

Employment protection in China – 2008

Item 1 Notification procedures in the case of individual dismissal of a workers with a regular contract	An employer may terminate an employment contract by giving the worker 30 days' prior written notice or giving him/her one month's wage in lieu of notice. If an employer unilaterally terminates an employment contract, it shall notify the labour union of the reason in advance. If the employer has violated laws, administrative regulations of the provisions of the employment contract, the labour union shall have the right to demand that the employer rectify the matter. The employer shall consider the opinions of the labour union and notify the labour union in writing on how it handled the matter.
Item 2 Delay involved before notice can start	The employer may terminate the employment contract by giving the worker 30 days' prior written notice.
Item 3 Length of notice period at different tenure durations	30 days written notice, regardless of tenure.
Item 4 Severance pay at different tenure durations	Severance pay shall be paid to a worker based on his/her years of service with the employer at the rate of one month's salary for each full year of service. A period of service of not less than six months but less than one year shall be counted as one year. For a period of service of less than six months, a worker shall be paid half a month's wage as severance pay. If the monthly wage of a worker is three times greater than the average monthly wage of staff and workers in the region during the preceding year published by the people's government of the municipality directly under the central government or the city (divided into districts) where the employer is located, severance pay shall be paid to him/her at the rate of three times the average monthly wage of staff and workers and for a maximum period of service not exceeding 12 years.
Item 5 Definition of unfair dismissal	<p>Fair: An employer may terminate an employment contract if: (i) during the probation period, the worker is shown not to satisfy the conditions of employment; (ii) the worker seriously violates its rules and regulations; (iii) the workers commits a serious dereliction of duty, practices graft or engages in embezzlement, causing material damage to the employer; (iv) the worker simultaneously has an employment relationship with another employer, seriously affecting the completion of his/her work tasks with the employer, or after having the same mentioned to him/her by the employer, he/she refused to rectify the matter; (v) the employment contract is concluded or amended through means such as fraud, coercion or by taking advantage of a parties plight, thereby causing the other party to conclude or amend the employment contract in a manner contrary to his/her/its true intent; (vi) the worker contracted an illness of sustained a non-work-related injury and after the expiration of the set medical period he/she is unable to return to his/her original job or engage in other worker arranged for him/her by the employer; (vii) the worker is incompetent and after undergoing training or an adjustment of his/her position he/she remains incompetent; (viii) the objective circumstances relied on at the time of the conclusion of the employment contract have materially changed, making performance thereof impossible and the employer and the worker fail to reach agreement on amending the employment contract after consultations.</p> <p>Unfair: An employer may not terminate a worker's employment contract if the worker: (i) was engaged in operations that exposed him/her to an occupational disease hazard and has not undergone a pre-departure occupational health examination or is suspected of having contracted an occupational illness and is being diagnosed or undergoing medical observation; (ii) contracted an occupational illness or sustained a work-related injury with the employer and has been confirmed as having lost all of part of his/her capacity to work; (iii) contracted an occupational illness or sustained a work-related injury and the set period of medical treatment has not expired; (iv) is a female employee in her pregnancy, confinement or nursing period; (v) has been working for the employer for at least 15 years in succession and is less than five years away from the statutory retirement age; or (vi) is characterised by another circumstance specified in laws or administrative regulations.</p>
Item 6 Length of trial period	If an employment contract has a term of not less than three months but less than one year, the probation period may not exceed one month. If an employment contract has a term of not less than one year but less than three years, the probation period may not exceed two months. For a fixed-term contract of not less than three years or an open ended employment contract, the probation period may not exceed six months. No probation period may be specified for an employment contract for the duration of a certain task or an employment contract with a term of less than three months.
Item 7 Compensation following unfair dismissal	If an employer terminates or ends an employment contract in violation of the law, the worker can request reinstatement. If the worker does not request reinstatement or continued performance of the employment contract has become impossible, the employer shall pay the worker compensation in an amount equivalent to twice the rate for severance pay to which the worker is entitled. Typical compensation at 20 years service: 40 months.
Item 8 Reinstatement option for the employee following unfair dismissal	If an employer terminates or ends an employment contract in violation of the law, the worker can request reinstatement.

