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France

Employment and Labour Law

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This country-specific Q&A provides an overview of employment and labour laws and regulations applicable in France.

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France: Employment and Labour Law

1. Does an employer need a reason to lawfully terminate an employment relationship? If so, state what reasons are lawful in your jurisdiction?

A permanent employment contract may be terminated at any time, either by the employee or the employer, or by mutual agreement. While the employee does not have to specify the reason for resigning, the employer is obliged to provide a reason for terminating the employment contract. In France, employees cannot be dismissed unless there is a real and serious reason for doing so.

Solely termination of the employment contract during the trial period does not have to be justified. In the event of a dispute, however, the employer must be able to demonstrate that the reason for the termination was indeed linked to the employee's skills, which were deemed inadequate in relation to the requirements of the position held. Failure to do so could result in the termination of the trial period being deemed unfair.

There are two main categories of dismissal. Dismissal on personal grounds is justified by a reason inherent to the employee. This reason may be disciplinary (due to a fault committed by the employee in the execution of the employment contract) or non-disciplinary, such as, for example, professional inadequacy (i.e. inability of the employee to fulfil his/her duties, incompetence).

Dismissal for economic reasons, which is not related to the employee, results from the elimination or transformation of a job or a change, refused by the employee, to an essential element of the employment contract as a result of economic difficulties, a reorganisation of the company necessary to safeguard its competitiveness or the cessation of the company's activity. A law passed in June 2016 defined the precise criteria (decrease in orders, decrease in sales revenue) allowing the company to resort to economic dismissal. If the company does not belong to a group, the economic reason is assessed at company level. On the other hand, if the company is part of a group, the economic reason is assessed at the level of the sector of activity common to that company and the other companies in the group to which it belongs, established on national territory.

From experience, the strength of the grounds for dismissal is a crucial element, because it can be easily contested by the employee before the labour courts and may lead to severe penalties for the employer. However, on this point, a scale of compensation for dismissal without real and serious cause was established in 2017. From that time, the amount of damages assessed by the court must fall inside of the upper and lower limits established based on the employee's length of service and the size of the company.

2. What, if any, additional considerations apply if large numbers of dismissals (redundancies) are planned? How many employees need to be affected for the additional considerations to apply?

Not all mass redundancies for economic reasons follow the same procedure. It all depends on the size of the company and the number of employees to be made redundant. In particular, if the company has at least 50 employees and the proposed redundancy involves at least 10 employees over a period of 30 consecutive days, a job protection plan must be set up.

The aim of this plan is to avoid redundancies or at least to limit their number. To this end, it must contain a redeployment plan designed to facilitate the redeployment of employees affected by redundancies, in particular older employees and employees with social characteristics that make their professional reintegration particularly difficult. The redeployment obligation applies to jobs available in the company or other companies in the group to which it belongs, located in France. The jobs concerned are those in the same professional category as the one occupied by the employee or equivalent jobs with equivalent remuneration. Subject to the employee's agreement, redeployment may be to a lower category job.

The Social and Economic Committee (i.e. the employee representative body) must be consulted on the proposed reorganisation and the resulting job protection plan. The committee must issue two separate opinions within the time limits laid down by law. If no opinion is made within these time limits, it is deemed to have been consulted. It should be noted, however, that the committee is only consulted on the reorganisation project and not on the subsequent redundancy project (i.e. job protection plan) when the content of the latter has been defined by a collective agreement signed with the trade unions present

in the company.

It should also be noted that the opinions provided by the Social and Economic Committee are not binding, the company remains free to implement its projects even in the event of an unfavourable opinion.

Lastly, the labour authorities must be kept informed throughout the process of setting up the job protection plan, so that they can make any comments they may have on the accompanying social measures it contains, to which the company is obliged to respond. Once finalised, the job protection plan must be submitted to the authorities for approval before being implemented.

3. What, if any, additional considerations apply if a worker's employment is terminated in the context of a business sale?

When a business is sold, the employment contracts of employees in force on the date of the sale are automatically transferred to the buyer as the new employer and continue under the same conditions as before. This means that employees retain all the rights attached to their employment contract, such as seniority, qualifications, salary, etc. Beforehand, the transferor and transferee must inform and consult their respective social and economic committees about the proposed sale.

