



Guide to Restrictive Covenants

01. What are the principal types of restrictive covenants used by employers in your jurisdiction in relation to their employees?



Canada

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Canadian courts have severely limited the circumstances in which a restrictive covenant, such as a non-competition, is enforceable post-employment.

Considered to be a form of post-employment restraint of trade, the burden rests with the employer to demonstrate a restrictive covenant represents the minimal degree of restriction required to protect the organisation's legitimate business interests.

An enforceable restrictive covenant must clearly define the activity to be restricted (with a significant degree of specificity) and contain reasonable geographic and temporal limits. In the case of a non-competition covenant, some provinces have banned their use and enforceability subject to the employee's relative importance within the organisation. If a court finds a restrictive covenant to be overly broad (temporally, geographically, or in the activity it purports to limit), ambiguous (such as failing to clearly define its geographic scope or the restricted activity), or overly restrictive, the court will refuse to enforce the restrictive covenant and will not alter its wording to render the covenant enforceable.

Ontario, Canada's most populous province, has prohibited the use of a non-competition restrictive covenant for most employees. The federal jurisdiction is currently contemplating a similar prohibition which, if passed, will apply to any federally regulated employer which includes the following industries: air transportation, banking, cross-border transportation, postal services and telecommunications.

Because of the limited circumstances in which a restrictive covenant is permitted, Canadian employers will often use other forms of covenants such as confidentiality (non-disclosure), non-solicitation, and intellectual property.

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02. What general rules apply in determining whether a restrictive covenant is enforceable against an employee?



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A Canadian court will generally treat a restrictive covenant as presumptively unenforceable as a restraint on trade unless the employer can establish the restrictive covenant:

- protects a legitimate proprietary interest of the employer;
- is reasonable in scope, including from a temporal and geographic perspective; and
- is not otherwise contrary to public policy.

If the employer fails to establish any one of the above three elements, a restrictive covenant will be deemed unenforceable.

Canadian courts tend to take a stricter approach to a non-competition agreement as compared to other restrictive covenants.

Canadian courts will also generally refuse to “blue pencil” or modify the offending part of a restrictive covenant if found to be ambiguous or unreasonable.

In addition, Ontario statutory law now prohibits the use of a non-competition agreement except in specific circumstances. The federal jurisdiction is currently contemplating a similar statutory prohibition.

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03. How do these general rules differ from the general rules that apply in determining whether a restrictive covenant is enforceable in other contexts, for example a commercial agreement, a franchise agreement with an individual who is a franchisee, a shareholders agreement, or incentive arrangements?



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In short, a restrictive covenant in an employment context will receive more scrutiny than one in a purely commercial context, primarily because of a perceived imbalance of bargaining power between employer and employee, and the strict nature of the restraint of trade. Even if the employment contract was entered into or agreed to in the context of a business transaction, Canadian courts are reluctant to enforce this type of restrictive covenant.

By contrast, in a commercial context, without any nexus to an employment contract, a restrictive covenant will usually be found to be reasonable if it is limited in scope in terms of territory and activity and designed to protect the legitimate interests of the party seeking protection. Canadian courts will consider factors including sale price, nature of the business’ activities, parties’ experience

and expertise, and whether the parties had access to legal counsel or other professionals.

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04. Can restrictive covenants be enforceable against any level of employee or just certain types and, if so, which types?



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A restrictive covenant can be enforceable against any level of employee. However, it is more likely to be enforceable against a more senior executive as opposed to a junior employee, because the employer must establish that the restrictive covenant:

- protects a legitimate proprietary interest of the employer;
- is reasonable in scope, including from a temporal and geographic perspective; and
- is not otherwise contrary to public policy.

In Ontario, a non-competition agreement is only enforceable:

- against an executive specifically identified by Ontario's employment standards legislation; and
- in the context of a prescribed sale of business in which the seller of the business becomes an employee of the purchaser.

The federal jurisdiction is currently exploring restrictions of a similar nature.

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05. Is an employer required to make a payment to an employee in order for any restrictive covenant in their employment terms to be potentially enforceable? If so, how much and/or how is that calculated?



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Yes, for a restrictive covenant to be enforceable, it must be supported by good and sufficient consideration.

If a restrictive covenant is included as a term in an employment contract in the context of a brand-new employment relationship, the offer of new employment will be sufficient to satisfy this requirement.

