



FAMILY AND MEDICAL LEAVE ACT OF 1993



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Employee Packet

DATE:
TO:
FROM: Division of Human Resources
SUBJECT: Family and Medical Leave

Attached is information on the *Family and Medical Leave Act of 1993*. Employees are eligible if they have worked for the state in a salaried position at least one year or for Virginia Tech in a wage position for at least one year and have worked 1,250 hours during the immediate prior 12 months. Various medical conditions are appropriate for *Family and Medical Leave*, such as, heart conditions, pregnancy, childbirth, miscarriage, back problems, appendicitis, emphysema or continuing treatment for chronic or long-term health conditions.

Some conditions which would not be appropriate under *the Family and Medical Leave Act (FMLA)* are short-term conditions for which treatment and recovery are brief or the care of a child for illnesses such as colds or flu.

If *FMLA* leave is appropriate for you, please complete the *FMLA Leave Request Form P7*. Also complete the top portion of the front page of the *Certification of Health Care Provider Form P7A*. Include the employee's name and department, or if applicable, the patient's name and relationship to the employee. The attending physician must complete the remainder.

It is the responsibility of the employee to submit the completed forms to Human Resources within 15 days of the time when the employee made the supervisor aware that he/she needs to be on extended medical leave which may qualify under the *Family and Medical Leave Act*. Completed forms should be returned to:

Virginia Tech
Division of Human Resources (0318)
Attention: Leave Programs
300 Turner Street NW
Suite 2300, North End Center
Blacksburg, Virginia 24061

If you should have questions, please call 540-231-9331.

c: *FMLA Leave Request Form P7*
Certification of Health Care Provider for Employee's Serious Health Condition
Employee Responsibilities and Information Related to FMLA
Summary of the Family and Medical Leave Act of 1993

If accessing this memo from the Human Resources website www.hr.vt.edu the above documents will be downloaded also.

This information must be given to the employee who is being placed on Family and Medical Leave or who has requested Family Medical Leave

SUMMARY OF THE FAMILY AND MEDICAL LEAVE ACT OF 1993

The *Family and Medical Leave Act of 1993* (FMLA) was enacted on August, 1993. It requires public agencies to provide up to twelve weeks (60 work days; 480 work hours) of unpaid, job-protected leave per calendar year to *eligible* employees for certain family and medical reasons. Employees are eligible if they have worked for the state in a salaried position at least one year or for Virginia Tech in a wage position for at least one year *and* the employee has worked 1,250 hours during the immediate prior 12 months. Leave for part-time employees is given proportionate to the percent of time worked.

REASONS FOR TAKING LEAVE

An employer must grant unpaid leave to eligible employees for one or more of the following reasons:

- ▶ a serious health condition that makes the employee unable to perform their job;
- ▶ the care of the employee's child (birth, adoption or foster care; or
- ▶ the care of the employee's spouse, parent, step-parent, child, step-child who has a serious health condition.
- ▶ Certain types of paid leave may be substituted for unpaid leave at the option of the employee or the employer.

ADVANCE NOTICE AND MEDICAL CERTIFICATION

- ▶ The employee should provide 30 days' advance notice and medical certification.
- ▶ An employer may also require medical certification if the employee is unable to return from leave because of a serious health condition.
- ▶ An employer may require second or third opinions (at the employer's expense) and may require a release to return to work.

INTERMITTENT OR REDUCED LEAVE

- ▶ An employee may take intermittent leave or may work a reduced leave schedule to reduce the usual number of hours per day or work week.
- ▶ Subject to the approval of the healthcare provider, when planning medical treatment, the employee should consult with the employer and make a reasonable effort to schedule the leave so as not to unduly disrupt department operations.

- ▶ Intermittent or reduced scheduled leave to care for a newborn child, adoption or foster care is subject to department head approval.

