

LABOUR LAW MONTHLY UPDATE

NOVEMBER 2024

DISCLAIMER

- This Presentation is meant for informational purpose only and do not purport to be advice or opinion, legal or otherwise, whatsoever.
- This is not intended to advertise services or solicit work through this monthly update.

Let's
take
a
tour

Amendments & Ordinance

Circulars and Notifications

Across the Globe

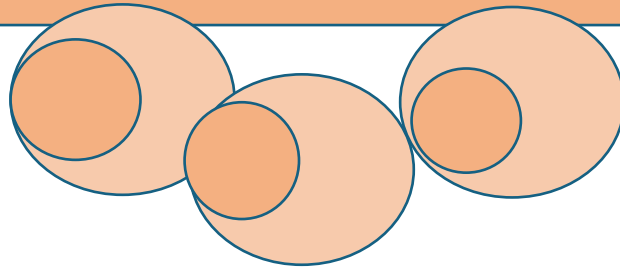
Did you know

Case Law

Compliance

Knowledge Corner

Circulars and Notifications



EMPLOYEES PROVIDENT FUND ORGANIZATION

Circular dated 07.10.2024

Utilization of Reserves and Surplus Of The Exempted Establishments

A circular has been issued under the Employees Provident Fund Act, 1952 with regard to usage of reserves and surplus of exempted trust by crediting interest to the current trust beneficiaries at a rate substantially higher than the one declared by the EPFO for its members. :

- Distribution of higher earnings from previous years to beneficiaries is allowed.
- No interest is to be credited for the broken period of a year.
- The interest rate credited to the beneficiaries of Exempted Trusts should align with the actual earnings of the Fund.
- Overdrawing from reserves and surplus is not permitted at any time.

Employees Provident Fund Organisation

Notification dated: 25.10.2024

Timely Disbursement of Pension to Pensioners

- The Employees Provident Fund Organisation has directed that all field officers must submit the monthly Bank Reconciliation Statements to banks, ensuring that pension payments are credited to pensioners' account by the last working day of the month.
- Additionally, all Zonal and Regional Offices are instructed to provide the necessary guidance to pension disbursing banks to ensure the effective implementation of this directive.

Employees State Insurance Corporation

Notification dated: 21.10.2024

Implementation of Aadhaar Seeding for Insured Persons

- The Employees State Insurance Corporation has devised the following provisions to address the delay in the daily Aadhaar Seeding count all across the Regional and Sub-Regional Office:
- **IP Portal:** All insured persons (IPs) can conveniently seed their Aadhar and that of their family members by accessing the IP Portal.
- **Employer Portal:** Employers have been empowered to generate new Insurance Number using employees Aadhaar through OTP or biometrics verification. Additionally, employers can seed Aadhar numbers of existing IPs and their family members on their behalf.

Contn.

- **Bulk Aadhaar Seeding for Employers:** Employers can now perform bulk Aadhaar seeding by uploading a predefined template that includes Aadhaar numbers and mobile numbers of the IPs and their beneficiaries.
- **ESIC Staff:** Branch Offices/DBCOs/Dispensaries/Hospitals are designated facilities where IPs can seed the Aadhaar numbers of themselves and their family members.
- **Employer Portal:** This Mobile app offer a convenient facility of IPs to seed their Aadhaar numbers and those of their family members either through OTP or through face authentication. Furthermore, the ESIC staff can also utilize the AAA+ AAP for Aadhaar seeding using OTP and face authentication.

QUIZ!

An order of dismissal is issued without mentioning the reason for dismissal .

Will non-mentioning of reasons nullify the dismissal order?

