International Employment Lawyer

Guide to Restructuring a Cross-Border Workforce

Contributing Editors

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01. Is there a concept of redundancy - based on a shortage of work or other economic reasons - as a justified reason to dismiss employees in your jurisdiction? If so, how is it defined?

Czechia

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Yes, there is. An employee is redundant if the following conditions are met:

- the employer adopted a decision on organisational change;
- the change concerns the scope of activities, tasks, technical equipment, number of employees, or otherwise alters the structure of the employer;
- the aim of the change is to increase work efficiency, reduce costs, or otherwise alter the performance of the employer's enterprise; and
- as a result, the employee's work is redundant or not needed.

According to case law, the employee's work is not needed, either at all or at least in part, with the rest being distributed among the current employees or corporate body. Rebranding the position, hiring a new employee to carry out the work of the dismissed employee shortly thereafter, or otherwise fabricating the redundancy with an ulterior motive does not qualify as redundancy.

Czech law provides two other similar reasons based on which an employer is entitled to terminate employment – closing down or relocation of the employer's undertaking or its part. Together with redundancy, these three reasons are known as "organisational reasons" (in Czech: "organizační důvody") for termination of employment. However, closing down and relocation of the employer or its part are different reasons than the redundancy itself, and therefore we do not address them further.

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02. In brief, what is the required process for making someone redundant?

Czechia

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The employer must take the following steps:

- review underlying documents (including organisational charts), decide what organisational change needs to be made and work out which positions are no longer needed, and plan the timing;
- adopt a decision on organisational change, including its effective date and which redundant positions are cancelled. The decision doesn't have to be in writing or state reasons for the redundancy. However, both are highly recommended and a market standard, as this serves as evidence;
- if there are unions, consult the unions in advance (see question 4), and if a union representative is supposed to be made redundant, obtain the union's consent in advance (see question 11);
- execute dismissal either by a termination agreement (recommended) or a termination notice with the redundant employees. In case of termination notice, the redundancy must (based on the decision) take effect on or before the notice period expired, not after; and
- implement the organisational change (including updating organisational charts).

Organisational changes may also be governed by collective agreements, in which case additional rules may apply (this applies to all the questions below).

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03. Does this process change where there is a "collective redundancy"? If so, what is the employee number threshold that triggers a collective redundancy?

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Yes, Czech law provides a special procedure for "collective dismissal" in all three cases of organisational changes (see question 1).

The threshold is:

- ten employees if the employer has 20 to 100 employees;
- 10% of employees if the employer has 101 to 300 employees; and
- 30 employees if the employer has more than 300 employees.

The respective number of employees must be dismissed due to redundancy within a period of 30 days. If at least five employees are dismissed within 30 days by termination notice due to redundancy, then employees dismissed in the same period by termination agreement are included in these thresholds.

In addition to the process above, collective dismissal must be:

- consulted with unions 30 days in advance, or notified to each affected employee if there are no active unions at the employer; and
- notified to the local Labour Office: (i) in advance, including information on commencement of the consultation process with unions; and (ii) on its result once it's completed, in the form of a written report that must be delivered in copy to unions, which then have the right to comment on it – employment relationships can terminate only after the lapse of 30 days following this.

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04. Do employers need to consult with unions or employee representatives at any stage of the redundancy process? If there is a requirement to consult, does agreement need to be reached with the union/employee representatives at the end of the consultation?

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Yes, the employer must consult any termination notice in advance. Agreement doesn't have to be reached (with the exception of employees with enhanced protection; see question 11). In practice, the consultation is more of an announcement.

In case of collective dismissal, consultation must take place, and the employer must try to reach an agreement and inform the Labour Office of the result.

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05. If agreement is not reached, can the restructure be delayed or prevented? If so, by whom?

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It is the employer's right to make an organisational change and its factual validity cannot be challenged. However, the individual dismissals may be challenged by employees. If successful (ie, the employer doesn't prove redundancy), the restructure in the individual case may be prevented.

