



The Future of Equal Pay:

Compliance, Trends, and Global Perspectives

March 2025

Seyfarth Shaw LLP

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Seyfarth Thought Leadership: Four Resources



Agenda

- 01** State Pay Transparency Legislation & Pay Data Reporting
- 02** Global Landscape Outside the U.S.
- 03** Equal Pay in the US: Executive Orders, Trends & Key Considerations
- 04** Strategic Considerations for 2025 & Beyond



US - State Pay Transparency

Overview of Current U.S. Pay Disclosure Requirements

On Job Posting

- California
- Colorado
- Hawaii
- Illinois
- Maryland
- Massachusetts (*effective 10/29/25*)
- Minnesota
- New Jersey (*effective 6/1/25*) (and Jersey City)
- New York State (and Albany County, Ithaca, NYC)
- Vermont (*effective 7/1/25*)
- Washington
- Washington, DC

Upon Request

- Ohio (Cincinnati & Toledo)

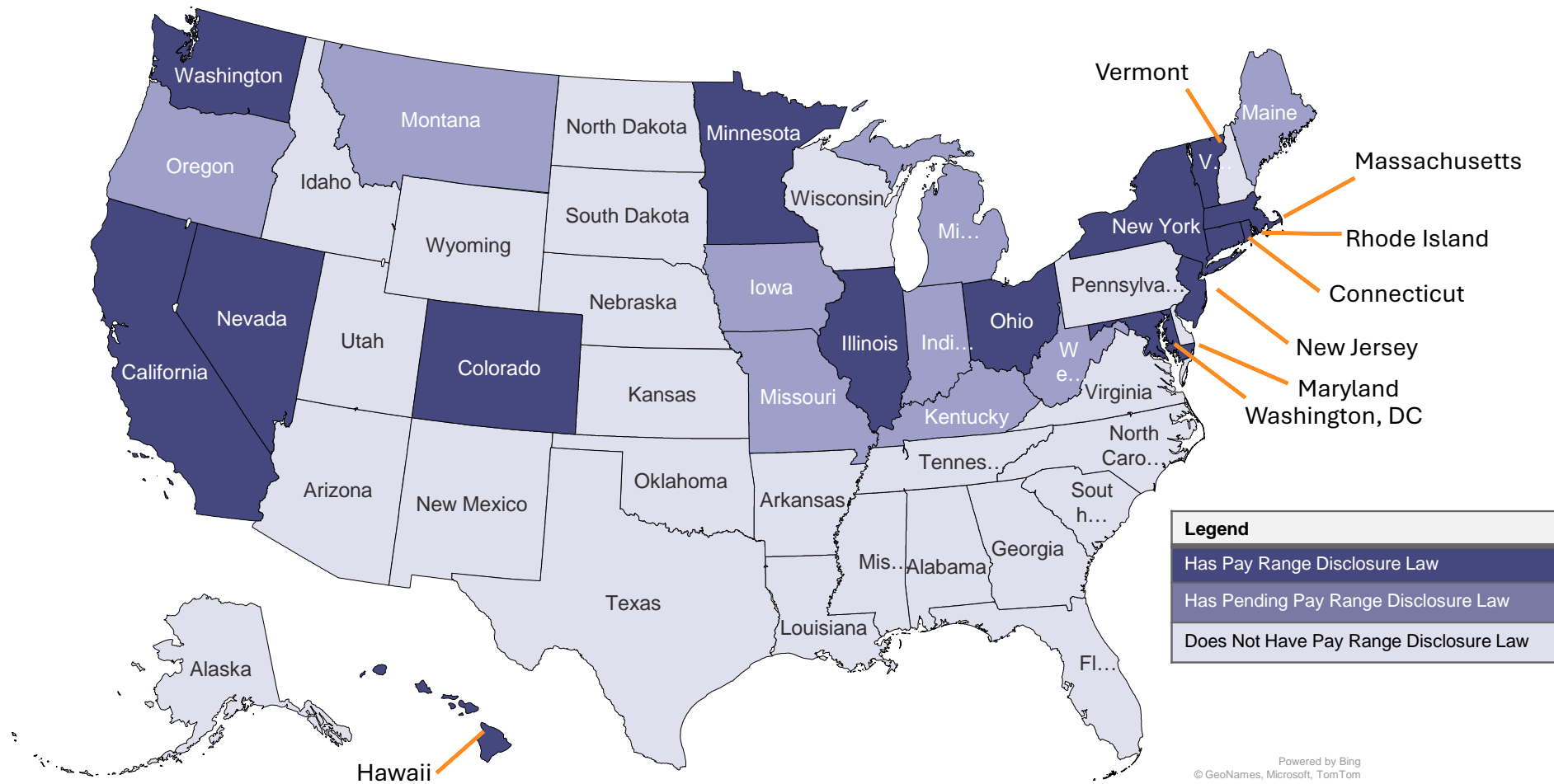
Other

- Connecticut
- Nevada
- Rhode Island

Jurisdictions with Pay Range Disclosure Requirements



Jurisdictions with Pending Pay Transparency Legislation



Recent Nationwide Trends and Differences

Jurisdiction-specific ranges

Specifying how range should be set

Starting range v. full range

Specifying how to describe commissions & other compensation

Requiring description of benefits and other compensation

Limiting reach for remote workers

Notice of promotional opportunities

Affirmative disclosure in absence of job posting

Whether permitted to use a hyperlink

Differences in Enforcement

Potential Nationwide Approach

- When discussing a potential nationwide approach, consider:
 - Different approaches for remote jobs v. jobs at a physical location
 - Comfort with disclosing more information than required by some jurisdictions
 - Ease of implementation v. risk of potential violations or lawsuits

Enforcement & Litigation Trends

California

- Over 50 open claims but no citations issued

Colorado

- 1,934 complaints filed since 1/1/21
- 526 voluntary compliance letters sent, 21 citations issued, 7 of which included fines, totaling \$790,000

