

The Labor and Social Security Rights of Health Professionals in a Time of a Pandemic

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ABSTRACT

This article proposes to present an overview of the labor and social security rights of health professionals, before and during the pandemic, notably with regard to compliance with health and safety standards and their consequences in the employment contract.

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Received: January 06, 2022; **Accepted:** January 12, 2022; **Published:** January 15, 2022

Keywords: Health worker, labor rights, social security rights, pandemic

Introduction

All the inhabitants of the Earth are currently experiencing a serious health crisis of unimaginable proportions, spread across all continents, as a result of the coronavirus disease COVID-19 (SARS-Cov-2), which had its first records made at the end of December 2019, in the city of Wuhan, China.

The Ministry of Health defines COVID-19 and Coronavirus, respectively, on its website, as follows:

COVID-19 is a disease caused by the SARS-CoV-2 coronavirus, which has a clinical picture that ranges from asymptomatic infections to severe respiratory conditions. According to the World Health Organization (WHO), the majority of patients with COVID-19 (about 80%) may be asymptomatic and about 20% of cases may require hospital care due to respiratory difficulties, and of these cases approximately 5% may need support for the treatment of respiratory failure (ventilatory support). "Coronavirus is a family of viruses that cause respiratory infections.

The new coronavirus agent was discovered on 12/31/19 after cases reported in China. Causes the disease called coronavirus (COVID-19)

Faced with a globalized world, the virus has spread exponentially around the planet, reaching millions of people in different countries, regardless of age, sex, ethnicity, creed, social class or academic background. On January 30, 2020, the World Health Organization declared a Public Health Emergency of International Concern by the World Health Organization (WHO) as a result of COVID-19.

In February 2020, Law No. 13,979/2020 established measures to deal with the Public Health Emergency of International Importance, with a view to protecting the community. On March 11, 2020, the World Health Organization announced the Pandemic

framework and brought guidelines for social isolation and/or quarantine, especially for people who fall into risk groups (over 60 years old, immunodeficient people and/or with chronic or serious diseases, pregnant and lactating women.

In the country, states and municipalities have adopted restrictive measures for circulation.

In the midst of this war against the virus, it is undisputed that health professionals who are on the front line in combating and controlling the spread of Covid-19, day in and day out, bravely facing the routines that involve caring for people with signs and symptoms of the disease.

And it is about the new routine that this article will deal with, notably about the measures that directly affect the labor and social security rights of health professionals. Health professionals since the beginning of this Covid 19 pandemic have evolved with stress and shaken quality of life, which will be addressed in the next item, to better understand the category.

Hours Worked X Stress - Quality of Life at Work

Job satisfaction influences the physical and mental health of workers and there is a direct correlation that also affects their social and family life. For nurses, job satisfaction comprises factors that are related not only to the physical structure that makes up their work environment, but also to those that originate from their relationships and their own feelings. Studies on feelings of satisfaction and dissatisfaction of nurses working in the hospital environment showed that the workplace, remuneration, interaction, autonomy, recognition, personal development and liking what they do are factors that influence these feelings (SIQUEIRA and KURCKGANT, 2012).

In the sense of Mininel, Baptista and Felli (2011), for nursing workers, the strain caused by situations and social relationships present at work has an impact on the quality of life, where psychological violence, in its various forms, predominates in mental health. of the individual, compromising their rationality,

social well-being and physical health.

The topic is current, but there is still no consensus in the literature on what Quality of Working Life (QWL) is, but, according to Schmidt and Dantas (2012, p.702), the term is generally used, most of the time, to describe “several basic dimensions of the task and other dimensions not directly dependent on the task, but capable of producing motivation and satisfaction at different levels, aimed, above all, at improving the quality of services and productivity”. Basically, the QWL has different approaches and is associated with job satisfaction, remuneration, autonomy, professional status and effective participation of the worker within the institution in which he works.

As already seen in the studies presented here, the nursing staff is predominantly composed of female professionals. These professionals, by nature, already have a double shift, as they usually take care of the house, children, husband and still have to work outside the home. The stress level of these professionals can be much higher than that of male workers. There is a need for more male professionals, since there are procedures that require physical preparation, so the exaggerated effort can generate low back and shoulder pain.