The transferor may not make redundancies on economic grounds at the time of the transfer. Furthermore, the new employer may not refuse to take on the transferred employees, failing which it is liable to pay them damages for dismissal without real and serious cause.

However, since a law of 8 August 2016, the transferor may, under certain conditions, make one or more employees redundant on economic grounds before the transfer takes place, even if these employees may subsequently be rehired by the new employer. This option was initially reserved for companies with at least 1,000 employees or those belonging to a group with at least 1,000 employees, before being extended in 2017 to companies with at least 50 employees.

4. Do employees need to have a minimum period of service in order to benefit from termination rights? If so, what is the length of the service requirement?

To be entitled to severance pay, an employee must in principle have at least 8 months' uninterrupted service with the same employer. This seniority is assessed on the date on which the employer sends the letter of dismissal. However, a collective bargaining agreement, a company agreement, or even the employment contract or company practice may provide for a shorter length of service, which will apply if it is more favourable to the employee.

The length of service required to qualify for severance pay should not be confused with the length of service required to calculate this pay. This calculation must include the period of notice, even if the employee is exempt from work during this period.

5. What, if any, is the minimum notice period to terminate employment? Are there any categories of employee who typically have a contractual notice entitlement in excess of the minimum period?

In the event of termination of a permanent employment contract, a notice period must be observed by both the employer and the employee. In the event of dismissal, if the employee has less than 6 months' seniority, the period of notice depends on the company's collective bargaining agreement or on the practices in the profession or in the geographical area where the company is located. For seniority between 6 months and 2 years, the notice period is 1 month. If seniority is at least 2 years, the notice period is 2 months. These periods apply subject to more favourable provisions in the company's collective bargaining agreement or in the employment contract.

6. Is it possible to make a payment to a worker to end the employment relationship instead of giving notice?

The dismissed employee may, regardless of the reason for dismissal, be exempted by the employer to fulfill the notice period. In this case, the employee's monthly pay will be paid normally until the end of the notice period.

7. Can an employer require a worker to be on garden leave, that is, continue to employ and pay a worker during their notice period but require them to stay at home and not participate in any work?

The employer can exempt the employee from fulfilling the notice period by authorising him/her not to work during this period. The employer's decision to waive the notice period is binding on the employee, who is not required to

give his/her consent. However, this exemption does not bring forward the date of termination of the employment contract, which remains fixed at the end of the notice period. The employer is required to pay the employee compensatory allowance in lieu of notice equal to the salary he/she would have received if he/she had kept working during the notice period.

Similarly, during this period, the employee retains his/her benefits in kind (telephone, company car, etc.). These will be returned to the employer at the end of the notice period, even if the employee has not worked.

Compensatory allowance in lieu of notice is not payable in the event of dismissal for serious or gross misconduct, in which case the dismissal takes effect on the date of notification of the termination.

If the employee is exempt from fulfilling the notice period, he or she may be hired by another company without waiting for the end of the contract, which remains fixed at the end of the notice period.

8. Does an employer have to follow a prescribed procedure to achieve an effective termination of the employment relationship? If yes, describe the requirements of that procedure or procedures.

Whatever the reason for dismissal, the employer must follow a number of steps that are common in all situations. First of all, the employer must invite the employee to a preliminary meeting by registered letter with acknowledgement of receipt or by hand-delivered letter. This letter must contain a number of compulsory details (purpose of the meeting, date, time and place of the meeting). Above all, it must specify that the employee may be assisted by an employee representative or by an external advisor from a specific list. The letter must be sent or delivered at least 5 working days before the meeting takes place.

The purpose of the preliminary meeting is to explain to the employee the reasons for the proposed dismissal. This meeting is an opportunity for the employee to defend himself/herself and to comment on the reasons given by the employer.

Following the meeting, notice of dismissal is sent by registered letter with acknowledgement of receipt. This notification may not be made less than two working days after the meeting. In the event of disciplinary dismissal (for misconduct), the letter of dismissal must be sent within a maximum period of one month from the date of the preliminary meeting. Different deadlines apply to dismissals for economic reasons.

At the end of the notice period, whether worked or not, the employment contract comes to an end and the employer must provide the employee with the documents required at the end of the contract (certificate of employment, full and final settlement, certificate for the unemployment agency, etc.)