However, if the restrictive covenant is included in an employment agreement put in place after the employee is already working for the employer, fresh consideration is required (usually in the form of a signing bonus or improved pay or benefits).

Consideration must be “sufficient” and there is no specific formula. The general rule is that consideration must be paid specifically in connection with the new contract or provision and be of value to the employee.

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06. Are there any planned changes in the law of restrictive covenants in your jurisdiction? If so, please provide details.



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Yes, there are planned changes that, if passed, will affect the ability of a federally regulated employer to enter into a non-compete agreement. A federally regulated employer is an employer in an industry that is regulated by the federal, and not provincial, government. These federal industries include air transportation, banks, cross-border transportation and shipping, postal services and telecommunication.

Bill C-31, Budget 2025 Implementation Act, (No. 2), introduced on 6 May 2026, would amend the Canada Labour Code to include a new prohibition on the use of a non-competition clause in an employment agreement. If passed in its current form, Bill C-31 would include limited exceptions to this general ban, including in the context of a sale of business transaction, for senior executive roles, and for other specified senior employees. This proposed change broadly mirrors the legislative prohibition on the use of a non-competition clause already in force in Ontario.

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07. Non-compete: Will the courts enforce a restriction seeking to prevent an employee from working for a competitor after they leave the employer's employment? If so,

(a) What conditions must be satisfied?

(b) Specifically, must payment be made to the employee and, if so, at what level and for how long?



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Canadian courts may enforce a restriction seeking to prevent an employee from working for a competitor after they leave the employer's employment (ie, a non-competition agreement), if the restriction:

- is not already prohibited by law (ie, in Ontario and, potentially soon, in the federal jurisdiction); and
- meets the general test for the enforceability of a restrictive covenant.

However, given the significant impact of such a restriction on an employee's ability to earn a living, Canadian courts will closely scrutinise such restrictions and often find them to be unenforceable.

To be enforceable, an employer must be able to establish the restrictive covenant:

- protects a legitimate proprietary interest of the employer;
- is reasonable in scope, including from a temporal and geographic perspective; and
- is not otherwise contrary to public policy.

Canadian courts will not assist the employer by "blue penciling" a covenant that is ambiguous or unreasonable.

An employer does not need to make payments to the employee for a non-competition agreement to be enforceable. However, if the employee is entitled to reasonable notice of termination, a court may rely on the existence of a non-competition agreement to extend the reasonable notice period (which would increase the financial liability).

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08. Garden leave: Do employers use "garden leave" provisions in their employment terms whereby an employee who has either given or received notice of termination of their employment is required to stay away from the workplace and is prevented from having any contact with clients/customers or staff while continuing to be paid? If so,

(a) what conditions must be satisfied and/or are there any limits on the use of garden leave clauses?

(b) will your courts require that the duration of any "garden leave" must be offset against the duration of any restrictive covenants that apply after termination of employment?



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"Garden leave" is not specifically recognised by Canadian employment legislation and, if implemented poorly, or without the employee's consent, may lead to a claim of "constructive dismissal". This is because, without an employee's agreement, an employer's unilateral decision to deprive an employee of work may amount to constructive dismissal, potentially entitling the employee to damages for wrongful dismissal.

That said, a Canadian employer may achieve an outcome similar to a "garden leave". For example:

- a Canadian employment agreement may include a provision that, if the employee resigns, the employer may decide the employee is not required to attend at work for the remainder of the resignation notice period;
- if the employer terminates employment with "working notice," the employer may choose to have the employee not attend at work for the "working notice" period; and
- it may also be possible for a Canadian employer to include a payment as part of a non-competition arrangements (if the restrictive covenant is permissible). However, this solution is rarely adopted given how challenging it is to enforce in Canada.

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09. Confidential information: Will the courts enforce an employment term seeking to prevent an employee from using or disclosing their employer's confidential information after they leave its employment? If so, what conditions must the employer satisfy and for what duration would the court enforce the restriction?



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It is likely a court will enforce an employment term preventing an employee from using or disclosing the employer's confidential information post-employment. In all employment contracts, an employee has an implied duty of fidelity, good faith and loyalty. This includes the duty not to disclose confidential information, and it survives the employment contract. In addition, Canadian courts can enforce an express confidentiality agreement.

