

Employment protection in Germany – 2008

Item 1 Notification procedures in the case of individual dismissal of a workers with a regular contract	Legal requirement for notification to employee to be in writing, after oral or written warnings to employee in case of dismissal for lack of performance. Previous notification of planned dismissal, including reasons for termination, to works council is necessary. Works council can make a statement within 1 week. In case of notice given despite works council objection and subsequent law suit, dismissal has to wait for decision by Labour Court. Special cases: notice for a disabled person requires prior consent of public authorities (Integrationsamt); notice for a pregnant woman and until 4 months after delivery requires prior consent of public authorities (Behörde für Arbeitsschutz)
Item 2 Delay involved before notice can start	Before notification, employer must wait 1 week so that works council can make a statement. Notice can then be served, specifying the 1st or 15th of the month.
Item 3 Length of notice period at different tenure durations	All workers: 2w in trial period, 4w<2y, 1m<5y, 2m<8y, 3m<10y, 4m<12y, 5m<15y, 6m<20y, 7m>20y. (Notice periods >4w only apply to workers above 25 years of age.)
Item 4 Severance pay at different tenure durations	Personal reasons: there is no right to severance pay in cases of dismissal for personal reasons, although severance pay may be provided through collective agreements or social plans. Operational reasons: If a dismissal is based on business needs or compelling operational reasons, the employee has a right to a severance payment if he does not bring his case to the court within 3 weeks. The right is only given if the employer points out in the notice that the dismissal is caused by business needs or urgent operational reasons and that the employee has a right to severance payment if he accepts the dismissal. The amount of the severance payment is a half month pay for each year of tenure.
Item 5 Definition of unfair dismissal	Fair: Dismissals based on factors inherent in the personal characteristics or behaviour of the employee (such as insufficient skill or capability), or business needs and compelling operational reasons. Unfair: Dismissals where the employee can be retained in another capacity within the same establishment or enterprise, and redundancy dismissals where due account has not been taken of "social considerations" (e.g. seniority, age, alimony). Rehabilitation must already have been attempted before the dismissal, or the dismissal is considered unfair.
Item 6 Length of trial period	6 months.
Item 7 Compensation following unfair dismissal	Compensation of up to 12 months, depending on length of service (15 months if aged under 50 and tenure >15 years, 18 months if aged over 55 and tenure > 20). Compensation must be requested for by employee or employer during court action; continuation of employment must be unreasonable for one of the parties. In some cases, additional liability for wages from the expiry date of the notice to the conclusion of the court hearing. Typical compensation at 20 years tenure (all workers): 18 months.
Item 8 Reinstatement option for the employee following unfair dismissal	A reinstatement order is possible, although rarely taken up by the employee concerned.
Item 9 Maximum time period after dismissal notification up to which an unfair dismissal claim can be made	3 weeks.
Item 10 Valid cases for use of fixed term contracts	Fixed-term contracts without specifying an objective reason are possible up to 2 years or up to 4 years if an employer launches a new business. Exception: with employees over 52 years of age and unemployed for more than 4 months or who participated in a public employment measure for more than 4 months, fixed-term contracts are possible up to a duration of 60 months.
Item 11 Maximum number of successive FTCs (initial contract plus renewals and/or prolongations)	Four, up to an entire length of 2 years. Exception: employees who are older than 52 when beginning the employment. Objective reason: Successive fixed-term contracts with objective reason are possible without any restrictions, but there must be an objective reason for each successive contract.
Item 12 Maximum cumulated duration of successive FTCs	24 months (No legal limit in case of objective reasons). Exceptions: launching a new business: 48 months, older unemployed (see above): 60 months
Item 13 Types of work for which temporary work agency (TWA) employment is legal	General, with exception of construction industry.
Item 14 Are there restrictions on the number of renewals and/or prolongations of TWA contracts?	Yes, same as for fixed-term contracts.
Item 15 Maximum cumulated duration of TWA contracts	No limit.
Item 16 Does the set-up of a TWA require authorisation or reporting obligations?	TWA needs permission by labour authority and needs to report regularly.

Item 17 Do regulations ensure equal treatment of regular workers and agency workers at the user firm?	Equal treatment on pay and conditions, but the principle of equal treatment can be waived as far as the employees are protected by applicable collective agreements in the TWA sector.
Item 18 Definition of collective dismissal	Within 30 days, >5 dismissals in firms 21-59 employees; 10% or > 25 dismissals in firms 60-499; >30 dismissals in firms > 500 employees.
Item 19 Additional notification requirements (compared to Item 1) in cases of collective dismissal	Notification of employee representatives: Consultation with Works Council. Notification of public authorities: Notification of local employment office.
Item 20 Additional delays involved (compared to Item 2)	1 month delay after notice to PES, can be extended to two months.
Item 21 Other special costs to employers in case of collective dismissals	Type of negotiation required: Consultation on alternatives to redundancy and ways to mitigate the effects; social plan to be set up in conjunction with Works Council, regulating selection standards, transfers, lump-sum payments, early retirement etc. Selection criteria: Social as well as economic considerations can enter the selection criteria, e.g. labour market prospects of concerned employees and economic viability of the company. Severance pay: No legal requirements, but often part of social compensation plans.

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.