

## Employment protection in Spain – 2008

Item 1 Notification procedures in the case of individual dismissal of a workers with a regular contract	Written notice with statement of reasons plus notification to workers' representatives. In the case of disciplinary dismissal, the notice of dismissal will contain the facts on which the dismissal is based and the date of effect.
Item 2 Delay involved before notice can start	Letter sent by mail or handed directly to employee.
Item 3 Length of notice period at different tenure durations	<b>Workers dismissed for "objective" reasons:</b> 30d. <b>Workers under fixed-term contracts:</b> 0<1y, 15d>1y.
Item 4 Severance pay at different tenure durations	<b>Workers dismissed for "objective" reasons:</b> 2/3 of a month's pay per year of service up to a maximum of 12 months. <b>When the employer acknowledges unfair dismissal:</b> the employer can deposit 45 days pay per year of service to a maximum of 42 months' wages (or for new permanent contracts after 1997 (aimed at young and disadvantaged workers: 16-28, over 45, fixed-term employees, long-term unemployed, women where they are under-represented) 33 days pay per year of service, with a maximum of 24 months pay) to the Labour Court within two days of giving notice of dismissal and avoid the possibility of paying back pay to workers if the dismissal is subsequently found by the courts to be unfair. The employee can apply immediately for unemployment benefits because the dismissal is assumed to be unfair. <b>Workers under temporary contracts:</b> 8 days per year of service except for contract of replacement; workers under contract with temporary agencies and the handicapped get 12 days per year of service.
Item 5 Definition of unfair dismissal	<b>Fair:</b> Dismissal based on objective grounds, including economic grounds, absenteeism, lack of adequacy for the job, lack of adaption to technological changes made in the enterprise after, if appropriate, a training course of three months, and lack of funding of public plans or programmes developed by the public administration or non-profit organisations. <b>Unfair dismissal:</b> dismissals where none of the above-mentioned grounds is proven. <b>Null and void:</b> dismissals based on discrimination or carried out with violation of fundamental rights, as well as those based on situations derived from maternity (pregnancy, birth, feeding, childcare, etc.). <b>When the employer acknowledges unfair dismissal:</b> any reason is adequate grounds for dismissal because the employer has already acknowledged unfair dismissal.
Item 6 Length of trial period	In accordance with provisions of collective agreements. If there is no provision on this matter, this period may not be longer than six months for qualified experts or two months for other workers (three months in enterprises with less than 25 workers).
Item 7 Compensation following unfair dismissal	<b>Unfair dismissal case:</b> employer can choose between reinstatement with back pay (the wages for the period going from the dismissal to the final decision by the courts, if that stage is reached) and compensation with back pay (45 days wages per year of seniority with a maximum of 42 months wages) with back pay. For new permanent contracts after 1997 (aimed at young and disadvantaged workers: 16-28, over 45, fixed-term employees, long-term unemployed, women where they are under-represented) compensation is fixed in 33 days per year of service, with a maximum of 24 months pay. Typical compensation at 20 years tenure: 22 months. <b>Discrimination case:</b> employers must accept reinstatement. <b>Lack of form case:</b> the employer can choose between the reinstatement and the compensation. <b>When the employer acknowledges unfair dismissal:</b> the maximum compensation for unfair dismissal has already been paid and there is no right to receive backpay.
Item 8 Reinstatement option for the employee following unfair dismissal	In the case where the dismissal has been declared unfair, the employer has a choice between reinstatement and compensation, except where the dismissed employee is a legal representative of the workers or a union delegate, in which case the employee can choose between reinstatement and compensation. If the dismissal was found to be discriminatory, the worker should always be reinstated.
Item 9 Maximum time period after dismissal notification up to which an unfair dismissal claim can be made	The worker can file a claim against dismissal within 20 working days following the date of effect of the dismissal.
Item 10 Valid cases for use of fixed term contracts	In addition to objective or "causal" reasons (for specific work, due to accumulation of tasks, replacement, etc), FTCs may be drawn up for the following purposes: training contracts (in-practice contracts and contracts for training purposes); to hire workers with disabilities; and to cover the part of the working day left uncovered by an employee close to retirement with another temporary worker from the enterprise, or with an unemployed worker.