To enforce a confidentiality agreement or covenant, an employer is required to provide evidence that the information at issue is confidential information and that the employee engaged in a breach of confidentiality. In practice, this can be challenging.

Factors a court may consider when determining whether information is confidential, and thus worthy of protection, include:

- the extent to which the information is known outside the business or within the business;
- the extent of the protective measures taken;
- the value of the information to the business and its competitors;
- the financial investment made by the business to develop the information they are seeking to protect; and
- whether a third party could independently acquire this information.

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10. Non-solicitation clients: Will the courts enforce an employment term seeking to restrict an ex- employee from approaching their former employer's clients or customers or potential clients or customers? If so, what conditions must the employer satisfy and for what duration would the court enforce the restriction?



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A non-solicitation agreement which restricts an ex-employee from approaching their former employer's clients or customers is enforceable if an employer can demonstrate the non-solicitation agreement:

- protects a legitimate proprietary interest of the employer;
- is reasonable in scope; and
- is not otherwise contrary to public policy.

Canadian courts will not assist the employer by “blue penciling” a covenant that is ambiguous or unreasonable. It may be more difficult to enforce a non-solicitation agreement which extends to potential clients or customers – but this is highly case specific.

Canadian courts tend to be more lenient when determining the reasonableness of a non-solicitation agreement, as opposed to a non-competition agreement. As such, a failure to define the geographic scope of a non-solicitation agreement may not render the agreement unenforceable. On the other hand, an unlimited or unnecessarily lengthy temporal scope is unlikely to be viewed as reasonable and may render the agreement unenforceable.

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11. Non-dealing clients: Will the courts enforce an employment term seeking to restrict an ex-employee from dealing with their former employer's clients or customers or potential clients or customers even if the client or customer approaches the ex-employee? If so, what conditions must the employer satisfy and for what duration would the court enforce the restriction?



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This will depend on the wording of the clause. A true non-solicitation clause requires the act of solicitation. If a client or customer approaches the ex-employee (not the other way around) it is arguable there has not been solicitation. That said, in most cases, the ex-employee does make some overture to clients and customers and, in that case, solicitation can be demonstrated. However, if the clause is a de facto non-competition provision, it is less likely to be enforceable.

In order to be enforceable, the employer must demonstrate the clause:

- protects a legitimate proprietary interest of the employer;
- is reasonable in scope; and
- is not otherwise contrary to public policy.

Canadian courts will not assist the employer by “blue penciling” a covenant that is ambiguous or unreasonable.

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12. Non-dealing suppliers: Will the courts enforce an employment term seeking to restrict the extent to which an ex-employee can deal with their former employer's suppliers? If so, what conditions must the employer satisfy and for what duration would the court enforce the restriction?



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No-dealing provisions are not common in Canada. However, Canadian courts will assess these provisions much in the same manner as other restrictive covenants that constitute restraints of trade. As such, whether a no-dealing provision is enforceable will likely depend on whether the employer can demonstrate that the clause:

- protects a legitimate proprietary interest of the employer;
- is reasonable in scope; and
- is not otherwise contrary to public policy.

Canadian courts will not assist the employer by “blue penciling” a covenant that is ambiguous or unreasonable.

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13. Non-solicitation employees: Will the courts enforce an employment term seeking to restrict an ex-employee from approaching any of their former employer's staff to persuade them to leave their employment and become a fellow employee of the ex-employee in their new employment? If so, what conditions must the employer satisfy and for what duration would the court enforce the restriction?



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A non-solicitation agreement which restricts an ex-employee from approaching their former colleagues is enforceable if an employer can demonstrate the agreement:

- protects a legitimate proprietary interest of the employer;
- is reasonable in scope; and
- is not otherwise contrary to public policy.

Canadian courts tend to be more lenient when determining the reasonableness of a non-solicitation agreement. As such, a failure to define the geographic scope of a non-solicitation agreement may not render the agreement unenforceable. On the other hand, while there is not a precise durational restriction on a non-solicitation agreement, an unlimited or unnecessarily lengthy temporal scope is unlikely to be viewed as reasonable and may render the agreement unenforceable.

Note that under the Competition Act, which applies to all employers in Canada, a “mutual” no-poach agreement is illegal. This is where one or more employers agree not to hire each other’s employees. A one way no-poach agreement – where one party agrees not to poach another party’s employees – is generally not prohibited under the Competition Act.