JOB AND BENEFITS PROTECTION

- ▶ Upon return from FMLA leave, employees must be returned to their original or equivalent position with equivalent pay, benefits and other employment terms.
- ▶ The use of FMLA leave cannot result in the loss of any employment benefit accrued prior to the start of the employee's leave.
- ▶ The use of unpaid FMLA leave cannot affect the exempt status of bonafide executive, administration and professional employees under the *Fair Labor Standards Act*.
- ▶ If the employee is unable to or fails to return to work when FMLA is exhausted, the employer may terminate the employee.
- ▶ The employer must maintain the employee's medical insurance coverage under any *group health plan* for the duration of the FMLA leave. However, the employee is responsible to pay for the employee portion of the coverage.
- ▶ When the employee uses paid annual or sick leave under the provisions of FMLA, the payroll deductions of the employee portion of the premium continues.
- ▶ If the employee fails to return to work from FMLA, the employer may recover premiums paid to maintain the employee's health coverage.

FMLA DOES NOT

- ▶ affect any federal or state laws prohibiting discrimination;
- ▶ supersede any state or local law which provides greater family or medical leave rights;
- ▶ discourage employers from adopting policies more generous than required by FMLA.

UNLAWFUL ACTS BY EMPLOYERS

FMLA makes it unlawful for an employer to:

- ▶ interfere with, restrain, or deny the exercise of any right provided under FMLA;
- ▶ discharge or discriminate against any person for opposing any practice made unlawful; and
- ▶ discharge or discriminate against any person because of involvement in any proceeding under or related to FMLA.

MISCELLANEOUS PROVISIONS

- ▶ ***Special rules apply to employees of local education agencies.***
- ▶ Employers must post a notice approved by the Secretary of Labor explaining rights and responsibilities under FMLA. Any employer who willfully violates this requirement may be subject to a fine of up to \$100 for each separate offense.

ENFORCEMENT

- ▶ The *Secretary of Labor* is authorized to investigate and attempt to resolve complaints of violations and may bring an action against an employer in any federal or state court of law.
- ▶ The enforcement procedures of FMLA parallel those of the federal *Fair Labor Standards Act*. The FMLA will be enforced by the Department of Labor's *Wage and Hour Division*.
- ▶ An eligible employee may bring a civil action against an employer for violations.
- ▶ Employers who act in good faith and have reasonable grounds to believe their actions did not violate FMLA may have any damages reduced to actual damages at the discretion of a judge.

For additional information contact the Leave Team at hrlleave@vt.edu.

* Staff employees are eligible for 12 weeks per calendar year and faculty are eligible for 12 weeks per "rolling" year – measured forward from the date the employee is approved for FMLA.

FAMILY AND MEDICAL LEAVE ACT (FMLA) EMPLOYEE/SUPERVISOR RESPONSIBILITIES AND INFORMATION

- ▶ At the time the employee makes the supervisor aware of a request for leave for a reason that might qualify under *FMLA*, the supervisor should give the employee the application and related information.
- ▶ The *FMLA Request Form P7* may be completed by the employee, family member, or the supervisor.
- ▶ It is the responsibility of the employee, *not the supervisor*, to submit the (original) completed *Certification of Health Provider Form P7A* (by the attending physician) to Human Resources within fifteen (15) calendar days; copies may be retained by the employee and supervisor.
- ▶ Failure to submit the appropriate paperwork to Human Resources within the 15 calendar day time frame may result in the denial of *FMLA* leave.
- ▶ The supervisor has an option of putting the employee on *Provisional FMLA* leave to avert the use of more leave than necessary from work. Please call Human Resources for additional information.
- ▶ The employee must have worked for the state of Virginia (or Virginia Tech, if on an hourly wage basis) for at least 12 months and must have worked 1,250 hours during the previous 12 months. Leave for part-time employees is given proportionate to the percent of time worked.

HUMAN RESOURCES WILL:

1. determine the 1,250 hours eligibility requirement,
 2. calculate the available leave,
 3. verify the certification of the required documentation by the attending physician,
 4. send written confirmation to the employee and supervisor or department head documenting the approval or / disapproval of the request for *FMLA* leave with effective date and any current accrued leave balances.
- ▶ Follow up medical documentation may be requested of the employee **only** by Human Resources during the time the employee is on leave.
 - ▶ If an *intermittent* or *reduced work* schedule is requested, it must be discussed and developed by the employee and the supervisor, maintaining the plan at the department.
An intermittent or reduced schedule of leave for birth, adoption or foster care of a child is subject to approval by the department head. Contact Human Resources for assistance.

