

BOLIVIA

| Items | Regulations in force on 31 December 2013 |
|--|--|
| 1: Notification procedures in the case of individual dismissal of a worker with a regular contract | No specific notification procedure is required in case of dismissal with just cause or without just cause, but the reasons for dismissal must be communicated to the employee in all cases as its absence implies the acknowledgement of lack of just cause (article 12 and 16 General Labour Law –GLL). Calculations (for EPL indicators): 1 |
| 2: Delay involved before notice can start | Warning procedures are advisable in case of dismissal with just cause (Case Law. Sala Social y Administrativa Expediente: 10/2012-S). Dismissal without just cause is unfair, thus it is considered in Items 5, 7 and 8. Calculations (for EPL indicators): dismissal with cause 7 days |
| 3: Length of notice period at different tenure durations (a) | The GLL (article 12) mandates employers to provide workers an advance notice of their dismissal. The length of notice period varies for blue-collar workers (obreros) and white-collar (empleados). 1) Blue-collars a) 7d > 1m b) 15d > 6m c) 1m > 1y 2) White-collars 90d > 3m If an employer dismisses an employee without prior notice, termination is considered in Spanish “despido intempestivo” being the employee entitle to the payment of “desahucio”, which amounts to pay in lieu of notice. For white-collars: 3 months’ salary. Calculation (for EPL indicators): average of blue collar and white collar: 9 months tenure: 52.5 days; 4 years tenure: 60 days; 20 years tenure: 60 days |
| 4: Severance pay at different tenure durations (a) | <u>Dismissal with just cause</u> : No severance pay (called Indemnity for length of service) in case of dismissal with justified cause (“justa causa”), which essentially corresponds to employee’s misconduct (article 16 GLL and article 10 Supreme Decree N° 28699). <u>Dismissal without just cause</u> : considered in Item 7: Compensation for unfair dismissal. Employee can opt between reinstatement or severance payment (equivalent to 1 monthly salary per each year of service and in proportion per fraction of year). |
| 5: Definition of unfair dismissal (b) | <u>Fair dismissal</u> : Article 16 GLL provides an exhaustive list of reasons for dismissal with justified cause, which are related to employee’s conduct: 1) intentional damage to firm’s machinery, products or merchandise; 2) disclosure of firm’s industrial secrets, 3) non-compliance with industrial hygiene and safety rules, 4) failure to comply, totally or partially with firm’s internal rules, 5) abuse of trust or theft. Employee’s capability is not a just cause for dismissal. <u>Unfair dismissal</u> : when no justified cause is alleged or when the employee challenges the just cause alleged by the employer. Employee can opt between reinstatement plus back pay or severance payment plus pay in lieu of notice. Upon dismissal, the employer and employee must file a form called in Spanish “Finiquito” before the Labour Ministry. The employer is obliged to pay, within 15 days of dismissal, the amounts corresponding to severance payment (if applicable) plus other labour benefits owed to the employee. If the employer fails to comply with this obligation, a fine of 30% is imposed (article 9 Supreme Decree 28699). |
| 6: Length of trial period (c) | 3 months (Article 13 GLL). |
| 7: Compensation following unfair dismissal (d) | In case of unfair dismissal (dismissal without just cause “sin justa causa”), which occurs when no just cause (article 16 GLL) is alleged by the employer or when the just cause is challenged by the employee before the Labour Ministry (or at Court), the latest can opt between reinstatement plus back pay or the payment of severance indemnity plus pay in lieu of notice (article 10 Supreme Decree N° 28699). Severance pay for unjustified dismissal (“sin justa causa”) is equivalent to 1 monthly salary per each year of service and in proportion per fraction of year (article 13 GLL, articles 9 and 10 Supreme Decree 28699 of May, 1 st 2006 and articles 1 and 2 Supreme Decree N° 110 of May, 1 st 2009). Calculation (for EPL indicators at 20 years tenure): (20 months’ salary plus pay in lieu of notice 3 months for white collar – notice period counted in Item 3): 20 months |
| 8: Reinstatement option for the employee following unfair dismissal (b) | Under Bolivian Constitution (articles 48 and 49), employees enjoy job stability. Reinstatement option is always available (article 10 Supreme Decree 28699). Upon unfair dismissal, employees can opt between reinstatement (plus back pay) or severance indemnity (plus pay in lieu of notice), article 10 and 11 Supreme Decree 28699. If the employee opts for reinstatement, he can request the Labour Authority to issue a reinstatement order -provided unjustified dismissal is proved-. If the employer fails to comply with the order a fine will be imposed. In such case, the employee can claim the compliance with reinstatement order before the Labour Court (submitting the document issued by the Labour Ministry which proves that dismissal was unfair), article 10 III Supreme Decree N° 28699. Reinstatement is also available for certain categories of workers which have special protection as pregnant women or on maternity leave, recent fathers (Supreme Decree N° 12 of 2009) |
| 9: Maximum time period after dismissal up to which an unfair dismissal claim can be made (e) | Labour claims do not prescribe (article 48 IV Constitution). The Constitution in force as of February, 2009 modified article 120 GLL. The latest stated a time limit of 2 years. |