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14. Non-employ: Will the courts enforce an employment term seeking to restrict an ex-employee from being involved in the process of engaging any of their former employer's staff on behalf of the ex-employee's new employer, even if the former employer's staff member approaches the ex-employee? If so, what conditions must the employer satisfy and for what duration would the court enforce the restriction?

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This clause is not common in Canada. The enforceability of this clause will likely depend on how it is drafted, and whether the clause is more akin to a non-competition or non-solicitation agreement. If the clause is drafted as a non-solicitation provision, the clause may be more likely to be enforceable. Canadian courts tend to be more lenient when determining the reasonableness of non-solicitation agreements.

That said, a true non-solicitation clause requires the act of solicitation. If staff approach the ex-employee (not the other way around) it is arguable there has not been solicitation. That said, in most cases, the ex-employee does make some overture to staff and, in that case, solicitation can be demonstrated.

Be aware that under the Competition Act, which applies to all employers in Canada, a “mutual” no-poach agreement is illegal. This is where one or more employers agree not to hire each other’s employees. A one way no-poach agreement – where one party agrees not to poach another party’s employees – is generally not prohibited under the Competition Act. However, when there are separate arrangements that result in two or more employers agreeing to not poach each other’s employees, the Competition Bureau may take enforcement action.

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15. Team move: Will the courts enforce what is sometimes called a “team move” covenant which seeks to prevent an employee from leaving the employer’s employment and joining other former employees of the employer in working for a competitor of the employer? If so, what conditions must the employer satisfy and for what duration would the court enforce the restriction?

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This clause is not common in Canada. The enforceability of such a clause will likely depend on whether the clause is drafted in such a way that it seeks to restrict solicitation or competition. If the clause is drafted to restrict competition with the former employer, then the clause will be less likely to be unenforceable and may even be prohibited in certain jurisdictions such as Ontario (and, depending on whether federal Bill C-31 becomes law, the federal jurisdiction).

Be aware that under the Competition Act, which applies to all employers in Canada, a “mutual” no-poach agreement is illegal. This is where one or more employers agree not to hire each other’s employees. A one way no-poach agreement – where one party agrees not to poach another party’s employees – is generally not prohibited under the Competition Act. However, when there are separate arrangements that result in two or more employers agreeing to not poach each other’s employees, the Competition Bureau may take enforcement action.

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16. Non-disparagement: Will the courts enforce an employment term seeking to restrict an ex-employee from disparaging or making comments about their former employer which may damages its reputation? If so, what conditions must the employer satisfy and for what duration would the court enforce the restriction?



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In Canada, a non-disparagement clause is typically used in the context of a settlement or separation agreement between an employer and employee. If the non-disparagement clause is breached a Canadian court or tribunal may order payment of liquidated damages for breach of settlement.

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17. Are there any other types of post-termination restriction which are common? If so, what are they and what conditions must be satisfied?



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The following post-termination restrictions are frequently found in severance or settlement agreements, as well as in employment agreements: non-disclosure, confidentiality, non-disparagement, return of company property and information.

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18. Golden handcuffs: Which types of provisions do employers in your jurisdiction use in their employment arrangements which potentially have the effect of restricting the activities of an employee after they leave their employment but which do not overtly seek to restrict those activities? Examples could be:

(a) long term incentive plans in which awards may be forfeited if the employee engages in certain types of competitive activity

(b) commission schemes in which accrued commission otherwise payable to the ex-employee could be forfeited in similar circumstances?



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“Golden handcuffs” are not commonly used in Canada. Instead, bonus, commission, long-term incentive plans and other incentive schemes usually contain provisions that limit payment under these plans following the end of the period of statutory notice of termination (which varies from jurisdiction to jurisdiction).

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19. Will the courts enforce such provisions? If so:

(a) What conditions must the employer satisfy?

(b) Will the courts enforce all such provisions or only certain types and if so, which types?



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These provisions are not commonly used in Canada and as such, their enforceability is difficult to predict. Enforcement will be subject to the same considerations applicable to other restrictive covenants.

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20 . If an employer wishes to enforce a restrictive covenant:

(a) What process must it follow and in which court must it seek to enforce the covenant?

(b) What remedies can an employer obtain?

(c) If a court order preventing breaches/further breaches of the covenant can be obtained, how quickly can the employer obtain this order from the court?