In the case of collective dismissals, it may be delayed by the unions prolonging the consultation. However, even then the unions and the Labour Office can't prevent the dismissal, and the only way to prevent individual dismissal is a successful individual challenge by the dismissed employee.

If the unions believe that the collective agreement was violated by the redundancy or in the process of its implementation, they may dispute this violation. The dispute may be resolved by a mediator or escalated to an arbitrator. However, this doesn't prevent the employer from executing the dismissals or restructure (only if violation is later found, it may have certain implications based on the individual collective agreement and nature of its violation).

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06. What does any required consultation process involve (i.e. when should it commence, how long should it last, what needs to be covered)? If an employer fails to comply with its consultation obligations, what remedies are available?

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In case of individual dismissal, the consultation process is, rather, a notification (with the exception of employees with enhanced protection; see question 11) including:

- the identity of the employee;
- termination grounds (redundancy); and
- basic details of the redundancy (why and when).

It should take place prior to the dismissal (no specific deadline is given).

In case of collective dismissal, the consultation process includes:

- measures preventing or limiting the collective dismissal;
- mitigation measures (eg, employing the redundant employee at other workplaces of the employer);
- reasons;
- number and professions of redundant employees;
- number and professions of all the employees;
- the period during which the collective dismissal takes place;
- selection method of redundant employees; and
- severance pay and other rights of the redundant employees.

The consultation process must take place no later than 30 days prior to the collective dismissal. The local Labour Office must be notified as well (see question 3).

The administrative fine for violation of the consultation process with unions is up to 200,000 koruna. Employees who suffer damage as a result may claim compensation.

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07. Do employers need to present an economic business rationale as part of the consultation with unions/employee representatives? If so, can this be challenged and how would such a challenge normally be made?

Czechia

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Yes, an economic business rationale should be the reason for organisational change, and therefore the redundancy, and as such should be part of the consultation.

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08. Is there a requirement or is it best practice to consult employees individually (whether or not the employer is also legally required to collectively consult employees)?

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In case of collective dismissals, if there are no unions or employee representatives, the employer must inform and directly consult the affected employees to the same extent.

In case of individual dismissal, it is not a requirement, nor best practice, and highly depends on the strategy in the individual case.

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09. Are there rules on the selection of individual employees for redundancy?

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The only rule is that the employee's position or work must be genuinely redundant (see question 1). If more than one employee fulfils this condition, it is up to the employer which employee to select. However, this choice must not indicate that there are in fact different motives for the redundancy of the selected employee (eg, disputes with the employer, unsatisfactory performance, or gender or other discriminatory motives).

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10. Are there any specific categories of employees who an employer is prohibited from making redundant?

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Yes, a termination notice due to redundancy is not allowed during the period for which an employee is:

- declared temporarily medically unfit for work or in institutional treatment (unless the employee has intentionally caused this unfitness, or it is a direct consequence of the employee's alcohol intoxication or substance abuse);
- deployed in military exercises or military service;
- on long-term full leave to act in public office;
- pregnant, or on maternity leave, paternity leave, or parental leave;
- declared temporarily unfit for night work if they perform night work; or
- on leave caring for a child under 10 years of age, treating a child under 10 years of age or other natural persons, or providing long-term care, all as specified in the Czech Sickness Insurance Act.

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11. Are there categories of employees with enhanced protection (e.g., union officials, employees on sick leave or maternity/parental leave, etc)?

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Yes, members of a trade union body during their term of office and for a period of one year after the end of their term of office. The employer must have prior consent of the unions for termination of their employment relationship by a notice. Consent is deemed to be given if the unions don't respond within 15 days. Consent is valid for two months. Termination notice without such consent is invalid unless the court decides in the validity case that the employer could not have been justifiably required to keep the employee.

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12. What payments are employees entitled to when made redundant? Do these payments need to be made within a specified period? Are there any other requirements, such as giving contractual notice, payments into a central fund, etc.

