

Fourth Study Commission
of the
International Association of Judges
2008 meeting.

Rights of parents in the employer-employee relationship
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Due to the delay given by the central committee 14 reports arrived at time . For the report from Nicaragua, there was a problem for the translation. 7 reports were distributed during the meeting.

The international report has been approved with unanimity.

Introductory remarks:

Different measures have been developed, enabling men and women to reconcile their occupational and family obligations. New flexible ways of organizing work and time, which are better suited to the changing needs of society may take into account the needs of both undertakings and workers. This is also important to promote equal opportunities and equal treatment between men and women. Flexibility and diversity of child-care services are part of a strategy to meet the different preferences, needs and circumstances of children and their parents.

The three main fields of this questionnaire are:

- a. maternity leave for women –related to maternity and birth
- b. parental leave (distinct from maternity leave) for men and women related to the upbringing of infants and
- c. time off work due to other urgent family reasons

A Maternity leave

1. When shall pregnant employees inform their employer of their condition?
2. Are pregnant employees and employees who have recently given birth entitled to a continuous period of maternity leave? How long is this leave and when is it allocated before?
3. Do they maintain their pay or are they entitled to allowances. How high are these allowances related to the original pay?
4. What rights are acquired by the worker on the date on which maternity leave starts until the end?
5. Is there continuity of the entitlements to social security, in particular regarding health care ?

Germany :

1	2	3	4	5
After they know	10 weeks before the date of birth 8 weeks after 12 for twins. – possibility to work until the 2nd week before the birth.	Same remunerations than the average of the thirteen weeks before pregnancy. During maternal leave wages and allowance.	During pregnancy the mother may be banned from certain work -night work -heavy loads, - dangerous exposures Right to transfer the worker to another working place. Special Rights if breast feeding.	Yes

Austria :

1	2	3	4	5
Yes, after they know. They also have to inform about the expected date of confinement.	16 weeks : 8 before, 8 after; longer, if twins or more	Maternity allowance paid by social insurance As high as the average income of the last 13 weeks before maternity leave	The right to come back to do the same or similar work	Yes

Belgium :

1	2	3	4	5
As soon as they know . Legal protection does not start before the employer has been informed.	- 15 weeks (17 if twins, 19 if more than 2 children) 6 weeks before confinement and 9 weeks after (see national report). -compulsory 1 week before. - if the mother is hospitalized or dies, the father has got the same rights.	Allowances paid by social insurance between 82 and 79,5% of the wages	The right to come back to do the same or similar work.	Yes

Spain :

1	2	3	4	5
Yes, as soon as possible. In order, to gain	16 weeks 6 weeks obligatorily after	A maternity benefit equal to 100% of the base for the	- The employees participate from the improvement	Yes

the rights of the statutes on the protection of the occupational risks there is no document necessary in order to proof .	the childbirth. - Longer if multiple births. - Same right for the father if mother dies.	temporary inability of the mother	of the work conditions which would have happened during the maternity leave. - Not discriminating	
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Estonia :

1	2	3	4	5
At least 2 weeks before the leave.	- Yes, up to the age for 3 years. - Parental leave may be used in several parts	Yes, with some limits		Yes.

Ireland :

1	2	3	4	5
4 weeks before	Yes, 22 weeks and optional 12 weeks more without payment. 2 weeks must be taken before and 4 weeks after birth. The other weeks may be taken before or after birth.	Yes, either by the decision of the employer or they are regulated by collective agreements. - Social insurance allowances within a scale.	Same rights as other employees.	Yes

Israel :

1	2	3	4	5
Is not obliged to employer. The granted rights start in the 5th month of pregnancy. Protection against overtime and night-work	14 weeks. 6 Weeks for the mother, the rest can be divided between the husband and her. The same as regards adoption of a child of less than 10 years. If multiple births, 3 weeks additional. - If hospitalization 4 weeks 2 weeks if it is the child (see precision in the report/ratio.) Leave without wages is possible	The maternity benefit perceived by the social security. - 100% with limits. - Allowances of birth. - Free Hospitalization	Without limit	Yes.