Where the dismissal concerns an employee who benefits from specific protection (employee representatives, union delegates, etc.), the employer must obtain prior authorisation from the Labour Inspectorate before being able to dismiss. Any dismissal without authorisation is null and void.

The letter of dismissal must be drafted with the utmost care. It must state the precise reason(s) for dismissal. These reasons are binding on the employer, who will not be able to invoke other reasons in the event of a subsequent dispute.

The reasons for dismissal may be clarified at the employee's request within 15 days of receipt of the letter of dismissal. The employer then has 15 days to provide the details requested. Once again, the employer may not state new reasons that were not included in the initial letter.

9. If the employer does not follow any prescribed procedure as described in response to question 8, what are the consequences for the employer?

If the required procedure is not followed, the employer may be sentenced to damages up to one month's salary.

10. How, if at all, are collective agreements relevant to the termination of employment?

Collective agreements may contain specific provisions about the dismissal procedure, particularly in the event of disciplinary dismissal, offering employees additional guarantees. Some collective agreements, for example, provide for prior referral to an in-house disciplinary board before which the employee must be heard.

Failure by the employer to comply with these provisions is severely punished, because in the event of a dispute, the dismissal will not be considered as irregular in form but automatically deemed to be without real or serious cause. It does not matter whether the reason for dismissal itself is perfectly well-founded.

Many collective agreements also provide for a severance

pay that is more favourable than the statutory severance pay provided for in the French Labour Code. This indemnity corresponds to the minimum amount that must be paid to the employee. The employer must therefore make both calculations and choose the one that is most advantageous for the employee.

As a result, an employer considering making an employee dismissed should systematically check the provisions on the subject in the collective agreement applicable to the company. In this respect, it should be noted that the vast majority of sectors of activity and related companies have their own collective agreement.

11. Does the employer have to obtain the permission of or inform a third party (e.g local labour authorities or court) before being able to validly terminate the employment relationship? If yes, what are the sanctions for breach of this requirement?

Employees exercising staff representation functions within the company (i.e. members of the social and economic committee, trade union delegates) benefit from special protection against dismissal. In addition to the usual procedure (convening to a preliminary meeting, holding the preliminary meeting), the employer must request authorisation to dismiss the protected employee from the labour inspector responsible for the establishment where the employee is employed. In addition, in companies with at least 50 employees, the employer must consult the social and economic committee (SEC) on the proposed dismissal. The employee is interviewed by the SEC, which must give its opinion. The minutes of the SEC meeting must be attached to the application for authorisation to dismiss sent to the labour inspectorate.

The latter conducts an adversarial investigation. The employee and employer are interviewed individually. The labour inspectorate checks that the dismissal procedure is in order, that there is a valid reason for the dismissal, that there is no link between the dismissal and the employee's mandate, and that there is no reason of general interest (e.g. maintaining staff representation within the company). The decision is made within 2 months of receipt of the application for authorisation to dismiss. After this deadline, and in the absence of a decision, the authorisation for dismissal is deemed to have been rejected.

If a protected employee is dismissed without authorisation, the dismissal is null and void. The employee may then ask to be reinstated in the company, in addition to receiving a lump-sum payment corresponding to the wages he/she would have received between his/her dismissal and his/her reinstatement. If he/she does not request reinstatement, he/she may then claim compensation for breach of his/her protective status. In addition, the usual severance pay and compensation for unlawful dismissal equal to at least 6 months' salary must be paid.

12. What protection from discrimination or harassment are workers entitled to in respect of the termination of employment?

No employee may be dismissed on discriminatory grounds, for example because of his or her state of health. Such dismissal is null and void, and the employee may request reinstatement and payment of compensation for the loss suffered, equal to the wages he or she was deprived of before reinstatement. If the employee does not request reinstatement, or if reinstatement is impossible, the court will award compensation, payable by the employer, which may not be less than the employee's salary for the previous 6 months.

No employee may be penalised for reporting in good faith harassment of which he or she has been a victim or which he or she has witnessed. If an employer terminates an employee's contract of employment because the employee has reported harassment, the dismissal is null and void. It is irrelevant whether the harassment complained of is subsequently found not to be harassment. On the other hand, protection is excluded if the report was made in bad faith, which can only result from the employee's knowledge of the falsity of the harassment he or she is reporting.