- ▶ If the employee is on unpaid approved *FMLA* leave, it will be his/her responsibility to pay the employee portion of the monthly health care premium to the Bursar's Office.
- ▶ If the employee does not return to work after 12 weeks of leave, Virginia Tech may then seek to recover the health insurance contribution for the period of leave-without-pay.
- ▶ At the end of the *FMLA* leave, the employee will be reinstated to the original or equivalent position.
- ▶ For the birth, adoption or foster care placement of a child, the parents may only use twelve weeks of combined leave. They are not each entitled to twelve weeks of *FMLA* leave.

REPORTING LEAVE AND LEAVE USAGE

- ▶ The employee has the option of using applicable leave balances while on approved *FMLA* leave. The hours will be deducted from the employee's *FMLA* leave annual entitlement.
- ▶ An eligible employee may take up to 12 weeks of unpaid leave or use applicable leave balances (annual, sick or compensatory).
- ▶ If an employee is found ineligible for *FMLA* leave, standard leave policies will apply.
- ▶ If the employee is unavailable to complete their *Leave Entry*, the leave representative for the department should enter leave in the leave system on their behalf.
- ▶ If the employee will be on leave-without-pay for more than 14 consecutive calendar days, the department must complete a *Notice of Employee Leave of Absence Without Pay Form P4B* indicating *Leave-Without Pay/FMLA* leave.
- ▶ Under the *Standard Sick Leave Plan*, employees may use up to 48 hours of *Family Sick Leave* per calendar year with no more than 24 hours per event for the illness of an **immediate family member** (parents, step-parents, spouse, children, step-children).

STAFF EMPLOYEES USE OF ACCRUED LEAVE WHILE ON FAMILY AND MEDICAL LEAVE

The Serious Health Condition of the Employee

Under the *Standard Sick Leave Plan* the employee may use sick leave then other applicable leave balances (annual, compensatory or overtime) may be used or the employee may go on leave-without-pay.

Under the *Virginia Sickness and Disability Plan*, the employee must contact The Reed Group, the administrator of the plan at 1-877-928-7021.

Caring for an Immediate Family Member

(parents, step-parents, spouse, children, step-children)

Under the *Standard Sick Leave Plan*, the employee may use up to 33 percent of accrued sick leave balances available at the beginning of the leave effective date, then family sick leave balances may be used for the first three days. Next, applicable leave balances may be used or the employee may go on leave-without-pay.

Under the *Virginia Sickness and Disability Plan*, the employee may use up to 33 percent of personal sick leave balances available at the beginning of the leave effective date, then family personal leave balances. Next, applicable leave balances may be used or the employee may go on leave-without-pay.

Birth of a Child

Under the *Standard Sick Leave Plan*, **the mother may use** sick leave until the doctor releases her to return to work, then up to 33 percent of accrued sick leave balance she has available on the effective date of leave. Next, applicable leave balances may be used or the employee may go on leave-without-pay.

Under the *Virginia Sickness and Disability Plan*, the mother must contact The Reed Group, the administrator of the plan at 1-877-928-7021 **and** Human Resources at 540-231-9331.

The father may use up to 33 percent of sick, or personal sick leave balances he has available at the beginning of the effective date of leave. Next, applicable leave balances may be used or the employee may go on leave-without-pay.

Under the *Virginia Sickness and Disability Plan*, the father must contact Human Resources at 540-231-9331.

Adoption or Placement of a Foster Child

The parent(s) may use up to 33 percent of accrued sick leave, or personal sick leave balances they have available at the beginning of the leave effective date. Next, applicable leave balances may be used or the employee may go on leave-without-pay.

If both parents are Virginia Tech employees, their FMLA entitlement is a total of 12 weeks combined.

FACULTY MEMBERS USE OF ACCRUED LEAVE WHILE ON FAMILY AND MEDICAL LEAVE

The Serious Health Condition of the Employee

Under the *Faculty Sick Leave Policy* the employee may use sick leave, then other applicable leave balances may be used or the employee may go on leave-without-pay.

Under the *Virginia Sickness and Disability Plan*, the employee must contact The Reed Group, the administrator of the plan at 1-877-928-7021.

