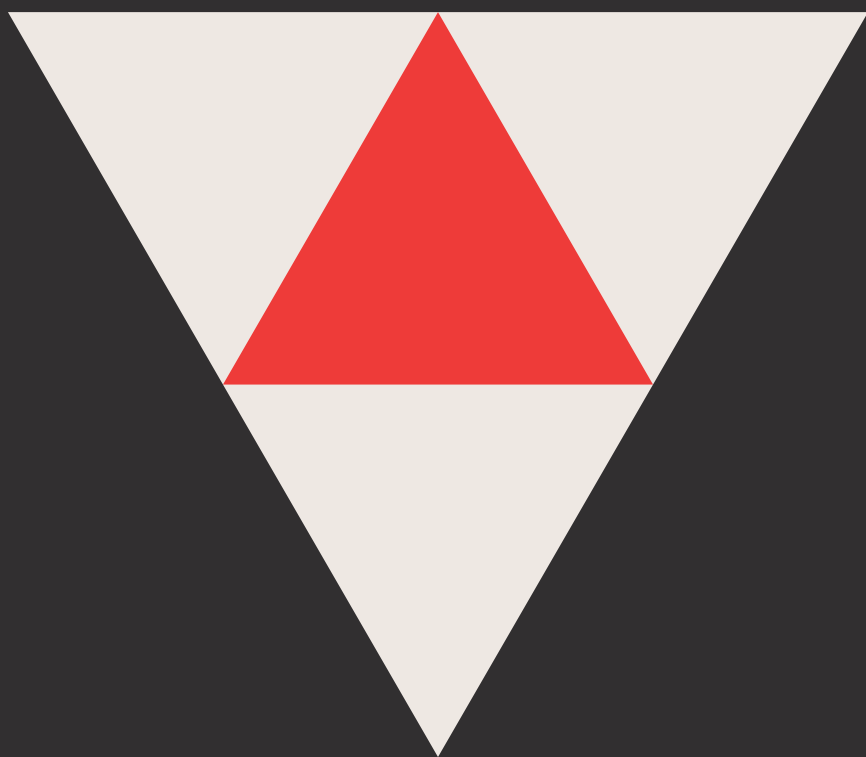


KNOW YOUR RIGHTS

A legal guide for game
industry workers in Québec



Are You an Employee or a Freelancer?

Here's how to tell the difference.

Your status is determined by the following six criteria:

1. Subordination to an employer. You are likely an employee if your employer:
 - Determines the conditions of your hiring and firing
 - Sets your schedule and decides where you will work
 - Defines your tasks and work methods
 - Manages your activities
 - Controls the execution of your work
 - Is able take disciplinary action against you
2. Financial liability
 - Freelancers must cover their own business operating costs, and can make profits and losses
 - Employees generally assume no financial risk
3. Ownership of tools
 - Freelancers supply their own tools
 - Employees generally use tools owned by their employer
4. Whether your work is integral to the activities of your work provider
 - Freelancers' work is generally not integral

5. Whether your work ends upon achieving a specific result
 - Freelancers are hired to achieve a specific result and have freedom to determine how they will achieve that result
 - Employees are usually hired for a period of time
6. The agreement between you and your work provider
 - Different aspects of your contract affect classification
 - Does your contract refer to you as an employee or an independent contractor? (note: this alone does not determine status)
 - If you receive severance pay, or are eligible for your employers' health benefits package, you are also more likely to be considered an employee

Note that different entities (the CRA, CNESST, the courts) may come to different conclusions in determining whether a worker is an independent contractor (freelancer) or employee.



Crunch and Overtime

For Employees:

Overtime pay is due if you work more than your regular weekly hours.

- You are entitled to **an additional 50%** of your regular hourly pay.
- At your request, this can be replaced with **equivalent paid leave plus 50%**.

Salaried employees **are** entitled to overtime pay.

You have the right to refuse work if:

- It is more than **2 hours** after regular daily working hours or more than **14 working hours** per twenty-four hour period, whichever period is the shortest.
- You have worked more than **12 hours** in a **24 hour period** on a variable or non-continuous schedule.
- You have worked more than **50 hours** in a week.
- You were not given at least **5 days** notice, **unless** the nature of the job requires that you remain available (for example, emergency services).