13. What are the possible consequences for the employer if a worker has suffered discrimination or harassment in the context of termination of employment?

If the dismissal is declared null and void, the employee may request reinstatement and the payment of a sum equal to the wages he or she was deprived of before reinstatement as compensation for the loss suffered. If the employee does not request reinstatement, or if reinstatement is impossible, the court will award compensation, payable by the employer, which may not be less than the employee's salary for the previous 6 months.

14. Are any categories of worker (for example, fixed-term workers or workers on family leave) entitled to specific protection, other than protection from discrimination or harassment, on the termination of employment?

There are many forms of protection against dismissal, of varying degrees of strength, for example in the event of maternity, adoption or a work accident.

Pregnant women, in the same way as parents adopting a child, benefit from absolute protection against dismissal during their maternity leave and the paid leave taken immediately afterwards. This protection is relative before the date of their maternity leave and during the 10 weeks following the end of their maternity leave, since the employer may dismiss them if he can prove serious misconduct or if it is impossible to maintain their employment contract for a reason unrelated to their pregnancy.

The second parent also benefits from protection against dismissal for a period of 10 weeks following the birth of the child. This protection is also relative, and the employee may still be dismissed in the event of serious misconduct or if it is impossible to maintain the employment contract for a reason unrelated to the arrival of the child.

Similarly, employers may not dismiss an employee who has lost a child under the age of 25 or a person under the age of 25 for whom they have effective and permanent responsibility. This protection applies for 13 weeks following the death of the child, unless the employer can prove gross misconduct or that it was impossible to maintain the employment contract for a reason unrelated to the death of the child. A new protection has also recently been introduced, in 2023, with the introduction of parental presence leave for employees whose child is seriously ill, since they cannot be dismissed during their leave except under the aforementioned exceptions.

Lastly, employers may not dismiss employees who suffer an accident at work or an occupational illness while they are off work, except in the event of serious misconduct or if it is impossible for the employer to maintain their employment contract for a reason unrelated to the accident or illness.

In any event, termination of an employee's employment contract in disregard of the protection rules mentioned above is null and void and entitles the employee to reinstatement in the company and payment of damages.

15. Are workers who have made disclosures in the public interest (whistleblowers) entitled to any special protection from termination of employment?

Whistleblowers may not be subject to any reprisals in connection with their whistleblowing. The French Labour Code establishes a principle of non-discrimination in their favour. In particular, no employee may be dismissed for reporting or disclosing information. To qualify for whistleblower status, employees must meet certain requirements. They must act in good faith and without direct financial consideration. Case law states that employees who report acts of moral harassment can only be dismissed for this reason if their bad faith is established. Bad faith can only result from the employee's knowledge of the falsity of the facts he or she is reporting.

16. In the event of financial difficulties, can an employer lawfully terminate an employee's contract of employment and offer re-engagement on new less favourable terms?

Employers may dismiss employees for economic reasons, particularly if they are experiencing economic difficulties characterised by a significant fall in sales or orders over a given period compared with the same period in the previous year. However, the employer may not terminate the employee's contract of employment and offer re-engagement on less favourable terms.

That said, the employer may consider, for one of the economic reasons set out in article L.1233-3 of the French Labour Code, modifying an essential element of the employee's employment contract, such as his/her remuneration, in a way that is less favourable to him/her, while respecting minimum wages. To do this, the employer must propose the change to the employee by registered letter with acknowledgement of receipt, informing the employee of the economic reasons for the proposal, the new terms and conditions of employment and any accompanying measures. The employee has 1 month from receipt of the letter to accept or reject the change. This period is reduced to 15 days if the company is in receivership or liquidation. If the employee does not answer within the period mentioned above, the employee is deemed to have accepted the proposed change. If the employee refuses the proposed change to his or her employment contract, the employer may either abandon the project or consider a redundancy procedure for economic reasons if the legal conditions are met.

In addition, if the employer is forced to change its business model or to take the necessary measures to preserve jobs, particularly as a result of economic difficulties, it may conclude a collective performance agreement enabling it to adjust its employees' working conditions. To do so, it must negotiate and conclude an agreement with the employee representatives. The agreement may, in particular, adjust working hours or modify employees' pay, in a way that is less favourable to them and within the limits of minimum wages. The terms of the agreement thus take precedence over the terms of the employee's employment contract.

