

KOREA

Items	Regulations in force on 1 January 2013
1: Notification procedures in the case of individual dismissal of a worker with a regular contract	<p>Personal reasons: Written notice. The reasons for and date of dismissal should be clearly stated to the employee.</p> <p>Managerial reasons: Advance notice to the union representing the majority of the workforce (in the absence of such union, workers' representatives) 50 days prior to dismissal and sincere consultation with them over efforts to avoid dismissal, and fair and rational criteria for selecting workers to be dismissed.</p> <p>Workplaces with four workers or less are exempted from all the provisions concerning dismissals except for prior notice or notice allowance (cf. Items 1-9).</p> <p>Calculation (for EPL indicators): 1.5 = average of 1 for personal reasons and 2 for managerial reasons.</p>
2: Delay involved before notice can start	<p>Personal reasons: Written notice. The reasons for and the date of dismissal should be clearly stated to the employee.</p> <p>Managerial reasons: Advance notice to the union (workers' representatives in absence of such union) 50 days prior to dismissal and sincere consultation with them over efforts to avoid dismissal, and fair and rational criteria for selecting workers to be dismissed.</p> <p>However, the Supreme Court ruled that the duty of consultation with union or workers' representatives 50 days prior to dismissal on managerial reasons does not constitute a requirement for the validity of the layoff. Therefore, the court stated that if other requirements are met, the layoff could be validated. (Supreme Court Decision 2001du 1154 decided on Oct.15. 2004.).</p> <p>Calculation (for EPL indicators): average of personal reasons (1 day) and managerial reasons (evaluated at 39 days, on average, to take into account the Supreme Court ruling).</p>
3: Length of notice period at different tenure durations (a)	<p>All workers: 30d (applies to every worker to be dismissed regardless of job tenure). Exceptionally, an advance notice of dismissal may not be given to workers who have been employed: (i) on a daily basis for less than 3 consecutive months, (ii) for a fixed period not exceeding 2 months, (iii) as a monthly-paid worker for less than 6 months, (iv) for seasonal work for a fixed period not exceeding 6 months and (v) on probation for less than 3 months.</p> <p>Instead of giving an advance notice, an employer may pay 30 days' ordinary wages to the worker as dismissal notice allowance. This is a separate payment and not related with severance pay.</p> <p>Calculation (for EPL indicators): 9 months tenure: 1 month, 4 years tenure: 1 month, 20 years tenure: 1 month.</p>
4: Severance pay at different tenure durations (a)	<p>There is no severance pay. All firms are required to pay at least 30 days pay per year of service regardless of the reason for separation (i.e. voluntary quit or involuntary dismissal) to those with at least one year of tenure.</p>
5: Definition of unfair dismissal (b)	<p>Fair: Dismissals for "just cause". According to court precedents, a just cause means that a worker is accountable for a certain cause that makes it impossible to maintain an employment contract according to social norms or that there are indispensable managerial reasons for dismissal. (Supreme Court Decision 91da 17931 decided on Apr.24. 1992). Just causes include violation of work regulation, illegal activities, misconduct, apparent lack of abilities to carry out duties, inability to carry out duties due to physical disability, false statement of career experience, etc.) or urgent managerial needs (including individual redundancy and dismissals due to mergers and acquisitions when employees or union have been consulted on urgency, selection criteria and transfer/retraining alternatives). Unfair: dismissal without any just cause or dismissal in violation of legitimate procedures that are stipulated in statutes (dismissal for managerial reasons), or collective agreement or company's work rule.</p> <p>In the case a worker receives medical treatment for occupational diseases or injuries or takes maternity leave before and after childbirth, the worker cannot be dismissed during such periods and within 30 days thereafter.</p>
6: Length of trial period (c)	<p>No statutory restriction on the length of trial period, but it should be reasonable according to case law. Dismissal during reasonable trial period is allowed if there is a reasonable cause which is wider in scope than just cause applicable to a regular worker for dismissal.</p> <p>- However, firing workers on a trial period for less than 3 months is possible without giving 30 days prior notice or notice allowance.</p>
7: Compensation following unfair dismissal (d)	<p>Workers can get money equivalent to their wages corresponding to the period from the beginning of unfair dismissal until they are reinstated. Compensation in lieu of reinstatement varies widely. Typical compensation at 20 years tenure (all workers): Wide range, on case-to-case basis. (6 months between court decision and dismissal)</p>