Your employer is not allowed to fire you, take away benefits, reduce wages or punish you in any other way for exercising your rights.

For Freelancers:

Freelancers should include a **rush rate** in their contract.

Harassment

Behaviour that is **humiliating, offensive, or abusive**.

Exceeds what a “reasonable person” considers appropriate within the context of their work, and is **repetitive in nature**.

Psychological harassment includes verbal comments, actions or gestures of a sexual nature:

- that are hostile or unwanted
- that affect your dignity or physical or mental health
- that make the work environment harmful

Can occur on the basis of:

- Race
- Color
- Sex
- Pregnancy
- Civil status
- Age
- Political convictions
- Disabilities
- Social condition
- Ethnic origin
- Language
- Sexual orientation
- Gender identity or expression

You have up to 2 years to file a complaint.

Where to file a complaint?

- **Non-unionized employees:** Commission des normes, de l'équité, de la santé et de la sécurité du travail (CNESST)
- **Unionized employees:** their union
- **Freelancers:** Quebec Human Rights Commission (CDPDJ)

Try to **document** incidents whenever possible:

- **Keep a copy** of emails, texts, screenshots, etc. on a personal (not work!) device.
- **Keep a journal** with dates, times, locations, names, a description of events, and how it made you feel.

If your case is successful, the Labour Tribunal may order the employer to:

- reinstate you if you've been fired
- compensate you for lost wages
- take reasonable action to put a stop to the harassment
- pay punitive and moral damages

Bill 176

New additions to Québec's labour code regarding harassment, in 2019.

“[Employers] must...adopt and make available to their employees a psychological harassment prevention and complaint processing policy that includes, in particular, a section on behaviour that manifests itself in the form of **verbal comments, actions or gestures of a sexual nature.**”

Bill 176 Section 81.19

In other words, harassment policies must **specifically address sexual harassment.**

Standards and Benefits (Employees)

Employers cannot give you worse working conditions or benefits than someone else doing the same tasks at the same company based **solely on hiring date**.

This applies to:

- wages
- hours of work
- statutory general holidays and non-working days with pay
- paid annual leaves
- rest periods
- absences owing to sickness, accident or a criminal offence
- absences and leaves for family reasons or parental reasons
- notice of termination of employment or layoff and work certificate
- miscellaneous other standards (e.g. uniform)

Termination

For Employees:

You must be given **written** notice if you have worked for more than 3 months.

How much notice?

Length of uninterrupted service	Notice Period
3 months - 1 year	1 week
1 year - 5 years	2 weeks
5 - 10 years	4 weeks
10 years +	8 weeks

- If you are not given sufficient notice, the employer must pay you an amount equal to what would have been earned during the notice period.
- This amount, as well as **any amount owed for vacation or overtime**, must be paid **at the time of dismissal**.
- If you have worked at least 2 years uninterrupted for the same employer, they cannot fire you without **“good and sufficient cause.”** In other words, **they must prove** that they had a serious reason for firing you. These reasons may include: **dishonesty, insubordination, negligence, incompetence** and **bad performance**. (See the glossary for definitions of some of these terms.) You have **up to 45 days after dismissal** to file a complaint with the CNESST.

Note that these protections do **not** apply to employees who have worked for **less than 3 months**.

Mass layoffs

A mass layoff or collective dismissal occurs when an employer terminates the employment of **10 employees or more** of the same establishment over a period of **2 months**.

In this case the employer must provide notice or equivalent pay based on the number of employees who have been let go.

Number of employees	Notice Period
10 - 99	8 weeks
100 - 299	12 weeks
300 and over	16 weeks

- If the company goes bankrupt, employees can apply to the federal Wage Earner Protection Program (WEPP) to reclaim wages owed to them, including vacation pay and severance pay.
- As of January 1, 2019 the maximum amount you can apply for is \$7,148.05.
- Employees can also apply to the CNESST for unpaid wages (but not the amount owed for notice of termination).

Exceptions (when no notice is required):

- you were hired for a specific task that has been completed
- you were on a fixed term contract, and the contract has ended
- you are being laid off temporarily for a period of less than 6 months

Can contractors and freelancers quit early?

