HR 101: Dealing with Governmental Administration Agencies





Welcome New Members and Guests!









Vision, Core Values, & Mission









2024 Upcoming Programs

| | Dates | Topic & Speaker | | |
|---------------------------------------|------------------------|---|--|--|
| * Provides SHRM and HRCI credits | <u>June 13th, 2024</u> | HR101 - Admin Agency*+ | | |
| | June 18th, 2024 | Lancaster Chamber <u>Mastering the Art of Business</u> <u>Networking</u> | | |
| + Hosted by the Government Affairs | June 20th, 2024 | Lancaster Chamber <u>HR Roundtable: The Use of AI in Human</u> <u>Resources*</u> | | |
| Committee | June 23-26, 2024 | SHRM National Convention in Chicago | | |
| | June 27th, 2024 | CPBGH <u>Health Summit</u> | | |
| | June 27th, 2024 | Lancaster Chamber <u>Selling Series: The Effective Sales Leader</u> | | |
| | <u>July 9th, 2024</u> | LSHRM July Breakfast-Crisis Management 101* | | |
| | July 11th, 2024 | B.Y.O. Lunch & Learn: Immigration/Hiring*+ | | |







2024 Volunteer Leadership Conference



Volunteer LEADERSHIP CONFERENCE

The New Normal: Leveraging Knowledge to Promote Adaptable, Resilient Leadership



Wyndham Gettysburg Gettysburg, PA



The New Normal: Leveraging Knowledge to Promote Adaptable, Resilient Leadership

The Volunteer Leadership Conference is a **NO-COST** educational training event held by PA SHRM for individuals that are currently or interested in becoming volunteer leaders for the PA State Council or their local Chapter's Board or Committees.



Register today!! The registration deadline is Friday, July 19th.

2024 PA LSHRM Annual Conference



Unleashing Potential, Transforming Tomorrow

Sponsored by

UKG

Our purpose is people





Sponsorship





12 + in-person events



Intimate setting for engagement in high-tech venue



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LANCASTER SHRAM Society for Human Resource Management

WHEN THE AGENCY COMES KNOCKIN'

HR 101 Series | June 13, 2024

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YOUR HOSTS...



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| | | \times | | | | |
|---|-------------------------|-------------------------------------|----------------------------|-------------------------------|------------------------------|---------------------------------|
| | DRUMMERS Named Ringo | HOW MANY FINGERS Ami Holding UP? | ADMINISTRATIVE Agencies | COLORS THAT End in "Urple" | WORDS THAT RHYME With Dog | MONTHS THAT START With "Feb" |
| | \$200 | \$200 | \$200 | \$200 | \$200 | \$200 |
| × | \$400 | \$400 | \$400 | \$400 | \$400 | \$400 |
| | \$600 | \$600 | \$600 | \$600 | \$600 | \$600 |
| | \$800 | \$800 | \$800 | \$800 | \$800 | \$800 |
| | \$1000 | \$1000 | \$1000 | \$1000 | \$1000 | \$1000 |

ADMINISTRATIVE AGENCIES - \$200

THIS FEDERAL AGENCY'S MISSION IS TO PREVENT AND REMEDY UNLAWFUL EMPLOYMENT **DISCRIMINATION AND ADVANCE** EQUAL OPPORTUNITY FOR ALL

WHAT IS THE EQUAL EMPLOYMENT **OPPORTUNITY COMMISSION (EEOC)**

EEOC OVERVIEW

- Responsible for enforcing federal laws that make it illegal to discriminate against a job applicant or an employee because of a person's *protected characteristic*
 - Race, color, religion, sex/gender (including sexual orientation, transgender status, gender identity, gender expression, pregnancy, childbirth, or related conditions), national origin, age (40 or older), disability, genetic information, citizenship
- Employers with at least 15 employees are covered by EEOC laws, including labor unions and employment agencies