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A redundant employee is entitled to a statutory severance payment, regardless of whether the employment termination is made by notice or agreement and if the redundancy is explicitly stated as the reason for the termination.

The severance payment is due on the next scheduled pay date following the termination of employment. A later due date can be agreed.

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13. If employees are entitled to redundancy/severance payments, are there eligibility criteria and how is the payment calculated?

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The severance payment amount differs based on the length of the employment as follows:

- one gross average monthly salary of the employee if the employment lasted less than one year;
- two gross average monthly salaries of the employee if the employment lasted at least one year but less than two years; and
- three gross average monthly salaries of the employee if the employment lasted at least two years.

If the working hours account applies (specific working hours distribution scheme under the Czech Labour Code) the statutory severance is the relevant amount above plus three gross average monthly salaries of the employee.

The severance payment may also be higher if stated so by:

- agreement between the parties;
- the employer's internal regulations; or
- a collective bargaining agreement.

A gross average monthly salary of the employee must be calculated for each employee separately using the specific rules of the Labour Code.

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14. Do employers need to notify local/regional/national government and/or regulators before making redundancies? If so, by when and what information needs to be provided?

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Not in cases of individual dismissals.

In cases of collective dismissals, the employer must notify the relevant branch of the Labour Office:

- of the intention to carry out collective dismissal;
- that the consultation process has been initiated with the unions or the employees; and
- of the specific aspects of the collective dismissal, to the same extent as the unions (see question 6).

Following the consultation, the employer must deliver a written report to the Labour Office stating:

- that the employer has decided on collective redundancies;
- the outcome of the consultation process;
- the number and occupational composition of all employees; and
- the number and occupational composition of the employees to be made redundant.

A copy of the report must be delivered to the unions, which then have the right to comment on it.

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15. Is there any obligation on employers to consider alternatives to redundancy, including suitable alternative employment?

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No, generally there is no such obligation. If the conditions for dismissal due to redundancy are met, the employer is not obliged to offer the employee an alternative solution.

However, in some specific individual cases, the courts have concluded that if the employer still needs the work on part-time basis, the employer should first offer the employee this part-time job.

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16. Do employers need to notify local/regional/national government and/or regulators after making redundancies, e.g. immigration department, labour department, pension authority, inland revenue, social security department? If so, by when and what information needs to be provided?

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There are no specific notification obligations after making the redundancies. Only general notification obligations, which are the same for all employment terminations, apply.

These general notifications must be made within eight days, using the relevant forms, to: (i) the employee's health insurance company; and (ii) the District Social Security Administration (including the pension insurance record sheet).

If wage deductions were made to satisfy the employee's debt to a third party, the employer must notify the

relevant court (or tax authority case of tax debt), including an account of the deductions.

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17. If an employee is not satisfied with the decision to make them redundant, do they have any potential claims against the employer? If so, what are they and in what forum should they be brought, e.g. tribunal, arbitration, court? Could a union or employee representative bring a claim on behalf of an employee/employees and if so, what claim/s and where should they be brought?

Czechia

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An employee may challenge the validity of a dismissal for redundancy if they consider that the statutory conditions were not met. First, the employee who wishes to remain employed must inform the employer without undue delay after the termination notice that they insist on continuing their employment. Second, the employee must file a lawsuit at the district court of the employer's seat (residence or registered address). The lawsuit must be made within two months from the date on which the employment should have ended. After the two months, the right to file the lawsuit expires.

If the dismissal for redundancy is found invalid, the employee who wishes to remain employed remains to be employed at the original position under the original conditions and is entitled to a full compensation of salary for the whole time from the invalid termination until work is assigned again, or until the employment is validly terminated (ie, including the time of the court proceedings). The court may reduce the amount of such compensation if, for example, the employee has found another job in the interim, or could have found one.

There's no statutory authorisation for unions to raise any claims at the court on behalf of employees except for insolvency proceedings (see question 21). However, only attorneys at law can represent employees fully and without limits in any proceedings. Another natural person can be granted a power of attorney in a specific case (not repeatedly). Theoretically, this could be a member or employee of the unions, but this is not a market standard.