Yes, even without the client's consent. But you need to have a serious reason:

- the client repeatedly interferes with the work
- the client refuses to cooperate
- the client is abusive, disagreeable or impolite
- the client tries to change the terms of your contract

Serious reasons **do not** include:

- if you did not charge a high enough price, **unless** it was due to misinformation given by the client
- the client is too demanding about performance
- the client has not paid certain small costs

You **can't** end the contract during a time that causes the client damage — for example, the day before a big deadline.

Leaves and Absences (Employees)

Reason for Absence	Leave (typical)
illness or injury	<ul style="list-style-type: none">• 2 days paid*• 26 weeks unpaid
family obligations	<ul style="list-style-type: none">• 10 days unpaid
funeral for spouse or close relative**	<ul style="list-style-type: none">• 2 days paid• 3 days unpaid
your wedding or civil union	<ul style="list-style-type: none">• 1 day paid
birth or adoption	<ul style="list-style-type: none">• 2 days paid• 3 days unpaid
terminating pregnancy before 20th week	<ul style="list-style-type: none">• 3 weeks unpaid
maternity leave	<ul style="list-style-type: none">• 18 weeks unpaid
paternity leave	<ul style="list-style-type: none">• 5 weeks unpaid
parental leave***	<ul style="list-style-type: none">• 52 weeks unpaid

* requires at least 3 months of uninterrupted service, can also be used for family obligations

** close relatives includes parents, children, and siblings

*** parental leave can be taken in addition to maternity/
paternity leave

Your employer is not allowed to fire you, take away benefits, or reduce wages if you are absent for any of these reasons for the allotted time.

Some conditions apply:

- in most cases employees must give notice as soon as possible
- if you are repeatedly absent your employer can request a document attesting to the reasons for your absence (for example, a doctor's note)

Full list of leaves and absences, with conditions and obligations: <https://bit.ly/2Na9hDW>



Art by Sarah G.

Vacations (Employees)

Employment length	Vacation & indemnity
1 year	<ul style="list-style-type: none">• 1 day/month of service• 4% of wages earned
1 - 3 years	<ul style="list-style-type: none">• 2 weeks• 4% of wages earned
3 years or more	<ul style="list-style-type: none">• 3 weeks• 6% of wages earned

- indemnities (additional sums of money that do not include wages) are calculated based on the wages you earned during the previous year
- indemnities must be paid as a lump sum before the start of your vacation
- an employee who is already entitled to 2 weeks can take **1 additional week of unpaid leave**

Statutory Holidays (Employees)

Paid days off include:

- **New Years Day** - January 1
- **Good Friday or Easter Monday** - before/after Easter Sunday

- **National Patriotes Day** - Monday before May 25
- **St. Jean Baptiste Day** - June 24 (Québec only)
- **Canada Day** - July 1
- **Labour Day** - 1st Monday of September
- **Thanksgiving** - 2nd Monday of October
- **Christmas Day** - December 25

If a statutory holiday falls on a non-work day **another day will be substituted.**

Exceptions

- An employee needs to have worked at least 30 days to be entitled to holiday pay
- Statutory holidays do not apply to contract workers

Reprisals (Employees)

Your employer or manager **cannot** dismiss, suspend or transfer, discriminate against, or punish you

- for exercising any of the rights covered under the Labour Act
- for filing a complaint with the Commission des Normes du Travail, or providing evidence for an investigation
- on the grounds that you are pregnant or paying child support
- because you refused to do overtime in order to look after your child or close relative (if you are their primary caretaker)
- because you've reached the age of retirement, or to avoid meeting obligations under the Voluntary Retirement Savings Plan Act

If your rights are violated, you have up to **45 days** to make a complaint to the Commission des normes du travail.

Intellectual Property

In the absence of an agreement to the contrary, the copyright to works created by **an employee** in the course of their employment will automatically be **owned by the employer**.

- Be careful to avoid using employer property (computers, etc.) to create works outside of the job description/work hours.

In the absence of an agreement **in writing** to the contrary, the copyright to works created by an independent contractor **remain their own**.

- Before signing an agreement, think carefully about whether giving your client ownership over your IP will prevent you from being able to do your work as you normally do.

NDAs, non-competition, etc.

