

MEXICO

Items	Regulations in force on 1 January 2019
<p>1: Notification procedures in the case of individual dismissal of a worker with a regular contract</p>	<p>The employer who dismisses a worker shall give written notice to the employee clearly indicating the conduct or conducts that motivate his/her dismissal and the date or dates on which they were committed. The notice shall be delivered personally to the employee at the moment of the dismissal or the employer shall notify to the Conciliation and Arbitration Board competent within five business days. The Board will notify the employee (Art. 47 Federal Labour Law, FLL hereafter). The behaviours established in the written notice cannot be modified through a trial.</p> <p>As of a certain number of dismissals (see Item 18): see item 19.</p>
<p>2: Delay involved before notice can start</p>	<p>The notice must be communicated to the employee.</p> <p>As of a certain number of dismissals (see Item 18): see item 20.</p>
<p>3: Length of notice period at different tenure durations (a)</p>	<p>All workers: No minimum notice period.</p>
<p>4: Severance pay at different tenure durations (a)</p>	<p>Dismissals are justified only if the worker in the course of his employment is guilty of a dishonest or dishonourable act. Dismissed workers shall be entitled to a service bonus of 12 days per year of service. In the case of physical or mental disability or manifest unfitness of the worker that makes impossible continued employment, severance pay is 1 month plus 12 days per year of service (Art. 54 FFL). However, permanent workers shall be entitled to a length-of- service bonus, consisting in twelve days' wages for each year of service even if they resign voluntarily, on condition that they have completed at least fifteen years of service. (Art. 162 FLL).</p> <p>Calculation for EPL indicators for individual dismissals: severance pay minus entitlements upon quitting.</p> <p>In case of approval of a certain number of dismissals, workers will be entitled to compensation of three months of salary, and to receive the seniority premium consisting of the payment of 12 days for each year of services rendered (Article 162 and 436 of the FLL).</p>

<p>5: Definition of unfair dismissal (b)</p>	<p>Justified: Dismissals are justified only when the employer can demonstrate the worker's lack of integrity or actions prejudicial to the company's interests (such as negligence, imprudence, or disobedience). Dismissal for physical or mental disability or manifest unfitness of the worker that makes impossible employment continuation is also justified.</p> <p>Unfair: In all other cases, including where relevant notification procedures have not been followed, the dismissal will usually be ruled unfair.</p> <p>A certain number of dismissals can be justified following the closure of establishments or undertakings or by the permanent reduction of their production, mainly for economic reasons (Chapter VIII, FLL). When it comes to reducing jobs in a company or establishment, the workers' ladder will be taken into consideration, so that those of lesser age are readjusted (Article 437 of the FLL). If the employer resumes the activities of his company or creates a similar one, he/she will be obliged to prefer, in equal circumstances, Mexican workers over those who are not; to those who have served them satisfactorily for longer; to those who, having no other source of economic income, are in charge of a family; to those who have finished their compulsory basic education; to those trained in those who are not, to those who have greater aptitude and knowledge to do a job and to those who are unionized in relation to those who are not (Articles 438).</p>
<p>6: Length of trial period (c)</p>	<p>The FLL regulates the trial period as follows:</p> <p>Article 39A: In an employment relation of unspecified duration or when exceeding 180 days, the trial period, may not exceed 30 days, with the only purpose to verify that the employee meets the requirements and skills needed to develop the work requested.</p> <p>The trial period may be extended up to 180 days, only in the case of workers in management positions, managerial and other involved in the management or administrative functions in the company or establishment or the performance of specialized, professional, or technical work. At the end of the trial period, if the worker cannot prove to satisfy the qualifications and skills needed to develop the work, the employer, taking into account the opinion of the Joint Commission on Productivity, Development and Training, will terminate the employment relationship without liability.</p> <p>Calculation (for EPL indicators): average of the 2 situations: 3.5 months</p>
<p>7: Compensation following unfair dismissal (d)</p>	<p>In the case of dismissal without "just cause", compensation of 3 months plus 20 days per year of service. Back pay accrues from the date of dismissal.</p> <p>Calculation (for EPL indicators): Typical compensation at 20 years tenure (all workers): 15 months (compensation plus back pay minus seniority bonus minus severance pay mentioned in Item 4).</p> <p>As of a certain number of dismissals (see Item 18): there is no such definition in the labour legislation, since the termination of collective labour relations requires approval or authorization from the Labour Court, as established in the articles 434 and 435 of the FLL.</p>

