

Employment protection in Japan – 2008

Item 1 Notification procedures in the case of individual dismissal of a workers with a regular contract	There are no legally proscribed procedures for dismissal. Written or oral notification is common practice and courts or collective agreements may require that trade unions have been adequately consulted.
Item 2 Delay involved before notice can start	There are no proscribed procedures. Written or oral notification is common practice.
Item 3 Length of notice period at different tenure durations	30 days.
Item 4 Severance pay at different tenure durations	Severance pay is not legally required. In practice, some enterprises may provide for severance pay on a voluntary basis.
Item 5 Definition of unfair dismissal	Fair: Dismissals for "reasonable cause": incompetence of the employee or violation of disciplinary rules. Redundancy dismissals require business reasons for reducing the number of staff; efforts to avoid dismissal, reasonableness of selection criteria and procedures. Unfair: Dismissal due to gender, of workers recuperating from work-related accidents, before and after childbirth leave, childbirth and maternity leave and when conditions on fair dismissal have not been satisfied.
Item 6 Length of trial period	Not legally regulated, but usually varies from 2 to 6 months (most often 3 months). The employer can dismiss the employee without stating any reason during the whole length of the probation period. However, after the first 14 days the ordinary 30-day notice must be given.
Item 7 Compensation following unfair dismissal	In lieu of reinstatement, compensation through regular severance pay, plus a sum equal to earnings between the dismissal and the legal settlement of the case. Sums earned by the employee in the interim can only partially be set off against the award. Typical compensation at 20 years tenure: 6 months (assuming case takes 6 months).
Item 8 Reinstatement option for the employee following unfair dismissal	Frequent orders of reinstatement with back pay.
Item 9 Maximum time period after dismissal notification up to which an unfair dismissal claim can be made	There is no statutory limit.
Item 10 Valid cases for use of fixed term contracts	Fixed-term contracts under 3 year duration widely possible without specifying an objective reason. The contract can be of 5 years for highly skilled employees or those aged 60+.
Item 11 Maximum number of successive FTCs (initial contract plus renewals and/or prolongations)	No legal limit specified; after repeated renewal the employee becomes entitled to expect renewal of his contract and the employer must have just cause to refuse renewal.
Item 12 Maximum cumulated duration of successive FTCs	No limit.
Item 13 Types of work for which temporary work agency (TWA) employment is legal	"Dispatching agencies" allowed for all occupations except port transport services, construction work, security services, medical-related work at hospital etc.
Item 14 Are there restrictions on the number of renewals and/or prolongations of TWA contracts?	No restrictions.
Item 15 Maximum cumulated duration of TWA contracts	In the 26 original occupations, there is no limit for occupations that need special employment management and 36 months for occupations that need specialised knowledge. In all other allowed occupations, there is no limit for the duration of the temporary work contract itself, but the possible duration in which temporary work service is offered is 36 months maximum.
Item 16 Does the set-up of a TWA require authorisation or reporting obligations?	Setting up a TWA requires the permission or notification of the Ministry for Health, Labour and Welfare. After set-up, the TWA is required to report on its operations once a year.
Item 17 Do regulations ensure equal treatment of regular workers and agency workers at the user firm?	Legally, user firms should endeavour to take necessary measures concerning dispatched workers to maintain an appropriate workplace, etc. The labour conditions of dispatched workers are secured by making the user firm employer subject to the parts of the relevant laws on labour protection and apportioning responsibilities between the TWA and the user firm.
Item 18 Definition of collective dismissal	Firms intending to dismissal 30+ workers in one month face additional notification requirements
Item 19 Additional notification requirements (compared to Item 1) in cases of collective dismissal	Firms are required to notify the public employment service. Courts may also require that the firm has engaged in sincere negotiation with the trade union prior to making dismissals when deciding whether dismissals are justified.
Item 20 Additional delays involved (compared to Item 2)	No special regulations.

Item 21 Other special costs to employers in case of collective dismissals	No special costs specified.
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This summary was produced by the OECD based on responses to a questionnaire submitted by authorities in OECD member countries. 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.