- Yes
- No
- May be



ACROSS THE GLOBE

New Hampshire in United States extends protection for Voluntary Emergency Responders



- New Hampshire has expanded protections under the Emergency Responders Leave Law to prohibit discrimination and retaliation against employees who volunteer in emergencies.
- This change impacts employees serving as volunteer emergency responders such as firefighters, rescue squad or Emergency Medical Technician (EMT), wherein there is a bar to penalise them by their employers for being late owing to such emergency responses.
- Under this new law, Employers are not obligated to compensate the employees for the time spent in the emergency.
- Employers are prohibited from discharging or taking disciplinary action against an employee for failure to report to work due to the need to respond to a qualified emergency.

Belgium introduces two new Registration Obligations for Employers



- The Belgian government recently introduced two new registration obligations for employers in Belgium as follows:
 - To register professional trainings in the new federal learning account.
 - To register employer's training plan with social inspection.
- This requires the employers with at least 20 employees to draft an annual training plan by 31st March of each year focusing on collective employee training.
- The training plan must be reviewed by the Works Council or equivalent 15 days before the finalisation with a focus on specific groups like older employees, non-EU jobseekers and disabled workers.
- The Federal learning account, records all training days to ensure employees receive their entitled training, with registration required each quarter.





In Sweden, there is a system called double days in Parental benefits which allows both parents to take paid leave at the same time during a child's first year of life. Now it has been increased from 30 to 60 days and can be taken during the child's first 15 months.



**SADHASHIV ENGINEERING PVT LTD VS STATE OF MADHYA
PRADESH AND ANOTHER**

2023 LLR 374

Dated: 05.09.2022

SADHASHIV ENGINEERING PVT LTD VS STATE OF MADHYA PRADESH AND ANOTHER

2023 LLR 374 Dated: 05.09.2022

- The dispute concerned the payment of bonus. The Trade Union representing the workers demanded bonus at the rate of 20%, while the Management claimed that it was only liable to pay a minimum bonus of 8.33% based on their financial statements.
- The Tribunal ordered for Bonus at the rate of 13%.
- The High Court held the management with the intention to pay lesser bonus had not shown the correct allocable surplus and balance sheets of last five years was not submitted.
- Being so the High Court confirmed the award of the Tribunal granting 13% bonus.