Japan :

Answers for female judges and female personnel of courts

1	2	3	4	5
Immediately after	10 weeks before	Ordinary Wages.	No.	Yes.

knowledge.	the birth, 8 afterwards. Work is prohibited during the week which follows the birth.			
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Norway :

1	2	3	4	5
As soon as possible.	The parents are entitled to 12 months all together. 6 weeks after the birth are reserved for the mother	Yes, under certain conditions (see details in the report.)	To turn to their work and to receive wages	Yes

Portugal :

1	2	3	4	5
Yes, 30 days before the beginning of maternity leave	120 days 150 days	100% of the rem. from reference -80% of the rem. The remuneration of reference is calculated on the average of the rem. from the first six months of the last eight months before birth	Right to stay at home	Yes

Sweden :

1	2	3	4	5
Generally no information is required but -2 months notice before the beginning of the leave. – - indication of the planned duration.	Protective regulations against heavy work Maternity leave- 7 weeks prior to birth, 7 weeks afterwards. 2 weeks are obligatory. Leave for breast feeding.	Parental and pregnancy allowances(details see report/ratio)	To be treated like any other employee without discrimination.	Yes.

Switzerland :

1	2	3	4	5
No legal time limit for informing the employer, but at least a few months before birth, at least 4 to 5 before, In Canton of	- Before the birth if risk of diseases or of accident with full remunerations After birth 14 weeks or more if the child is ill	80% of the wages with a limit- Canton of Basle 100% of the wages (details see report)	In the Canton of Basle full remunerations -the right to return to the same work -a paid leave for nursing - possibility to	Yes.

Basle at least 4 months before	(details see report)		reduce working hours.	
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Taiwan :

1	2	3	4	5
-No obligation of information -Maternity Leave 8 weeks if informed. If public service: 8 days before and 42 days afterwards.	Different kinds of leaves 8 weeks. If public service 8 days before 42 days after. Leave changes -if termination of pregnancy.	Employment since more than 6 month –regular salary If less than 6 months half.	Without discrimination	Yes

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1	2	3	4	5

6. Do workers have the right to return to the same job after their maternity leave or, if that is not possible, to an equivalent or similar job?

7. Are employees protected against dismissal?

8. Are there special provisions to meet the operational and organizational requirements of small undertakings?

9. Are employees entitled to time off in order to attend ante-natal examinations, if such examinations have to take place during working hours?

10. What are the most common cases at courts related to this?

Germany :

6	7	8	9	10
Yes, or similar and equivalent.	Yes, dismissal is illegal during pregnancy and 4 months after birth.	Yes.	Yes	Dismissals with or without state permission because the employer does not know about pregnancy or the need to get a permission. Payment

Austria

6	7	8	9	10
Yes	Yes (details see report)	No	Yes	Dismissals

Belgium :

6	7	8	9	10
Same or equivalent.	Yes	Yes, in particular for nursing.	Yes	Allowance: 6 months fixed remuneration. Many cases but different questions. - Disputes regarding information about pregnancy. - Compensation. - Guaranteed wages and maternity benefits

Spain :

6	7	8	9	10
Yes	Protection against dismissal.	Yes. 2 days in the event of serious disease of hospitalization.	Yes. For the examinations before and after birth.	The maternity leave. The protection of remuneration..