Caring for an Immediate Family Member

(parents, step-parents, spouse, children, step-children)

Under the *Faculty Sick Leave Policy*, a regular salaried faculty member caring for a family member may use family sick leave balances. Next applicable leave balances may be applied or the employee may go on leave-without-pay.

Under the *Virginia Sickness and Disability Plan*, the employee may use up to 33 percent of personal sick leave balances available at the beginning of the leave effective date, then family personal leave balances. Next, applicable leave balances may be used or the employee may go on leave-without-pay.

Birth of a Child

Under the *Faculty Sick Leave Policy*, a regular salaried faculty member, **the mother may use** sick leave until the doctor releases her to return to work, then 10 days faculty family leave may be used. Next applicable leave balances may be used or the employee may go on leave-without-pay.

The father may use 10 days of faculty family leave. Next applicable leave balances may be used or the employee may go on leave-without-pay.

Under the *Virginia Sickness and Disability Plan*, effective January 1, 1999, **the mother** must contact The Reed Group, the administrator of the plan at 1-877-928-7021 **and** Human Resources at 540-231-9331. The **father must** contact Human Resources at 540-231-9331.

Adoption or Placement of a Foster Child

Under the *Faculty Sick Leave Policy*, the parent(s) may use 10 days of faculty family leave. Next applicable leave balances may be used, or they may go on leave-without-pay.

If both parents are Virginia Tech employees, their FMLA entitlement is a total of 12 weeks combined.

VIRGINIA TECH FAMILY AND MEDICAL LEAVE (FMLA) REQUEST FORM P7

| | | |
|--|--|---|
| Name: | | Date: |
| Employee ID Number: | Department: | |
| Mailing Address (home): | | Home Phone: |
| Supervisor's Name: | | Phone: |
| <input type="checkbox"/> Staff <input type="checkbox"/> Faculty | <input type="checkbox"/> Salaried Appointment <input type="checkbox"/> Salaried Appointment | <input type="checkbox"/> Wage Appointment <input type="checkbox"/> Normal Work Hours Per Week: |
| Virginia Tech Hire Date: | State Hire Date, if Different: | |
| Anticipated Begin Date of Leave: | Expected Return to Work Date: | |
| Has the Employee Taken Other <i>FMLA</i> leave During this Calendar Year? | | |
| Yes | No | If Yes, How Many Work Days? |
| Explain Reason for Request: | | |
| Schedule of Leave Request: | | |
| <input type="checkbox"/> For entire period requested above <input type="checkbox"/> Intermittent (a few hours a day, for a few days a week or on an as needed basis) <input type="checkbox"/> Reduced Schedule (reduction in hours worked per work week or work day) | | |
| <input type="checkbox"/> Retain Leave Balances During Leave | | <input type="checkbox"/> Use Applicable Leave Balances |

Request is initiated by: Employee Supervisor Other (family member)

Signature of Person Initiating Request:

| | |
|------------|-------|
| Signature: | Date: |
|------------|-------|

Please return to: Human Resources, 300 Turner Street NW
 Suite 2300, North End Center
 Blacksburg, VA 24061

Note: After making the supervisor aware that the employee needs leave for a reason that might qualify FMLA Leave, it is the responsibility of the employee to obtain from the physician the completed *Certification of Health Provider Form P7A* and return to the Division of Human Resources 15 days.

**Certification of Health Care Provider for
Employee's Serious Health Condition**
(Family and Medical Leave Act)

U.S. Department of Labor
Wage and Hour Division



DO NOT SEND COMPLETED FORM TO THE DEPARTMENT OF LABOR; RETURN TO THE
PATIENT Expires: 8/31/2021

OMB Control Number: 1235-0003

SECTION I: For Completion by the EMPLOYER

INSTRUCTIONS to the EMPLOYER: The Family and Medical Leave Act (FMLA) provides that an employer may require an employee seeking FMLA protections because of a need for leave due to a serious health condition to submit a medical certification issued by the employee's health care provider. Please complete Section I before giving this form to your employee. Your response is voluntary. While you are not required to use this form, you may not ask the employee to provide more information than allowed under the FMLA regulations, 29 C.F.R. §§ 825.306-825.308. Employers must generally maintain records and documents relating to medical certifications, recertifications, or medical histories of employees created for FMLA purposes as confidential medical records in separate files/records from the usual personnel files and in accordance with 29 C.F.R. § 1630.14(c)(1), if the Americans with Disabilities Act applies, and in accordance with 29 C.F.R. § 1635.9, if the Genetic Information Nondiscrimination Act applies.