3 common restrictive covenants in contracts:

- **Non-hire:** restricts a worker from hiring or working with other employees/contractors of the employer/client
- **Non-solicit:** restricts a worker from soliciting clients (and sometimes suppliers or others) of the employer/client
- **Non-competition:** restricts a worker from working for another business that competes with the employer/client, and this could include as a freelancer

With all of 3 of these clauses, as well as NDAs, it is important to **understand the scope**. Does it continue after the working relationship ends, and for how long? Non-competition provisions should specify what constitutes a competitive business, and where the restriction applies (city, province, country, online, etc).

Read contracts before you sign them. Make sure you understand what the contract is saying and that it matches your understanding of the agreed-upon terms.

**Every contract is negotiable,
but you need leverage!**

Unionization Rights

Every worker has the right to join, form, or participate in a union of their choice.

Restrictions on employers

- no employer or employer's association (e.g. La Guilde, ESA) can try to dominate, hinder, finance, or participate in the formation or activities of a union
- employers are not allowed to threaten or intimidate you to prevent you from joining a union
- employers are not allowed to refuse to hire you, fire you, or use any other form of punishment against you because you have joined or participated in union activities
- if they claim to be firing/punishing you for other reasons, they have to **prove it** (that is, the burden of proof lies with the employer)

Restrictions on union activities

- you are not allowed to ask people to join your union during working hours
- you can't hold union meetings at the workplace unless you have the permission of your employer

You have **30 days** to file a complaint with the Labour Tribunal.

Some benefits of collective action:

- You'll have **stronger negotiating power** to win improvements at your workplace compared to trying to change things as an individual.
- As a freelancer, you ultimately have very few rights and protections under Québec labour law. When freelancers join together, we can help protect ourselves right now *and* push for better labour laws for everyone in the long term.
- On top of legal reform, unions help transform and improve your whole industry for **every worker** by helping to establish standards and expectations.
- Unions can help democratize company policies and politics.
- Unions can also help **put a stop to employee misclassification** (when employers treat workers who should be employees as freelancers in order to deny them basic rights) and the loss of benefits that almost always entails.

Many employers get away with violating the legal rights of their workers because those workers aren't unionized and have no way to fight back. **Unionizing is the best way to ensure our rights are respected.** If you suspect your rights are being violated, or are curious what the next steps are, **Game Workers Unite and S'ATTAQ are here to help you** - don't hesitate to contact us!

Links and Resources

CNESST

The **Commission des normes, de l'équité, de la santé et de la sécurité du travail**. This commission was formerly two commissions: the **CNT** (Commission des normes du travail) and the **CSST** (Commission de la santé et de la sécurité du travail), so you may still find references to these names.

<https://www.cnt.gouv.qc.ca/en/accueil/index.html>

Educaloi

Accessible introduction to a wide variety of legal topics.

<https://www.educaloi.qc.ca>

Québec Labour Act

Also known as the “Act Respecting Labor Standards” (or in some official documents even just as the Act).

<http://legisquebec.gouv.qc.ca/en/showdoc/cs/N-1.1>

Canadian Human Rights Act

“An Act to extend the laws in Canada that proscribe discrimination.”

<https://laws-lois.justice.gc.ca/eng/acts/h-6/fulltext.html>

CDPDJ

Commission des droits de la personne et des droits de la jeunesse. Discusses different forms of harassment and how to defend your rights.

<http://www.cdpdj.qc.ca/en/droits-de-la-personne/pratiques/Pages/harcelement.aspx>

The Consequences of Fixed-Term Employment Contracts

A brief discussing some legal concerns and consequences around fixed-term contracts in Québec.

http://blg.com/en/News-And-Publications/Publication_5112

Wage Earner Protection Program (WEPP) Overview

Explains who is covered by the program, how much you can receive, and how to apply.

<https://www.canada.ca/en/employment-social-development/services/wage-earner-protection/employee.html>

Glossary

Claim

An action by the Commission which consists of claiming, on its own behalf or on behalf of an employee, a sum of money from an employer to enforce certain provisions of the law.

Collective Agreement

There are many definitions of a collective agreement, but as it's defined by the Québec Labour Code, it is “an agreement in writing respecting conditions of employment made between one or more certified associations and one or more employers or employers' associations.”

A collective agreement is usually (but not always) one of the key negotiating points of a unionized workforce, and typically grants better employment conditions for workers. A collective agreement may also come with certain limitations; for example, it may forbid workers from going on strike.

Compensatory Leave

A leave granted to you in place of an indemnity (see definition below) that was supposed to be paid, or for a paid leave you didn't benefit from.