EMPLOYER COVERAGE

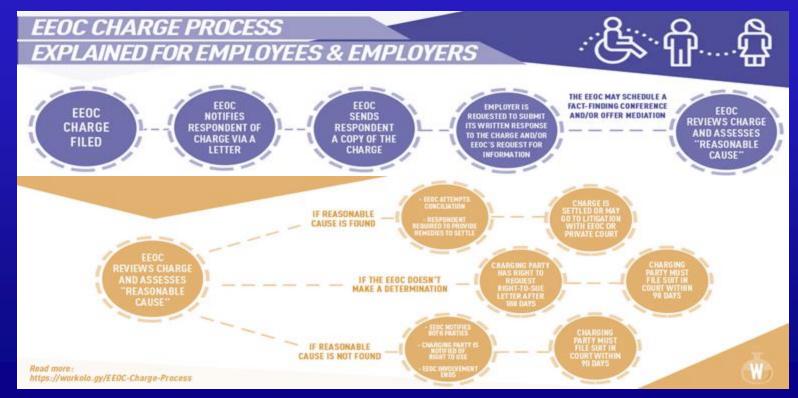
| Civil Rights Act of 1964 (Title VII) | Age Discrimination in Employment Act (ADEA) | Americans with Disabilities Act (ADA) | Genetic Information Non- disclosure Act (GINA) | Uniformed Services Employment and Reemployment Rights Act (USERRA) | Pregnancy Discrimination Act Pregnant Workers Fairness Act (PWFA) FLSA – Providing Urgent Maternal Protections for Nursing Mothers (PUMP) | Occupational Safety and Health Act (OSHA) | Family Medical Leave Act (FMLA) |
|--|--|--|--|--|--|--|--|
| 15⁺ | 20+ | 15+ | 15⁺ | 1+ | 15⁺ | 1+ | 50+ |
| Employees | Employees | Employees | Employees | Employees | Employees | Employees | Employees |

EEOC AUTHORITY AND ROLE

- EEOC has the authority to investigate charges of discrimination against employers who are covered by the law
- EEOC's role in an investigation is to fairly and accurately assess the allegations in the charge and make a finding



EEOC CHARGE PROCESS



Source: EEOC Charge Process, Workology (2022)

COMMON MISTAKES TO AVOID

Lack of Documentation

- The EEOC will want to see proof that the Employer did not discriminate against the employee filing the Complaint
 - Ex: Performance Reviews, Attendance Records, Company Policy Violations, Communication Issues, Records of Disciplinary Actions, etc.

No Anti-Discrimination Policy

- Should define which behaviors are unacceptable, disciplinary actions if the policy is violated, and clear instructions on how employees can file formal complaints
- Inconsistency with Enforcing Policies

 Treat employees equally, regardless of their position or seniority

EEOC DIGITAL CHARGE SYSTEM (RESPONDENT PORTAL)

- Secure online portal to transmit and receive documents between the parties to a charge and the EEOC
- Allows an employer against whom a charge has been filed to communicate with the EEOC to download the charge, review an invitation to mediate, submit a position statement, and provide and verify contact information
 - If the EEOC has an email address for a designated contact to receive charges for the Respondent, an electronic notice will be sent to that email address
 - If the EEOC does not have an email address, a paper notice will be mailed to the address of record for the Respondent
- The Notice of Charge instructs the Respondent to log into the secure portal with the specific charge number and a system-generated password. These items are required to access the system

ADMINISTRATIVE AGENCIES - \$400

AN EMPLOYEE HAS THIS NUMBER OF DAYS FROM THE LAST DISCRIMINATORY ACT TO FILE A COMPLAINT WITH THE EEOC

WHAT IS

300 DAYS

THIS STATE AGENCY PROMOTES EQUAL OPPORTUNITY AND ENFORCES PA CIVIL RIGHTS LAWS THAT PROTECT PEOPLE FROM UNLAWFUL DISCRIMINATION