Item 11 Maximum number of successive FTCs (initial contract plus renewals and/or prolongations)	<p><b>Temporary increase in workload:</b> contract can be extended or renewed only once, within the maximum duration.</p> <p><b>Other objective reasons:</b> no limit specified.</p> <p><b>Training contracts:</b> may be extended for six months up to two years, or three years by collective agreement, and up to four years for workers with disabilities.</p> <p><b>Workers with disabilities:</b> may be hired for minimum periods of one year up to a maximum of three years, therefore allowing for two extensions.</p> <p><b>Replacement for workers near retirement:</b> extendable in yearly periods if the partially retired worker decides to continue his activity after the age of 65, with the contract expiring at the end of the corresponding period of the year when the replaced worker reaches the age of full retirement.</p>
Item 12 Maximum cumulated duration of successive FTCs	<p><b>Temporary increase in workload:</b> maximum duration is six months which may be extended to 12 months through collective agreement.</p> <p><b>Other objective reasons:</b> no limit on duration if the objective reasons continues to exist. However, in both cases, workers will become permanent when they have been under contract for more than 24 months within a period of 30 months, continuously or not, in the same job and in the same enterprise, with two or more temporary contracts regardless of whether they have been directly hired or hired through a temporary work agency.</p> <p><b>Training contracts:</b> maximum of two years, can be extended to three years by collective agreement and up to four year years if the training contract is drawn up with a worker with a disability.</p> <p><b>Workers with disabilities:</b> may be hired for minimum periods of one year up to maximum of three years.</p> <p><b>Replacement for workers near retirement:</b> maximum duration of five years extendable in yearly periods if the partially retired worker decides to continue his activity after the age of 65, with the relief contract expiring at the end of the corresponding period of the year when the replaced worker reaches the age of full retirement.</p>
Item 13 Types of work for which temporary work agency (TWA) employment is legal	Limited to "objective situations".
Item 14 Are there restrictions on the number of renewals and/or prolongations of TWA contracts?	Yes
Item 15 Maximum cumulated duration of TWA contracts	No limit for substitution and contracts related to a specific task; 6 months for temporary increase in workload; 3 months to cover temporarily a post while carrying out a selection process.
Item 16 Does the set-up of a TWA require authorisation or reporting obligations?	TWAs need administrative authorisation to carry out their activities. The authorisation is valid for one year and will be extended for two successive years provided the TWA applies for the extension three months in advance of the expiry date and fulfils its legal obligations. The authorisation will be granted with no time limit when the TWA has been carrying out authorised activity for three years and expires when the TWA gives up its activity for one uninterrupted year. TWAs have monthly reporting requirements and are required to provide user firms and employee representatives with information when there is a new contract or transfer contract.
Item 17 Do regulations ensure equal treatment of regular workers and agency workers at the user firm?	TWA workers are entitled to receive at least the total remuneration established for the work to be performed in the statutory collective agreement applied to the user enterprise. Remuneration should include, if appropriate, the proportionate part corresponding to the weekly days off, extra payments, public holidays and annual leave.
Item 18 Definition of collective dismissal	Within 90 days, 10+ workers in firms <100 employees; 10%+ in firms 100-299; 30+ workers in firms 300+ employees.
Item 19 Additional notification requirements (compared to Item 1) in cases of collective dismissal	<p><b>Notification of employee representatives:</b> Duty to inform and consult with Works Council or trade union delegation.</p> <p><b>Notification of public authorities:</b> Notification of labour authority.</p>
Item 20 Additional delays involved (compared to Item 2)	Employer should apply for authorisation and open a period of consultation of 30 days (15 days in enterprises of less than 50 workers) with employee representatives. If this period ends with an agreement, the labour authority issues within 15 days a resolution authorising the expiry of the contracts. If no agreement has been reached, the resolution, issued within 15 days, will accept or reject the expiry of all of part of the contracts applied for.
Item 21 Other special costs to employers in case of collective dismissals	<p><b>Type of negotiation required:</b> Consultation on grounds for labour force adjustment plan and no possible avoidance of reduction of their effects, as well as on the measures needed to alleviate their consequences for the affected workers and to allow for the continuity and feasibility of the business.</p> <p><b>Selection criteria:</b> None, except for priority to legal representatives of employees.</p> <p><b>Severance pay:</b> No additional regulations for collective dismissal.</p>

*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).*