However, the employee may refuse the change to his/her employment contract resulting from the application of the agreement, within a period of 1 month from the date on which he/she was informed by the employer of the existence and content of the agreement. The employer may then initiate dismissal proceedings for real and serious cause within 2 months.

17. What, if any, risks are associated with the use of artificial intelligence in an employer's recruitment or termination decisions? Have any court or tribunal claims been brought regarding an employer's use of AI or automated decision-making in the termination process?

The use of AI in recruitment or termination decisions could present risks of discrimination, if the algorithms used by the company unintentionally reproduce existing biases and prejudices based on grounds prohibited by law.

Furthermore, the use of AI presents risks of breaches of the personal data of applicants and employees. If employers fail to comply with their obligations in terms of personal data (data processing, respect for privacy, employee consent to data collection), which stem in part from the General Data Protection Regulation (GDPR), they are exposed to claims and possible financial penalties.

To date, to our knowledge, there has been no precedent-setting court ruling on the use of AI by employers as part of a redundancy procedure.

18. What financial compensation is required under law or custom to terminate the employment relationship? How is such compensation calculated?

Dismissed employees are entitled to severance pay. The employee must be bound by a permanent employment contract and in principle have at least 8 months' uninterrupted service with the company. He/she must not have been dismissed for serious or gross misconduct.

Whatever the reason for dismissal, for personal or economic grounds, the French Labour Code sets the amount of severance pay at 1/4 month per year of seniority. This compensation is increased for employees with more than 10 years' seniority. It is then equal to 1/4 of a month per year of seniority for the first 10 years, then 1/3 for each year of seniority beyond the 10th year. Severance pay is calculated per year of seniority in the company (including the notice period), taking into account the months of service completed beyond the full years. Incomplete years are taken into account on a pro rata basis according to the number of months of presence, at the rate of 1/12 for each month of service. Only full months should be counted.

The salary to be taken into account for the calculation of the severance pay is, according to the formula most advantageous to the employee, either 1/12 of the gross remuneration for the last 12 months prior to the dismissal (i.e. the date of notification of the dismissal and not the end of the notice period), or 1/3 of the last 3 months. The salary to be taken into account includes, in addition to the basic salary, all annual or exceptional bonuses and gratuities paid to the employee during the period. In the event of less than one year's seniority, the average monthly salary for the months before notification of dismissal should be taken into account.

The collective bargaining agreement applicable to the company may stipulate terms calculating severance pay, which will apply if they are more favourable to the employee. This may also be the case for a company agreement or even the employment contract, which may sometimes contain other provisions.

Severance pay is exempt from social contributions and income tax within certain limits.

19. Can an employer reach agreement with a worker on the termination of employment in which the employee validly waives his rights in return for a payment? If yes, in what form, should the agreement be documented? Describe any limitations that apply, including in respect of

non-disclosure or confidentiality clauses.

Employers and employees are perfectly entitled to negotiate a settlement agreement following dismissal. The purpose of such an agreement is to definitively end or prevent a dispute relating to the termination of the employment contract. Indeed, in most cases, the employee will challenge the grounds for dismissal.

The employee undertakes not to contest his/her dismissal before the labour courts, by means of a clause waiving any right of appeal, in return for payment of a sum of money (settlement indemnity). For the employer, the settlement agreement is a way of securing the termination of the employment contract by avoiding any legal action. For the employee, it is a way of obtaining more than the severance pay to which he/she is entitled.

A settlement agreement is not in itself a means of terminating an employment contract; its sole purpose is to settle the financial consequences of dismissal. It can therefore only be concluded after the dismissal has been notified. The amount of settlement indemnity must not be derisory. It must, of course, be higher than the legal severance payments (i.e. severance pay calculated on the basis of the Labour Code or the applicable collective agreement, compensation in lieu of notice).

The settlement agreement, that must be written, contains a confidentiality clause prohibiting the parties from disclosing the settlement or reporting on it to any third party, with the sole exception of the administrative authorities (tax, social security) or a court, should they so request. This confidentiality clause also covers all information relating to the employer's business, of which the employee may have become aware during the performance of his/her duties. The settlement agreement also contains a non-disparagement clause prohibiting the parties from making any statements or comments likely to damage their image or harm their interests.