ADMINISTRATIVE AGENCIES - \$600

WHAT IS THE PENNSYLVANIA HUMAN RELATIONS **COMMISSION (PHRC)**

PHRCOVERVIEW

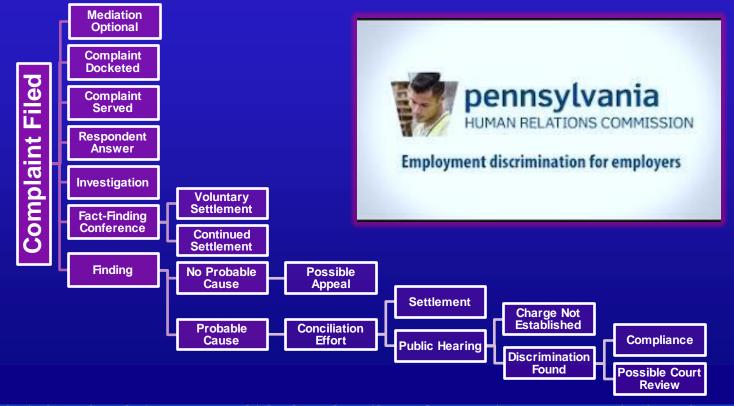
- PHRC enforces state laws that prohibit discrimination
 - Pennsylvania Human Relations Act (PHRA) applies to companies with 4+ employees and does NOT apply to federal agencies, or law enforcement agencies, covering discrimination in employment, housing, commercial property, education, and public accommodations
- Pennsylvania law prohibits employment discrimination based on:
 - Race, color, religious creed, ancestry, age (40 and older), sex/gender (including sexual orientation, transgender status, gender identity, gender expression), national origin, handicap or disability, and the use, handling, or training of support or guide animals for disability, and retaliation for filing a complaint, opposing unlawful behavior, or assisting investigations

PHRCAUTHORITY AND ROLE

- To protect the rights of Complainants under state and federal law, the PHRC also investigates:
 - Employment discrimination complaints on behalf of the EEOC, and
 - Housing discrimination complaints on behalf of the U.S.
 Department of Housing and Urban Development (HUD)



PHRC COMPLAINT PROCESS



CHALLENGES EMPLOYERS FACE

- Responsiveness of Investigator
- Deadlines for Submission of Documents
- Backlog of Cases
 - Prolonging Litigation
- Lack of Internal Communication



EEOC V. PHRC

- Cross-Filing

 EEOC and PHRC
- Choice of Venue Considerations
 Size of Employer
 - Size of Employer
 - Number of Employees
 - Cap on Damages



ADMINISTRATIVE AGENCIES - \$800

AN EMPLOYEE HAS THIS NUMBER OF DAYS FROM THE LAST DISCRIMINATORY ACT TO FILE A COMPLAINT WITH THE PHRC

WHAT IS



ADMINISTRATIVE AGENCIES - \$600

THIS FEDERAL AGENCY SAFEGUARDS EMPLOYEES' RIGHTS TO ORGANIZE

WHAT IS THE NATIONAL LABOR **RELATIONS BOARD** (NLRB)

NLRBOVERVIEW

- The NLRB is an independent federal agency which enforces employees' right to:
 - Organize (form a labor union)
 - Engage with one another to seek better working conditions
 - Choose whether or not to have a collective bargaining representative negotiate on their behalf with their employer, or refrain from doing so
 - Prevent and remedy unfair labor practices (ULP) committed by private sector employers and unions
 - Conduct secret ballot elections regarding union representation

NON-UNION EMPLOYERS

Protected Speech

• Employees have the right to:

- Share, discuss and criticize wages
- Discuss and criticize terms and conditions of employment
- Discuss and criticize working conditions
- Criticize their employer
- Support one another and work together in bringing complaints



NLRBAUTHORITY AND ROLE

General Counsel

(Enforcement)

- Appointed by the President to a 4-year term
- Independent from the Board
- Responsible for the investigation and prosecution of unfair labor practice cases and general supervision of the NLRB field offices in the processing of cases

Board

(Judicial)

- Appointed by the President to 5-year terms, with Senate consent
- The Board acts as a quasijudicial body in deciding cases on the basis of formal records in administrative proceedings related to the National Labor Relations Act (NLRA)
- Authority to make, amend, and rescind rules and regulations as may be necessary to carry out the provisions of the NLRA

ULP PROCESS

CHARGE Filed with Regional Director; alleges unfair labor practice by employer or labor organization.

INVESTIGATION

Regional Director determines

whether formal action should be

Lalours

INJUNCTION

Regional Director must ask district court for temporary restraining order in unlawful boycott and certain picketing cases...

INJUNCTION

General Counsel may, with Board approval, ask district court for temporary restraining order after complaint is issued in certain serious unfair labor practice cases.

COMPLAINT AND ANSWER **Regional Director issues complaint** and notice of hearing. Respondent files answer in 10 days.