In the research carried out by Schmidt and Dantas (2012), they found that 69% of nurses worked up to 40 hours a week and 51.6% worked more than 40 hours a week. As for double shifts, 42.4% have a double job and 53.3% work at night. The research aimed to determine the quality of life at work and work-related musculoskeletal disorders among health professionals. The authors concluded that there is an association of Quality of Working Life, due to the highly stressful environment and full of predisposing factors to the presence of musculoskeletal disorders among its workers, so there must be an awareness among administrators, managers, supervisors, about working conditions to which these professionals are subjected, having to intervene with strategies to promote the well-being and health of these professionals.

In view of the studies presented, it is observed that the pathologies presented by health professionals are closely linked to the work routine, and to the excessive workload, which drastically reduces the professional's motivation and their quality of life. The individual who lives tired, physically and mentally exhausted, will hardly be able to have a common social and family life, as he will always be unwilling for extra-work activities, and cannot participate in meetings between friends or family members, and with that his social-family life will be ruined. And the question that remains is what will be the pension landscape and the rights of these professionals in time of a pandemic, which will be addressed in the next item.

The Labor and Social Security Overview of Health Professionals

The Federal Constitution guarantees in its article 7, in items XXII, XXIII, XXIV, respectively, “workers have the right to reduce the risks inherent to work, through occupational health and safety standards”, “additional remuneration for the painful, unhealthy or dangerous activities, in the form of the law” and “retirement”.

Health workers are those who are active in unhealthy work environments, in strenuous working hours, exposed to risks, dedicating their lives to caring for others.

These workers receive unhealthy and hazardous work premiums, according to their exposure and risk, the provision for which is

covered by labor legislation. And they serve to compensate for the possibility of damage to the life or health of those who carry out their activities in unhealthy and dangerous environments.

Article 189 of the Consolidation of Labor Laws provides: “Unhealthy activities or operations will be considered those that, by their nature, conditions or working methods, expose employees to agents harmful to health, above the tolerance limits established by reason of the nature and intensity of the agent and the time of exposure to its effects.”

NR 15, of Decree 3,214/78, deals with unhealthy activities or operations. In item 15.1, unhealthy activities or operations are those that are above the tolerance limit for agents, noise, heat, ionizing radiation and chemical agents of NR-15.

The activities listed in Annexes 6 (hyperbaric conditions), 13 (chemical agents) and 14 (biological agents) of NR-15 Those that were proven through an inspection report at the work place (made by a Safety Engineer or Occupational Doctor) for non-ionizing radiation, vibrations, cold and humidity agents.

In item 15,1,5 regarding the tolerance limit, concentration or maximum or minimum intensity related to the nature and time of exposure to the agent, which will not cause damage to the worker's health during his working life.

In item 15.2, unhealthy work additional are identified as follows.

- 40% of the region's minimum wage – Maximum grade
- 20% of the region's minimum wage - Middle grade
- 10% of the region's minimum wage – Minimum degree.

In the course of providing services, in the event of an incapacitating illness, the worker is entitled to paid leave, in the first fifteen days, and from the sixteenth day onwards he is entitled to qualify for the corresponding incapacity benefit, if the incapacity is temporary, it will be due common sickness allowance, with indefinite disability, disability retirement will be due.

If the social security leave is due to an accident at work, the professional will be entitled to accidental sickness benefit, guaranteeing temporary job stability, guaranteeing land deposits and counting the time for his retirement.

Having fulfilled the requirements, these professionals are entitled to special retirement, if they worked the entire period in an unhealthy or dangerous environment, or the conversion of the special time into common, if they have not worked all the time exposed to risks. Special retirement is provided for in article 57 of Law 8.213/91, in verbis:

“The special retirement will be due, once the grace period required in this Law has been fulfilled, to the insured person who has worked subject to special conditions that harm health or physical integrity, for 15 (fifteen), 20 (twenty) or 25 (twenty-five) years.) years, as provided by law.”

From this point on, the impacts felt by health workers in times of a pandemic in Brazil will be analyzed. And to substantiate this matter, we need to study how the evolution of security in Brazil and the legislation took place.

The evolution of Work Safety in Brazil and current legislation

In Brazil, the first legal provision against accidents at work appeared only after the end of the First World War, in 1919, through safety regulations in the railway sector, as there were no large industries at the time.