(d) Is it a potentially expensive process?

(e) What conditions must the employer satisfy to enforce a covenant?

(f) How common is it for employers seeking to enforce a restrictive covenant to come to an agreement with the ex-employee without issuing legal proceedings?

(g) Are there situations when an otherwise enforceable restrictive covenant is not enforceable (for example if there has been a repudiatory breach of contract)?



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(a) Typically, an employer will first reach out to a former employee to remind them of the restrictive covenant and direct them to cease and desist from breaching it. On occasion, and if relevant, the employer may inform the former employee's current employer of the covenant. If this does not achieve the intended effect, the employer may commence an action to claim compensatory damages in the relevant provincial court and may also seek a corresponding injunction to prevent or

stop the employee's breach.

Note that in the event of a breach of an intellectual property agreement, a remedy may also be sought through Canada's Federal Court, which has broad jurisdiction to resolve disputes regarding intellectual property rights.

(b) Provided a restrictive covenant is held to be enforceable, an employer could obtain an injunction to prevent further competition or solicitation.

A court may only grant injunctive relief if the employer:

- has presented a serious issue to be tried;
- would suffer irreparable harm if the application is refused; and
- would likely suffer greater harm from the refusal to grant injunctive relief than the employee would suffer from the granting of the injunction.

An employer may also be able to pursue a claim for breach of contract to recover compensatory damages. In that case, an employee may be required to account for and pay to the employer any profits earned from their breach.

(c) Interim injunction – although rare, an interim injunction order can be obtained within days (sometimes hours), without requiring an employer to give notice to the employee. The order would be for a short duration, as it is intended to protect urgent and immediate employer interests until there can be a proper hearing on notice.

- Interlocutory injunction – an interlocutory injunction can be obtained in weeks or months. An interlocutory injunction is also difficult to obtain, although less difficult than an interim injunction. If obtained, the injunction could last until the final resolution of the claim on the merits. To obtain an interlocutory injunction, an employer must demonstrate:
 - there is a serious issue to be tried;
 - the employer would suffer irreparable harm without injunctive relief; and
 - the balance of convenience favours the employer.
- Permanent injunction – a permanent injunction could be awarded after a full trial, which would likely be completed months or years from the initial breach.

(d) Yes, both the injunction and trial processes are likely to be expensive.

(e) To enforce a restrictive covenant, an employer must demonstrate that the covenant:

- protects a legitimate proprietary interest of the employer;
- is reasonable in scope; and
- is not otherwise contrary to public policy.

(f) Given the significant expense associated with legal proceedings in Canada, it is very common for post-employment matters to be dealt with by way of a separation or settlement agreement between employer and employee. In some cases, for strategic reasons, given the challenges enforcing certain restrictive covenants (particularly non-competition agreements), an employer may not insist on compliance with such covenant in exchange for some other promise.

(g) If the employer has repudiated the contract, an otherwise enforceable restrictive covenant may become unenforceable. As an example, if an employer failed to pay statutory minimum termination amounts on termination of employment, it may be held to have repudiated the employment contract, and an enforceable restrictive covenant may then be exposed to attack as a result of the repudiation.

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21. Will a court rewrite a restrictive covenant if it considers that it is too wide in its effect or too long in its duration? If so, what are the conditions that must be satisfied? If not, would the court delete words in the restrictive covenant to make it enforceable?



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No. In Canada, courts will not rewrite or “blue pencil” a restrictive covenant the court considers to be ambiguous, too broad in effect or duration, or contrary to public policy.

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22. If an employment contract is governed by the law of another jurisdiction, which law will the courts apply when determining if the covenant is enforceable?



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The court will generally apply the employment standards law applicable to the employee. For example, an employee who works for a federally regulated employer will be governed by the Canada Labour Code. An employee who works for a provincially regulated employer will be governed by the employment standards law of the province in which the employee works.

If a covenant is part of an employment agreement, and the agreement includes a “choice of law” clause, the court may apply the law chosen by the parties, so long as the choice is bona fide, legal, and not contrary to public policy (which often depends on whether the law chosen by the parties falls below the minimum employment standards applicable to the employee in their place of employment). As such, a Canadian court is unlikely to enforce the law of a jurisdiction in which employment rights fall below the applicable Canadian employment minimum standards.

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