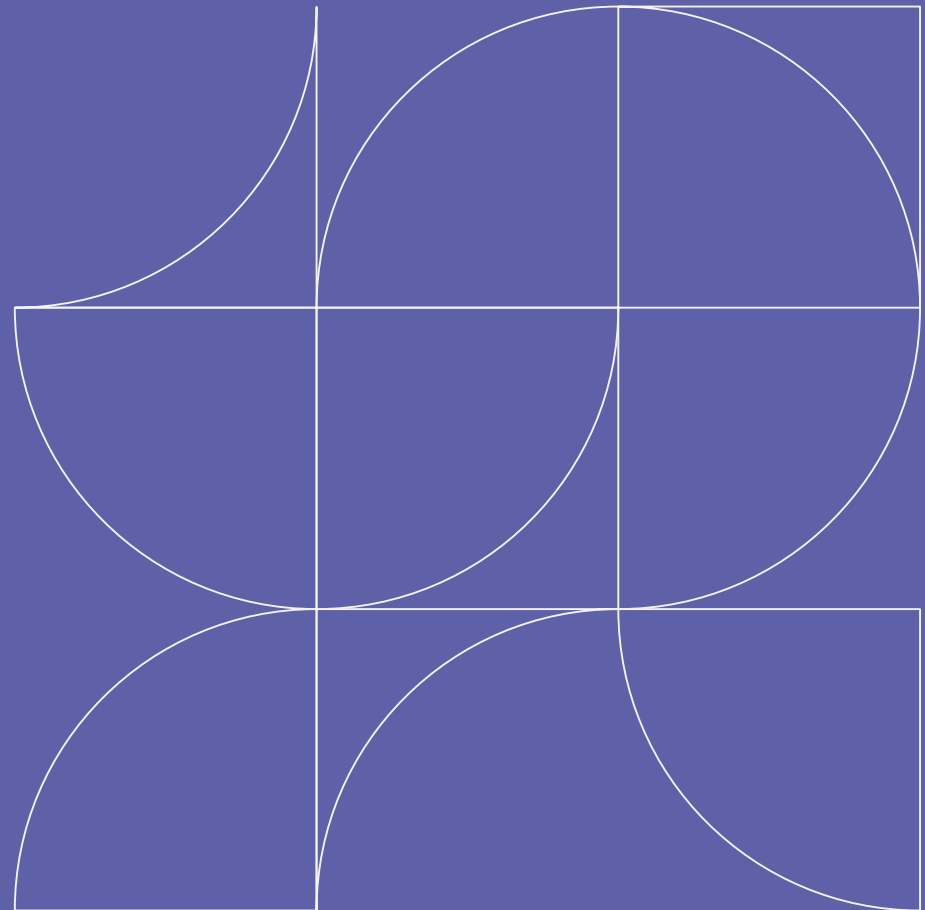
Illinois

- Became effective January 1, 2025 and already seeing complaints

Washington

- Only a handful of fines issued by Department of Labor & Industries
- Hundreds of class action lawsuits
- Certified question before Washington's Supreme Court: What must a Plaintiff prove to be deemed a "job applicant"?

Pay Data Reporting Requirements



State Pay Data Reporting Requirements

California

- 100 or more employees or labor contractor workers (at least 1 in CA)
- Aggregated data in **Payroll Employee Report** (W2 employees) and **Labor Contractor Report** (“labor contractor” workers)
- Due annually on second Wednesday in May (**May 14, 2025**)
- New option to include Middle Eastern or North African (MENA)

Illinois

- 100 or more Illinois employees
- Employee-Level pay data & compliance statement certification
- Employer-specific due dates – Every 2 years on certificate date
- **New data requirements:** subject to CBA, Hourly/Salaried, Hourly Rate (also new option to include MENA)

Massachusetts

- 100 or more Massachusetts employees
- Seeks “wage data reports” defined as federal EEO-1 Report
- Due annually on **February 1st**
- Current federal EEO-1 Report **does not include pay data**



Global Landscape Outside the US

Current Global Trends in Pay Reporting



Bulk of legislation in Europe, but other regions anticipated to catch up, particularly with the enactment of the EU Pay Transparency Directive

- **North America**
 - ✓ US (CA, IL)
 - ✓ Canada (BC, ON, QC)
- **LatAm**
 - ✓ Brazil
 - ✓ Ecuador
- **APAC**
 - ✓ Japan
 - ✓ Australia
- **EMEA**
 - ✓ Austria
 - ✓ Belgium
 - ✓ Denmark
 - ✓ Finland
 - ✓ France
 - ✓ Germany
 - ✓ Ireland
 - ✓ Israel
 - ✓ Italy
 - ✓ Lithuania
 - ✓ Luxembourg
 - ✓ Norway
 - ✓ Portugal
 - ✓ South Africa
 - ✓ Spain
 - ✓ Sweden
 - ✓ Switzerland
 - ✓ UK