Twenty-two years later, in 1941, the Brazilian Association for Accident Prevention – A.B.P.A – was founded in the city of Rio de Janeiro.

Three years after, in 1944, the consolidation of labor laws – C.LT – appears, based on the Carta Del Lavoro of Italian origin, which in its chapter V of title II dealt with Occupational Safety and Hygiene.

In compliance with a recommendation by the ILO- on November 10 of the same year, Decree-Law n. employees and employees, for discussion and proposals for occupational safety and hygiene measures.

On June 19, 1945 – Ordinance No. 229 of the National Labor Department gives the newly created CIPA its first regulation, On November 27, 1953-Eight years after Ordinance No. 155 of the Ministry of Industry and Commerce reorganizes and better defines the functioning of CIPA, On February 26, 1967 – Decree law n. 229 profoundly modifies the text of Chapter V of Title II of the CLT, which provided for matters of Safety and Hygiene at Work, In accordance with Ordinance No. 3214, based on this provision, the great and definitive step of the Brazilian Legislation in relation to the matter is taken, with the creation, on 06/08/78 of this ordinance of the Ministry of Labor, the Regulatory Norms or NRs , Regulatory Standard 1, in its General Provisions, it is up to item 1.7 as the employer, to comply with and enforce the legal provisions; prepare Work Orders, Keep workers informed, Allow inspection.

In item 1.8 thereof, the employee is responsible for complying with the legal provisions. Use the PPE provided by the employer, undergo the medical examinations provided for in the Regulatory Norms, collaborate with the company or hospital institution in the application of the Regulatory Norms.

In item 4.1, private and public institutions, public bodies of direct and indirect administration and of the Legislative and Judiciary powers that have employees governed by the Consolidation of Labor Laws - CLT will mandatorily maintain Specialized Services in Safety Engineering and Occupational Medicine, with the purpose is to promote health and protect the integrity of the worker in the workplace. And according to the Provisional Measure of 927, we will study the Work Journey and the Individual Protection groups.

Provisional Measure 927

From the workday

Provisional Measure 927, of March 22, 2020, specifically deals with professionals working in health facilities, in articles 26 and 27, below:

Art. 26. During the state of public calamity referred to in article 1, health establishments are allowed, by individual written agreement, even for unhealthy activities and for the twelve-hour working day for thirty-six hours of rest:

I – extend the working day, pursuant to the provisions of article 61 of the Consolidation of Labor Laws, approved by Decree-Law No. 5,452, of 1943; and II – adopt overtime schedules between the

thirteenth and twenty-fourth hour of the inter-working day break, without any administrative penalty, guaranteed weekly paid rest in accordance with the provisions of article 67 of the Consolidation of Labor Laws, approved by Decree- Law No. 5,452, of 1943.

Art. 27. The overtime computed as a result of the adoption of the measures provided for in items I and II of the caput of art. 26 may be compensated, within eighteen months, counting from the date of termination of the state of public calamity, through an hour bank or paid as overtime.

Faced with a pandemic of such proportions, adjustments are necessary to face it, but such adjustments must be made from the perspective of the worker.

The work environment of these professionals, from the declaration of a state of public calamity that occurs until December of this year , does not only involve exposure to the usual risks inherent in the profession, as they are faced with the constant fear of being contaminated, and becoming vectors of transmission. for your family members. Not forgetting the threat of transmission on public transport they use to travel between home and work.

Another point that deserves to be highlighted is the direct contact with the isolation of patients who are hospitalized, who cannot receive visits and, many times, do not have time to have the last contact with their relatives, and they die, without have the opportunity to be veiled, in the way we knew before the pandemic. This drama is experienced by health professionals on a daily basis, especially considering the high number of daily deaths in the country.

Health professionals are in the midst of this suffering, that is, between the isolation of patients anxious for healing and the return to social life and the reception of family members who seek information about the health status of their loved ones.

In some cases, patients were able to communicate through cell phones with their families, with the intervention of professionals who made their own cell phones available for this link, bringing relief, even if momentarily.

Social isolation has also generated a lot of anguish, anxiety and depression in the general population. For three months, since March 2020, the recommendation is for the population to stay at home and not have contact with other people, except for those who live in the same residence.