Estonia :

6	7	8	9	10
Yes.	Yes		No	No answer

Ireland :

6	7	8	9	10
Yes.	Yes	Yes	Yes	No answer

Israel :

6	7	8	9	10
Yes.	Yes(details see national report	Yes, but depending on the size of the enterprise.	Yes.	Dismissals of pregnant employees without being authorized according to the legal procedure or dismissals due to pregnancy

Japan :

6	7	8	9	10
Same or similar	Dismissal is	No answer	Yes (details se	No cases

work.	forbidden		national report)	
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Norway :

6	7	8	9	10
Yes.	Yes	Does not exist	Yes.	Few cases before court. Conciliation board

Portugal :

6	7	8	9	10
Yes, or equivalent.	Yes. In the event of dismissal, there are indemnities equal to 15 to 45 days of wages per year of seniority	No.	Yes, for examinations before and after birth.	Unfair dismissal

Sweden :

6	7	8	9	10
Yes.	Discrimination is forbidden. The period of notice does not start during maternal/parental leave..	No.	Yes.	Litigations concerning wages and promotion

Switzerland :

6	7	8	9	10
Yes	Yes, without grave reasons or agreement notice is void.	Not in small enterprises (details see national report)	Yes	Litigation relating to payment - new laws - parental leave father or mother- nothing at the level of the federal state.

Taiwan :

6	7	8	9	10
Yes	Yes, administrative fines for the employer.	No.	For public service antenatal leave of 8 days	None

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6	7	8	9	10

Conclusions :

- In most countries, information must be given to the employer but the moment varies considerably and is especially related to the right of acquiring remunerations or allowances in relation to maternal leave.
- A period of leave before and after the birth exists in all the countries; its duration varies considerably from one country to another.
- In most countries a remuneration or maternity allowance exists.
- According to the rules of anti-discrimination the rights of the workers remain identical during maternity leave to those rights granted to the other workers.
- Generally they maintain their affiliation to the social security and the right to return to same or equivalent work.
- Employees are protected against dismissal which is generally regarded as abusive. In Taiwan the employers are the subject also of administrative fine in these cases.
- The examinations before and after birth - may generally be done during the work hours. The obligation to work is suspended for this period.
- Generally cases before the courts are rare. When they exist, they vary and often deal with payment for maternal leave or abusive dismissal.
- Switzerland has regulations which are more favourable than these general conclusions.
- Japan answered for a particular category of employees only.

B – Parental leave

1. What are the conditions of access and rules for applying for parental leave?

Describe Your system (full-time or part-time basis, time-credit system....).

2. Is the entitlement to parental leave subject to a period of work qualification and/or a length of service qualification and which period?

3. Which notice periods exist for the worker when exercising the right to parental leave, specifying the beginning and the end of the period of leave?

4. Is an employer allowed to postpone the granting of parental leave for reasons related to the operation of the undertaking (e.g. where a replacement cannot be found within the notice period?)

5. Do employees maintain their pay or are they entitled to allowances. How high are these allowances related to the original pay?

6. What rights are acquired by the employees on the date on which parental leave starts until the end of parental leave?

Germany :

1	2	3	4	5	6
-Applying parent has to live together with the child. - has to take	Not, for parental leave. Full. For part-time at least 6	Yes, at least 7 weeks before the beginning - written	No.	No wages but under certain conditions an allowance during the first	They may work part-time or independent without losing their legal

care and raise them -A 7 weeks notice before the beginning of the leave. -Until the child is 3 years. The leave can be divided. Full-time or part time (details see national report)	months.			year (see written report)	protection
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Austria:

1	2	3	4	5	6
Until the child turns two years - live together with the child Parents may switch, but minimum period 3 month part-time work until child turns 7 years (see report)	No, but part-time work- three years	Yes	Yes	Allowance of +/- 450 Euro per month	Right to come back

Belgium :

1	2	3	4	5	6
All workers of the private sector - from Birth until the child is 6 years. - If adoption: 4 years starting from adoption, maximum age 8 years. Total Suspension of the contract for 3 months, part time: 6 months or 1/5 of full-time for 15 month duration of leave subject	-Work contract for at least 12 months during the 15 months before the written request for leave. -Documents of the birth or the adoption.	The leave must start -at the latest- 6 months after the month when it could start It may be transferred in case of justified reasons.	Yes, but the employer too.	Allowance.	Prohibition to terminate the contract

to the authorization of the employer who can transfer the period Collective agreement can improve the rights to the parents. - In all cases the father is entitled to 10 days leave during the 30 days after childbirth.					
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Spain :

