

## Employment protection in New Zealand – 2008

Item 1 Notification procedures in the case of individual dismissal of a workers with a regular contract	<p><b>Personal reasons:</b> Under the Employment Relations Act 2000 (ERA), employers, employees and unions must deal with each other in good faith. This means that before an employer can dismiss an employee, an employer must give their employee warnings and provision of an opportunity to the employee to answer allegations and improve performance, clear explanations and reasonable notification of the reasons for that employee's dismissal. Further, all employment agreements must set out, in plain language, the procedure for resolving employment relationship problems, which may include a procedure for notification.</p> <p><b>Redundancy:</b> the principle of good faith also applies specifically to making employees redundant. This means that an employer must give unions and employees explicit, reasonable notice before redundancies are implemented. Employment agreements must contain provisions to prescribe procedures when restructuring occurs due to contracting out or the sale or transfer of the employee's work. The employer's action must be that of a fair and reasonable employer taking all the circumstances of the case into account.</p>
Item 2 Delay involved before notice can start	<p><b>Personal reasons:</b> Notification orally or in writing (as provided for in contract), after previous warning.</p> <p><b>Redundancy:</b> The principle of good faith requires consultation with employees and unions over matters that affect collective employment interests (such as selection and ways of avoiding dismissal).</p>
Item 3 Length of notice period at different tenure durations	<p><b>All workers:</b> No specific period is required under the ERA, but the duty of good faith, as well as case law, requires that reasonable notice be provided.</p>
Item 4 Severance pay at different tenure durations	<p><b>Personal reasons:</b> none.</p> <p><b>Redundancy cases:</b> no statutory requirements to pay severance pay. However, about 21% of workers are covered by collective agreements, which in most cases provide some form of redundancy pay. About 42% of employees who are covered by a collective agreement that provides for redundancy pay, receive 6 weeks pay for their 1st year of service, and 2 additional weeks pay for every year thereafter.</p>
Item 5 Definition of unfair dismissal	<p>Dismissal is <b>justified</b> if there is a good substantive reason to dismiss (where it would be open to a fair and reasonable employer to dismiss an employee in those particular circumstances) and the employer carries out the dismissal fairly and reasonably in those circumstances.</p> <p>What is a "good substantive reason" for dismissal will depend upon the circumstances of each individual case, but there are three main grounds: misconduct, lack of competence, redundancy. What is <b>'fair'</b> process of dismissal will also depend upon the circumstances of each individual case. The Authority and the Court have generally placed most emphasis on the fact that an employee must be given reasonable notice of the specific allegation against them, a reasonable opportunity to respond to those allegations. An employer must also give unbiased consideration to an employee's explanation.</p>
Item 6 Length of trial period	<p>All employees are covered by employment protection from the start of their employment. The ERA's provisions on trial and probationary periods provide that the fact that an employee is employed on a trial/probationary period does not affect the application of the law relating to unjustifiable dismissal.</p>
Item 7 Compensation following unfair dismissal	<p>Compensation is set on a case-by-case basis. The ERA's provisions on personal grievances provide for some of the following remedies: reinstatement, reimbursement of lost wages; and payment of compensation, including compensation for humiliation, loss of dignity, injury to employee's feelings, and for loss of any benefit.</p> <p><b>Typical compensation at 20 years tenure:</b> backpay of 6 months (assuming case takes 6 months) and median compensation payment of NZD 6 500 (equivalent to 1.7 months wages).</p>
Item 8 Reinstatement option for the employee following unfair dismissal	<p>The ERA requires the Employment Relations Authority to provide for reinstatement "wherever practicable". In determining whether it is practicable to order reinstatement, the Authority will determine whether the level of mutual trust and confidence that remains between the parties would enable them to resume a productive employment relationship if reinstatement were ordered.</p>
Item 9 Maximum time period after dismissal notification up to which an unfair dismissal claim can be made	<p>90 days, but a potential applicant may ask the Employment Relations Authority to allow for filing a claim out of time in exceptional circumstances, including trauma of employee caused by the dismissal, failure to file due to a dilatory agent, no explanation of employment relationship resolution problems in the employee's employment agreement and the failure of the employer to provide, on request, a written statement of the reasons for dismissal.</p>
Item 10 Valid cases for use of fixed term contracts	<p>The ERA provides that before an employee and an employer agree that the employee's employment will be based on a fixed term, the employer must have genuine reasons based on reasonable grounds for specifying that the employment of the employee is to be fixed term. The ERA also provides that the following reasons are not genuine reasons for agreeing to fixed term employment: to exclude or limit the rights of an employee under the ERA; and to establish the suitability of the employee for permanent employment.</p>
Item 11 Maximum number of successive FTCs (initial contract plus renewals and/or prolongations)	<p>No limit specified in law, but the requirement that an employer must have genuine reasons based on reasonable grounds may mean that there will be a risk that upon continuous renewal the Courts will find a fixed-term agreement to be a "sham".</p>

Item 12 Maximum cumulated duration of successive FTCs	No limit, unless it is shown that the employer does not have genuine reasons based on reasonable grounds.
Item 13 Types of work for which temporary work agency (TWA) employment is legal	General.
Item 14 Are there restrictions on the number of renewals and/or prolongations of TWA contracts?	No limit specified, except that the employer must have genuine reasons based on reasonable grounds.
Item 15 Maximum cumulated duration of TWA contracts	No limit, unless it is shown that the employer does not have genuine reasons based on reasonable grounds.
Item 16 Does the set-up of a TWA require authorisation or reporting obligations?	No.
Item 17 Do regulations ensure equal treatment of regular workers and agency workers at the user firm?	No.
Item 18 Definition of collective dismissal	No definition of collective dismissal.
Item 19 Additional notification requirements (compared to Item 1) in cases of collective dismissal	<b>Notification of employee representatives:</b> No special regulations for collective dismissal. Good faith applies to redundancy and requires consultation with employees and unions over matters that affect collective employment interests. This covers prior consultation over matters such as how to avoid dismissals. <b>Notification of public authorities:</b> Not required.
Item 20 Additional delays involved (compared to Item 2)	No special regulations for collective dismissal. .
Item 21 Other special costs to employers in case of collective dismissals	<b>Type of negotiation required:</b> No legal requirements apart from procedural fairness and consultation requirements. (Part of the review of the ERA involves looking at providing employment protection for employees where the work they are performing is contracted out, sold, or transferred to another business.) <b>Selection criteria:</b> The duty of good faith requires that an employer's basis for redundancy selection be fair. In redundancy situations employees providing certain services (cleaning and food catering, laundry services in hospitals, age-related residential care facilities and the education sector, orderly services in hospitals and the age-related residential care facilities and caretaking in the education sector) have the right to transfer to a new employer on the same terms if they wish. <b>Severance pay:</b> No special regulations 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).*