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18. Is it common to use settlement agreements when making employees redundant?

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Yes, it is very common and highly recommended to terminate the employment by mutual agreement when making employees redundant. The termination agreement does not have to state any reasons for termination. However, should the reason be redundancy of the employee, the employee is entitled to statutory severance payment regardless. To motivate the employees to conclude the termination agreement, it is a market standard to offer a higher severance package than the statutory severance payment.

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19. In your experience, how long does it normally take to complete an individual or collective redundancy process?

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Individual redundancies generally take around two to three months. The organisational change must be prepared, and the termination agreement negotiated or the termination notice given. In case of the notice, the statutory notice period is two months. There's no statutory notice period requirement in case of agreement, therefore it can be faster. It can also take longer (eg, more complicated cases, restructuring, C-level or other higher managers).

For collective redundancies, the process takes several months (at least three) due to higher demands on preparation, more complicated structuring, the consultation process, and the notification obligation to the Labour Office.

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20. Are there any limitations on operating a business for a period following a redundancy, like a prohibition on hiring or priority for re-hire being given to previous employees?

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The statutory law does not expressly prohibit certain conduct. However, a redundancy means that the employee's work is no longer needed and therefore any hiring (internal or external) for the same (or largely the same) position should be avoided (or at least thoroughly considered), especially for the two-month period during which the employee can challenge the validity of the dismissal.

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21. Is employee consultation or consent required for

major transactions (such as business transfer, mergers, acquisitions, disposals or joint ventures)?

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The term “restructuring” in Czech law means one of the ways of resolving a company’s bankruptcy in insolvency proceedings. During this process, organisational changes including redundancies may occur. This kind of restructuring does not require unions’ consent; however, consultation may be required. Further, unions may represent the employees in insolvency proceedings.

In Czech law, “restructuring” within the meaning of a business transaction or corporate transformation or changes (i.e. not a type of insolvency proceeding) can also lead to transfer of rights and obligations from the employment relationship to another employer (transfer of undertakings), ie, the employee and their employment will be transferred to a new employer as a result of such transaction. In this case, the employer must inform the unions or other representatives (and if there are none, then the individual employees) and consult at least 30 days in advance:

- the effective date of the transfer;
- reasons for the transfer;
- legal, economic, and social consequences of the transfer for the employees; and
- measures to be taken in relation to the employees.

In case of cross-border mergers or spin-offs, the employer also must: (i) inform the employees or unions of their right to get acquainted with the written merger or spin-off project and give written comments on it; and (ii) generally reach agreement with unions regarding the extent and manner of the right of influence of the employees of the successor corporation (for example, in certain cases by electing a certain number of members of supervisory board in a joint stock company) if the seat of the newly formed entity is supposed to be in the Czechia. Further corporate obligations depend on the form of such restructuring.

However, the described labour law obligations don’t apply in the case of mere ownership change of the employer’s company where this has no direct legal implications for the employees (ie, it isn’t a transfer of undertaking or a termination reason).

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22. What are the remedies that are available if an employer fails to comply with its consultation duties? Can employees take action to prevent any proposals going ahead?

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In general, employees have limited ability to influence the process of business transactions. The consultation process (see question 21) doesn’t have to result in an agreement with or of the unions. The administrative fine for violation of the consultation process is up to 200,000 Czech Koruna. If there are no unions and the employer breaches its information obligation towards the individual employees (see

question 21), the law provides no administrative penalty. In each case, the employee could claim compensation for damage if any damage occurred.

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23. Is there any statutory protection of employees on a business transfer? Are employees automatically transferred with the business? Are employees protected against dismissal (before or after the transfer of employment)?