1	2	3	4	5	6
Parental leave exists for men and women. Subject to the authorization of the employer – If litigation is started, it is decided by the court	No	No notice before the reduction of the working time. - 15 days notice before returning..	No.	Allowance of the state.	No answer

Estonia :

1	2	3	4	5	6
Yes, until the age of 3 years a father has the right to 14 days during pregnancy or within two month after birth of the child.	No.	In accordance with the holiday schedule of the employer. If there is no holiday schedule communicated the employee is entitled to take the leave at the chosen time but shall notify this to the employer 2 weeks before.	No.	Yes, with limits.	No answer

Ireland :

1	2	3	4	5	6
Taken over a	1 year service –	Yes, Six weeks'	Yes,	No.	Same rights

single period or on diffuse bases with agreement of employer	special conditions for older children of recently employed workers.	notice before beginning.	maximum length of postponement –6 month		
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Israel :

1	2	3	4	5	6
Yes, for the father during the maternity leave of the mother (14 weeks), also in case of hospitalization of the mother or if maternity leave is not used by the mother. Extendable under certain circumstances.	One period of 24 months work – -leave without payment in 2 cases (details national report).	Notice 30 days before the beginning of the leave	No.	Yes, if instead of his spouse – maternity allowance.	Is considered to be working time.

Japan :

Answers for female judges and female personnel of courts

1	2	3	4	5	6
Until the age of 3 years (details see national report.)	No.	-One month before the beginning of the leave. - Subject to the authorization of the superior.	Only if is extremely difficult to adjust the duties.	No wages, but a limited allowance	No.

Norway :

1	2	3	4	5	6
Like maternity leave but for a period of 3 years. Partial leave depends on an agreement between the employee and the employer, also part-time work	No.	After maternity leave.	No.	See maternity leave.	Like maternity leave.

Portugal :

1	2	3	4	5	6
For the father or the mother	No. Suspensive	Yes, 30 days	Yes, if there is an agreement	No remuneration.	Suspended.

of a child less than 6 years. -Leave 3 months full time 6 months part time.			with the employer.		
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Sweden :

1	2	3	4	5	6
Until child reaches 18 month -they also receive a parental allowance similar for adoption (details see report)	No.	Notice at least 2 months before the leave commences -as soon as possible with a plan regarding the duration of the leave.	Full-time or part time.	480 days of parental allowance - if multiple birth 180 additional days (details see report/)	Without discrimination

Switzerland :

1	2	3	4	5	6
Does not exist on the level of federal legislation. Details in individual contracts	.	No.	According to employee and employer.	Yes	No answer

Taiwan :

1	2	3	4	5	6
-More than one year of service -Employer of more than 30 employees. -parental leave without payment until the 3rd year -1 hour less per day without payment (details see report)	More than one year of service	2 years per child until the child is 3 years.	No. Risk of administrative fine for the employer.	No payment Project: 60% of allowances	To inform the employee of programs for education and training.

1	2	3	4	5	6

7. Is there a continuity of the entitlements to social security, in particular regarding health care?

8. Do employees have the right to return to the same job or, if that is not possible, to an equivalent or similar job at the end of parental leave?

9. Are employees protected against dismissal on the grounds of an application for, or the taking of, parental leave?

10. Are there special provisions to meet the operational and organizational requirements of small undertakings?

11. Does your system also grant access to parental leave for adoption cases and are there specific rules for applying for parental leave to the special circumstances of adoption .

12. What are the most common cases at courts related to this?

Germany :

7	8	9	10	11	12
Yes.	No, but equivalent work.	Yes, after the employee applies but not earlier than eight weeks before paternity leave begins and throughout leave.	The employer may engage someone else for a limited period of time	Yes	Dismissal during parental leave

Austria :

7	8	9	10	11	12
Yes	Yes	Yes	No	Yes	Unfair dismissals

Belgium :

7	8	9	10	11	12
Yes	Yes	Yes, because dismissed are entitled to a lump sum for damages of 6 months of remuneration..	Yes, short leave or unemployment	Yes, 4 years starting from the arrival of the child until its 8th birthday..	Not very many, various

Spain :

7	8	9	10	11	12
Yes.	Yes, during 12 month.	Yes	Yes, if hospitalisation, operation etc.	Yes	- dismissals - Reduction of hours.

