

**JAPAN**

| Items  | Regulations in force on 1 January 2013   |
|--|--|
| 1: Notification procedures in the case of individual dismissal of a worker with a regular contract   | An employer shall provide at least 30 days advance notice, or pay the average wage for a period of not less than 30 days.<br>Oral notification is sufficient.<br>A written statement on the reasons of dismissal must be provided upon request.  |
| 2: Delay involved before notice can start  | There are no prescribed procedures.  |
| 3: Length of notice period at different tenure durations (a)   | 30 days, regardless of job tenure.   |
| 4: Severance pay at different tenure durations (a)   | Severance pay is not legally required.   |
| 5: Definition of unfair dismissal (b)  | <b>Fair:</b> Dismissals for "reasonable cause": incompetence of the employee or violation of disciplinary rules. Redundancy dismissals require business reasons for reducing the number of staff; efforts to avoid dismissal, reasonableness of selection criteria and procedures. <b>Unfair:</b> Dismissal due to gender, of workers recovering from work-related accidents, before and after childbirth leave, during childbirth and maternity leave and when conditions on fair dismissal have not been satisfied.  |
| 6: Length of trial period (c)  | Length of trial period is not legally regulated. (It usually varies from 2 to 6 months. The most common period is 3 months).   |
| 7: Compensation following unfair dismissal (d)   | If dismissed workers file a civil lawsuit and get an unfair dismissal sentence not entering into a settlement, compensation of a sum equal to earnings between the dismissal and the legal settlement of the case is paid. Sums earned by the employee in the interim can only partially be set off against the award.<br><br>Dismissed workers and their employers are reconciled by the labor tribunal or by the mediation of Prefectural Labor Bureaus on a case-by-case basis. If mediation fails, the labour tribunal can adjudicate the case. And if parties appeal to the court, a settlement may be reached on a case-by-case basis.<br><br>Typical compensation at 20 years tenure (all workers): 6 months. |
| 8: Reinstatement option for the employee following unfair dismissal (b)                              | A settlement may be reached on a case-by-case basis through the labor tribunal or the mediation of Prefectural Labor Bureaus, or the case is adjudicated by the labor tribunal. In that case, reinstatement is rarely made. If dismissed workers file a civil lawsuit and get an unfair dismissal sentence, not entering into a settlement, remedies for unjust dismissals are limited to nullifying dismissals, ordering reinstatement and payment for wages during the dismissed period. However, in a number of cases, monetary compensation is paid without reinstatement even after the annulment of dismissal is ordered.  |
| 9: Maximum time period after dismissal up to which an unfair dismissal claim can be made (e)         | A lawsuit about dismissal does not require a special type of lawsuit and proceeds according to the rules of normal civil litigation.<br><br>Therefore, there is no statutory limit on the period where an employee, who has been unduly dismissed by an employer, can file a claim for reinstatement. However, there are also court cases in which complaints filed a long period after the date of dismissal have not been allowed, based on the principle of good faith.   |
| 10: Valid cases for use of standard fixed term contracts   | Fixed-term contracts under 3 year duration widely possible without specifying an objective reason. The contract can be of 5 years for highly skilled employees or those aged 60+.  |
| 11: Maximum number of successive standard FTCs (initial contract plus renewals and/or prolongations) | No legal limit specified in terms of the number of renewals; after repeated renewals the employee becomes entitled to expect renewal of his contract and the employer must have just cause to refuse renewal.  |
| 12: Maximum cumulated duration of successive standard FTCs   | There are no limits for the cumulative duration of FTCs. However, each contract cannot be concluded for a term exceeding three years, except if concluded for the completion of a specified project (Labour Standards Act – Art. 14). The contract can be of 5 years for highly skilled employees or those aged 60+.   |
| 13: Types of work for which temporary work agency (TWA) employment is legal                          | "Dispatching agencies" are allowed for all occupations except port transport services, construction work, security services, medical-related work at hospital etc.   |
| 14: Are there restrictions on the number of renewals and/or prolongations of TWA assignments? (f)    | No restrictions  |

|  |   |
|--|---|
| <b>15:</b> Maximum cumulated duration of TWA assignments (f)   | In the 26 original occupations, there is no limit for occupations that need special employment management and 36 months for occupations that need specialised knowledge. In all other allowed occupations, there is no limit for the duration of the temporary work contract itself, but the possible duration of temporary work assignment at the user-firm is 36 months maximum.  |
| <b>16:</b> Does the set-up of a TWA require authorisation or reporting obligations?                      | Setting up a TWA requires the permission or notification of the Ministry for Health, Labour and Welfare. After set-up, the TWA is required to report on its operations, etc., once a year.  |
| <b>17:</b> Do regulations ensure equal treatment of regular workers and agency workers at the user firm? | Legally, user firms should endeavour to take necessary measures concerning dispatched workers to maintain an appropriate workplace, etc. The labour conditions of dispatched workers are secured by making the user firm employer subject to the parts of the relevant laws on labour protection and sharing responsibilities between the TWA and the user firm.<br>The Revised Worker Dispatching Act (2012), stipulates that dispatching business operators shall consider the situation of workers directly hired by clients and engaged in the same type of work in setting wages, rights to education and training, welfare programs, etc., and that clients shall make efforts to provide necessary information upon requests by dispatching business operators.  |
| <b>18:</b> Definition of collective dismissal (b)  | Firms expecting 30+ workers turnover in one month will have additional notification requirements  |
| <b>19:</b> Additional notification requirements in cases of collective dismissal (g)                     | Firms are required to notify the public employment service. (Employment Measure Act Art 27) and to submit a re-employment assistance plan to the public employment service (EMA Art 24). Firms are required to listen to the opinion of union or workers' representative when making the plan. (EMA Art 24).<br>Courts may also require that the firm has engaged in sincere negotiation with the trade union prior to making dismissals when deciding whether dismissals are justified.  |
| <b>20:</b> Additional delays involved in cases of collective dismissal (h)                               | Firms are required to notify the public employment service one month prior to the last dismissal and to set up a re-employment assistance plan, which must be submitted to the public employment service one month prior to the first dismissal and obtain approval (Art. 7/3 of the Ministerial Decree of application of the Employment Measure Act). Also, firms are required to listen to the opinion of union or workers representative when making a re-employment assistance plan (Employment Measure Act art.24). Therefore the process must start more than 1 month before the first dismissal and it is estimated that at least 2 days are necessary for the consultation. However, individual notice can be served simultaneously, since it is independent from those procedures.<br>Calculation (for EPL indicators): at least 2 days for negotiations +30 for PES notification minus 1 day for individual notification (Item 2) minus 30 days for notice. |
| <b>21:</b> Other special costs to employers in case of collective dismissals (i)                         | Firms expecting 30 or more workers' turnover within one month due to business contraction are obliged to make a re-employment assistance plan and submit it to the public employment service.   |

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.