

## Employment protection in Korea – 2008

Item 1 Notification procedures in the case of individual dismissal of a workers with a regular contract	<p><b>Personal reasons:</b> Written notice. The reasons for and date of dismissal should be clearly stated to the employee.</p> <p><b>Managerial reasons:</b> Advance notice to union or other worker representatives 50 days prior to dismissal and have a sincere consultation with them over efforts to avoid dismissal, and fair and rational criteria for selecting workers to be dismissed.</p>
Item 2 Delay involved before notice can start	<p><b>Personal reasons:</b> Written notice. The reasons for and date of dismissal should be clearly stated to the employee.</p> <p><b>Managerial reasons:</b> Advance notice to union or other worker representatives 50 days prior to dismissal and have a sincere consultation with them over efforts to avoid dismissal, and fair and rational criteria for selecting workers to be dismissed. However, in Nov. 13, 2003, the Korean Supreme Court stated that a dismissal could be validated even if employee representatives have been notified less than 60 days prior to dismissal, provided that there was enough time have sincere consultations.</p>
Item 3 Length of notice period at different tenure durations	<p><b>All workers:</b> 30d (applies to every worker to be dismissed regardless of the length of tenure). Exceptionally, an advance notice of dismissal may not be given to workers who have been employed: (i) on a daily basis for less than 3 consecutive months, (ii) for a fixed period not exceeding 2 months, (iii) as a monthly-paid worker for less than 6 months, (iv) for seasonal work for a fixed period not exceeding 6 months and (v) on probation for less than 3 months. Instead of giving an advance notice, an employer may pay 30 days' ordinary wages to the worker in the name of dismissal notice allowance. This is a separate payment and not related to severance pay.</p>
Item 4 Severance pay at different tenure durations	<p>There is no severance pay. Firms with 5 or more employees are required to pay at least 30 days pay per year of service whatever the reason for separation (voluntary quit, layoff) to those with at least one year of tenure, but this is not considered severance pay.</p>
Item 5 Definition of unfair dismissal	<p><b>Fair:</b> Dismissals for "just cause" (according to court precedents, justifiable reasons include violation of work regulation, illegal activities, misconduct, apparent lack of abilities to carry out duties, inability to carry out duties due to physical disability, false statement of career experience, etc.) or urgent managerial needs (including individual redundancy and dismissals due to mergers and acquisitions when employees or union have been consulted on urgency, selection criteria and transfer/retraining alternatives).</p> <p><b>Unfair:</b> Dismissal for reason of nationality, gender, belief or social status, of workers on sick leave, child birth and maternity leave, and when not having demonstrated special efforts to avoid dismissal in consultation with labour union. (In case a worker receives medical treatment for occupational diseases or injuries or takes maternity leave before and after childbirth, the worker cannot be dismissed during such periods and within 30 days thereafter.)</p>
Item 6 Length of trial period	<p>Although there is no set deadline for bringing a case of unfair dismissal before the courts, such a claim should be filed with the Labor Relations Commission within three months of dismissal if a complaint is to be made with the Labor Relations Commission.</p>
Item 7 Compensation following unfair dismissal	<p>Workers can get money equivalent to their wages corresponding to the period from the beginning of unfair dismissal until they are reinstated. Compensation in lieu of reinstatement varies widely.</p>
Item 8 Reinstatement option for the employee following unfair dismissal	<p>Courts determine that dismissal is invalid and that employment relations continue, and therefore, order reinstatement with back pay. If the dismissed worker does not want to be reinstated, he/she can ask for monetary compensation in lieu of reinstatement. The Labor Relations Commission can order the employer to pay the amount equivalent to wages or more.</p>
Item 9 Maximum time period after dismissal notification up to which an unfair dismissal claim can be made	<p>Although there is no set deadline for bringing a case of unfair dismissal before the courts, such a claim should be filed with the Labor Relations Commission within three months of dismissal if a complaint is to be made with the Labor Relations Commission.</p>
Item 10 Valid cases for use of fixed term contracts	<p>Fixed term contracts do not require objective situations or reasons (no restrictions).</p>
Item 11 Maximum number of successive FTCs (initial contract plus renewals and/or prolongations)	<p>The number of renewals is not limited within the 2-year limit for fixed term contracts.</p>
Item 12 Maximum cumulated duration of successive FTCs	<p>Employers are allowed to employ a fixed-term worker only for up to two years. If the contract is renewed, the total period of consecutive employment should not exceed two years. If a fixed term worker is employed for more than two years, he/she is considered as a worker whose employment period is not fixed from the moment when the employment contract exceeds two years, except in the following exceptional cases: (i) the period needed to complete the project is fixed; (ii) the fixed-term worker is hired to fill a vacancy caused by a worker's temporary suspension from duty; (iii) the period needed to complete study at school or vocational training is fixed; (iv) the job is provided by the government as an unemployment or welfare measure, etc.; and (v) the job requires professional knowledge and skills.</p>

Item 13 Types of work for which temporary work agency (TWA) employment is legal	TWA employment, in principle, is allowed in only 32 occupations determined by consideration of professional knowledge, skills, experience and the nature of jobs. However, where TWA employment is required for temporary or intermittent reasons, it is possible to use TWA employment in other occupations. In some occupations, such as construction work, seaman, harmful and dangerous work, work with dust, etc., the use of TWA employment is completely prohibited.
Item 14 Are there restrictions on the number of renewals and/or prolongations of TWA contracts?	No.
Item 15 Maximum cumulated duration of TWA contracts	The maximum duration of temporary work contracts is 2 years in case of the 32 occupations for which TWA employment is allowed. But in the case of temporary and intermittent reasons, the duration of TWA contracts is three months in principle and can be extended for up to another three months, bringing the maximum duration up to six months.
Item 16 Does the set-up of a TWA require authorisation or reporting obligations?	The set-up of a TWA requires administrative approval and the approval should be renewed every three years. With regard to worker dispatch services (the business of providing temporary agency workers), a report should be made to the competent authorities every six months.
Item 17 Do regulations ensure equal treatment of regular workers and agency workers at the user firm?	If a temporary agency worker is engaged in a job that is the same as or similar to the one a worker of the using employer does, both sending and using employers should not discriminate against the TWA worker in terms of wages or other working conditions without reasonable cause, and the worker who was discriminated against can file a discrimination claim with the Labor Relations Commission.
Item 18 Definition of collective dismissal	>10 workers in firms <100 employees; >10% of workers in firms 100-999; >100 workers in firms >1000 employees.
Item 19 Additional notification requirements (compared to Item 1) in cases of collective dismissal	<b>Notification of employee representatives:</b> Information and sincere consultation with trade union/employee representatives at least 50 days before the dismissal. <b>Notification of public authorities:</b> Notification to Ministry of Labour 30 days before the dismissal. But there are no sanctions for failing to notify.
Item 20 Additional delays involved (compared to Item 2)	No special regulations (as for the case of dismissal for managerial reasons, an employer should have a sincere consultation with workers' representatives over efforts to avoid dismissal and fair and rational criteria for selecting workers to be dismissed for 50 days).
Item 21 Other special costs to employers in case of collective dismissals	<b>Type of negotiation required:</b> Sincere consultation on need for redundancy, dismissal standards and employee selection. An employer should make efforts to avoid dismissal for managerial reasons in order to justify it, he/she should take such measures as voluntary retirement, reassignment, out-placement, temporary shutdown, and working hour reduction. <b>Selection criteria:</b> Law lays down union participation, but no specific selection criteria for dismissal other than "rational and fair standards". <b>Severance pay:</b> No special regulation for collective dismissal.

*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](http://www.oecd.org/employment/protection).*