## Employer & Employee HR Toolkit – In Response to COVID-19

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#### COVID-19 Human Resources Toolkit: Model Forms, Policies and Templates for Employers

#### Workplace Policies/Forms Related to COVID-19

- COVID-19 employee distancing, hygiene and mask policy
- Employee travel policy
- Work from home/telecommute policy
- Work letter for essential employee
- Return to work post-coronavirus checklist

#### Responding to COVID-19 Exposure in Workplace

- Protocol for COVID-19 case in workplace/contact tracing
- Protocol for return to work for positive COVID-19 case
- Notice to potentially exposed employees
- OSHA reporting protocol
- Safety complaint/whistleblower policy

#### Employee Medical Screening/Testing

- Employee screening policy
- Employee health self-screening form
- Temperature check log
  Temperature check auft

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- Temperature check authorization
- Temperature check failure/accommodation form
- COVID-19 testing protocol

#### Furloughs & Recalls

- Recall letter
- Return to work from furlough policy
- Benefits checklist for return to work
- Medical questionnaire for returning employees
  Notification to unemployment for employee
- refusal to return from furlough
- Reduction in force checklist
- PPP loan forgiveness FTE reduction exception memorandum

#### Accommodation Requests

- Interactive process checklist/protocol for ADA accommodation requests
- Letter to employee regarding request
- Letter granting or denying request

#### Families First Coronavirus Response Act (FFCRA)

- FFCRA policy
- Paid leave request form
- Employee letter granting or denying request

## **Overview of Webinar Topics**

- 1. Social Distancing and Employee Hygiene Policies
- 2. Protocol for Responding to a Positive Test Case
- 3. Employee Medical Screening Forms and Policies
- 4. Request for Leave and Accommodation Request Forms



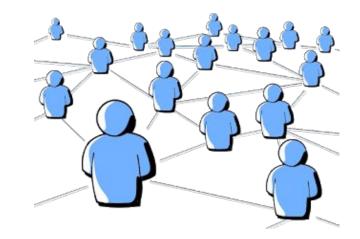
# Social Distancing and Employee Hygiene Policies

JENNY GOLTZ



## **Distancing Policies**

- No one-size-fits-all solution
- Will be dynamic in nature depending on the nature of your workforce, facilities, and return to work plan
- Communicate changes in writing
- Include the following elements:
  - Individual work spaces;
  - Meeting and shared spaces;
  - Circulation spaces;
  - Work practices.





## **Employee Hygiene**

- Personal Protective Equipment (face coverings);
- Respiratory Etiquette;
- Hand hygiene;
- Avoiding surface touches.







## Masks and Face Coverings:

- Mask: A filtering respirator (such as N95 respirators) or a specialized medical grade or surgical mask worn by healthcare personnel, first responders, and workers in other industries.
  - due to supply issues, the CDC recommends that masks be reserved for healthcare workers and other medical first responders.
- Face Covering: A cloth, bandana, handmade mask that covers the wearers mouth and nose. The CDC states that cloth face coverings should:
  - fit snugly but comfortably against the side of the face
  - be secured with ties or ear loops
  - include multiple layers of fabric
  - allow for breathing without restriction
  - be able to be laundered and machine dried without damage or change to shape

https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/cloth-face-cover.html



#### Masks and Face Coverings:

#### 1. Can you require employees to wear a face covering?

- Yes, An employer may require employees to wear protective gear (for example, masks and gloves) and observe infection control practices (for example, regular hand washing and social distancing protocols).
- However, where an employee with a disability needs a related reasonable accommodation under the ADA (e.g., non-latex gloves, modified face masks for interpreters or others who communicate with an employee who uses lip reading, or gowns designed for individuals who use wheelchairs), or a religious accommodation under Title VII (such as modified equipment due to religious garb), the employer should discuss the request and provide the modification or an alternative if feasible and not an **undue hardship** on the operation of the employer's business under the ADA or Title VII.

https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws



## Masks and Face Coverings:

#### 2. What can you do if the employee refuses?

- □ Is it for a medical or religious reason? Yes, the employer should engage in the interactive process to determine if the employee can be accommodated.
- Is it for a non-medical reason? Yes, the employer should still engage with the employee to determine why there is a concern:
  - Make sure there are no underlying protected reasons (for example, the mask is in conflict with dress or grooming requirements of a religion).
  - Address the employee's concerns.
  - Discipline if the employee is not raising any medical or otherwise protected objection.