Current Global Pay Equity Reporting Requirement Examples

Country	Overview of Requirement
UK	Employers with 250 or more employees must report their gender pay gap figures annually. Published on government website and on employer's own website for the public to view.
France	Employers with at least 50 employees are required to calculate and publish a professional equality index to measure the pay gap between women and men. The result must be published annually, on the company's website.
Spain	Depending on company size, employers are or will become obliged to prepare an Equality Plan. All companies must also have a salary record with gender-disaggregated data and companies with 50+ employees must carry out a salary audit as part of the Equality Plan.
Germany	Employers with more than 500 employees, and which are obliged to provide a management report pursuant to the German Commercial Act, are required to include a detailed report on equality and equal pay every three/five years. Published in the Federal Gazette.
Italy	Employers with over 50 employees are required to provide a report at least every two years, containing information on male and female employee remuneration. The report must be shared with union representatives and the government.
Australia	Private sector employers with 100 or more employees are required to lodge reports in relation to various gender equality targets to the Workplace Gender Equality Agency.
Quebec & British Columbia	In Quebec employers with 10 or more employees must conduct a pay equity exercise that is shared with employees and file an annual pay equity declaration, and in BC companies will have to report the pay transparency report in a publicly available website.
Brazil	The government prepares a report based on information submitted by the employer and then the employer must publish/post the report.