Employer name and contact: _____

Employee's job title: _____ Regular work schedule: _____

Employee's essential job functions: _____

Check if job description is attached: _____

SECTION II: For Completion by the EMPLOYEE

INSTRUCTIONS to the EMPLOYEE: Please complete Section II before giving this form to your medical provider. The FMLA permits an employer to require that you submit a timely, complete, and sufficient medical certification to support a request for FMLA leave due to your own serious health condition. If requested by your employer, your response is required to obtain or retain the benefit of FMLA protections. 29 U.S.C. §§ 2613, 2614(c)(3). Failure to provide a complete and sufficient medical certification may result in a denial of your FMLA request. 29 C.F.R. § 825.313. Your employer must give you at least 15 calendar days to return this form. 29 C.F.R. § 825.305(b).

Your name: _____
First Middle Last

SECTION III: For Completion by the HEALTH CARE PROVIDER

INSTRUCTIONS to the HEALTH CARE PROVIDER: Your patient has requested leave under the FMLA. Answer, fully and completely, all applicable parts. Several questions seek a response as to the frequency or duration of a condition, treatment, etc. Your answer should be your best estimate based upon your medical knowledge, experience, and examination of the patient. Be as specific as you can; terms such as "lifetime," "unknown," or "indeterminate" may not be sufficient to determine FMLA coverage. Limit your responses to the condition for which the employee is seeking leave. Do not provide information about genetic tests, as defined in 29 C.F.R. § 1635.3(f), genetic services, as defined in 29 C.F.R. § 1635.3(e), or the manifestation of disease or disorder in the employee's family members, 29 C.F.R. § 1635.3(b). Please be sure to sign the form on the last page.

Provider's name and business address: _____

Type of practice / Medical specialty: _____

Telephone: () _____ Fax: () _____

PART A: MEDICAL FACTS

1. Approximate date condition commenced: _____

Probable duration of condition: _____

Mark below as applicable:

Was the patient admitted for an overnight stay in a hospital, hospice, or residential medical care facility?

No Yes. If so, dates of admission:

Date(s) you treated the patient for condition:

Will the patient need to have treatment visits at least twice per year due to the condition? No Yes

Was medication, other than over-the-counter medication, prescribed? No Yes

Was the patient referred to other health care provider(s) for evaluation or treatment (e.g., physical therapist)?

No Yes. If so, state the nature of such treatments and expected duration of treatment:

2. Is the medical condition pregnancy? No Yes. If so, expected delivery date: _____

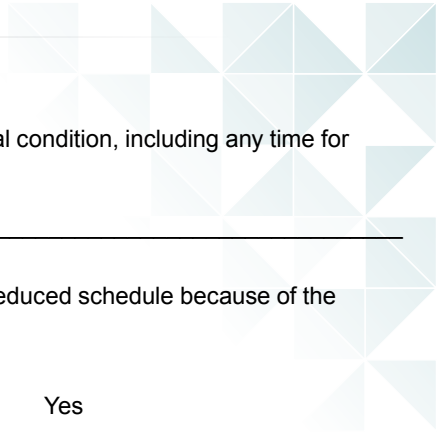
3. Use the information provided by the employer in Section I to answer this question. If the employer fails to provide a list of the employee's essential functions or a job description, answer these questions based upon the employee's own description of his/her job functions.