**SRI. RANJITH CHANDRAN VS. SENIOR GENERAL MANAGER-
H.R.D**

2024:KER:44413

Dated 20.06.2024

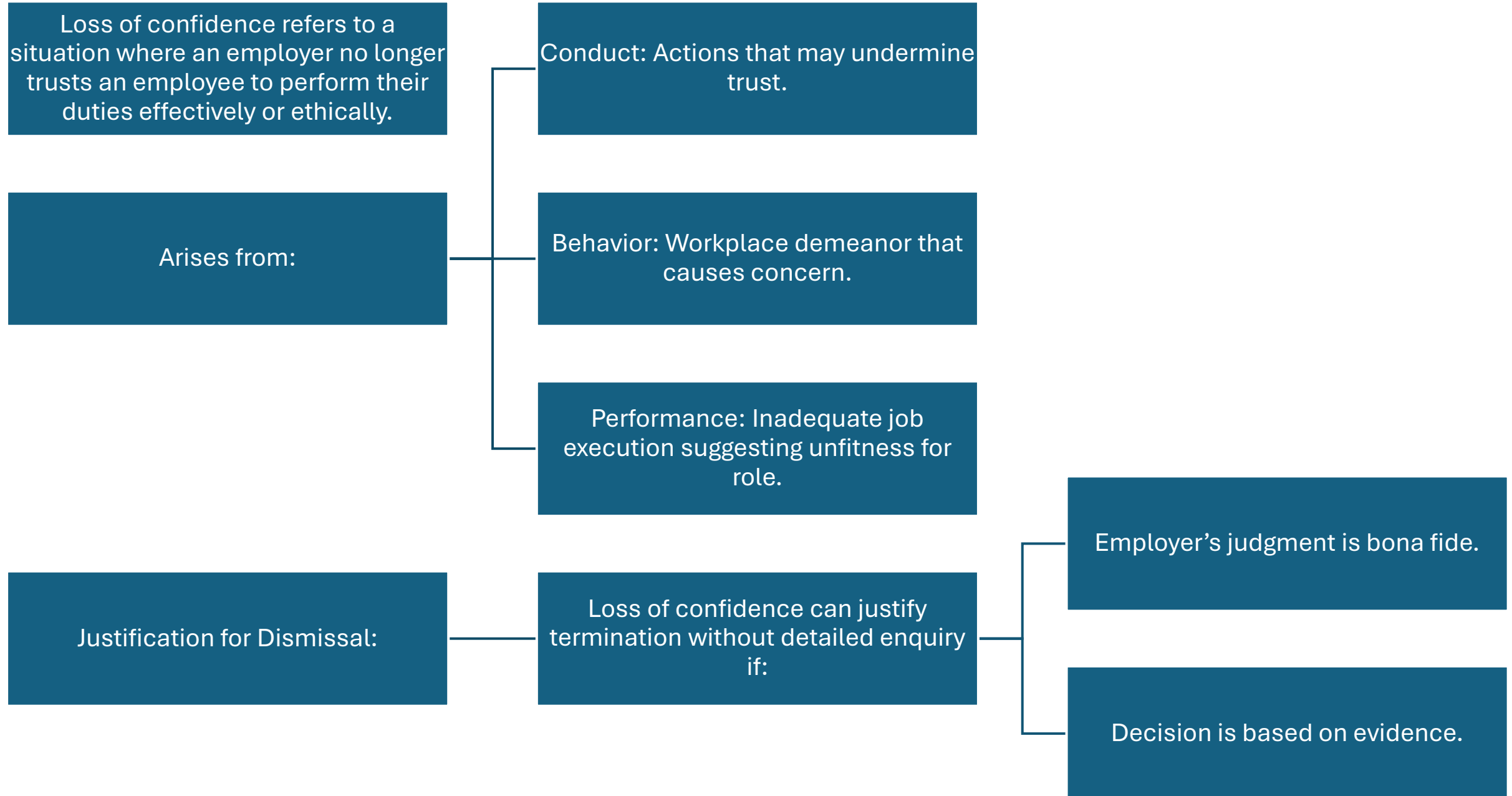
SRI. RANJITH CHANDRAN VS. SENIOR GENERAL MANAGER- H.R.D

2024:KER:44413 dated 20.06.2024

- A person employed as a Business Executive, was terminated without notice after two months on probation. He claimed the termination was unjustified. The management argued that he was a probationer, and his termination followed unsatisfactory performance as per company policy.
- The Tribunal held that the probation terms were unclear and granted relief.
- However, the Single Judge reversed this, emphasizing that probationary termination, under certain laws, do not mandate show-cause notices unless punitive.
- The Division Bench upheld this view, stating the management acted within legal bounds to terminate a probationer for unsatisfactory performance without requiring additional procedural safeguards.

LOSS OF CONFIDENCE :- A LEGAL PERSPECTIVE





TESTS FOR ESTABLISHING 'LOSS OF CONFIDENCE'

laid down by the Hon'ble Supreme Court in the case of
Kanhaiyalal Agrawal v. Factory Manager (2001) 9 SCC 609

Whether the worker holds a position of trust and confidence

Whether the worker has abused the position of trust and committed an act that results in forfeiting employment ?

Whether it would be embarrassing and inconvenient to the employer or detrimental to the discipline or security of the establishment to continue the worker in service?

Loss of Confidence – A Sitgma

- In *Chandu Lal v. Pan American World Airways* (1985) 2 SCC 727, the Supreme Court held that “loss of confidence” is a valid ground for dismissal without stigmatizing the employee. The judgment clarified that, especially in cases involving trust-based roles, dismissal is justified if the employer genuinely and reasonably believes that the employee’s conduct compromised their confidence.