## Hygiene - High Touch Surfaces

- Light and power switches;
- Doors and drawers;
- Collaboration tools;
- Chairs;
- Shared equipment;
- Supply storage;
- Kitchen and meal preparation areas;
- Personal work areas.





## Hygiene and Environmental Safety Practices

- Cleaning of visibly dirty surfaces followed by disinfection is the best practice measure for prevention of COVID-19.
- Perform additional environmental cleaning on all frequently touched areas, such as front desk, elevator banks, coffee stations, doorknobs, etc.
- CDC No additional disinfection beyond routine cleaning is recommended at this time.
- Products with EPA-approved emerging viral pathogens claims are expected to be effective against COVID-10 based on data for harder to kill viruses. Ensure use for linens / laundry.





## Protocol for Responding to a Positive Test Case



## COVID-19 Tests

#### May an employer administer a COVID-19 test (a test to detect the presence of the COVID-19 virus) before permitting employees to enter the workplace?

Yes. Under ADA, a mandatory medical test must be "job related and consistent with business necessity." Employers may take steps to determine if employees entering the workplace have COVID-19 because an individual with the virus will pose a direct threat to others. Therefore an employer may choose to administer COVID-19 testing to employees before they enter the workplace to determine if they have the virus.

#### Employer must:

- Make sure the tests are accurate and reliable.
- Monitor the U.S. Food and Drug Administration about what may or may not be considered safe and accurate testing, as well as guidance from CDC or other public health authorities, and check for updates.
- Consider the incidence of false-positives or false-negatives associated with a particular test.
- Recognize that accurate testing only reveals if the virus is currently present; a negative test does not mean the employee will not acquire the virus later.



## **OSHA** Reporting Requirements

- Under OSHA's recordkeeping requirements, COVID-19 is a recordable illness, and thus employers are responsible for recording cases of COVID-19, if:
  - The case is a confirmed case of COVID-19, as defined by the CDC;
  - The case is work-related as defined by 29 CFR § 1904.5; and
  - □ The case involves one or more of the general recording criteria set forth in 29 CFR § 1904.7.



- In assessing efforts to determine work-relatedness, OSHA will consider:
  - The reasonableness of the employer's investigation;
  - The evidence available to the employer; and
  - The evidence that the COVID-19 was contracted at work.



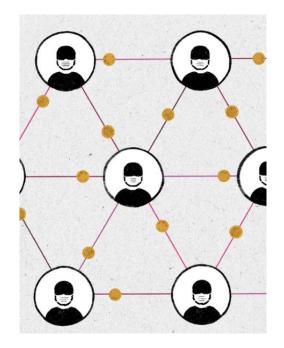
## **Disclosure and Reporting Issues**

- An employer *should* disclose to co-workers that employee has tested positive for COVID-19.
- An employer *should* ask the employee who tested positive to provide a list of individuals (employees, clients, contractors, vendors) with whom the employee came in contact in the last 14 days in connection with their employment, as well as areas of the workplace that were visited.
- An employer should notify all individuals identified by the employee that someone they were in contact with tested positive, and that they should take appropriate measures.



## **Protecting Others**

- Identify contacts: Interview the likely infected employee to understand who their co-workers are and with whom he or she has been in close contact with in the workplace.
- Locate and notify contacts: Inform all potentially contacted employees of their potential exposure. If the employee has been in close contact with the probable positive employee, he or she should be asked to isolate or self-quarantine for 14 days.
- Monitor contacts: Periodically check in with individuals in self-quarantine to determine if he or she has developed symptoms.
- Protect privacy: Ensure that any investigation and contract tracing methods are done so in a way that protects the privacy of individuals and that information about an employee's medical condition is shared only on a need to know basis.