Estonia :

7	8	9	10	11	12
Yes.	Yes	Yes	No.	Yes.	Nothing

Ireland :

7	8	9	10	11	12
Yes.	Yes	Yes	Yes	Yes, 24 weeks.	Nothing

Israel :

7	8	9	10	11	12
Yes.	If a father who took leave without pay (wife is hospitalized or the child is in his sole custody) wants to come back earlier, the employer can only postpone this for 2 weeks. Other cases are decided by the Court.	Yes. .	That depends on the size of the company.	14 weeks of leave when adopting a child younger than 10 years.	The majority of the cases are men who want to exercise rights that the mother does not exercise - illegal discriminations

Japan :

Answers for female judges and female personnel of courts

7	8	9	10	11	12
Yes.	Same work or equivalent	No dismissal.		Yes	No cases.

Norway :

7	8	9	10	11	12
Yes.	Yes	Yes	No.	Child under 15 year - 41 weeks full or - 51 week 80%.	Rare. (Conciliation board.)

Portugal :

7	8	9	10	11	12
Yes	Yes, or equivalent.	Yes	No.	Yes	Unfair Dismissal -the time of return to work

Sweden :

7	8	9	10	11	12
Yes.	Yes.	Yes.	No.	Yes.	Disputes regarding salary

					and promotion
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Switzerland :

7	8	9	10	11	12
No federal statute.	No federal statute.	No federal statute.	No federal statute.	No.	Very rare -missing legal rules.

Taiwan :

7	8	9	10	11	12
Yes.	Yes, except certain cases (details see report.)	Yes. (details see report.)	Enterprises with more than 30 employees.	Yes.	

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7	8	9	10	11	12

Conclusions :

- In most countries there exists an access to leave, if notice is given early enough.
- Generally a notice must be given so that the leave can start.
- It is remarkable to note that in the majority of the countries, that answered the questionnaire, the leave is open equally to the father or the mother
- Remuneration is seldom guaranteed, often there exists a reduction or payment or fixed allowances.
- Social security rights are maintained, also the right to return at the end of the leave to the same or an equivalent work.
- Due to the leave the workers are protected against dismissal and indemnities have to be paid in the event of abusive dismissal.
- Several countries recognize the same right in the event of adoption but there are some exceptions.
- Before court these cases are extremely rare and are generally related to unfair dismissals.
- Switzerland has a different regulation.
- Japan answered for a particular category of employees only.

C. Time off from work on grounds of urgent family reasons

1. Are employed parents with responsibility for the care and upbringing of children entitled to time off work on grounds of urgent family reasons (sickness or other reasons related to family members making the immediate presence of the worker indispensable)?
2. What are the conditions of access for applying for this kind of time off ?
3. Is this time off limited to a certain amount of time per year or per case?
4. Do employees maintain their pay or are they entitled to allowances. How high are these allowances related to the pay before?

Germany :

1	2	3	4
Yes	Inform the employer ten days before - Care at home	10 days per case maximum six months.	Maximum of 5 days wages, otherwise allowances (details see report)

Austria

1	2	3	4
Yes. One week per year. If children younger than 12 years: one additional week. Confirmation of illness	If the presence is necessary.	One or two weeks per years	Full salary

Belgium:

1	2	3	4
Yes.	-Employment contract. - To inform before or as soon as possible. - Absence because of the named reasons.	Maximum 10 working days per year, 5 days maximum for part-time workers.	The leave is not paid. .

Spain :

1	2	3	4
4 days if - displacement.	Notice and justification given to the employer.	2 or 4 days.	Salaries are maintained..