20. Is it possible to restrict a worker from working for competitors after the termination of employment? If yes, describe any relevant requirements or limitations.

It is possible to include a non-competition clause in an employment contract to prevent an employee from carrying out, after termination of the contract, an activity competing with that of his/her employer, either on his/her own behalf or on behalf of another employer. Such a clause is only justified if it aims to protect the legitimate interests of the company. It must therefore be inserted into the employment contract with great care. For example, the clause is justified for a managerial employee occupying strategic functions within the company. It will not be justified for an employee with no particular qualifications, such as, for example, a window washer. It must also include a time limit (usually one year) and a geographical limit. Lastly, it must provide for the payment of financial compensation to the employee during the period in which competition is prohibited. Any clause that does not comply with these cumulative conditions is null and void.

Some collective agreements contain specific provisions on the subject, which the employer should refer to when drafting the non-competition clause. The non-competition clause applies regardless of how the employment contract is terminated (resignation, dismissal, termination by mutual agreement). The employer may waive the benefit of the non-competition clause. This waiver must be made expressly and in writing in accordance with the terms and conditions set out in the employment contract.

21. Can an employer require a worker to keep information relating to the employer confidential after the termination of employment?

To prevent strategic information from reaching their competitors, companies can bind their employees by a confidentiality clause in the employment contract. This confidentiality obligation is maintained after the termination of the contract.

The confidentiality clause prohibits the employee from divulging certain information communicated to him/her during his/her work. This confidentiality applies to people outside the company, but it may also apply internally if the employee's position gives him/her access to sensitive information about the company's staff (for example, employees in charge of human resources).

22. Are employers obliged to provide references to new employers if these are requested? If so, what information must the reference include?

Employers are not obliged to respond to a request for a reference from a new employer. Some employers may even prefer to refuse, for fear of possible legal action if the reference given is negative. If the former employer agrees to respond to the request, certain rules must be observed. They must remain objective and factual and not divulge any personal information about the candidate. They must not give a negative assessment without professional justification. If there is any doubt about the

relevance of information to be shared, the former employer should be cautious.

23. What, in your opinion, are the most common difficulties faced by employers in your jurisdiction when terminating employment and how do you consider employers can mitigate these?

When considering dismissing an employee, the employer is faced with the unavoidable exercise of justifying the dismissal, which must be included in the letter of dismissal. French law does not permit “at-will” employment which allows the employer to terminate the employment relationship at any time without cause as long as it is not for an illegal reason. The reason for dismissal must be real and serious. It must be materially verifiable, i.e. it must be based on concrete evidence. Professional inadequacy must be supported by documents illustrating the incompetence of which the employee is accused. Lack of motivation or insufficient involvement in the work must be proven by documents showing, for example, the delay in handing in work, incomplete work, mistakes made, and so on

Annual appraisal interviews are essential in this respect, as they provide an opportunity to take stock over the course of a year of the work carried out, the difficulties encountered and the improvements required and then provide useful evidence in support of dismissal for professional incompetence.

Experience shows, however, that employers do not always attach sufficient importance to this essential stage, or that the related documentation (written appraisal support) is inadequate or does not correspond to the alleged reason for inadequacy. However, appraisal interview reports are essential for establishing a history of the shortcomings observed.

Employers who have given inadequate reasons for dismissal or who do not have sufficient evidence will find it very difficult to have their dismissal approved by the labour courts.

24. Are any legal changes planned that are likely to impact the way employers in your jurisdiction approach termination of employment? If so, please describe what impact you foresee from such changes and how employers can prepare for them?

No legal changes are currently envisaged that could have an impact on the termination of employment contracts by the employer. In fact, the last major reform in this area was introduced by a law in June 2008 with the termination by mutual consent of an employment contract. This option has since been considerably expanded. It allows the employer and the employee to come to a common agreement on the conditions for terminating the contract binding them. For the employer, termination does not have to be justified. For the employee, the termination gives the right to the payment of specific compensation and the payment of unemployment benefits. Unless by agreement between the parties, termination by mutual consent of an employment contract does not require advanced notice.

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