- *Kamal Kishore Lakshmanan v. Management of Pan American World Airways Inc.* AIR 1987 SC 229 , The Court emphasized that when an employee holds a position requiring a high level of trust (like handling sensitive company information, finances, or other important duties), any breach leading to a loss of confidence is sufficient grounds for termination, even without a formal inquiry into specific acts of misconduct. The Supreme Court upheld the dismissal, affirming that "loss of confidence" constitutes a valid, legally recognized basis for termination when the employee’s role inherently depends on trust.

Can Courts interfere on the Termination order issued based on loss of confidence?

- U. P. State Road Transport Corporation vs. Mohan Lal Gupta and Ors. (2000) 9 SCC 521
 - It would not be fair for the court to substitute the employer's finding and confidence with its own by allowing reinstatement.
 - The gravity of the offence would render the misconduct proved, and in such a situation, the labour court cannot exercise its discretion and alter the punishment.
 - When the misconduct is proved, merely by gravity of the Offence the Labour Court cannot exercise its discretion to alter the punishment.



Termination due to conduct of employee

- *Air India Corporation, Bombay v. V.A. Rebellow* (1981) 1 SCC 634, the employer terminated an employee on an immediate basis by paying an amount in lieu of notice period. The reason given by the employer was that they had lost confidence in the employee due to a grave suspicion regarding his private conduct and behaviour with an air hostess employed by the employer. No disciplinary inquiry was conducted against the employee.
- The Supreme Court stated that once the employer's bona fide loss of confidence in the employee is affirmed, the termination order cannot be challenged.
- The employer's opinion about the suitability of the employee for the job assigned to him, even if erroneous, is final and not subject to review by industrial adjudication. The employer's opinion may lead to the termination of the employee's services, but such termination cannot be considered misconduct and is therefore permissible and immune from challenge.

Does termination on loss of confidence amounts to Retrenchment?

- In *Hariprasad Shivshankar Shukla v. A.D. Divikar* [1957] 1 SCR 121 , the Supreme Court ruled that the words ‘for any reason whatsoever’ cover only instances involving the discharge of surplus labour or staff by the employer. Termination of workers’ employment for any other reason (such as the closure of an enterprise) does not constitute ‘retrenchment,’ and thus the provisions of sections 25G (procedure for retrenchment) and 25H (re-employment of retrenched workmen) of the ID Act do not apply to such dismissals. Based on the Supreme Court’s decision, several High Courts have ruled that terminating a worker due to a loss of confidence does not constitute ‘retrenchment’.

Whether an employer is required to hold domestic enquiry for a misconduct resulting in loss of confidence?

Delhi State Civil Supply Corporation Ltd. Vs. Sh. Badan Singh, (2019) LLR 1189 (Del HC)

In case of misconduct resulting in loss of confidence, the employer is not bound to hold any inquiry to visit the employee with penal action even if such reason happens to be misconduct of the employee. The employer, in its discretion, may invoke the power to discharge simpliciter for loss of confidence while dispensing with inquiry into the conduct of the workman. The departmental inquiry in such a case is not necessary.

Whether deliberate refusal to work results into loss of confidence?

Arun Kumar Vs. Management of Cable Corum of India, (2012) LLR 1176 (Del HC)

The Delhi High Court in DCM Shriram Consolidated Ltd. v. O.P. Gupta, (2006) 129 DLT 320 held that in a case where the employee refused to perform the duties assigned to him held that the punishment of termination was not shockingly disproportionate. In Rattan Lal Gupta v. Management of Birla Textile Mills W.P.(C) 19/2007 decided on 19th January, 2007 it was held that in a case where the workman refused to perform his duties, the management was bound to lose confidence in the workman and looking at the misconduct, deliberate non-working and making of counter allegations, the punishment of termination cannot be said to be disproportionate. This was followed in the above judgment to hold that refusal to work can be cited for loss of confidence.

Whether providing compensation in lieu of reinstatement be appropriate when an employer has lost confidence in a workman?