## **Additional Issues**

- An employer *should* identify all work locations for the infected employee and temporarily close those areas of operations. Either engaging an outside company to thoroughly clean and disinfect the area or utilize in-house expertise. Use chemical solutions sufficient to eliminate the virus, as identified in the CDC website.
- Consider Enhanced Screening Protocols and Distancing for Affected Work Areas
  - If not already implemented, consider temperature screening or enhanced symptom screening process.
  - Review distancing arrangements and consider further opportunities to increase distancing between employees in work areas, break rooms, and common areas to at least 6 feet at all times.
  - Review company policies on personal protective equipment and facial coverings and consider increasing such requirements in affected work areas for at least 14 days





### Return to Work

Determining what steps an employees must take in order to return after he or she has tested positive is not once size fits all and could depend on the location where the employee works.

#### Factors to consider:

- Local law Do any local orders or ordinances dictate a specific procedure?
- Burden on the healthcare system- Has the area been acutely effected, making doctor visits difficult?
- Availability of COVID-19 testing Would it be realistic to require employees to be tested before returning?



## Return to Work Approaches

**Symptom Based Approach:** A symptom based approach asks employees to self-isolate and monitor their symptoms over a period of time, only allowing the employees to return after meeting certain milestones.

#### **Time-Since-Illness Approach**

- Some employees contract the virus but never show symptoms.
- Require employees to certify that it has been at least 10 days following a positive test and that he or she has not exhibited symptoms of COVID-19.

#### **Time-Since-Recovery Approach**

- Employee shows physical symptoms such as fever, cough, shortness of breath.
- Require employee to certify that he or she has been fever free, without medication for at least 72 hours.
- □ More than 10 days have passed since symptoms appeared.
- At least 10 days have passed since positive test.
- **Require a return to work certification from healthcare professional if possible.** 
  - May require employer to pay.
  - □ May clock the healthcare system.



#### Return to Work Approaches

**Test Based Approach:** Requires a negative COVID-19 test prior to returning to work after testing positive

- Contingent on availability of testing, which is still sporadic at best in most places.
- If requiring negative tests, employees should provide a copy of his or her results to the employer.
- In most states, requiring employees to be tested likely requires employers to pay for testing and time spent being tested.
- □ If testing is widespread and the employer has the financial ability to pay for employees tests, then this method will likely provide the most certainty and help ensure employees returning to work cannot help spread the virus.



#### Return to Work

May an employer require a doctor's note certifying fitness for duty before allowing an employee to return to work?

❑ Yes. Such inquiries are permitted under the ADA either because they would not be disability-related or, if the pandemic were truly severe, they would be justified under the ADA standards for disability-related inquiries of employees. As a practical matter, however, doctors and other health care professionals may be too busy during and immediately after a pandemic outbreak to provide fitness-for-duty documentation. Therefore, new approaches may be necessary, such as reliance on local clinics to provide a form, a stamp, or an e-mail to certify that an individual does not have the pandemic virus.

https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws



# Employee Medical Screening Forms and Policies



## **EEOC Guidance on Health Screening**

- Temperature scans, COVID-19 tests, and symptom monitoring during the COVID-19 pandemic are not improper medical exams under the ADA because they are job related and consistent with business necessity to protect employees in the workplace.
- EEO laws apply during the COVID-19 pandemic, but do not interfere with or prevent employers from following CDC or state/local public health guidance



## **Two Common Types of Screening**

1.

Temperature Scanning of Employees At Start of Shift 2.

Screening of Employees for COVID-19 Symptoms (Either Self-Screen or by Company or Third Party)

One or both types of screening may be required in some jurisdictions or industries.



### **Temperature Checks**

#### Allowed:

EEOC guidance: "Generally, measuring an employee's body temperature is a medical examination. Because the CDC and state/local health authorities have acknowledged community spread of COVID-19 and issued attendant precautions, employers may measure employees' body temperature. However, employers should be aware that some people with COVID-19 do not have a fever." <a href="https://www.eeoc.gov/facts/pandemic\_flu.html#q7">https://www.eeoc.gov/facts/pandemic\_flu.html#q7</a>

#### **Required under some State/Local ordinances:**

San Diego: Effective May 27, 2020, essential businesses and those opened under California's Resilience Roadmap *must* conduct daily temperature screenings of employees, as well as develop and post specific plans for health screenings and to maintain social distancing and sanitation measures. Employees with a temperature of 100 ° or more must be prohibited from entering the workplace.

