

BELGIUM

Items	Regulations in force on 1 January 2013
1: Notification procedures in the case of individual dismissal of a worker with a regular contract	Notification of employee by registered letter. Oral notification possible if the employer chooses severance pay in lieu of notice but only if the worker does not challenge the dismissal.
2: Delay involved before notice can start	<p>In the case of written notification:</p> <ul style="list-style-type: none"> - the letter takes effect on the 3rd working day after dispatch, - the notice period starts on the 1st day of the month following the date on which the notification by registered letter takes effect (two weeks on average), - the notice period for blue-collar workers starts on the 1st Monday following the date on which the notification by registered letter takes effect (3.5 days on average). <p>Calculation (for EPL indicators): average of blue collar and white collar workers: $3 + (3.5 + 15) / 2 = 12.25$ days</p>
3: Length of notice period at different tenure durations (a)	<p>I) Regulations applicable to contracts whose performance began before 1 January 2012:</p> <p>Blue collar: no notice during trial period; 7d<6m (if provided for in individual contracts); 28d<6 m; 35 d<5y; 42 d<10 y; 56 d<15 y; 84 d<20 y; 112 d>20 y unless stipulated otherwise in a royal decree, collective branch agreement or collective bargaining agreement.</p> <p>White collar: 7d during trial period; 3m<5y. Additional three months' notice for each started 5-year period of tenure (e.g. 6 m<10 years, 9 m<15 years, etc.). This is the legal minimum.</p> <p>If annual remuneration is above EUR 32 254, the parties must agree to a reasonable notice period which cannot be less than the legal minimum. If they fail to reach an agreement, the courts shall rule on a reasonable notice period. Some methods, such as the Claeys formula, have been developed by legal experts to calculate this appropriate notice period, but they are in no way binding.</p> <p>II) Regulations applicable to contracts whose performance began after 1 January 2012:</p> <p>Blue collar: no notice during trial period; 7d<6 months (if provided for in employment agreement); 28d<6 months, 40d<5 years, 48d<10 years, 64d<15 years, 97d<20 years and 129d>20 years.</p> <p>White collar:</p> <ol style="list-style-type: none"> 1) If the employee's gross annual remuneration is not over EUR 32 254: same arrangements as those for contracts whose performance began before 1 January 2012: see above. 2) If the employee's gross annual remuneration is over EUR 32 254 but not more than EUR 64 508: 91 d<3 years, 120 d<4 years, 150 d<5 years, 182 d<6 years and 30 d per year of tenure started if the employee has 6 years' tenure or more. 3) If the employee's gross annual remuneration is over EUR 64 508, the notice period can be set by agreement concluded at the latest at the commencement of the job. It shall in no case be less than the notice period applicable to employees covered under (1) for employees whose gross annual remuneration is less than EUR 32 254. <p>Calculation (for EPL indicators): average of blue collar and white collar workers (average of the first two scenarios for white collar employees)</p> <p>9 months: $(1.33 + 3) / 2 = 2.15$ months</p> <p>4 years: $(1.33 + (3+5) / 2) / 2 = 2.65$ months</p> <p>20 years: $(4.33 + (15+21) / 2) / 2 = 11.15$ months</p>
4: Severance pay at different tenure durations (a)	In the event of dismissal without a notice period, severance pay depends on the length of the notice period that should have been observed. For example, if the notice period is 3 months, severance pay shall be equivalent to 3 months' salary.
5: Definition of unfair dismissal (b)	<p>Unfair dismissal of blue collar workers (with an open-ended employment contract): a dismissal is deemed unfair if the reasons given have nothing to do with the individual's capability or conduct or do not concern any operational requirements of the firm, establishment or department.</p> <p>For white collar workers, there are no provisions for the notion of unfair dismissal in regulations; only the general concept of abuse of rights. The right to dismiss an employee must be exercised for the purposes for which it is granted, <i>i.e.</i> in the interests of the enterprise. It is then up to the employee to prove that the dismissal is unfair.</p>