HEARING AND DECISION

Administrative Law Judge presides over a trial and files a decision recommending either (1) order to cease and desist from unfair labor practice and affirmative relief or (2) dismissal of complaint. If no timely exceptions are filed to the Administrative Law Judge's decision, the findings of the Administrative Law Judge automatically becomes the decision and order of the Board.

DISMISSAL Board finds respondent did not commit unfair labor practice and dismisses complaint.

REMEDIAL ORDER

Board finds respondent committed unfair labor practice and orders respondent to cease and desist and to remedy such unfair labor practice.

COURT ENFORCEMENT AND REVIEW

Court of appeals can enforce, set aside or remand all or part of the case. U.S. Supreme Court reviews appeals from courts of appeals.

WITHDRAWAL - REFUSAL TO ISSUE COMPLAINT -SETTLEMENT Charge may, with Agency approval, be withdrawn before or after complaint is issued. Regional

Director may refuse to issue a complaint; refusal (dismissal of charge) may be appealed to General Counsel, Settlement of case may occur before or after issuance of complaint (informal settlement agreement subject to approval of Regional Director; formal settlement agreement executed simultaneously with or after issuance of complaint, subject to approval of Board). A formal settlement agreement will provide for entry of the Board's order and may provide for a judgement from the court of appeals enforcing the Board's order.

OTHER DISPOSITION Board remands case to Administrative Law Judge for further action.



ELECTION PROCESS

- Can be initiated by employees or a labor union
- Employees show support by signing petition or authorization cards
- Must involve a defined "unit" (ex. all janitors, all store employees)
- Need at least 30% of employees in proposed unit to signify support
 Not likely to proceed unless they have greater than 50% support
- Process started by filing a petition to hold an election
- Employers have right to express their opposition and opinions
- Union must secure 50% plus one of employees who vote

CHALLENGES EMPLOYERS FACE

- Although the Regional Offices decide cases within 30 days, the final decision by the ALJ and the Board Members can take years
- Employers should always contact labor counsel to analyze their options and create a strategy for defending against the charges brought by employees or unions



ADMINISTRATIVE AGENCIES - \$1000

THIS AGENCY ADMINISTERS AND ENFORCES PA LAWS DEALING WITH LABOR-MANAGEMENT RELATIONS

WHAT IS THE PENNSYLVANIA LABOR **RELATIONS BOARD** (PLRB)

PLRBOVERVIEW

- The Board is comprised of 3 members who are appointed by the Governor and confirmed by the Pennsylvania Senate to serve six-year terms
- The PLRB provides efficient and impartial oversight of the laws which guarantee collective bargaining rights to public and some private sector employees, to promote stability and mutual benefit in employer/employee relationships, and to assure balance in the rights and interests of employers, employees, and the public at large
- The Pennsylvania Relations Act (PLRA), which created the Board, limits the PLRB's jurisdiction to employers and their employees not covered by the NLRA
 - Ex: Small local businesses, municipal government employees

PLRB AUTHORITY AND ROLE

- The PLRB has the responsibility of:
 - Determining the appropriateness of collective bargaining units;
 - Certifying employee representatives as well as the authority to remedy and prevent unfair labor practices; and
 - Resolve collective bargaining impasses for public employees (other than police and firefighters)

• The PLRB is authorized to:

- Conduct hearings and issue decisions on questions of representation and unfair labor practice charges;
- Conduct union representation elections;
- Appoint fact-finders; and
- Provide panels of arbitrators in bargaining disputes involving employees who do not have the right to strike under the Pennsylvania Employees Relations Act (PERA)





| | \backslash — | \mathbf{X} | | | • . | |
|---|---------------------------------|----------------------------|-------------------|----------------------------|----------------------------------|-------------------------|
| | FOODS THAT END In "Amburger" | CURRENT U.S. Presidents | MAKE ANY Noise | ADMINISTRATIVE Agencies | MOVIES THAT START With "Jaws" | WHAT COLOR Is green? |
| | \$400 | \$400 | \$400 | \$400 | \$400 | \$400 |
| ¥ | \$800 | \$800 | \$800 | \$800 | \$800 | \$800 |
| | \$1200 | \$1200 | \$1200 | \$1200 | \$1200 | \$1200 |
| | \$1600 | \$1600 | \$1600 | \$1600 | \$1600 | \$1600 |
| | \$2000 | \$2000 | \$2000 | \$2000 | \$2000 | \$2000 |