Health professionals are in a similar situation, many cannot even see their relatives and relatives, given the imminent possibility of contamination and transmission. Some are staying in hotels or hostels in order to minimize the risk of bringing the virus into their homes.

Suggesting or requesting that these professionals exceed their working hours, in the context of a pandemic, goes against measures of physical and psychological preservation of workers in this sector, given that they are exposed to risks of contact with pathogens, long working hours, psychological suffering, fatigue , professional exhaustion, lack of professionals, stigma and psychological and even physical violence. When this happens, the worker often finds himself in an internal conflict between what is offered in extra money or rest in the hour bank modality. He also thinks about the situation in which the colleague will find himself working more

and with a reduced team, which will decrease if he stays. And there is even a greater appreciation for those who manage to continue and double or increase their workload compared to those who cannot, increasing the risk of psychological stress and/or fatigue.

Personal Protective Equipment

According to NR-6, Personal Protective Equipment (PPE) is considered to be any device or product for individual use used by the worker, designed to protect against risks likely to threaten safety and health at work.

According to NR-6, referring to the item of Personal Protective Equipment, in its item 6.3 the company is obliged to provide employees free of charge, PPE appropriate to the risk. In perfect condition and working order, under the following circumstances:

- Whenever general measures do not offer complete protection,
- While collective protection measures are being implemented,
- To meet emergency situations.

Personal protective equipment is part of the reality of these professionals in their routines. The obligation to provide and supervise the use of PPE's is regulated and mandatory, under penalty of fines, otherwise let's see:

Article 166, of the CLT, says: "The company is obliged to provide employees, free of charge, adequate to the risk and in perfect state of conservation and functioning (...)"

The proper use of PPE is the worker's duty (Article 158 of the CLT) and the company's obligation (Articles 157 and 166 of the CLT).

In the midst of a health crisis, compliance with occupational health and safety standards must be constant in the workday of professionals in the area.

The most constant international recommendations in countries that have structured themselves to face the pandemic have been, primarily, the protection of health workers, with the proper supply of personal protective equipment.

In the country, Recommendation no. 20 of the National Health Council (CNS) and Technical Opinion No. 128/2020, of April 7, 2020, which present eighteen measures to protect the physical and mental health of workers in the sector in the face of the covid-19 pandemic. .

Of the measures proposed in the Technical Opinion, regarding the supply of PPE, the following stand out:

"Local health services and systems must ensure risk-appropriate Personal Protective Equipment (PPE) in each type of health service and reprogram actions and the physical environment, as well as properly train workers with guidelines on prevention and control strategies infection to use when infection with the new coronavirus is suspected. "

Failure to provide personal protective equipment implies exposing the lives of these workers to imminent risk, increasing the likelihood of contamination and transmission of the virus. This breach of contract implies a criminal case, as provided for in article 132 of the Penal Code: "exposing the life or health of another to direct and imminent danger."

It is known that the Brazilian health system was not prepared for the crisis situation. There is a lack of personal protective equipment around the world. Missing tests. There is a lack of beds and a lack of professionals. But caution and care for the human being cannot

be lacking. And the care with care professionals has effects for the whole society.

Requiring the provision of services, without observing the rules of health and safety at work, is punishable, even in the criminal sphere (articles 132 and 268 of the CP) as well as attracts the objective civil liability of the agent, present in the sole paragraph of the article 927 of the Civil Code.

Failure to supply the adequate quantity, with the quality provided for by law, forces the professional to remain with the same PPE throughout the working day, which is usually 12 hours, and because there is no other to change, the worker is prevented from meet their physiological needs, which violates the principle of human dignity, contrary to the provisions of article 5, item X, of the Constitution, which determines that: "the intimacy, private life, honor and image of people are inviolable, guaranteed the right to compensation for material or moral damage resulting from its violation."

Regarding the suspension of administrative requirements in safety and health at work, the Provisional Measure, in article 16, contrary to the recommendations of health bodies, suspends the mandatory training of current employees, as follows:

Art. 16. During the state of public calamity referred to in art. 1, the obligation to carry out periodic and occasional training of current employees, provided for in regulatory standards for safety and health at work, is suspended.

This flexibility is unreasonable, in the midst of a pandemic, when efforts need to focus on serving an entire population in the public and private health system, with a view to maintaining human lives.