Item 9 Maximum time period after dismissal notification up to which an unfair dismissal claim can be made	One year under the Arbitration and Mediation Act.
Item 10 Valid cases for use of fixed term contracts	Once an employer and a worker have reached a consensus through consultations, they may establish a fixed-term employment contract. There are no restrictions on the types of work for which fixed-term contract may be used.
Item 11 Maximum number of successive FTCs (initial contract plus renewals and/or prolongations)	If the worker has concluded two fixed-term contracts in succession, he/she is not characterised by any of the circumstances under which the employer may fairly dismiss him/her and his/her contract is up for renewal, the new contract will be taken to be an open-ended contract.
Item 12 Maximum cumulated duration of successive FTCs	If the worker has worked for the employer for at least 10 years in succession, the contract will be taken to be an open-ended contract.
Item 13 Types of work for which temporary work agency (TWA) employment is legal	In general, placement of temporary workers shall apply to temporary, ancillary and substitute positions.
Item 14 Are there restrictions on the number of renewals and/or prolongations of TWA contracts?	A temp agency shall conclude a fixed-term employment contract of at least two years with a temporary worker. Fixed-term contracts may only be renewed twice.
Item 15 Maximum cumulated duration of TWA contracts	A temp agency shall conclude a fixed-term employment contract of at least two years with a temporary worker. Maximum cumulated duration of a fixed-term contract is 10 years.
Item 16 Does the set-up of a TWA require authorisation or reporting obligations?	Temp agencies shall be established in accordance with relevant provisions of the Company Law and have registered capital of not less than RMB 500 000. There is no obligation in the Employment Contract Law for ongoing reporting to authorities.
Item 17 Do regulations ensure equal treatment of regular workers and agency workers at the user firm?	Temporary workers have the right to the same pay for the same work as the workers of the employment of temporary workers. If the employer of temporary workers does not have workers in the same positions, the labour compensation of the temporary workers shall be determined with reference to the labour compensation of workers in identical or similar positions in the place where the employer of temporary workers is located.
Item 18 Definition of collective dismissal	Special provisions for collective dismissal apply where an employer needs to carry out a personnel cutback involving at least 20 persons or a personnel cutback involving less than 20 persons but accounting for at least 10% of the enterprise's workforce for one of the following reasons: (i) the employer is to undergo restructuring in accordance with the Enterprise Bankruptcy Law; (ii) the employer is experiencing serious difficulties with its production and operations; (iii) the enterprise is to switch production, undergo a material technological makeover or adjust its mode of operations and still needs to cut back personnel after amendment of employment contracts; (iv) another material change in the objective economic circumstances relied upon at the time of the conclusion of the employment contracts occurs, making the performance thereof impossible.
Item 19 Additional notification requirements (compared to Item 1) in cases of collective dismissal	The employer may perform a collective personnel cutback after explaining the circumstances to the labour union or all of the staff and workers 30 days in advance, listening to the opinions of the labour union or staff and workers and reporting its personnel cutback plan to the labour administrative department.
Item 20 Additional delays involved (compared to Item 2)	No additional delays.
Item 21 Other special costs to employers in case of collective dismissals	When carrying out a personnel cutback, the following persons shall be retained on a priority basis: (i) those who have concluded relatively long-term fixed-term contracts with the employer; (ii) those who have concluded open-ended contracts with the employer; (iii) those who do not have other employed persons in the household and are supporting elderly persons or minors. If an employer that has carried out a personnel cutback employs again within six months, it shall notify the personnel that were cut back and, all things being equal, employ them on a preferential basis.

This summary was produced by the OECD using national labour legislation, secondary legal sources and advice from legal experts. 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.