

SWITZERLAND

Items	Regulations in force on 1 January 2019
1: Notification procedures in the case of individual dismissal of a worker with a regular contract	<p>Notification to employee who has the right to request a statement of reasons (Art. 335 CO (code of obligations)). Case law indicates that the employer may invoke, during the trial, unknown grounds or grounds that were known but unreported for legitimate reasons (suspicions, facts under investigation).</p> <p>As of a certain number of dismissals (see Item 18): see Item 19</p>
2: Delay involved before notice can start	<p>Letter sent by mail or handed directly to employee.</p> <p>Art. 335c of the Code of Obligations stipulates that termination occurs at the end of the calendar month. This is reflected also in many collective agreements.</p> <p>Calculation (for EPL indicators): 1 day for the notification and 15 days on average for the time period until the end of the month = 16 days.</p> <p>As of a certain number of dismissals (see Item 18): see Item 20.</p>
3: Length of notice period at different tenure durations (a)	<p>All workers: 7d during the trial period (1 to 3 months), 1m<1y, 2m<10y, 3m>10y, always to the end of a calendar month.</p> <p>Calculation (for EPL indicators): 9 months tenure: 1 month, 4 years tenure: 2 months, 20 years tenure: 3 months.</p>
4: Severance pay at different tenure durations (a)	<p>All workers: No legal entitlement to severance pay. An "indemnité à raison de longs rapports de travail" is paid to workers over age 50 and more than 20 years seniority and cannot be less than 2 months wages, with a maximum amount of 8 months wages. However, this indemnity is paid upon termination of initiated by either party, with a few derogations (Art. 339c of the Code of Obligations).</p> <p>Calculation (for EPL indicators): 9 months tenure: 0, 4 years tenure: 0, 20 years tenure: 0 months.</p>
5: Definition of unfair dismissal (b)	<p>Unfair: Dismissals based, inter alia, on personal grounds such as sex, religion, union membership, marital status or family responsibilities, or on the exercise of an employee's constitutional rights or legal obligations, such as military service.</p> <p>In addition the law defines as abusive a dismissal based on an employee's claim related to the employment contract or undertaken without respecting the procedure for collective dismissals.</p> <p>Case law also considers abusive dismissals based on reasons of comparable severity, such as those not respecting the notice period, based on denunciation of an illegal action, when there is a strong disequilibrium between the interest of the employer and that of the employee or when dismissal is manifestly not given in good faith.</p> <p>The courts are very reluctant to question the managerial decisions of the employer (ATF 133 III 512 and 138 III 359, on dismissals for economic reasons of staff representatives).</p> <p>As of a certain number of dismissals (see Item 18): judges verify only that the procedure has been and do not examine the validity of the economic justification for redundancy (art. 336, al. 2, let. c CO). Obligation to negotiate a social plan for firms with more than 250 employees (art. 335f al. 2 CO, art. 335h ss CO), and frequently contained in collective agreements.</p>
6: Length of trial period (c)	<p>All workers: 1 month according to the law. It can be extended to maximum 3 months in written individual employment contracts.</p>
7: Compensation following unfair dismissal (d)	<p>Compensation freely determined by the judge (6 months maximum). Criteria are the severity of the damage to the worker, economic and social consequences, job tenure, the employer's financial capacity and if there is a simultaneous worker's fault.</p> <p>Typical compensation at 20 years tenure: maximum 6 months.</p> <p>As of a certain number of dismissals (see Item 18): maximum 2 months of wage.</p>
8: Reinstatement option for the employee following unfair dismissal (b)	<p>Courts are not empowered to order reinstatement (except in case of gender discrimination).</p>
9: Maximum time period after dismissal up to which an unfair dismissal claim can be made (e)	<p>The employee has to object against the dismissal in writing by the end of the notice period. If the objection is valid and if the parties do not agree on continuing the contract, the employee is entitled to claim compensation within 180 days after the end of the contract.</p>

10: Valid cases for use of standard fixed term contracts	General
11: Maximum number of successive standard FTCs (initial contract plus renewals and/or prolongations)	Estimated 1.5 No limit specified, but successive contracts imply the risk of a court declaring the fixed-term contract null and void and requalified as a permanent contract.
12: Maximum cumulated duration of successive standard FTCs	Maximum 10 years.
13: Types of work for which temporary work agency (TWA) employment is legal	General
14: Are there restrictions on the number of renewals and/or prolongations of TWA assignments? (f)	Renewals or prolongation of fixed-term contracts only possible if there is an objective reason for the conclusion of another temporary contract or for a temporary prolongation. Chains of assignments of the same workers on the same post in the same firm are not allowed.
15: Maximum cumulated duration of TWA assignments (f)	No limit
16: Does the set-up of a TWA require authorisation or reporting obligations?	Requires administrative authorization.
17: Do regulations ensure equal treatment of regular workers and agency workers at the user firm?	Equal treatment only in the field of extended collective bargaining agreements concerning minimal salary, hours of work, progression development, anticipated retirement (Art. 20 Loi fédérale sur le service de l'emploi et la location de services (LSE), CCT de la branche du travail temporaire).
18: Definition of collective dismissal (b)	10+ workers in firms 20-99 employees; 10%+ in firms 100-299 employees; 30+ in firms with 300+ employees.
19: Additional notification requirements in cases of collective dismissal (g)	Notification of employee representatives: Obligation to inform and consult with Works Council or trade union delegation. Notification of public authorities: Duty to notify cantonal employment service.
20: Additional delays involved in cases of collective dismissal (h)	Maximum 30 days waiting period after notification to the cantonal employment service. However, Art. 335g al. 4 of the Code of Obligations states that this waiting period is concurrent with ordinary notice period (provided notification to the cantonal employment service does not occur after notice is given to the employee); therefore it is binding only when the notice period is shorter, implying in most cases no additional delays. However, when envisaging a collective dismissal the employer must consult Works Council or trade union delegation before the notification to the cantonal employment service (art. 335f, al. 1, Code of Obligations). The latter must include the result of the consultation (art. 335g, al. 1, Code of Obligations). Case Law suggests that during consultations, the employer should allow enough time to let unions formulate proposals and to seriously consider them. Therefore, consultations cannot be too short (at least 1-2 weeks; cf. arrêt de la Ire Cour civile dans la cause X. contre A. et B. (recours en réforme) 4C.263/2003 du 16 décembre 2003).
21: Other special costs to employers in case of collective dismissals (i)	Type of negotiation required: Consultation on alternatives to redundancy and ways to mitigate the effects; obligation to negotiate a social plan for firms with more than 250 employees (art. 335f al. 2 CO, art. 335h ss CO), and frequently contained in collective agreements. Selection criteria: No selection criteria laid down in law. Severance pay: No legal requirements, but often part of social plans.
22: The worker alone has the burden of proof when filing a complaint for unfair dismissal	Yes
23: Ex-ante validation of the dismissal limiting the scope of unfair dismissal complaints	No
24: Pre-termination resolution mechanisms granting unemployment benefits	Resignation or termination via mutual consent lead to a benefit suspension of 31-60 benefit days (6-12 weeks) (Art. 30, al. 1, let. a LACI ; 44 et 45, al. 3, 4 et 5 OACI) .

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 Versions 1 to 3 (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.