Everyone is exposed to an unknown virus, without a vaccine, without specific treatment, even more so, especially health professionals, who need constant training to deal with clients who arrive daily at emergency rooms or Intensive Care Units in hospitals. to the vulnerable group? They are the health professionals that we treat in the following item.

From the Group of Vulnerable Workers

Health professionals in the risk group, that is, individuals aged sixty years or older, immunodeficient, with preexisting chronic or serious diseases, such as cardiovascular, respiratory and metabolic diseases, pregnant and lactating women, should, as far as possible, be removed from the line of forward, with the exception of the hypothesis of an imperative need for the provision of services, in the perspective of preserving public health.

In this sense, Ordinance No. 428, of March 19, 2020, of the Ministry of Health, provides for protective measures to deal with the public health emergency of international importance arising from the coronavirus (covid-19) within the units of the Ministry of Health. Ministry of Health in the Federal District and in the States.

As coping measures, article 2 provides for the need for remote work, for individuals aged sixty or older, immunodeficient, with preexisting chronic or serious diseases, such as cardiovascular, respiratory and metabolic diseases, pregnant and lactating women.

Continuing with the measures of confrontation, article 3, brings the possibility of adopting measures of prevention, caution and reduction of transmissibility, as follows: (i) adoption of a working

day regime in alternating shifts of relay and remote work; (ii) distribution of individuals in the work environment, avoiding concentration and proximity; (iii) the flexibility of the start and end times of the workday, including the break between workdays, maintaining the daily and weekly workload established by law for each case.

Article 12 provides that the provisions of articles 2 and 11 apply, where applicable, to outsourced workers and other employees of the Ministry of Health units. Certainly, the differentiated treatment of those belonging to the risk group may trigger interpellations from other professionals, who do not belong to risk groups.

Faced with these questions, the principle of equality must be invoked, which presupposes that people in different situations are treated unequally, since giving equal treatment to the parties means treating equals equally and unequals unequally. And this way there will be the unfolding in the employment contract that we will see next.

Developments in the employment contract

On the Monday following the publication of MP 927, some employers had already adopted some of the measures planned for the confrontation. Workers and employers began the period of knowledge and adaptation to the new rules, in principle exceptional, arising from the aforementioned Provisional Measure. Many questions arose as soon as the measure was issued, and gradually each employer sought to adjust their routines, using measures to maintain jobs.

In the context of health workers, who work in services of an essential nature, the conflicts were due to the lack or insufficiency of personal protective equipment, the absence of tests, the permanence of workers from the risk group in the work environment, illness and removal of workers, due to excessive working hours, absences from work that burden active professionals, the impossibility of taking a vacation period, the non-granting of intra-day break and inter-day break, among others.

It is known that the employment contract is a synallagmatic contract, bringing rights and obligations to both parties, the worker has the primary obligation to provide his services and the employer has the obligation to pay wages for the work performed.

It should be noted here that there are no answers to all questions, given that the pandemic came and created several situations, which will need to be analyzed on a case-by-case basis, observing fundamental rights.

The lack or insufficiency of supply of personal protective equipment may give rise to the application of just cause to the employer (article 483, of the CLT), for non-compliance with contractual obligations, as well as for exposing the worker's life to risks or considerable harm. Emphasizing that the supply of PPE must be adequate to the degree of risk that professionals are exposed to.

On the other hand, just cause may be applied to the worker, in the cases, for example, of non-use or inappropriate use of PPE, deliberately; for leaving the job; for unjustified absence; among others (article 482 of the CLT).

It is important to emphasize that, in the event of conflicts, the best way is to have a frank conversation between employer and employee, in an attempt to equalize interests in the face of situations that arise, in a timely manner.

This does not mean that everything is allowed!

In the case of excesses, the situation can be brought to the attention of the Judiciary, given the inexorability of jurisdiction, provided for in Article 5, Item XXXV, of the Federal Constitution.

And in the face of practices that aim to distort, prevent or defraud the application of the precepts contained in the Consolidation of Labor Laws, there is the possibility of raising article 9 of the CLT, in comparison with the guiding principles of Labor Law. In addition, there will be a breakdown in pension.

The developments in the social security scope

What if this professional gets sick and becomes unable to work?