ADMINISTRATIVE AGENCIES - \$400

THIS DIVISION OF THE DOL **ENFORCES FEDERAL** MINIMUM WAGE, OVERTIME PAY, AND CHILD LABOR REQUIREMENTS

WHAT IS THE

WAGE AND HOUR DIVISION (WHD)

WHD OVERVIEW

- The WHD enforces laws that establish minimum standards for wages and working conditions in the U.S. regardless of immigration status, including:
 - Minimum wage, overtime pay, recordkeeping, child labor and special employment, family and medical leave, lie detector tests, worker protections for migrant workers and certain temporary worker programs, and the prevailing wages for government service and construction contracts



WHD AUTHORITY AND ROLE

- WHD investigators gather data on wages, hours, and other employment conditions to determine compliance with the law
- When violations are found, the WHD secures agreements to comply and collect back wages owed
- WHD may also assess liquidated damages for workers and civil money penalties if violations are repeat or willful
 - "Department of Labor recovers \$252k for 19 restaurant workers whose Albuquerque employer withheld tips, and wages at two franchise locations" DOL News (6/10/24)
 - "Department of Labor investigation, litigation recovers \$120k in back wages, damages for 29 Long Island landscaping, sprinkler installation workers" DOL News (5/20/24)
 - "Department of Labor obtains judgment requiring Philadelphia- area home care employer to pay over \$1M in overtime back wages, damages, and penalties" DOL News (5/14/24)

WHD INVESTIGATION PROCESS

Complaint/Agency-Initiated Investigation



Complaints initiate many investigations, but the WHD also targets certain types of businesses or industries for investigation such as low-wage industries because of high rates of violations, the employment of vulnerable workers, or rapid changes in an industry, such as growth or decline

WHD Investigator holds an initial conference with the employer and/or the employer's representative and tours the employer's establishment

WHD Investigator interviews employees in private

WHD Investigator reviews the employer's records to determine compliance

WHD holds a final conference with the employer and/or the employer's representative to discuss any violations found and how to correct them. If back wages are owed to employees, the investigator will request payment of back wages

LITIGATION PROCEDURES

- If the DOL and the Employer are unable to resolve the compliance issues administratively, the DOL may litigate and/or recommend criminal prosecution
 - If the DOL files a lawsuit on behalf of employees, it may seek:
 - Back wages and an equal amount in liquidated damages
 - Injunction to restrain violations of the law such as unlawful withholding of proper minimum wage and overtime pay, failure to keep proper records, and retaliation against employees who file complaints or cooperate with the DOL
 - Order for payment of civil money penalties from a U.S. DOL Administrative Law Judge (ALJ)
 - Order to prevent the shipment of affected goods
 - An employee may file a private suit to recover back wages, an equal amount in liquidated damages, plus attorney's fees and court costs

ADMINISTRATIVE AGENCIES - \$800

THIS PA STATE BUREAU IS **RESPONSIBLE FOR THE** ADMINISTRATION. EDUCATION. AND ENFORCEMENT OF LABOR LAWS

WHAT IS THE **BUREAU OF LABOR** LAW COMPLIANCE (BLLC)

BLLC OVERVIEW

- The PA Department of Labor and Industry's BLLC enforces and investigates complaints of violations under:
 - Wage Payment and Collection Law
 - Child Labor Act
 - Prevailing Wage Act
 - Construction Workplace Misclassification Act (Act 72)
 - Prohibition of Excessive Overtime in Healthcare Act (Act 102)



BLLC INVESTIGATION PROCESS

- BLLC will investigate alleged violations based upon an employee's complaint or upon its own initiative. Employees may file a complaint with the Bureau within 60 days of the alleged violation
- The Bureau will review and begin an investigation of a complaint within 60 days
- If the Bureau completes its investigation and finds there was a violation, it will issue an administrative decision containing its findings and proposed penalties. Once received by the employer, it may:
 - Accept the notice and pay the penalty
 - Request a penalty reduction by mailing the request to the Bureau within 10 days and must include mitigating circumstances that would support a lesser penalty and provide an alternative penalty amount. The Bureau must act on the request within 10 days
 - Submit a written request for a formal hearing within 30 days