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If the statutory conditions for transfer are met, the transfer occurs automatically, ie, neither the original employer, the new employer, the employees, nor the unions can avoid the transfer. An employee may prevent their own transfer only by serving termination notice to the employer before the transfer's effective date, in which case the employment terminates on the day immediately preceding the transfer's effective date at the latest. If the employer didn't inform employee at least 30 days in advance (see question 21), the employee may serve their termination notice within two months after the transfer's effective date – in which case, only a 15-day notice period applies.

Individual rights and obligations are transferred in full to the new employer. The rights and obligations under the original employer's collective agreement are also transferred to the new employer, but only for the duration of the collective agreement, and for no longer than to the end of the following calendar year.

Transfer itself is not a statutory reason for terminating the employment. However, a restructuring (organisation change) leading to redundancy may happen before, during, or following the transfer. In such a case, the employee has the same rights as in the case of other redundancies.

If the employee terminates the employment by a notice or by an agreement within two months of the effective date of the transfer, they may raise a claim at court that the reason for termination was a substantial deterioration in working conditions caused by the transfer. If the court confirms it, the employee will be entitled to statutory severance (see question 13).

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24. What is the procedure for a transfer of employment (upon a business transfer or within group companies)?

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Since the transfer of rights and obligations under employment law occurs automatically, it is generally sufficient to follow the legally prescribed procedure for a given business transfer. In addition, it is necessary

to comply with the information and consultation obligation (see question 21). Further, general reporting and notification obligations to the state authorities apply.

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25. Are there any statutory rules on harmonising the transferring employees' terms of employment with the existing employees' terms of employment?

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The working conditions of the transferred employees cannot substantially worsen. If this were to happen and the employee gave termination notice within two months of the transfer, the employee could claim statutory severance (see question 23).

In addition, the employer must comply with the general principle of equal treatment and ensure equal treatment of both the original and new employees in terms of their working conditions, remuneration, and other benefits, training, and the possibility of promotion.

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26. Can an employer reduce the hours, pay and/or benefits of an employee?

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If the hours, pay, or benefits are agreed in the employment or other contract, then no unilateral change can be made.

Working hours – either statutory weekly working hours apply (40 hours per week) or shorter working hours are agreed. In either case, the employer determines the distribution unilaterally (subject to complying with statutory rules and limits) unless agreed differently.

Salary – if it isn't agreed in the employment or other contract, the employer unilaterally determines the salary by an internal regulation or by a salary statement.

Benefits – if they aren't agreed in the employment or other contract, the employer unilaterally determines the benefits by an internal regulation or by a salary statement.

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27. Can an employer rely on an express contractual provision to vary an employment term?

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As for employment terms and conditions in general, if these have been agreed in the employment or other contract, they can be changed only by agreement. Validity of express contractual provision to vary the conditions depends on its structure and which conditions it concerns, and therefore there's no generally applicable answer to the question.

The Labour Code further allows, in certain cases, a change in type of work, workplace, or employer by a temporary transfer of an employee to a different work position, workplace, or employer. Generally, consent is required; however, in certain cases, the employer can (and in very specific cases, has to) make a temporary transfer unilaterally (for example, if the employee is medically unfit to perform the agreed type of work, or to avert imminent danger). The employer must adhere to strict statutory conditions.

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28. Can an employment term be varied by implied conduct?

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Yes, the employee and the employer may agree on certain changes and variations implicitly. However, it is recommended to avoid such situations.

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29. If agreement is required to vary an employment term, what are the company's options if employees refuse to agree to the proposed change?

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If agreement is required to vary an employment term or condition, then the only option to vary it is an agreement.

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30. What are the potential legal consequences if an employer varies an employment term unilaterally?

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If varied unilaterally in a case where agreement was required, the employee may challenge the variation (depending on the situation, by demanding the employer to: refrain from such conduct, restore the original terms, or compensate the employee for the damage caused by such conduct). Depending on the situation there could also be a risk of administrative penalties.

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Areas to Watch

Czechia

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The Czech parliament is currently debating several changes in the area of labour law. However, none of the currently debated changes should affect the answers above.

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