https://www.sandiegocounty.gov/content/dam/sdc/hhsa/programs/phs/Epidemiology/HealthOfficerOrderCOVID19. pdf





#### **Temperature Check Policy Contents**

- Confirm policy complies with state and local orders
- Describe process –screening area, safety measures, social distancing
- Set threshold 100.4 degrees Fahrenheit
- Describe consequences of failing test. Sent home? Retest Allowed?
- Address recordkeeping. Do you keep record of a failure?
- Who should the employee contact about next steps? What is the return to work protocol for employee who fails temp scan?
- What is the procedure if an employee refuses to take the test, or needs an accommodation?
- Obtain written authorization



## Sample Language - Accommodation

**Accommodation**. You have been advised that you have a right to request a reasonable accommodation if there is a legitimate medical reason why you cannot participate in the health screening, or if you have a non COVID-19 related health condition that might cause you to exhibit symptoms similar to COVID-19, like a fever.



## Sample Language – Refusal to Test

Any employee who refuses a temperature screen will be treated as a failure of the screening process and denied entry to the facility. Any employee who refuses a temperature screen will not be paid for the day they reported to work unless required by any applicable federal or state law.



#### **Employee Temperature-Screening Record**

If an employee's body temperature is at or above 100.4 degrees Fahrenheit, the employee must be sent home immediately and the following record completed.

Employee name:

Job title:

Supervisor's name:

Recorded temperature:

Does the employee have any explanation for the fever other than Covid-19 infection? If so, document reasons provided by the employee.

Are visible signs of respiratory illness present? \_\_\_\_ Yes \_\_\_\_ No

An employee sent home with a fever shall be advised as to the following:

- The employee should immediately contact the Company's Human Resources Department to discuss next steps and any return-to-work requirements. Contact information should be provided, if necessary.
- If there is any non Covid-19 related reason why the employee has a fever, the employee should provide that information to the Human Resources Department (if not already provided).
- The employee will be paid for the shift in accordance with the Company's sick leave policy and any applicable local, state or federal laws.

The employee will not be discriminated against based on the failure of the temperature screening, and the company will take reasonable steps to protect the confidentiality of the screening results.

Screened By:	Date	
Employee Acknowledgment	Date	

## **Employee Health Screening Inquiries**

In addition to requiring that employees self-report symptoms, employers may want or be required to monitor employees' health.

This may be done on a regular basis using a formal process such as a health questionnaire, or as a result of the employer having a reasonable belief based on objective evidence, that the employee may be exhibiting COVID-19 related symptoms.

Employers must ensure that all screening and decisions related to screening are done in a consistent manner, to avoid claims of disparate treatment based on protected classifications.



#### **Employee Health Screening Inquiries**

- Employers must treat documentation relating to the results of all inquiries/screening as confidential medical records.
- At all points of collecting, storing, transmitting, using, and disclosing the screening results, the employer must carefully safeguard this information.





#### Health Screening Policy Issues

As employers evaluate screening and testing requirements and recommendations, they will need to work through several issues including:

- Who will perform the screening (*e.g.*, company nurse, HR, employees self-screen);
- Whether or not the screening results will be recorded;
- If recorded, how will the information be recorded (*e.g.*, a daily log sheet listing all employees, a separate log sheet per employee);
- How and where will the screening information be stored, and for how long must it be maintained by the employer; and
- How much time will the screening/testing process take, and will the time be paid.



#### Sample Supervisor Screening Log

#### **COVID-19 Employee Health Screening Log for Onsite Screening**

**Person Completing Form** 

Date

Screen each employee for symptoms before they start their shift. Circle an answer (y=yes, n=no) for each symptom for each employee. If an employee reports any of the symptoms: 1. Send employee home immediately. 2. Notify the Human Resources Department.