It may happen that a compensatory leave is granted to you in place of payment for overtime worked. If this happens, by law this leave must constitute a condition of employment that is “more advantageous” for you.

Complainant

A natural or legal person that files a complaint because they believe that the employer infringed on a right granted by law.

“Legal person” in this specific context refers to any non-profit organization dedicated to defending workers’ rights. If an organization is representing you as a complainant, you have to authorize them to do so in writing.

Conditions of Employment

All of the favorable or unfavorable factors surrounding the accomplishment of work by the employees in an undertaking. Remuneration, fringe benefits, workplace layout, disciplinary system and leaves are part of the conditions of employment in the broad sense of the expression.

Contract of Employment

An agreement whereby a person undertakes to work under certain conditions under the authority of another in return for remuneration, be it for a fixed term or an open-ended period.

Disciplinary Measure Sanction

A repressive measure or punishment that your employer takes against you for an infraction you may have committed, like insubordination (see definition below) or negligence. Note that incompetence is **not** considered an infraction that can be disciplined.

A disciplinary sanction could consist of (amongst other things) a warning, a fine, loss of benefits, a suspension, demotion, or dismissal. But it's important to note that your employer **can't** do many of these things if they're not explicitly mentioned in your contract: for example, if you're granted a certain benefit as part of your contract, it can't be taken away from you as a sanction unless that's also noted in the contract.

Discriminatory Measure

Any measure or action an employer takes that adversely affects your job or employment conditions by treating you differently from other employees by reason of your sex, race, religion, age, gender identity or expression, sexual orientation, opinions (such as political convictions) or personal situation (such as whether you are homeless, a student, etc.).

The dismissal of an employee because they are pregnant or the forced retirement of an employee due to their age are examples of discriminatory measures.

Disloyalty

The law in Québec requires an employee to be “loyal” towards their employer. This means that under the law, while employed you have an obligation to:

- be honest with your employer.
- use good judgment in your role as an employee.
- put the interests of your employer above your own (with caveats; see “insubordination” below).
- protect confidential information.

Dismissal

Dismissal consists of definitively interrupting the employment of an employee whose behaviour is called into question by their employer. In certain cases, the non-renewal of a contract or the failure to recall the employee to work may constitute a dismissal.

Employee

A person who works for an employer and who is entitled to a wage. If you have a contract that entails performing some work in exchange for some sum of money, you're also most likely considered an employee. This includes, for example, a contract where you're provided a lump sum from which you're expected to deduct expenses for raw materials or equipment and then keep the remaining amount.

Employer

A natural or legal person that has work carried out, in return for remuneration, by one or more employees on their behalf and under their subordination.

Employment

Remunerated activity that usually entails obligations, responsibilities and requiring specific professional qualifications.

Fixed-Term Contract

A contract of employment stipulating a beginning and an end and binding the parties until its expiry either by a date or by a precise event that is to take place.

The end of the harvest or an objective to be attained are examples of events that may be used to set the expiry of a fixed term contract. In these specific cases, the Act uses the expression “contract for specific services” instead of “fixed-term contract.”

Good and Sufficient Cause

An employer can't fire you without a some kind of solid justification or reason. This reason has to represent “good and sufficient cause” for dismissal.

A good and sufficient cause does not generally entail an immediate breach of the contract of employment and does not release your employer from having to give you notice of termination.

Disloyalty (see above), insubordination (see below), and incompetence are reasons that may justify dismissal.

Incremental Nature of Sanctions

Your employer usually isn't allowed to dismiss you outright for any infractions you may have committed (short of those infractions constituting “serious fault”; see the definition of that below). Instead, these infractions must be met by your

employer with “gradual punishment”; this is the principle of the “incremental nature of sanctions.”

Under the law, this “incremental nature” may also vary according to the type of work you’re doing and the seriousness of the infraction.

Indemnity

A sum of money paid to you either to compensate for prejudice against you, or to compensate for a leave, or under certain other circumstances (such as a workplace injury).

Insubordination

Refusal to comply with the “general discipline of the enterprise,” to perform work, or to execute a legitimate order of your employer with the intention of resisting or challenging their authority may be considered “insubordination” under the law, and may constitute “good and sufficient cause” (see definition above) for your dismissal.