Is the employee unable to perform any of his/her job functions due to the condition: No Yes

If so, identify the job functions the employee is unable to perform:

4. Describe other relevant medical facts, if any, related to the condition for which the employee seeks leave (such medical facts may include symptoms, diagnosis, or any regimen of continuing treatment such as the use of specialized equipment):





PART B: AMOUNT OF LEAVE NEEDED

5. Will the employee be incapacitated for a single continuous period of time due to his/her medical condition, including any time for treatment and recovery? No Yes

If so, estimate the beginning and ending dates for the period of incapacity: _____

6. Will the employee need to attend follow-up treatment appointments or work part-time or on a reduced schedule because of the employee's medical condition? No Yes

If so, are the treatments or the reduced number of hours of work medically necessary? No Yes

Estimate treatment schedule, if any, including the dates of any scheduled appointments and the time required for each appointment, including any recovery period:

Estimate the part-time or reduced work schedule the employee needs, if any:

_____ hour(s) per day; _____ days per week from _____ through _____

7. Will the condition cause episodic flare-ups periodically preventing the employee from performing his/her job functions? No
Yes

Is it medically necessary for the employee to be absent from work during the flare-ups?

No Yes. . If so, explain:

Based upon the patient's medical history and your knowledge of the medical condition, estimate the frequency of flare-ups and the duration of related incapacity that the patient may have over the next 6 months (e.g., 1 episode every 3 months lasting 1-2 days):

Frequency: _____ times per _____ week(s) _____ month(s)

Duration: _____ hours or _____ day(s) per episode

ADDITIONAL INFORMATION: IDENTIFY QUESTION NUMBER WITH YOUR ADDITIONAL ANSWER.





Signature of Health Care Provider

Date

PAPERWORK REDUCTION ACT NOTICE AND PUBLIC BURDEN STATEMENT

If submitted, it is mandatory for employers to retain a copy of this disclosure in their records for three years. 29 U.S.C. § 2616; 29 C.F.R. § 825.500. Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number. The Department of Labor estimates that it will take an average of 20 minutes for respondents to complete this collection of information, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding this burden estimate or any other aspect of this collection information, including suggestions for reducing this burden, send them to the Administrator, Wage and Hour Division, U.S. Department of Labor, Room S-3502, 200 Constitution Ave., NW, Washington, DC 20210. **DO NOT SEND COMPLETED FORM TO THE DEPARTMENT OF LABOR; RETURN TO THE PATIENT.**



DEFINITIONS FOR PURPOSES OF FMLA

1. **Incapacity:** the inability to work, attend school or perform other regular daily activities due to the serious health condition and treatment for or recovery from.
2. **Treatment:** includes examinations to determine if a serious health condition exists and evaluations of the condition but does not include routine physical and eye or dental examinations.
3. **A Regimen of Continuing Treatment:** includes, for example, a course of prescription medication (e.g., an antibiotic) or therapy requiring special equipment to resolve or alleviate the health condition. A regimen of treatment does not include the taking of over-the-counter medications, such as aspirin or antihistamines that can be initiated without a visit to a health care provider.
4. **Serious Health Condition:** an illness, injury, impairment or physical or mental condition involving hospital care, absence plus treatment, pregnancy, a chronic condition requiring treatment or permanent/long term conditions requiring supervision, as described above.
5. **Hospital Care:** Inpatient care (an overnight stay) in a hospital, hospice or residential medical care facility, including any period of *incapacity* or subsequent treatment in connection with or consequent to such inpatient care.
6. **Absence Plus Treatment:** A period of *incapacity* of more than three consecutive calendar days (including any subsequent treatment or period of incapacity relating to the same condition) which also involves:
 - ▶ Treatment two or more times by a health care provider, by a nurse or physician's assistant under direct supervision of a health care provider or by a provider of health care services (e.g., physical therapist) under orders of or on referral by a health care provider; or
 - ▶ Treatment by a health care provider on at least one occasion which results in a *regimen of continuing treatment* under the supervision of health care provider.
7. **Pregnancy:** A period of *incapacity* due to pregnancy or for prenatal care
8. **Chronic Conditions Requiring Treatment:** A chronic condition which:
 - ▶ Requires periodic visits for treatment by a health care provider or by a nurse or physicians assistant under direct supervision of a health care provider;
 - ▶ Continues over an extended period of time (including recurring episodes of a single underlying condition);
 - ▶ May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.).
9. **Permanent/Long Term Conditions Requiring Supervision:**
 - ▶ A period of *incapacity* which is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving, active treatment by a health care provider. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease.



Division of
HUMAN RESOURCES

North End Center, Suite 2300
300 Turner Street NW
Blacksburg, VA 24061

540-231-9331
www.hr.vt.edu
hrleave@vt.edu

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