The first fifteen days are the responsibility of the employer and the worker is on paid leave. If this time is not enough for recovery, and exceeds fifteen days, the professional will be removed from their activities and sent to the National Institute of Social Security, to qualify for the disability benefit due in the event.

From the sixteenth day, the employment contract will be suspended, that is, without the provision of services and without salary. And it is in this moment of vulnerability that the worker has been relegated to his own fate. And if the professional contracts the covid-19, the CAT can be issued?

The social security leave of the health professional resulting from covid-19 can be recognized as an occupational disease, as the presumption is that it has been contaminated in the work environment.

Article 29 of MP 927, provided that cases of contamination by the coronavirus would not be considered occupational, except in cases where the causal link was proven.

The Federal Supreme Court decided, by majority, in the judgment of the preliminary injunction in seven direct actions of unconstitutionality proposed against the MP, to suspend the effectiveness of article 29 of MP 927.

Part of the doctrine understands that it is not an accident at work, as it is affiliated with the understanding that the hypothesis of endemic disease (presence of a disease or other ailment that occurs constantly or regularly, in a certain region or population) would encompass the pandemic (disease that extends to many countries, or that affects many people in a geographic area), based on article 20, item II, of Law n° 8.213/91.

If the accident is recognized (Article 19 of Law No. 8,213/91), the worker will be guaranteed temporary stability, for a minimum period of 12 months, with the maintenance of his employment contract at the company, after the cessation of the assistance. accidental illness (article 118, of Law No. 8,213/91); the continuity of land deposits (article 15, §5, of Law No. 8,036/90); no need to comply with the grace period (Article 26, Item II, of Law No. 8,036/90) and the period in which they remain on leave will be considered as contribution time (Article 60, IX, of Decree No. 3048/99).

Not being recognized as an accident at work, one of the consequences can be that the disabled sick worker is not entitled to the benefit, citing as an example, the newly hired, without previous contributions to the ongoing contract, will not have access to the social security benefit, due to lack of compliance of grace period, you will be without benefit and without salary. And what will be the reflexes of covid-19 on the physical and mental health of health professionals after the pandemic?

Health professionals deal daily with uncertainty, fear, insecurity, anxiety. At the end of a day's work, these warriors are physically and mentally tired, as they live with constant anguish.

I explain. They live with the illness caused by the covid-19 of co-workers, with the news of deaths all the time, live with the excess of work, in the face of the lack of colleagues (those who got sick), live with the concern for their families and live with the suffering of patients and family members of hospitalized patients.

Tough times, challenging situations, a war waged against an invisible enemy. Antagonistic emotions, on the one hand the suffering and on the other hand the gratification of saving lives every day!

It is not known what the impact will be on the physical and mental health of the warriors who are on the front lines. Little or nothing is known about this disease. Many scientists around the world are incessantly looking for a vaccine against this virus.

It is undisputed that the illness of these professionals will have direct effects on the social security system, of a solidary nature, in the face of leaves due to incapacity (including sick pay and disability retirement) and deaths; as well as in view of the increase in attendances in the public health network (SUS). Anyway, many are and will be the pension consequences resulting from the pandemic in the country. In this way we come to a conclusion.

Conclusion

Health workers must carry out their activities in a democratic, free, peaceful and safe manner. They are the main actors in the fight against Coronavirus 19. Every society has a duty of care for these professionals, especially in the current times, in which hopes for a more fraternal, less unequal society are renewed.

The measures presented in MP 927, notably with regard to the health and safety of workers in the work environment, are of an exceptional order and will last until December 31, 2020, however, they will have consequences beyond (and it is not known until when) the pandemic.

The role of companies and/or hospital institutions is to value the general well-being of the community, promoting a better quality of life, ensuring the health of their employees and reducing occupational risks. In this way, the social function of the company is carried out fully and satisfactorily for all.

The care with the health of those who take care of everyone, must be promoted by the whole society, as well as it must be encouraged through public policies, aiming at better working conditions for these professionals, so that a quality service is provided for the population.

Finally, there are many challenges that present themselves in this period of crisis, in which the whole society will need to walk hand in hand, in search of a fairer society, adopting paradigm shifts, starting with the exercise of conscience of each one, to recognize the that really matters in life. To the warriors on the front line: the whole of society depends on the strength of the work you carry out, not losing hope that it will pass.

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