Estonia :

1	2	3	4
Yes. Some days (details – national report)	Yes.	Depends on the age of children.	No answer.

Ireland:

1	2	3	4
Yes.	Disease or injury of certain family members (see the list in the report)	5 days over a 36 month period or 3 days over a 12 month period.	Full wages.

Israel :

1	2	3	4
Yes, under various conditions, like the age of the child, the parents, the duration of working contract, Whether the spouse is employed or self	8 days sick leave per year if the child is sick. – 6 days per year in certain cases.	Yes.	Yes, but limited .

employed.	- For sole parents 30 days per year if it is a handicapped child (see additional conditions in the report) - Disease of the mother 6 days. - Disease of the parents of more than 60 years 6 days per year.		
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Japan :

Answers for female judges and female personnel of courts

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1	2	3	4
When the children are sick or injured - 5 days per year for the days - For the members of the families not more than 2 weeks (see detail in the report)			Ordinary salary if caring for sick children if family care probably reduced wages

Norway :

1	2	3	4
Yes.	Reasons are important welfare or care	Yes. 10 days per year	Yes, if the employee has worked during the 4 weeks before the time off

Portugal

1	2	3	4
30 days per year for diseases of a child of less than ten years 15 days if more than ten years 4h. per trimester for the school rights for grandparents (details see report)	30 days notice	Yes	By social security

Sweden :

1	2	3	4
Yes, sick child less than 12 years in some cases under 16.	Sick child less than 12 years in some cases under 16. no period of notice.	No.	Parental allowance

Switzerland :

1	2	3	4
In exceptional cases	To present a doctor's	Yes.	Full wages.

also longer.	attestation to inform employer		
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Taiwan :

1	2	3	4
If there is an accident or disease or another important event (force major) an employee in enterprise with more than 30 employees - 7 days per year	To take care of a family member, a patient or another event of force major.	7 days per year	

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1	2	3	4

5. Is there a continuity of the entitlements to social security, in particular regarding health care?

6. Are these employees protected against dismissal?

7. Are there special provisions to meet the operational and organizational requirements of small undertakings ?

8. What are the most common cases at courts related to this?

Germany :

5	6	7	8
Yes.	Yes	These rights do not exist in companies smaller than 15 employees	None so far : law is too new

Austria :

5	6	7	8
Yes	Yes	No	rare

Belgium:

5	6	7	8
No, bound to effective work	No, except abusive use of the right by the employer.	No	No published jurisprudence

Spain :

5	6	7	8
Yes.	Yes.	No	Rare cases.

Estonia :

5	6	7	8
Yes	Yes	No.	No answer

Ireland :

5	6	7	8
Yes.	Yes	No.	Not known

Israel :

5	6	7	8
Yes.	No	No.	Not known

Japan :

Answers for female judges and female personnel of courts

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5	6	7	8
Yes.	No dismissal.		No cases

Norway :

5	6	7	8
Yes.	Yes	No.	Rare (conciliation board.)

Portugal

5	6	7	8
Yes	Yes compensation : 15 to 45 days per year of employment	No	Very rare

Sweden :

5	6	7	8
Yes.	Yes.	No	Fraud

Suisse :

5	6	7	8
Yes..	Yes. Abusive dismissal.	Not, without contract	Abusive dismissal of mothers Paid leave for a father even he did not have sole responsibility for his child .

Taiwan :

5	6	7	8
Yes.	Yes	Entreprise – more than 30 employees.	Not known

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5	6	7	8
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Conclusions :

- In all the countries, which answered the questionnaire, exists the possibility of obtaining time off from work if a child or a family member is ill or has an accident exists.
- The conditions for this time off are very different, but generally it is of short duration.
- The rights to the social security system are maintained and the worker is protected from the abusive dismissal.
- The rare cases before courts do not make it possible to make conclusions.
- Switzerland has different regulations.
- Japan answered for a particular category of workers only.

Finale conclusion.

Legislation give a good protection for maternity but the reality is often different and creates discrimination for women.

Translation:

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