<p>8: Reinstatement option for the employee following unfair dismissal (b)</p>	<p>The employee may request reinstatement, but the employer can be exempted from reinstating the employee by paying compensation to the employee in cases where the employee had tenure of less than one year, was employed on a casual basis or where an ongoing employment relationship is not possible the worker, because of the position he/she holds or the nature of his/her work, is in direct and permanent contact with the employer.</p> <p>Calculation (for EPL indicators): average of the two cases</p> <p>As of a certain number of dismissals (see Item 18): there is no such definition in the labour legislation, since the termination of collective labour relations requires approval or authorization from the Labour Court, as established in the articles 434 and 435 of the FLL.</p>
<p>9: Maximum time period after dismissal up to which an unfair dismissal claim can be made (e)</p>	<p>In accordance with the provisions of Art. 518 FLL, the legal prescription for unfair dismissal claims is two months. The prescription runs from the day following the date of termination of the employment relationship.</p> <p>As of a certain number of dismissals (see Item 18): there is no such definition in the labour legislation, since the termination of collective labour relations requires approval or authorization from the Labour Court, as established in the articles 434 and 435 of the FLL.</p>
<p>10: Valid cases for use of standard fixed term contracts</p>	<p>Restricted to objective situations (replacement, temporary increase in workload, work on a project that is itself of a fixed-term nature, etc.), with the exception of a few occupations. Extent of use determined in consultation with union delegates (Articles 35, 37, 39-A and 39-B of the FLL).</p>
<p>11: Maximum number of successive standard FTCs (initial contract plus renewals and/or prolongations)</p>	<p>No limit specified, negotiable by both parties.</p>
<p>12: Maximum cumulated duration of successive standard FTCs</p>	<p>No limit specified, negotiable by both parties. If the fixed term contract is to perform work of a fixed-term nature, the contract will extend as long as the work extends (Articles 42, 43, 76, 78, 170, 478, 486 and 491 of the FLL).</p>
<p>13: Types of work for which temporary work agency (TWA) employment is legal</p>	<p>The FLL regulates TWA employment in Articles 15-A, 15-B, 15-C and 15-D.</p> <p>The use of TWA employment should not cover the same activities that are normally performed in the user establishment. Moreover, jobs of regular and TWA workers at the user establishment must be different. Moreover, TWA employment must be justified by its specialized nature.</p> <p>The use of TWA employment is not permitted when worker's contract are transferred from the user firm to the agency, with the clear aim of reducing labour rights.</p>
<p>14: Are there restrictions on the number of renewals and/or prolongations of TWA assignments? (f)</p>	<p>No limit for both contracts and assignments</p>
<p>15: Maximum cumulated duration of TWA assignments (f)</p>	<p>No limit for both contracts and assignments</p>
<p>16: Does the set-up of a TWA require authorisation or reporting obligations?</p>	<p>No requirements</p>
<p>17: Do regulations ensure equal treatment of regular workers and agency workers at the user firm?</p>	<p>Article 14 of the FLL establishes responsibilities for companies that use intermediaries for hiring workers. Workers shall have the right to provide their services under the same conditions and have the same rights that apply to other workers who perform work in the company or similar establishment.</p>
<p>18: Definition of collective dismissal (b)</p>	<p>The Federal Labour Law does not contain a definition of collective dismissal, but it contemplates the collective termination of employment relationships, following the closure of establishments or undertakings or by the permanent reduction of their production, mainly for economic reasons (Chapter VIII, FLL).</p>
<p>19: Additional notification requirements in cases of collective dismissal (g)</p>	<p>Notification of employee representatives: Duty to inform and consult with trade union/employee representatives. Notification of public authorities: Notification to Conciliation and Arbitration Board if no agreement with union can be found.</p> <p>A certain number of dismissals need to be approved by the Labour Court (Articles 434 and 435 of the FFL).</p>
<p>20: Additional delays involved in cases of collective dismissal (h)</p>	<p>Type of negotiation required: Negotiation with employee representatives on conditions and procedures of dismissal. If no agreement is reached, agreement by Conciliation and Arbitration Board on terms of dismissal is required. For the related procedure, a hearing must be performed within the fifteen working days following the date in which the complaint was presented or at the conclusion of the investigations (Art. 893 FLL).</p>

21: Other special costs to employers in case of collective dismissals (i)	Type of negotiation required: Negotiation with employee representatives on conditions and procedures of dismissal. If no agreement is reached, agreement by Conciliation and Arbitration Board on terms of dismissal required. Selection criteria: Usually seniority-based. Severance pay: 3 months in addition to seniority bonus (Art. 436 FLL)
22: The worker alone has the burden of proof when filing a complaint for unfair dismissal	No
23: Ex-ante validation of the dismissal limiting the scope of unfair dismissal complaints	No A certain number of dismissals need to be approved by the Labour Court (Articles 434 and 435 of the FFL).
24: Pre-termination resolution mechanisms granting unemployment benefits	No unemployment benefits in Mexico.

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 Versions 1 to 3 of 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.