCS iON to provide free of cost online soft skill employability training to the job seekers registered on NCS Portal both in English as well as Hindi language. This employability training was found very useful in enhancing the employability skills of the jobseekers. Such trainings would help to improve the quality of the work force on their selection. An MoU was also signed by Ministry of Labour and Employment with KARPAGA Assessment APP MATRIX Services Private Limited (HireMee) to provide a free of cost facility to the jobseekers for self-assessing their suitability for a job through aptitude test. The employers will also be benefitted by this feature as they can view the scores of aptitude test and easily do first level of scrutiny which will eventually reduce time in selection of the candidates.

On this occasion, Smt. Arti Ahuja, Secretary, Labour and Employment emphasized that such partnership is important from the perspective of the jobseekers of the country. She highlighted that the NCS portal was also appreciated by the participants of the G20 - Employment Working Group. She also desired to have further partnerships with various government and private organizations which would help NCS to serve better to both jobseekers and employers at large.

Ministry of Labour and Employment also held a meeting with the representatives of Placement Organisations, Employers and Private job portals under the chairmanship of Shri Ramesh Krishmurthi, Additional Secretary, Ministry of Labour and Employment to discuss various aspect relating to improving and strengthening the partnership with NCS portal. The participants of the meeting put forth the suggestions with regards to the challenges and issues being faced by the employers during employment process. The participants also gave their suggestions on the proposed upgradation of the NCS portal.

[Source : PressInformationBureau](#)

LABOUR DEPT. ASKED TO MAKE FRESH CALCULATION OF MINIMUM WAGES FOR 10 SCHEDULED EMPLOYMENTS

In what is being seen as a positive signal in fixing minimum wages on scientific basis in the current revision cycle, the State government has sent back a proposal by the Labour Department to enhance minimum wages for 10 scheduled employments and asked the wages to be revised on a more rational basis.



While the minimum wages for 38 scheduled employments have already been notified in 2022-2023, the revised minimum wages for 10 scheduled employment is pending before the new Congress government for notification. Labour Minister Santosh Lad confirmed the development and said that he had asked for a scientific revision of wages. "Labour cannot be cheap. I have asked the department officials to come up with fresh calculations," he told The Hindu.

In Karnataka, to the already existing 83 scheduled employments, 22 were added in 2019, taking the total to 105 that covers close to about 2 crore workers. The minimum wages were fixed in 2017-2018 to 83 scheduled employments in Karnataka, and as per law these are to be revised at least once in five years.



Labour Unions' Stand

The revision of minimum wages to 38 of the scheduled employments in 2022-23, however, had been criticised by trade unions. While the 2017-2018 fixation of minimum wages was based on a ground-level survey at 16 centres across Karnataka, the State notified 5% to 10% hike on the wages, including the variable dearness allowance, without such a survey to assess inflation-related price rise in 2022-23. The unions had opposed the calculations and sought the revision based on the guidelines

laid down by the Supreme Court in the Reptakos Brett case. The officials pointed out that the ground survey had not been possible owing to the pandemic and also in anticipation of the Labour Code coming into effect. The department officials had argued that during the revision of the minimum wages in 2017-2018, the government followed the court guidelines in the Reptakos Brett case to bring uniformity in minimum wages.

Since the 2022-2023 process is to only revise the wages, there was no need to follow the guidelines again, the officials had argued. After the government notified the revision of minimum wages in 38 scheduled employment, the unions approached the High Court for relief. "The cost of food, clothes, and shelter has to be factored in the calculations for revision of minimum wages. The Reptakos Brett case should form the basis for calculations. Surveys should be conducted to ascertain ground realities. The government-notified minimum wages for 38 scheduled employments was arbitrary," All-India Trade Union Congress Karnataka secretary M. Satyanand said.

Cost Of Meat

He welcomed the government's decision of asking the department to rework the wage calculations, in the case of the 10 scheduled employments yet to be notified. "Meat that is part of the diet of a large number of households has not been considered for calculating minimum wages. This should be considered in this revision." Meanwhile, in a recent reply to a RTI query, the Labour Department has said that it will be following the guidelines fixed by the court in the Reptakos Brett case while fixing minimum wages to the 22 new employments added to the schedule since 2019.

GOVT'S NEW INSURANCE SCHEME FOR GIG WORKERS OFFERS RS 4 LAKH COVER

The Karnataka government recently rolled out an insurance scheme with a cover of Rs 4 lakh for gig workers across the state. Karnataka is the second state after Rajasthan to launch an insurance scheme for gig workers. The state will pay the entire premium for the scheme under which workers will get a life insurance cover of Rs 2 lakh and accidental cover of Rs 2 lakh. The scheme was announced by chief minister Siddaramaiah in the state budget in July.

However, the government has not spelt out in clear terms as to how the scheme will be funded. According to the order issued, the government will provide certain state grants and seek for additional grants from the Centre under section 7 (2) and (3) of the Unorganised Workers Social Security Act-2008. The government may seek funds from the employers and employees as well for the scheme apart from corporate social responsibility (CSR) funding and "any such approved mechanisms by the state government".



Officials in the finance department suggest that it is difficult to estimate at the present juncture on the exact requirement for the scheme and the order has been issued as it was a budgetary announcement by the CM.

Labour minister Santosh Lad said the CM has agreed to release of Rs 25 crore as seed money for the gig workers' scheme and is waiting for final orders.