EMPLOYEE NAME	CHECK SYMPTOMS DAILY, BEFORE STARTING SHIFT						
	Fever 100.4°F or above	Cough	Shortness of breath or difficulty breathing	Chills	Muscle aches	Sore throat	New loss of taste or smell
	Y N	ΥN	Y N	ΥN	ΥN	ΥN	Y N
	Y N	ΥN	Y N	ΥN	ΥN	ΥN	Y N
	Y N	ΥN	Y N	ΥN	ΥN	Y N	ΥN
	Y N	ΥN	Y N	ΥN	ΥN	Y N	ΥN
	Y N	ΥN	ΥN	ΥN	ΥN	ΥN	ΥN
	Y N	ΥN	Y N	ΥN	ΥN	ΥN	ΥN
	Y N	ΥN	Y N	ΥN	ΥN	Y N	ΥN
	Y N	ΥN	Y N	ΥN	ΥN	ΥN	ΥN



#### **COVID-19 EMPLOYEE SELF-SCREENING FORM**

Employee Name:	
Date:	Time:

#### 1. In the past 24 hours, have you experienced (please mark a check in either the

"yes" or "no" column):

SYMPTOM	YES	NO
Cough		
Shortness of Breath		
Fever (100.4° F or above)		
Chills		
Fatigue		
Muscle Aches and Pains		
Sore Throat		
Headaches		
New Loss of Taste or Smell		

If you answer "yes" to any of the symptoms listed above, or your temperature is 100.4° F or higher, do not go into work. Immediately contact Human Resources for further instruction. You may also be asked to self-isolate at home and contact your primary care physician's office for direction.

#### 2. Within the past 7 days, have you:

Had close sustained contact (within 6 feet for more than fifteen minutes) with an individual who had symptoms of, tested positive for, or was diagnosed with COVID-19?

#### □Yes □No

If you answer "yes" to this questions, please contact Human Resources before going to work.

#### 3. Self-Administered Temperature Check (Optional)

Please provide the readings of two self-administered temperature screenings taken within last 12 hours: Screening#1: Time: \_\_\_\_\_\_ Temperature: \_\_\_\_\_\_ Screening #2:Time: \_\_\_\_\_\_ Temperature: \_\_\_\_\_\_

# FFCRA Requests for Leave & Accommodation Request Forms



#### Families First Coronavirus Response Act



#### QUALIFYING REASONS FOR LEAVE RELATED TO COVID-19

An employee is entitled to take leave related to COVID-19 if the employee is unable to work, including unable to telework, because the employee:

- is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
- has been advised by a health care provider to self-quarantine related to COVID-19;
- is experiencing COVID-19 symptoms and is seeking a medical diagnosis;
- is caring for an individual subject to an order described in (1) or self-quarantine as described in (2);

- is caring for his or her child whose school or place of care is closed (or child care provider is unavailable) due to COVID-19 related reasons; or
- is experiencing any other substantially-similar condition specified by the U.S. Department of Health and Human Services.



## **Emergency COVID-19 Leave Policy**

- State purpose of policy is to maintain a safe and health workplace
- Identify the qualifying reasons for leave under the FFCRA
- Summarize the paid and partially-paid leave benefits available
- Identify notice requirements for obtaining leave
- Provide guidelines for returning to work
- Explain retaliation is strictly prohibited





## Sample Policy for Returning from Leave

**Return to Work** Employees are required to follow guidelines established by the Centers for Disease Control and Prevention and local public health authorities as it relates to ceasing home isolation practices. Employees returning to work after using the leave described above will be restored to the same or equivalent position, unless in the interim they would have been subject to an employment action regardless of leave usage. If an individual has exhausted all leave under this policy and is still unable to return to work, the situation will be reviewed on a case-by-case basis to determine what rights and protections might exist.



#### **Requesting Leave Under FFCRA**

#### 44. What information should an Eligible Employer receive from an employee and maintain to substantiate eligibility for the sick leave or family leave credits?

An Eligible Employer will substantiate eligibility for the sick leave or family leave credits if the employer receives a written request for such leave from the employee in which the employee provides:

- 1. The employee's name;
- 2. The date or dates for which leave is requested;
- 3. A statement of the COVID-19 related reason the employee is requesting leave and written support for such reason; and 4. A statement that the employee is unable to work, including by means of telework, for such reason.

In the case of a leave request based on a quarantine order or self-quarantine advice, the statement from the employee should include the name of the governmental entity ordering quarantine or the name of the health care professional advising self-quarantine, and, if the person subject to quarantine or advised to self-quarantine is not the employee, that person's name and relation to the employee.

