

Employment protection in the United States – 2008

Item 1 Notification procedures in the case of individual dismissal of a workers with a regular contract	No prescribed procedures. Only a few States prescribe a "service letter" a certain period after dismissal, noting the reasons for termination. Some states require that a dismissed employee submit a request for the reasons for his or her termination rather than prescribe a service letter.
Item 2 Delay involved before notice can start	Written or oral notification.
Item 3 Length of notice period at different tenure durations	No legal regulations (but can be regulated in collective agreements or company policy manuals).
Item 4 Severance pay at different tenure durations	No legal regulations (but can be regulated in collective agreements or company policy manuals). For example, the US Labor Department's Compensation Survey shows that in 2000, 20% of all private sector workers were covered by severance pay plans. The coverage rate was higher among union (31%), than non-union (19%) workers; and for workers working in establishments with 100+ workers (32%), than in establishments with fewer than 100 workers (11%).
Item 5 Definition of unfair dismissal	Fair: With the exception of the public sector, it is generally fair to terminate an open-ended employment relationship without justification or explanation ("employment-at-will" principle) unless the parties have placed specific restrictions on terminations. Unfair: Dismissals based on breach of Equal Employment Opportunity principles (<i>i.e.</i> national origin, race, sex, etc.) and dismissal of employees with physical or mental impairment if work could be performed through appropriate workplace adjustment. In addition, there are increasing numbers of cases where employees pursue wrongful termination claims by alleging that dismissal was based on a breach of an "implied contract" for continued employment.
Item 6 Length of trial period	Wide range.
Item 7 Compensation following unfair dismissal	A wrongfully discharged worker employed under a fixed-term contract is entitled to damages corresponding to what he/she would have earned over the life of the contract (less any salary from newly entered employment). Workers under open-ended contracts may be entitled to damages corresponding to past and future financial losses, and accompanying psychic injuries.
Item 8 Reinstatement option for the employee following unfair dismissal	Reinstatement often ordered where worker has been discharged in violation of laws such as the National Labor Relations Act or the Civil Rights Act. But in general, the option of reinstatement is almost never made available to the employee.
Item 9 Maximum time period after dismissal notification up to which an unfair dismissal claim can be made	The Equal Employment Opportunity Commission (EEOC) requires that a charge be filed before a private law suit is filed in court. A charge must be filed with the EEOC within 180 days from the date of the alleged violation, but the deadline may be extended to 300 days if the change is also covered by state or local anti-discrimination laws. If the EEOC does not resolve the unfair dismissal claim, then the time limit is governed by a state's tort statute of limitations, which is usually two years.
Item 10 Valid cases for use of fixed term contracts	No restrictions.
Item 11 Maximum number of successive FTCs (initial contract plus renewals and/or prolongations)	No limit.
Item 12 Maximum cumulated duration of successive FTCs	No limit. If the original contract expires and the employee continues doing the same work, then it is presumed that the employee is working under a new contract with the same terms and conditions as the original.
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.
Item 15 Maximum cumulated duration of TWA contracts	No limit.
Item 16 Does the set-up of a TWA require authorisation or reporting obligations?	Licenses for employment agencies are issued in accordance with individual states' licensing statutes. Often, these statutes delegate the authority to a "Commissioner of Licenses" who decides on the issuance of a license based on the applicant's character.
Item 17 Do regulations ensure equal treatment of regular workers and agency workers at the user firm?	There is no requirement for equal treatment in US federal law beyond minimum standards guaranteed to all workers. Some states may require equal treatment. In general, both groups of workers, permanent and temporary, may bargain for additional benefits.

Item 18 Definition of collective dismissal	The Worker Adjustment and Retraining Notification Act outlines procedures for plant closures mass layoffs in firms with 100 or more full-time employees or 100 or more employees who together work at least 4000 hours per week (exclusive of overtime) and over a period of 30 days: 50+ full-time workers in case of plant closure; 500+ full-time workers in case of layoff; 50-499 full-time workers, if they make up at least one third of the employer's full-time workforce at a single employment site.
Item 19 Additional notification requirements (compared to Item 1) in cases of collective dismissal	Notification of employee representatives: Duty to inform affected workers or labour unions (where they exist). Notification of public authorities: Duty to notify state and local authorities.
Item 20 Additional delays involved (compared to Item 2)	Special 60-day notice period. Exceptions to the notice period include layoffs due to risk of bankruptcy, unforeseen circumstances, or ending of a temporary business activity.
Item 21 Other special costs to employers in case of collective dismissals	Type of negotiation required: No legal requirements. Selection criteria: As laid down in collective agreements or company manuals; usually seniority-based. Severance pay: 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.