EU Pay Transparency Directive



Scope

- Applicable to EU member countries

Obligation

- The Directive itself does not impose reporting obligations. Obligations framed under the Directive are to be established through laws transposed by individual EU member countries

Timing

- Local laws to be transposed by June 7, 2026

Impact

- EU member countries are anticipated to enact national laws are at least as favorable to workers as the Directive's provisions.

EU Pay Transparency Directive



Highlights

- Job applicants and access to pay information
- Workers rights to obtain pay information
- Employer reporting obligations
- Reporting period will be based on the number of workers:
 - 250 or more workers: first report by June 7, 2027 (relating to 2026 data); subsequent reports annually thereafter
 - 150 to 249 workers: first report by June 7, 2027; subsequent reports every three years thereafter
 - 100 to 149 workers: first report by June 7, 2031 (relating to 2030 data); subsequent reports every three years thereafter.
 - Fewer than 100 workers: no reporting requirement under the Directive, although they may voluntarily report and member states may require under the local implementing law
- Potential for joint pay assessments with employer representative bodies

EU Pay Transparency Directive



Pay Reporting Obligations

- Employers will need to compile and report the following information:
 - The gender pay gap;
 - The gender pay gap in complementary or variable components;
 - The median gender pay gap;
 - The “median gender pay gap” is defined as the difference between the median pay level of female and median pay level of male workers of an employer expressed as a percentage of the median pay level of male workers.
 - The median gender pay gap in complementary or variable components;
 - The proportion of female and male workers receiving complementary or variable components;
 - The proportion of female and male workers in each quartile pay band; and
 - A “quartile pay band” is each of four equal groups of workers, bands into which workers are divided according to their pay level, from the lowest to the highest.
 - The gender pay gap between workers by category, broken down by ordinary basic wage or salary and complementary or variable components.

EU Pay Transparency Directive



Joint Pay Assessment

- Required assessment with worker representatives if:
 - (a) if the pay reporting reveals a minimum 5% difference in the average pay between male and female workers in any worker category;
 - (b) if the employer fails to justify this difference based on objective, gender-neutral criteria; and
 - (c) if the employer does not rectify the unjustified pay gap within six months from the submission of the pay reporting.
- Assessment to be shared with workers, worker representatives and monitoring body, and, upon request, to labor inspectorate and equality body

Pay Reporting Obligations Today and Anticipated under the EU PTD

What Should Employers Be Doing Now To Prepare?

- Where there is current legislation:
 - Determine current timing and scope of current obligations
 - Conduct analysis based on required data points
 - Ensure compliance with existing obligations
- Preparing for the EU PTD
 - Assess headcounts by legal entity in EU member countries to determine whether reporting requirements will apply
 - Determine expected obligations based on local presence and headcount
 - Consider internal budgets for future analysis and remediation
- If feasible, run pay assessments in 2025 and remedy
 - 2026 data will be used for 2027 reporting period
- Monitor enactment of local legislation

Strategies for Global Compliance



Achieving Global Compliance

- Internal tracking
 - headcount
 - jurisdictions with reporting obligations where the company does business
- Understanding the obligations
 - what to track and report
 - timing of obligations
 - internal vs. external reporting and to whom does report get submitted
 - affirmative reporting or does government compile
 - understand obligations to consult with employee representatives



Equal Pay in the US

Equal Pay In the US: Has Anything Changed?