The order also states that Karnataka does not have any record on how many gig workers are functioning but has relied on a Niti Ayog report-2022. The report estimates India has 7.7 million gig workers and will be around 23.5 million by the end of this decade. It also expects a long-term rise in numbers to be close to 90 million gig workers in India. Ahead of the assembly polls in Karnataka in May, former AICC chief Rahul Gandhi interacted with gig workers in Bengaluru.

Source : EconomicTimes



PUNISHMENT UNDER POSH ACT: HC SETS DATE TO DISPLAY NORMS



The Orissa high court has set December 15 deadline for government authorities to implement provisions of Section 19 (b) of Sexual Harassment of Women and Workplace (Prevention, Prohibition and Redressal) Act, 2013.

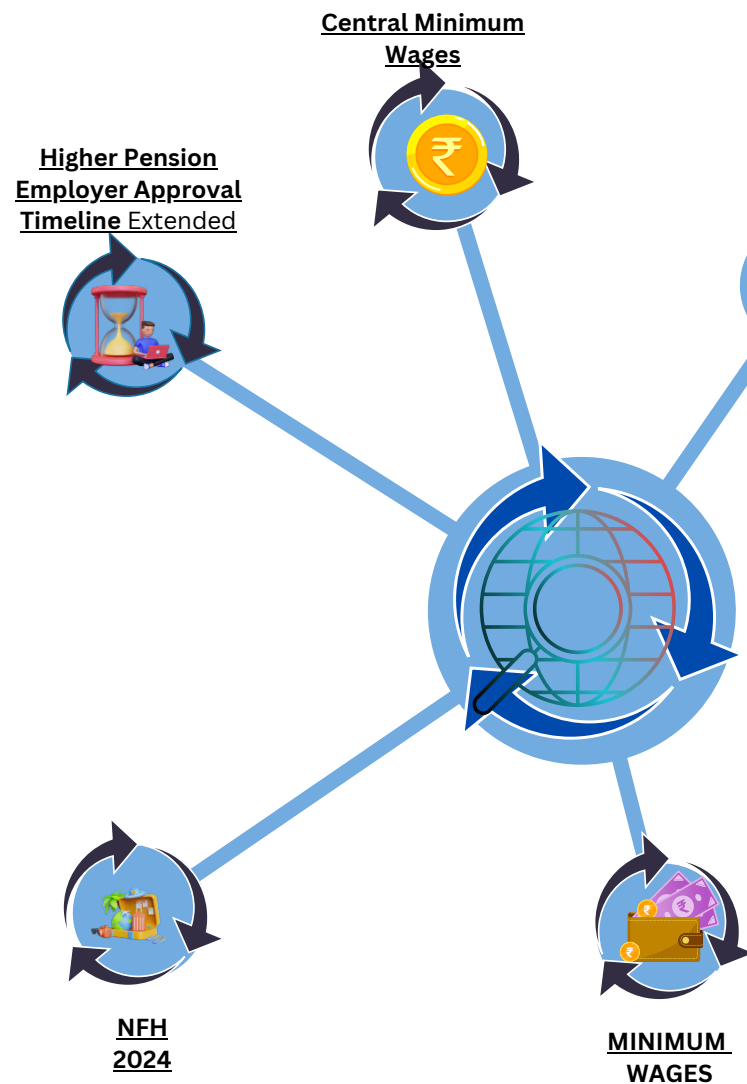
Section 19 (b) of the Act prescribes display of penal provisions of sexual harassment — simple imprisonment for a term which may extend to three years or with fine or with both and constituting an Internal Complaints Committee to inquire into grievances — at any prominent spot in a workplace.

The Centre had brought in the Act to protect against sexual harassment of women at workplaces and for the prevention and redressal of such complaints and for related matters and incidents. The Act came into force from December 9, 2013. The two-judge bench of Chief Justice Subhasis Talapatra and Justice Savitri Ratho said, “We direct all the authorities under the central government and state governments to comply with the direction of Section 19 (b) of the Act.”

“The said direction shall have to be carried out within a period of three months from today,” the bench said in its September 15 order, a copy of which was made available.

Accordingly, the authorities have to place a billboard displaying the penal provisions of sexual harassment, among others. Biyati Pragma Tripathy, a social activist, had filed the PIL seeking implementation of Section 19 (b) of the Act.

Source : TimesOfIndia





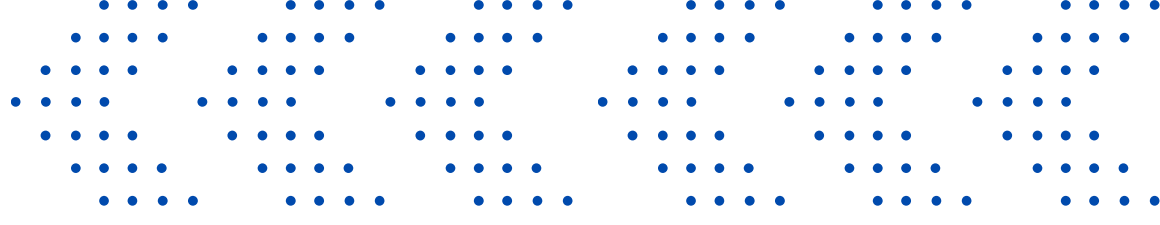
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