Vajravelu Vs. Management of Salem Steel Plant, Salem,
(2011) LLR 269 (Mad HC)



LexPOSH



LexPOSH

UNION OF INDIA VS. DILIP PAUL

CIVIL APPEAL NO.6190/2023

DATED 06.11.2023



LexPOSH

A Government employee , was accused of sexual harassment by a female colleague. Two complaints were filed, in 2011 and 2012. Initial investigations were inconclusive. However a central committee formed in 2012 found evidence supporting the claims. As a result, the employee faced penalties, including the withholding of 50% of his pension post-retirement.

On appeal the Gauhati High Court, has set aside the punishment on the following grounds:-

- i. The High Court found the committee considered unapproved complaints beyond the original allegations.
- ii. The committee assumed prosecutorial functions, which the court deemed inappropriate.
- iii. The High Court ruled the findings were based on conjecture rather than substantive evidence, concluding the case was one of "no evidence."



LexPOSH

The following are the key issues in Appeal:-

- i. Can the Central Complaints Committee (CCC) directly cross-examine witnesses in disciplinary proceedings for a sexual harassment complaint, similar to the role of a prosecutor?
- ii. Can the Court intervene in the decisions of the inquiry committee unless the findings are based on "no evidence" or are deemed unreasonable.

On conclusion the SC held that:-

- i. The Case of Sexual Harrassment should not be merely judged on the basis of procedural irregularities.
- ii. The High Court cannot function as appellate authority and substitute its own findings



LexPOSH

The Courts further noted that the rules of evidence under the Indian Evidence Act do not apply to disciplinary proceedings. This implies that allegations of sexual harassment need not be proven beyond a reasonable doubt. The Supreme Court ruled in favor of the Government, concluding that the findings of the Central Complaints Committee (CCC) were supported by the oral testimony of witnesses.

The Court allowed the instant appeal while setting aside the impugned judgment and order dated 15-05-2019 and restoring the penalty imposed by the Disciplinary Authority.

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REPORTING PERIOD - November-2024			
Act	State	Due Date	Activity
Employees Provident Fund & Miscellaneous Provisions Act	Pan India	15-Nov	PF Remittance
Employees Provident Fund & Miscellaneous Provisions Act	Pan India	15-Nov	IW Returns
Employees Provident Fund & Miscellaneous Provisions Act	Pan India	25-Nov	Monthly Returns-For Exempted Employer Under EDLI Scheme (FORM 7(IF))
Employees State Insurance Corporation Act	Pan India	15-Nov	ESIC Remittance
Employees State Insurance Corporation Act	Pan India	11-Nov	ESIC Half Yearly Returns
Professional Tax Act	Andhra Pradesh	10-Nov	Professional Tax Remittance cum Return
	Telangana	10-Nov	Professional Tax Remittance cum Return
	Madhya Pradesh	10-Nov	Professional Tax Remittance
	Gujarat	15-Nov	Professional Tax Remittance
	Karnataka	20-Nov	Professional Tax Remittance cum Return
	West Bengal	21-Nov	Professional Tax Remittance
	Maharashtra	30-Nov	Professional Tax Remittance cum Return
	Odisha	30-Nov	Professional Tax Remittance cum Return
	Assam	30-Nov	Professional Tax Remittance cum Return
	Nagaland	30-Nov	Professional Tax Remittance
	Meghalaya	30-Nov	Professional Tax Remittance
	Mizoram	30-Nov	Professional Tax Remittance
	Sikkim	30-Nov	Professional Tax Remittance
	Manipur	30-Nov	Professional Tax Remittance
	Tripura	30-Nov	Professional Tax Remittance
Kerala Shops & Commercialized Establishments Workers Welfare Fund Act	Kerala	05-Nov	WWF Remittance
Kerala Shops & Commercialized Establishments Workers Welfare Fund Act	Kerala	15-Nov	WWF Return

**Let's connect again
At
5PM on 02nd December, 2024**



*Thank
you*



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