ADMINISTRATIVE AGENCIES- \$1200

THIS AGENCY ASSURES WORKERS HAVE SAFE AND HEALTHFUL WORKING CONDITIONS

WHAT IS THE **OCCUPATIONAL SAFETY AND HEALTH** ADMINISTRATION (OSHA)

OSHA OVER VIEW

 Occupational Safety and Health Act – each employer shall furnish to each of its employees, employment and a place of employment that are free from recognized hazards that are causing or are likely to cause death or serious physical harm to its employees

General Requirements under the Act:

- Provide workplace free from serious hazards
- Comply with standards, rules and regulations issued under OSH Act
- Post OSHA poster
- Examine workplace conditions
- Communicate potential hazards to employees
- Establish safety policies/procedures and provide safety training

OSHA INSPECTIONS

INSPECTION PRIORITIES

- ⊗ Imminent Danger Situations
- ⊗ Severe Injuries and Illnesses
- ⊗ Worker Complaints
- \otimes Referrals
- \otimes Targeted Inspections
- ⊗ Follow-up Inspections

INSPECTION PROCEDURE

- 8 Preparation/Research
- \otimes Presentation of Credentials
- ⊗ Opening Conference
- \otimes Walk Around
- ⊗ Closing Conference



WHISTLEBLOWER COMPLAINT

- Investigated by whistleblower investigators
 - Separate division of OSHA
 - Process much slower than safety/compliance inspection
- EPLI coverage "Retaliation claims"
 - Separate counsel may handle compliance inspection and whistleblower action
- Consideration of other claims
 - Investigator will review OSHA compliance inspection file and gather information on other pending actions (lawsuits, agency proceedings and investigations, grievance arbitration)
 - Investigator may contact other agencies (EEOC, NLRB, UC)

DO'S AND DON'TS

DO

- Designate an ER representative to accompany CSHO (can be counsel)
- Educate employees on the rights concerning interviews
- Request proof of credentials and reason for compliance officer visit
- Be professional and polite
- Escort CSHO during inspection
- Limit the scope of the inspection when possible
- Take photos, videos and audio recordings of anything CSHO photographs or records

DON'T

- Volunteer information
- Agree to managerial interviews without consulting counsel
- Strong arm your way into an employee interview
- Allow CSHO to inspect facility unattended
- Admit to any violations
- Sign any statement unless it is exactly what you said while speaking to the CSHO
- Submit documents without reviewing for confidential or proprietary information

OSHA®

ADMINISTRATIVE AGENCIES - \$1,600

THIS AGENCY PROVIDES **INCOME TO INDIVIDUALS** WHO LOSE EMPLOYMENT THROUGH NO FAULT OF **THEIR OWN**

WHAT IS

UNEMPLOYMENT COMPENSATION (UC)

UC OVERVIEW

- The UC Office oversees former employee's payment of UC benefits.
- The UC Office is responsible for employer's compliance, under Pennsylvania Unemployment Compensation Law
- Payment of UC benefits to former employees impacts the amount an Employer must contribute to the UC fund



UC PROCESS

Claim Filed

UC Service Center

Financial Eligibility Determination

Benefit Eligibility Determination

Referee Appeal/Adjudication Board of Review Appeal



Cmwlth Court Appeal

Supreme Court Appeal

CLAIMS, APPEALS, COVERAGE, AND REPORTS

Responding to the Initial UC Claim

- Respond to all claims (contested and uncontested)
- **Respond timely**
- Be accurate and consistent
- Provide clear, first-hand information regarding reason for separation

Appealing the Initial Determination • File UC appeal petition form • Timely appeal • Request UC Center record/file

Prepare for hearing before Referee

Coverage and Reports

Coverage financing methods:

Contributory (most common)

 Reimbursable
 Contribution tax rate computed annually

 Appeal may be filed within 90 days of the notice
 Employers are responsible for reporting wages to employees and remitting any resulting contributions based on those wages



FINAL JEOPARDY - \$2000

LANCASTER SHRM, **ORIGINALLY CALLED THE** "PERSONNEL ASSOCIATION" WAS ESTABLISHED IN THIS YEAR

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WHAT IS





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