- US Federal Laws Have Not Changed But We Are navigating recent Executive Orders, including:
 - **EO 14173**: “Ending Illegal Discrimination And Restoring Merit-Based Opportunity” (January 21, 2025)
- Recent Executive Orders and Administrative Actions Relating to Diversity Equity and Inclusion Practices Are Raising Questions
 - Can I still conduct a pay review?
 - Should I conduct a pay review?
 - Are there changes I should consider?
- *Answer: Yes as to all!*

Equal Pay Analyses

- Equal pay reviews remain an important tool to **guard against** potential discrimination
- EEOC's recent guidance reminds employers that, under Title VII, *"[t]he prohibition against disparate treatment, including DEI-related disparate treatment, includes disparate treatment in: hiring, firing, promotion, demotion, **compensation**, fringe benefits..."*
- Social media influencer and activist, Robby Starbuck, stated *"I never said anything about ending any sort of pay equality. Pay equality across the sexes is lawful and anything that would be the opposite, where you are paying people differently on the basis of sex would already be illegal."*

Equal Pay Audits

Remain Legal, But You
May Need to Reconsider
Your Approach

Re-Examine Your Approach: Engage In Discussions With Legal Counsel and Statistical Experts

- Reassess Your Analysis Methodology
 - How should the analysis be established?
 - Who are the relevant comparator groups?
 - Should you conduct an analysis that allows the data to reveal which group is “favored” with regard to pay?
 - If so, what specific methodology should be used to identify the favored group? Average pay difference? Median Pay? Adjusted pay differences using regression control factors
 - Which flags should be investigated given limited time, resources and budget?
- Reviewing Outliers
 - How will you conduct the review
 - A detailed review is arguably, the most important part of the entire analysis
 - It gives insight in the “why” behind pay differences
- Remediation Strategies
- *Establishing and protecting attorney-client privilege is key*

Communications About Equal Pay

Key Considerations for Equal Pay Communications

- Should we start, continue, revise, or end communications?
 - Internal & External
 - Formal and Informal
 - *Consider attorney-client privilege waiver issues*
- Terminology is important:
 - “pay equity,” “equal pay,” “pay fairness,” “pay parity”
 - what do these terms actually mean?
 - Recommend defining terms as they are used within your organization
- If you choose to disclose a “pay gap” how should you communicate the “gap”?



Proactive Strategies



Best Practices

- Design a Comprehensive Compensation Structure and Philosophy
 - Refine pay ranges
 - Geographic pay differentials
 - How will prior experience factor into compensation strategy
 - Performance
 - Market Considerations
 - Establish, maintain effective job structure
 - Define and share how the company sets salary at various stages
 - Starting pay philosophy
 - Promotional increases
 - Departmental transfers
-



Best Practices (Cont'd)

- Conduct regular, proactive attorney-client privileged assessments
 - Test your job architecture and compensation strategy
 - Reassess practices that lead to unexplained pay differences
 - If necessary, implement adjustments to pay
 - Implement interim methods to review compensation
 - Assess peer equity at hire and promotion
 - Compa ratios
 - Merit Increases
 - Evaluate strategy to address and correct compression issues
 - Focus on closing the “data” gap
 - Capture the data related to the factors that explain pay differences
-