| | |
|---|--|
| 10: Valid cases for use of standard fixed term contracts | FTCs are permitted when the nature of the service or the tasks is itself of limited duration (Ministerial Resolution N° 283/62 of June, 13 th 1962). FTCs are prohibited for permanent tasks (Decree Law N° 16.187, article 2). |
| 11: Maximum number of successive standard FTCs (initial contract plus renewals and/or prolongations) | Only initial contract plus one renewal is admitted (Ministerial Resolution N° 283/62 of June, 13 th 1962 and Decree Law N° 16.187, article 2). Calculation (for EPL indicators): 2 (initial contract plus 1 renewal). |
| 12: Maximum cumulated duration of successive standard FTCs | FTC must not exceed 1 year. Same time limit applies to renewal (Ministerial Resolution N° 283/62 of June, 13 th 1962). Calculation (for EPL indicators): 24 months |
| 13: Types of work for which temporary work agency (TWA) employment is legal | Regulations refer to the broader category of outsourcing. Supreme Decree N° 521 of May 26 th 2010 prohibits the use of outsourcing, subcontracting, engagement, externalization of operations and other similar contractual agreements to develop the permanent and core activities of the counterparty (also Ministerial Resolution 108 of 2010). Failure to comply determines that both companies are jointly liable for the labour and social security benefits of the employees of the user firm. Moreover, the law considers an infringement subject to penalties, the following activities: 1) The usage of these figures to simulate non labour relationships 2) The recruitment and provision of labour force using the above mentioned figures to avoid complying with labour and social security regulations (article 2 Supreme Decree N° 521) These types of agreements are permitted for non core activities (article 3 Supreme Decree N° 521). |
| 14: Are there restrictions on the number of renewals and/or prolongations of TWA assignments? (f) | No specific regulation. FTC rules apply to FTCs between the agency and the worker. If assignments are of fixed-term, the duration of assignments and contracts typically coincide. |
| 15: Maximum cumulated duration of TWA assignments (f) | No specific regulation. However FTC rules apply to agreements with user firms. FTC rules apply to FTCs between the agency and the worker. Applying this rule, the assumption of a time limit of 24 months –for FTC- was considered. See Item 12 |
| 16: Does the set-up of a TWA require authorisation or reporting obligations? | No specific authorisation or reporting requirements (other than those which correspond to every employer). |
| 17: Do regulations ensure equal treatment of regular workers and agency workers at the user firm? | No specific regulation. However Supreme Decree N° 521, article 5 states that employees, ex- employees, who developed permanent and core activities of the user firm using the figures referred to in Item 13 (outsourcing, subcontracting, etc), can request the Labour Ministry to enforce their labour and social security rights. |
| 18: Definition of collective dismissal (b) | No statutory definition of collective dismissals. However there are certain situations that determine the termination of all the employment agreements such as: cessation of business due to bankruptcy, liquidation procedure, death of the employer (articles 14 and 15 GLL). |
| 19: Additional notification requirements in cases of collective dismissal (g) | No additional requirements. |
| 20: Additional delays involved in cases of collective dismissal (h) | No additional requirements. |
| 21: Other special costs to employers in case of collective dismissals (i) | No additional costs involved. Half of severance payment must be paid (articles 14 and 15 GLL). |

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).

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.