You cannot be charged with insubordination for refusing to perform work that endangers your health or safety. You also have the right to refuse to obey an order that would constitute an illegal act or that is “contrary to public order or morality.”

Layoff Notice

Written notice that must comply with the conditions and the time periods set by the Act and which the employer is required to give the employee before laying them off for six months or more.

Manager

An employee who performs a management role and who has the necessary authority to make decisions that are binding on their employer. The definition of the term “employee” in the Labour Code (Québec) excludes “managers.”

Overtime

Hours worked over and above the duration of the standard workweek and which are usually remunerated at a premium rate. The length of the regular workweek is set by law, but may also be negotiated between an employer and employee in a contract or other agreement.

Pecuniary Complaint

This type of complaint deals with infractions related to wages and indemnities.

Permanent Layoff

A permanent layoff consists of definitively interrupting the employment of an employee due to a change in the workforce needs.

Person

In Québec labour law, you may see reference to the term “natural or legal person” (or “personne physique ou morale” in French). A “natural person” is an individual — say, yourself, or someone who offers you an employment contract on their own behalf rather than on behalf of a business.

A “legal person” is a firm or organization. For example, a business that employs you does so as a legal person. And if you file a complaint with the Commission des Normes du Travail, a legal person could be an organization that represents you and helps you represent your case (see the definition of “complainant” above).

Plaintiff

See “complainant” above.

Professional Misconduct

If something you’ve done while performing your job results in harmful consequences for an employer or client, this might be considered “professional misconduct” under the law. Professional misconduct may be “good and sufficient cause” (see definition above) for dismissal and even constitute “serious fault,” (see definition below) depending on the circumstances.

Reasonable Person

When an employee claims to be a victim of harassment, a “reasonable person” is someone who is well-informed of the circumstances and is in the same situation as the employee, and who would also conclude that the behaviour the employee was subject to constitutes harassment.

Reasonable Time Period

If you’ve been terminated with notice (see the “Termination” section of the pamphlet), the notice period must be

“reasonable.” Amongst other things, this means it must take into account, the kind of job you’re performing, the particular circumstances under which you work, and the amount of time for which you’ve been employed.

Reprisal

An employer isn’t allowed to fire, suspend, dismiss, or transfer you for exercising your rights under the law. They’re also not allowed to punish you for doing so in any other way that adversely affects your job or employment conditions. Any such punishment is illegal, and is known as a “reprisal.” See the “Recourse” section of the pamphlet for a (non-exhaustive) list of other reasons an employer can’t take reprisals against you (for example, for being pregnant).

Serious Fault

A serious fault is something you’ve done (or failed to do) under the terms of your employment that’s considered serious enough to allow the employer to fire you without the normal obligation of notice of termination.

This can be a single major action (or omission) on your part. But the law might also consider it a serious fault if there’s a series of smaller issues that an employer has given you “serious warnings” about but that continue to happen.

Spouse

Under Québec law, you’re a “spouse” if you’re married (or in a civil union) with someone and living with them, OR if you have a child with someone and are living with them, OR if

you're in a relationship with someone (a "de facto union") and have been living with them for a year or more.

Uninterrupted Service

An uninterrupted period during which you're under an employment contract. This includes times within that period when you aren't working but during which the contract is still in effect.

If you have multiple consecutive fixed-term contracts with an employer in succession (without an interruption that would lead one to believe that the contract isn't renewed), this is also considered a period of uninterrupted service.

Who Are We?

About Game Workers Unite Montréal

GWU Montréal is the local chapter of Game Workers Unite, an international organization of people dedicated to advocating for workers' rights in the games industry. GWU is not a union, but is helping organize workers across the globe. Montréal is notable for the number of game companies it hosts – workers here are a powerful force. Together, we can achieve better working conditions, recognition, and mutual support for all.

gwumtl.com
gameworkersunite.org
gwumontreal@gmail.com

About S'ATTAQ

S'ATTAQ (Syndicat associatif des travailleu·ses·rs autonomes du Québec) is an organization that exists to unite freelancers across diverse fields in order to improve working conditions and further our common interests as a labour class. S'ATTAQ has come together in its common concerns to form a non-hierarchical democratic labour union with a commitment to mutual aid and social justice.

sattaq.xyz
sitt.iww.org
sattaq.union@gmail.com

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