

## Employment protection in Brazil – 2008

Item 1 Notification procedures in the case of individual dismissal of a workers with a regular contract	Oral or written notice.
Item 2 Delay involved before notice can start	Once notice is given, termination becomes effective upon expiration of the respective period of notice. If the employer reconsiders the dismissal before the end of the notice period, the worker may accept or reject that decision. If the worker accepts reconsideration or continues to work after the notice period expires, the employment contract will remain valid as if no notice had been given.
Item 3 Length of notice period at different tenure durations	Advanced notice of at least 8 days for workers paid on a weekly basis, or 30 days for those paid on a fortnightly or monthly basis or who have worked in the firm for more than 12 months.
Item 4 Severance pay at different tenure durations	No severance pay. The employer deposits 8% of the worker's monthly earnings into a saving account in the worker's name in the Fundo de Garantia po Tempo de Servico (FGTS). However, the worker receives the balance of the account in the case of voluntary separation as well as redundancy, so it cannot be considered a severance payment. An indemnity above this amount is payable in the case of unfair dismissal.
Item 5 Definition of unfair dismissal	<p>The following cases constitute grounds for "fair" (com justa causa) dismissal: i) dishonest acts; ii) immoral conduct or misbehaviour; iii) regular conduct of business by the worker for his own or another person's account, without the employer's permission, in competition with or to the detriment of the employer; iv) criminal conviction, unless the sentence has been suspended; v) negligence; vi) habitual or on-the-job drunkenness; vii) breach of company secrecy; viii) breach of discipline or insubordination; ix) abandonment of the job; x) physical or verbal aggression in the workplace against any person, except in self defence or in defence of third parties; xi) physical or verbal aggression against the employer or a superior, except in self defence or in defence of third parties; xii) habitual gambling. Acts prejudicial to national security, if proven in administrative proceedings, also constitute grounds for fair dismissal.</p> <p>A worker may deem his contract terminated, and may claim due indemnity, when: i) the employer seeks to impose on the employee the execution of services beyond the scope of the employment contract, or beyond the employee's physical capacity, or that constitute legally prohibited or morally degrading acts; ii) the employee is subject to excessive disciplinary action by the employer or a superior; iii) the employee is exposed to considerable hazards; iv) the employer fails to perform his/her obligations under the employment contract; v) the employer or its agents engage in acts against the honour or reputation of the employee or his family; vi) the employer physically attacks the employee, except in self defence or in the defence of third parties; and vii) the employer reduces the employee's workload, thereby reducing the employee's salary significantly.</p> <p>A worker may stop providing service or may terminate the employment contract when required to perform legal obligations incompatible with continued employment. In the event of the death of an employer constituted as an individual enterprise, the employee is entitled to+ terminate the employment contract.</p> <p>In items iv), v), and vii), the worker may request the termination the employment contract and receive the respective indemnities, and may at his/her discretion continue to provide service until the case is decided.</p>
Item 6 Length of trial period	Not covered by legislation, but 3 months is considered as a trial period for the purposes of determining compensation for unfair dismissal.
Item 7 Compensation following unfair dismissal	In the case of "unfair" (sem justa causa) dismissal, private-sector workers are entitled to an indemnity (multa) of 40% of the total amount deposited in their name in the Fundo de Garantia po Tempo de Servico (FGTS). To constitute this fund, the employer deposits 8% of the worker's monthly earnings into a saving account in the worker's name. The indemnity is paid over and above the deposits in the worker's FGTS account during the employment contract. Note that this applies only as of the fourth month of the employment contract, the first three months being considered, although not embodied in legislation, as a probationary period. Typical compensation at 20 years: $40\% \times 8\% \times 240 = 7.7$ months
Item 8 Reinstatement option for the employee following unfair dismissal	The law provides for this possibility, but it is rarely used because of the indemnity paid through FGST.
Item 9 Maximum time period after dismissal notification up to which an unfair dismissal claim can be made	Maximum time period after dismissal notification up to which an unfair dismissal claim can be made is 12 months.
Item 10 Valid cases for use of fixed term contracts	A fixed-term contract will only be valid in cases where: (a) the nature of the job justifies establishment of a fixed term; (b) the activities of the business are of a temporary or seasonal nature; or (c) the contract is probationary.

Item 11 Maximum number of successive FTCs (initial contract plus renewals and/or prolongations)	May be extended once.
Item 12 Maximum cumulated duration of successive FTCs	Not exceeding 2 years.
Item 13 Types of work for which temporary work agency (TWA) employment is legal	Work in urban areas to meet a temporary or seasonal need for regular and permanent employees, or to cope with an extraordinary workload increase.
Item 14 Are there restrictions on the number of renewals and/or prolongations of TWA contracts?	No, within the 3 month limit unless authorised by the Ministry of Labour and Employment.
Item 15 Maximum cumulated duration of TWA contracts	Three months unless authorised by the Ministry of Labour and Employment.
Item 16 Does the set-up of a TWA require authorisation or reporting obligations?	A temporary work agency must be registered with the Ministry of Labour and Employment. The agency must comply with any requests for information made by the Ministry.
Item 17 Do regulations ensure equal treatment of regular workers and agency workers at the user firm?	A TWA worker must receive the same pay as a worker doing the same work for the user firm. There is no explicit requirement for equal treatment on working conditions, but a number of minimum working conditions for TWA workers are set out in legislation.
Item 18 Definition of collective dismissal	No legal provisions exist.
Item 19 Additional notification requirements (compared to Item 1) in cases of collective dismissal	No legal provisions exist. The matter may be covered by collective bargaining.
Item 20 Additional delays involved (compared to Item 2)	No legal provisions exist. The matter may be covered by collective bargaining.
Item 21 Other special costs to employers in case of collective dismissals	No legal provisions exist. The matter may be covered by collective bargaining.

*This summary was produced by the OECD using national labour legislation, secondary legal sources and advice from legal experts at the ILO. It describes the situation current as at 1 January 2008 and is the basis for calculating the OECD employment protection indicators. To find out more about the methodology used to calculate the OECD employment protection indicators, see [www.oecd.org/employment/protection](http://www.oecd.org/employment/protection).*