

UNITED STATES

Items	Regulations in force on 1 January 2013
<p>1: Notification procedures in the case of individual dismissal of a worker with a regular contract</p>	<p>U.S. law does not expressly address notification procedures for dismissal of a worker with a contract. Workers in the United States generally do not have contracts. However, if an employment contract exists, the parties can bargain for terms in a contract to govern notification procedures. Similarly, if collective bargaining agreements or employee handbooks prescribe the circumstances for notice, then such documents would govern.</p> <p>In some states, eligible workers, regardless of whether the worker is under contract or not, may obtain a “service letter” that indicates the reasons for the dismissal. In other states where there is no “service letter” concept, the worker can request the reason for termination. Typically, the worker must first submit a request for the “service letter” or for the reasons for his or her termination. However, no federal law mandates a service letter.</p> <p>The number of states with service letters or similar obligations, approximately amount to 28% of the US population (excluding states where the service letter cannot be used in a labour dispute, e.g. Texas, as well as states in which the letter should be provided only on request but with no obligation of truly stating the reason of separation, e.g. Kansas).</p> <p>Calculation (for EPL indicators): 1 multiplied by the population share of states with service letters or similar obligations.</p>
<p>2: Delay involved before notice can start</p>	<p>There are no notice requirements prior to dismissal, with certain exceptions, as discussed above.</p> <p>Calculation (for EPL indicators): coded as 1 day for oral notification or where written notice can be given to the employee</p>
<p>3: Length of notice period at different tenure durations (a)</p>	<p>No legal regulations (but can be regulated in collective agreements or company policy manuals).</p>
<p>4: Severance pay at different tenure durations (a)</p>	<p>No legal regulations (but can be regulated in collective agreements or company policy manuals).</p>
<p>5: Definition of unfair dismissal (b)</p>	<p>Fair: With the exception of unionized workers or public sector workers, it is generally fair to terminate an employment relationship without justification or explanation according to employment at-will principles, unless the parties have placed specific restrictions on terminations, through a contract, for example.</p> <p>Unfair: Dismissals based on breach of Equal Employment Opportunity principles (e.g., national origin, race, sex, religion) and dismissals of employees with physical or mental impairments, dismissal of pregnant women, dismissals based on genetic information, dismissals based on sexual orientation, dismissals based on age, or dismissals in violation of a collective bargaining agreement, or dismissals in violation of the terms of a contract, or dismissals in violation of a public policy, or dismissals for whistle blowing. In addition, there are increasing numbers of cases where employees pursue wrongful termination claims by alleging that dismissal was based on an “implied contract” for continued employment where there is no actual contract, but whereby certain assurances for continued employment on behalf of the employer created a contract of sorts.</p>
<p>6: Length of trial period (c)</p>	<p>Wide range. Typically, the range in collective bargaining agreements is between 60-90 days.</p>
<p>7: Compensation following unfair dismissal (d)</p>	<p>A wrongfully discharged worker employed under a fixed-term contract is entitled to damages corresponding to what he/she would have earned over the life of the contract (less any salary from newly entered employment). Workers under open-ended contracts may be entitled to damages corresponding to past and future financial losses, and accompanying psychic injuries.</p> <p>There is no average compensation. Claims filed with the Equal Employment Opportunity Commission (EEOC), for example, may get settled with the employer for an agreed-upon amount, depending on worker approval. Claims may also go to court, just like claims pursued under an implied contract theory, or claims for breach of contract. Claims that go to court may result in awards setting the amount of compensation, taking into account the salary amount.</p> <p>Typical compensation at 20 years tenure (all workers): Disparate rulings.</p>
<p>8: Reinstatement option for the employee following unfair dismissal (b)</p>	<p>Reinstatement is often ordered where discrimination is established in the context of a union grievance, where a worker has been discharged in violation of laws such as the National Labor Relations Act or the Civil Rights Act. In these situations workers do not have contracts, aside from a collective bargaining agreement. But in general, workers who sue for breach of contract or implied contract are offered damages to make them whole, not reinstatement.</p>