Pay Transparency Practices

- Partner with key stakeholders to develop a **comprehensive strategy**
 - National vs state-by-state approach?
 - Guiding principles/governance: who will provide pay ranges
 - Consider providing greater transparency regarding how comp is set at organization
 - Determine **ranges for each jurisdiction**
 - Employees above/below range?
 - Consider how to post geographic differentials
 - Full range vs. posted range?
 - Balance the legal requirements and the “optics”
 - Develop **language** to be used on postings, offer letters, etc...
 - Consider whether to be more expansive than required based on talent acquisition needs; consider disclaimers (e.g., posted range applies to the current posting)
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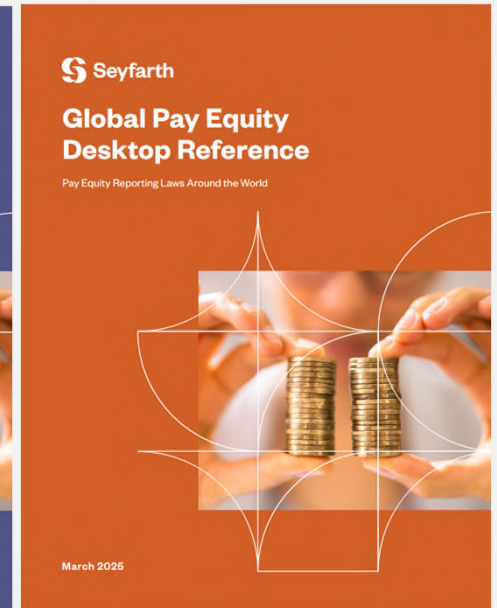
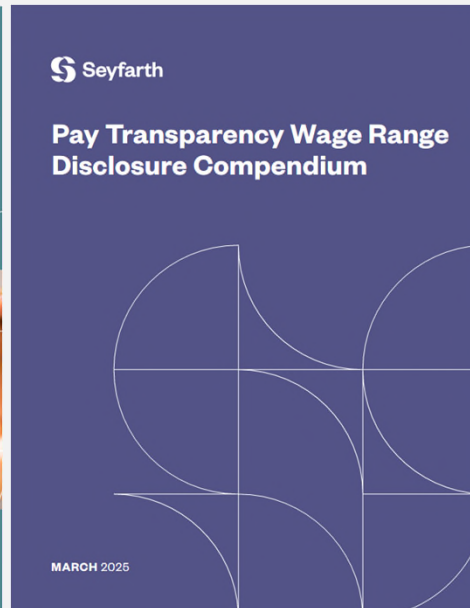
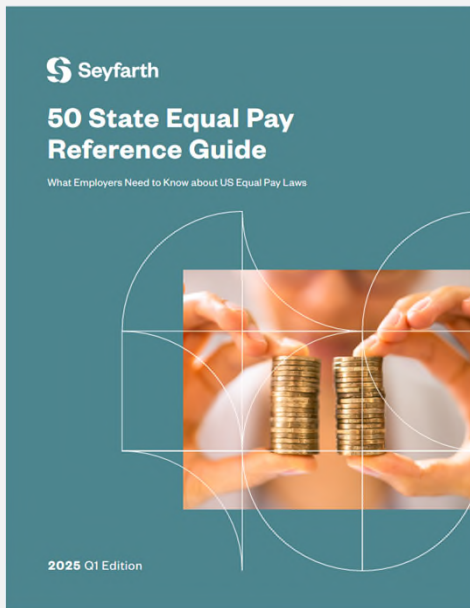
Pay Transparency Practices

- Consider how to address **questions** from employees in jurisdictions that do not have pay transparency requirements
 - **Beyond legal:** these are *practical/business considerations*
 - Develop strategy responding to **questions** from current employees about position on range
 - **Train** key personnel and operationalize process
 - Talking or FAQs points for leaders and employees
 - Templates/scripts for responding to applicant/employee requests
 - Continue to **monitor** pay transparency laws and **trends nationwide**
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Documentation, Data, & Consistent Application in Processes is Key for Proving Any Affirmative Defense

- Robust, contemporaneous documentation is often the most critical factor in determining the applicability of any affirmative defense if faced with litigation.
- If employers choose to justify a pay disparity based on a seniority or merit system, or on a system that bases pay on the quantity or quality of output, they must be careful that those systems are well documented and communicated to employees.
- A system that appears ad hoc or that is inconsistently applied risks being met with skepticism by a court
 - *Brunarski v. Miami Univ.*, No. 1:16-cv-311, 2018 WL 618458 (S.D. Ohio Jan. 26, 2018)
 - *Tourangeau v. Nappi Distribs.*, No. 2:20-cv-00012-JAW, 2022 WL 17987103 (D. Me. Dec. 29, 2022)

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