6: Length of trial period (c)	<p>Optional trial period clause: certain conditions have to be observed when it is included in the employment contract.</p> <p>Blue collar: minimum 7 days, maximum 14 days</p> <p>White collar: minimum 1 month, maximum 6 months [may be extended up to 12 months if gross annual remuneration is above EUR 37 721 (2012)]</p> <p>Calculation (for EPL indicators): average of maximum values for blue collar and white collar workers (average of both cases for white collar workers) = 4.75 months</p>
7: Compensation following unfair dismissal (d)	<p>Blue collar and white collar workers: payment of compensation (normal entitlement for dismissal) at least equivalent to the notice period (in the event that the notice period is not observed).</p> <p>In addition to this normal compensation (or pay in lieu of notice period):</p> <p>Blue collar workers: compensation for unfair dismissal equivalent to six months' salary</p> <p>White collar workers: damages to be decided by the court.</p> <p>Typical compensation for 20 years' tenure. Blue collar workers: 129 days + 6 months</p> <p>White collar workers: if gross annual remuneration is not more than EUR 32 254: 15 months. If gross annual remuneration is more than EUR 32 254: minimum of 600 days.</p> <p>These compensation payments include amounts due for dismissal without a notice period</p> <p>Calculation (for white collars): average of mean (average of minimum – 3 weeks – and maximum – 17 weeks) and maximum compensation $(10 + 17 \text{ weeks})/2 = 3.11$ months</p> <p>Calculation: average for blue and white collar workers: $(6+3.11)/2 = 4.55$ months</p>
8: Reinstatement option for the employee following unfair dismissal (b)	<p>There is no right to reinstatement.</p>
9: Maximum time period after dismissal up to which an unfair dismissal claim can be made (e)	<p>The time limit for making a claim of unfair dismissal is 1 year from the date at which the contract is terminated.</p>
10: Valid cases for use of standard fixed term contracts	<p>Fixed-term contracts (FTCs) are permitted without specifying an objective reason.</p>
11: Maximum number of successive standard FTCs (initial contract plus renewals and/or prolongations)	<p>No maximum number if these successive FTCs can be justified by the nature of the work or other legitimate reasons.</p> <p>If no justification can be given as to the nature of the work or other legitimate reasons: 4 successive FTCs, of a minimum duration of 3 months and total duration of two years or, 6 contracts with the authorisation of the Labour Inspectorate (<i>Inspection des lois sociales</i>), for a maximum total duration of 3 years with contracts of a minimum of 6 months.</p> <p>With legitimate reasons: no maximum number, but assessed by employment tribunals.</p>
12: Maximum cumulated duration of successive standard FTCs	<p>Unlimited for the first contract. In the case of successive FTCs not justified by the nature of the work or other legitimate reasons: 2 years (or 3 years with the authorisation of the Labour Inspectorate).</p> <p>If these successive FTCs are justified by the nature of the work or other legitimate reasons: no maximum cumulated duration.</p>
13: Types of work for which temporary work agency (TWA) employment is legal	<p>Use of services of temporary work agencies (TWA): temporary replacement of a permanent employee; temporary increase in workload; work of an exceptional nature.</p>
14: Are there restrictions on the number of renewals and/or prolongations of TWA assignments? (f)	<p>Authorisation procedures and time limits on the use of temporary employment (assignments).</p> <p>No particular restrictions with regard to the contract between the TWA and the worker.</p>
15: Maximum cumulated duration of TWA assignments (f)	<p>Replacement of a worker: 6 months, can be renewed once up to a maximum of 12 months or for the length of time that the employment contract of the worker being replaced is suspended.</p> <p>Temporary increase in workload: 18 months or more (to be negotiated with trade union representatives)</p> <p>Work of an exceptional nature: 3 months (except for certain specific cases: 7 days or 12 months)</p> <p>There are no restrictions for the duration of successive contracts between the TWA and workers.</p>
16: Does the set-up of a TWA require authorisation or reporting obligations?	<p>Authorisation from regional authorities is required for the setting up of a TWA.</p>
17: Do regulations ensure equal treatment of regular workers and agency workers at the user firm?	<p>Yes</p>