<p>9: Maximum time period after dismissal up to which an unfair dismissal claim can be made (e)</p>	<p>In general statutes of limitations vary by state and according to the act that is violated.</p> <p>A number of examples are reported below:</p> <p>The statutory limit for complaints for dismissal due to whistle blowing under the Occupational Health and Safety Act is 30 days.</p> <p>For an unfair dismissal claim in an "implied contract" situation, or regarding a breach of contract claim where there is a contract, the timeline is governed by the state jurisdiction's statute of limitations for the type of matter and varies state by state. For example, in New York, the statute of limitations is 6 years for a claim of breach of a written contract. For the same type of claim it is 4 years in California (2 years, if the contract is oral or implied-in-fact, it must be filed within two years of the breach.).</p> <p>The Equal Employment Opportunity Commission (EEOC) requires that a charge of discriminatory discharge is filed before a private law suit is filed in court. A charge must be filed with the EEOC within 180 days from the date of the alleged violation, but the deadline may be extended to 300 days if the change is also covered by state or local anti-discrimination laws. If the EEOC does not resolve the unfair dismissal claim, then the time limit is governed by a state's tort statute of limitations, which is usually two years.</p> <p>Calculation (for EPL indicators): estimate based on EEOC requests: $(180+300)/2 = 240$ days = 8 months.</p>
<p>10: Valid cases for use of standard fixed term contracts</p>	<p>No restrictions.</p>
<p>11: Maximum number of successive standard FTCs (initial contract plus renewals and/or prolongations)</p>	<p>No limit</p>
<p>12: Maximum cumulated duration of successive standard FTCs</p>	<p>No limit.</p>
<p>13: Types of work for which temporary work agency (TWA) employment is legal</p>	<p>General</p>
<p>14: Are there restrictions on the number of renewals and/or prolongations of TWA assignments? (f)</p>	<p>No</p>
<p>15: Maximum cumulated duration of TWA assignments (f)</p>	<p>No limit</p>
<p>16: Does the set-up of a TWA require authorisation or reporting obligations?</p>	<p>Licenses for employment agencies are issued in accordance with individual states' licensing statutes. Often, these statutes delegate the authority to a "Commissioner of Licenses" who decides on the issuance of a license based on the applicant's character. The license may have a short duration, such as for two years, and would need to get renewed.</p>
<p>17: Do regulations ensure equal treatment of regular workers and agency workers at the user firm?</p>	<p>There is no requirement for equal treatment in US federal law beyond minimum standards guaranteed to all workers. Some states may require equal treatment. In general, both groups of workers, permanent and temporary, may bargain for additional benefits.</p> <p>For example, on August 6, 2012, Massachusetts passed a law that allows temporary workers the right to know who their employer is, their job description, their rate of pay, their starting and ending times and expected duration of the job, among other pieces of information. Healthcare Cost Containment Act, 2012 Mass. Acts S 2400</p>
<p>18: Definition of collective dismissal (b)</p>	<p>The Worker Adjustment and Retraining Notification (WARN) Act outlines procedures for notice for covered plant closures and covered mass layoffs-in firms with 100 or more full-time employees or 100 or more employees who together work at least 4000 hours per week (exclusive of overtime) and over a period of 30 days: 50+ full-time workers in case of plant closure; 500+ full-time workers in case of layoff; 50-499 full-time workers, if they make up at least one third of the employer's full-time workforce at a single employment site. Firms with less than 100 employees are exempt from requirements for collective dismissals.</p>
<p>19: Additional notification requirements in cases of collective dismissal (g)</p>	<p>Notification of employee representatives: Duty to inform affected workers or labour unions (where they exist). Notification of public authorities: Duty to notify state and local authorities</p>
<p>20: Additional delays involved in cases of collective dismissal (h)</p>	<p>Special 60-day notice period. Exceptions to the notice period include layoffs due to risk of bankruptcy, unforeseen circumstances, or ending of a temporary business activity.</p>

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

Type of negotiation required: No legal requirements. **Selection criteria:** As laid down in collective agreements or company manuals; usually seniority-based. **Severance pay:** No special regulations 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.