<p>8: Reinstatement option for the employee following unfair dismissal (b)</p>	<p>If courts determine that dismissal is invalid and that employment relations continue, it orders reinstatement with back pay. If the dismissed worker does not want to be reinstated, he/she can ask for monetary compensation in lieu of reinstatement. The Labor Relations Commission can order the employer to pay the amount equivalent to wages or more.</p>
<p>9: Maximum time period after dismissal up to which an unfair dismissal claim can be made (e)</p>	<p>Within three months after unfair dismissal for adjudication by the Labor Relations Commission. (There is no statutory time limit regarding the direct claim calling for the nullity of the dismissal to the court but such claim should be filed within a reasonable period.)</p>
<p>10: Valid cases for use of standard fixed term contracts</p>	<p>Fixed term contracts do not require objective situations or reasons (no restrictions).</p>
<p>11: Maximum number of successive standard FTCs (initial contract plus renewals and/or prolongations)</p>	<p>The number of renewals is not limited within the 2-year limit for fixed term contracts.</p>
<p>12: Maximum cumulated duration of successive standard FTCs</p>	<p>Employers are allowed to employ a fixed-term worker only for up to two years. If the contract is renewed, the total period of consecutive employment should not exceed two years. If a fixed term worker is employed for more than two years, he/she is considered as a worker whose employment period is not fixed from the moment when the employment contract exceeds two years, except in the following exceptional cases: (i) the period needed to complete the project is fixed; (ii) the fixed-term worker is hired to fill a vacancy caused by a worker's temporary suspension from duty; (iii) the period needed to complete study at school or vocational training is fixed; (iv) the job is provided by the government as an unemployment or welfare measure, etc.; and (v) the job requires professional knowledge and skills.</p>
<p>13: Types of work for which temporary work agency (TWA) employment is legal</p>	<p>TWA employment, in principle, is allowed in only 32 occupations determined on the basis of professional knowledge, skills, experience and the nature of jobs. However, where TWA employment is required for temporary or intermittent reasons, it is possible to use TWA employment in other occupations. In some occupations, such as construction work, seamen, harmful and dangerous work, work with dust, etc., the use of TWA employment is completely prohibited.</p>
<p>14: Are there restrictions on the number of renewals and/or prolongations of TWA assignments? (f)</p>	<p>Yes. Assignments for temporary and intermittent reasons can be renewed once (Art. 6, Act on the Protection etc. of Dispatched Workers). No limitation on other assignments. There are no limits for contracts between the worker and the agency provided that the worker changes user employer once maximum assignment duration is reached.</p>
<p>15: Maximum cumulated duration of TWA assignments (f)</p>	<p>The maximum cumulated duration of temporary work assignments is 2 years in the case of the 32 occupations for which TWA employment is allowed. But in the case of temporary and intermittent reasons, the maximum duration of assignment is three months, in principle, and can be extended for up to another three months, raising the maximum duration up to six months. There are no limits for contracts between the worker and the agency provided that the worker changes user employer once maximum assignment duration is reached. In fact, the contract between the agency and the worker can even be open-ended. Calculation (for EPL indicators): average max duration of assignments in the 32 occupations and other cases.</p>
<p>16: Does the set-up of a TWA require authorisation or reporting obligations?</p>	<p>The set-up of a TWA requires administrative approval, which should be renewed every three years. With regard to worker dispatch services (the business of providing temporary agency workers), a report should be made to the competent authorities every six months.</p>
<p>17: Do regulations ensure equal treatment of regular workers and agency workers at the user firm?</p>	<p>If a temporary agency worker is engaged in a job that is the same as or similar to the one of another worker of the user firm, both TWA and user firm should not discriminate against the TWA worker in terms of wages or other working conditions without reasonable cause, and the worker who was discriminated against can file a discrimination claim with the Labor Relations Commission.</p>
<p>18: Definition of collective dismissal (b)</p>	<p>The Labor Standards Act requires firms to report to Ministry of Labor and Employment in the case of managerial dismissals above a certain size. (>10 workers in firms <100 employees; >10% of workers in firms 100-999 employees; >100 workers in firms >1000 employees.)</p>
<p>19: Additional notification requirements in cases of collective dismissal (g)</p>	<p>Notification to Ministry of Labor and Employment 30 days before the dismissal is necessary when dismissing a certain number of employees or more.</p>
<p>20: Additional delays involved in cases of collective dismissal (h)</p>	<p>Notification to Ministry of Labor and Employment 30 days before the dismissal. Beyond this requirement, no special regulations (as for the case of dismissal for managerial reasons, an employer should have a sincere consultation with workers' representatives over efforts to avoid dismissal and fair and rational criteria for selecting workers to be dismissed for 50 days).</p>

21: Other special costs to employers in case of collective dismissals (i)

Type of negotiation required: Sincere consultation on need for redundancy, dismissal standards and employee selection. An employer should make efforts to avoid dismissal for managerial reasons in order to justify it. He/she should take such measures as voluntary retirement, reassignment, out-placement, temporary shutdown, and working hour reduction. **Selection criteria:** Law lays down union participation, but no specific selection criteria for dismissal other than “rational and fair standards”. **Severance pay:** No special regulation for collective dismissal.

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:

- a) 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.
- b) Based also on case law, if court practice tends to be more (or less) restrictive than what specified in legislation.
- c) Initial period within which regular contracts are not fully covered by employment protection provisions and unfair dismissal claims cannot usually be made.
- d) 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.
- e) Maximum time period after dismissal up to which an unfair dismissal claim can be made.
- f) 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.
- g) 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).
- h) 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).
- i) 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.