<p>18: Definition of collective dismissal (b)</p>	<p>Dismissal is collective when it affects:</p> <ol style="list-style-type: none"> 1. firms with more than 20 workers 2. and is deployed over a period of at least 60 days: 10 workers in firms with between 21 and 99 employees; 10% of employees in firms with between 100 and 299 workers; 30 employees in firms with 300 and more workers.
<p>19: Additional notification requirements in cases of collective dismissal (g)</p>	<p>Collective dismissal requires 2 notifications:</p> <p>1st notification: Notification to staff representatives: duty to notify and consult with the works council, trade union delegates and staff representatives.</p> <p>This notification must also be sent to the public authorities: to the Director of the Sub-Regional Employment Service (<i>Directeur du service subrégional de l'emploi</i>) and the Chairman of the Executive Committee of the Federal Public Service, Employment, Labour and Social Dialogue (<i>Président du Comité de Direction du Service public fédéral Emploi, Travail et concertation sociale</i>).</p> <p>2nd notification: once the consultation procedure is completed, a new notification must be sent to the above-mentioned public authorities detailing the planned redundancies (number of workers to be dismissed, category, etc.) with a copy sent to staff representatives.</p>
<p>20: Additional delays involved in cases of collective dismissal (h)</p>	<p>Redundancies are prohibited during the 30 days following the 2nd notification (notification to the Sub-Regional Employment Service). This period can be reduced or extended up to a maximum of 60 days on the decision of the Director of the Sub-Regional Employment Service.</p> <p>Staff representatives have a period of 30 days from the second notification during which they can claim that certain points concerning the information and consultation procedure have not been respected.</p> <p>Calculation (for EPL indicators): At least five days for consultation between the 1st and the 2nd notification plus $(30+60)/2$ days on average following the 2nd notification.</p>
<p>21: Other special costs to employers in case of collective dismissals (i)</p>	<p>Type of negotiation required: Consultation with staff representatives on solutions other than redundancies and on how to mitigate the negative effects of dismissals. A voluntary social plan may be introduced but there is no legal obligation. However, the employer is required to set up an "employment cell" and provide outplacement services to workers.</p> <p>Compensation for collective dismissal: compensation will vary according to the duration of the notice period. The longer the notice period, the lower the compensation.</p>

Legend: d: days; w: weeks; m: months; y: years. For example "1m < 3y" means "1 month of notice (or severance) pay is required when length of service is below 3 years".

Notes:

- Three tenure durations (9 months, 4 years, 20 years). Case of a regular employee with tenure beyond any trial period, dismissed on personal grounds or economic redundancy, but without fault (where relevant, calculations of scores to compute OECD EPL indicators assume that the worker was 35 years old at the start of employment). Averages are taken where different situations apply – e.g. blue collar and white collar; dismissals for personal reasons and for redundancy.
- Based also on case law, if court practice tends to be more (or less) restrictive than what specified in legislation.
- Initial period within which regular contracts are not fully covered by employment protection provisions and unfair dismissal claims cannot usually be made.
- Typical compensation at 20 years of tenure, including back pay and other compensation (e.g. for future lost earnings in lieu of reinstatement or psychological injury), but excluding ordinary severance pay and pay in lieu of notice. Where relevant, calculations of scores to compute OECD EPL indicators assume that the worker was 35 years old at the start of employment and that a court case takes 6 months on average. Description based also on case law.
- Maximum time period after dismissal up to which an unfair dismissal claim can be made.
- Description based on both regulations on number and duration of the contract(s) between the temporary work agency and the employee and regulations on the number and duration of the assignment(s) with the same user firm.
- Notification requirements to works councils (or employee representatives), and to government authorities such as public employment offices. Only requirements on top of those requirements applying to individual redundancy dismissal count for the OECD EPL indicators (cf. Item 1).
- Additional delays and notice periods in the case of collective dismissal (only delays on top of those required for individual dismissals – as reported in Items 2 and 3 – count for the OECD EPL indicators).
- This refers to whether there are additional severance pay requirements and whether social compensation plans (detailing measures of reemployment, retraining, outplacement, etc.) are obligatory or common practice.