In the case of a leave request based on a school closing or child care provider unavailability, the statement from the employee should include the name and age of the child (or children) to be cared for, the name of the school that has closed or place of care that is unavailable, and a representation that no other person will be providing care for the child during the period for which the employee is receiving family medical leave and, with respect to the employee's inability to work or telework because of a need to provide care for a child older than fourteen during daylight hours, a statement that special circumstances exist requiring the employee to provide care.



#### **WIRS**

## **FFCRA Request for Leave Form**

- The DOL has not issued a standard form
- An FFCRA Request for Leave form *should* include:
  - Employee name
  - Date form submitted
  - Date leave is requested to begin and end
  - Reason for leave request and supporting reason for leave
    - E.g., Child name, age, child care provider, certification no other person caring for child, special circumstances if child is over 14
  - Option to substitute other available paid leave benefits
  - Additional information the Company may request and timeliness of employee's response





#### **Granting or Denying Leave**

#### Notify employee whether:

- Leave is granted
- Additional information is needed
- Leave is denied

We have reviewed your request for leave under the FFCRA and any supporting documentation that you have provided. We have received your most recent information on \_\_\_\_\_\_ and decided:

- D Your FFCRA leave request is approved
  - You are eligible for up to \_\_\_\_\_ weeks or \_\_\_\_\_ hours of FFCRA leave beginning on \_\_\_\_\_\_ and ending on \_\_\_\_\_\_
  - G Your leave may / may not (circle one) be taken intermittently on the following schedule:
  - D Your leave shall be paid or partially-paid as follows:
- Additional information is needed to determine if your FFCRA leave request can be approved
  - The documentation you have provided is insufficient to determine whether you are eligible for FFCRA leave. Please provide the following additional information no later than <u>7 calendar days</u> of this notice. If more time is needed, please let us know, or your leave request may be denied.
  - Specify additional information needed:
- D Your FFCRA leave request is not approved for the following reason:
  - D You have not set forth a qualifying reason for leave under the FFCRA
  - You have exhausted your FMLA leave entitlement in the applicable 12-month period
  - You have not been employed for at least 30 calendar days or you are otherwise excluded from the FFCRA because you are an emergency responder and/or health care worker
  - Your position has been impacted by a temporary or permanent layoff, furlough, or workplace closure
  - We have fewer than 50 employees and leave under the FFCRA would jeopardize the viability of the business



## Accommodation Requests Under ADA

- 1. Determine whether the employee has made a request for an accommodation.
- 2. Recognize <u>who</u> is seeking an accommodation under the ADA.
- 3. Determine whether the employee has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.
- 4. If the impairment and/or need for accommodation is <u>not obvious</u>, ask for reasonable documentation to establish the employee's right to receive accommodation under the ADA.
- 5. Determine <u>what</u> accommodation is the employee seeking, and discuss possible reasonable accommodations with employees.
- 6. Prepare a response to requests for accommodation based upon essential functions.



## Accommodation Requests Under ADA

- 7. Determine and document whether requested accommodations create undue hardship
- 8. Identify and <u>document</u> reasonable accommodations offered or the reason why accommodations are not needed or not offered.
- 9. <u>Discuss</u> with affected employees reasonable accommodations offered or the reason why accommodations are not needed or not offered.
- 10. Document all communications between the employer and the employee regarding the request for reasonable accommodations.
- **11**. Obtain employee's signature acknowledging decision.
- 12. <u>Protect confidentiality of reasonable accommodations made for employees and applicants with disabilities.</u>



## **Reasonable Accommodation Forms**

- Request for accommodation requests can be made in multiple ways:
  - can be in plain English
  - can be made orally or in writing
  - need not mention ADA or use the phrase "reasonable accommodation"
  - can be made at any time during the period of employment
- Reasonable Accommodation Request Forms should include:
  - The employee's statement of the specific requested accommodation
  - Statement regarding the limitations interfering with ability to perform essential functions of the job
  - How the accommodation will allow the employee to perform the job
  - Expected duration of the requested accommodation
- Communicate whether accommodation has been granted, denied, or whether an alternative accommodation is more suitable



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