

CHINA

Items	Regulations in force on 1 January 2012
1: Notification procedures in the case of individual dismissal of a worker with a regular contract	An employer may terminate an employment contract by giving the worker 30 days' prior written notice or giving him/her one month's wage in lieu of notice. If an employer unilaterally terminates an employment contract, it shall notify the labour union of the reason in advance. If the employer has violated laws, administrative regulations or the provisions of the employment contract, the labour union shall have the right to demand that the employer rectifies the matter. The employer shall consider the opinions of the labour union and notify the labour union in writing on how it handled the matter.
2: Delay involved before notice can start	The employer may terminate the employment contract by giving the worker 30 days' prior written notice. Calculation: 1 day for notice handed directly to the employee
3: Length of notice period at different tenure durations (a)	30 days written notice, regardless of tenure.
4: Severance pay at different tenure durations (a)	Severance pay shall be paid at the rate of one month's salary for each full year of service. A period of service of no less than six months but less than one year shall be counted as one year. For a period of service of less than six months, a worker shall be paid half a month's wage as severance pay. If the monthly wage of a worker is three times greater than the average monthly wage of staff and workers in the region during the preceding year - as published by local authorities in the district where the employer is located - severance pay shall be paid at the rate of three times that average monthly wage and for a maximum period of service not exceeding 12 years. Calculation (for EPL indicators): 9 months tenure: 1 month; 4 years: 4 months; 20 years: 20 months

<p>5: Definition of unfair dismissal (b)</p>	<p>Fair: An employer may terminate an employment contract if:</p> <ul style="list-style-type: none"> (i) during the probation period, it is shown that the worker does not satisfy the conditions of employment; (ii) the worker seriously violates its rules and regulations; (iii) the workers commits a serious dereliction of duty, practices graft or engages in embezzlement, causing material damage to the employer; (iv) the worker simultaneously has an employment relationship with another employer, seriously affecting the completion of his/her work tasks with the employer, or after being warned about this misconduct by the employer, he/she refused to rectify the matter; (v) the employment contract is concluded or amended through means such as fraud, coercion or by taking advantage of a parties plight, thereby causing the other party to conclude or amend the employment contract in a manner contrary to his/her true intent; (vi) the worker contracted an illness or suffers from a non-work-related injury and after the expiration of the set medical period he/she is unable to return to his/her original job or engage in other worker arranged for him/her by the employer; (vii) the worker is incompetent and after undergoing training or an adjustment of his/her position he/she remains incompetent; (viii) the objective circumstances relied on at the time of the conclusion of the employment contract have materially changed, making performance thereof impossible and the employer and the worker fail to reach agreement on amending the employment contract after consultations. <p>Unfair: other than the cases above</p> <p>In cases of (vi) to (viii) above, an employer may not terminate a worker's employment contract if the worker:</p> <ul style="list-style-type: none"> (i) was engaged in operations that exposed him/her to an occupational disease hazard and has not undergone a pre-departure occupational health examination or is suspected of having contracted an occupational illness and is being diagnosed or undergoing medical observation; (ii) contracted an occupational illness or suffered from a work-related injury and has been confirmed as having lost all of part of his/her capacity to work; (iii) contracted an occupational illness or suffered a work-related injury and the set period of medical treatment has not expired; (iv) is a female employee in her pregnancy, confinement or nursing period; (v) has been working for the employer for at least 15 years in succession and is less than five years away from the statutory retirement age; or (vi) falls within another circumstance specified in laws or administrative regulations.
<p>6: Length of trial period (c)</p>	<p>If an employment contract has a term of no less than three months but less than one year, the probation period may not exceed one month. If an employment contract has a term of no less than one year but less than three years, the probation period may not exceed two months. For a fixed-term contract of no less than three years or an open-ended employment contract, the probation period may not exceed six months.</p>
<p>7: Compensation following unfair dismissal (d)</p>	<p>If an employer terminates or ends an employment contract in violation of the law, the worker can request reinstatement. If the worker does not request reinstatement or continuation of the employment relationship under the same contract has become impossible, the employer shall pay the worker compensation in an amount equivalent to twice the rate for severance pay to which the worker is entitled.</p> <p>Typical compensation at 20 years service: 40 months, but in the case of reinstatement, backpay only.</p> <p>Calculation (for EPL indicators): Typical compensation minus ordinary severance payments</p>
<p>8: Reinstatement option for the employee following unfair dismissal (b)</p>	<p>If an employer terminates or ends an employment contract in violation of the law, the worker can request reinstatement.</p>
<p>9: Maximum time period after dismissal up to which an unfair dismissal claim can be made (e)</p>	<p>One year under the Arbitration and Mediation Act.</p>
<p>10: Valid cases for use of standard fixed term contracts</p>	<p>Once an employer and a worker have reached a consensus through consultations, they may establish a fixed-term employment contract. There are no restrictions on the types of work for which fixed-term contract may be used.</p>
<p>11: Maximum number of successive standard FTCs (initial contract plus renewals and/or prolongations)</p>	<p>If the worker has concluded two fixed-term contracts in succession, he/she is not characterised by any of the circumstances under which the employer may fairly dismiss him/her and his/her contract is up for renewal, another contract without a fixed period shall be concluded if the worker proposes to do so.</p>

12: Maximum cumulated duration of successive standard FTCs	If the worker has worked for the employer for at least 10 years in succession, the contract will be taken to be an open-ended contract, except if the worker proposes to conclude another fixed-term contract.
13: Types of work for which temporary work agency (TWA) employment is legal	In general, placement of temporary workers shall apply to temporary, ancillary or substitute positions. In practice, however, temporary agency employment is widely used in many different situations.
14: Are there restrictions on the number of renewals and/or prolongations of TWA assignments? (f)	A temp agency shall conclude a fixed-term employment contract of at least two years with a temporary worker. Fixed-term contracts may only be renewed twice. The using employer shall not divide a continuous term of labour use into a couple of short term assignments (dispatch agreements).
15: Maximum cumulated duration of TWA assignments (f)	A temp agency shall conclude a fixed-term employment contract of at least two years with a temporary worker. Same limitation as for standard fixed-term contracts. There is no restriction on duration of assignments (dispatch contract) as long as it falls within permitted work such as temporary, ancillary or substitute position.
16: Does the set-up of a TWA require authorisation or reporting obligations?	Temp agencies shall be established in accordance with relevant provisions of the Company Law and have registered capital of no less than Rmb500 000. There is no obligation in the Employment Contract Law for ongoing reporting to authorities.
17: Do regulations ensure equal treatment of regular workers and agency workers at the user firm?	Temporary workers have the right to the same pay for the same work as the workers of the user firm. If the user firm does not have workers in the same positions, the labour compensation of the temporary workers shall be determined with reference to the labour compensation of workers in identical or similar positions in the place where the user firm is located.
18: Definition of collective dismissal (b)	Special provisions for collective dismissal apply where an employer needs to carry out a personnel cutback involving at least 20 persons or a personnel cutback involving less than 20 persons but accounting for at least 10% of the enterprise's workforce for one of the following reasons: (i) the employer is to undergo restructuring in accordance with the Enterprise Bankruptcy Law; (ii) the employer is experiencing serious difficulties with its production and operations; (iii) the enterprise is to switch production, undergo a material technological makeover or adjust its mode of operations and still needs to cut back personnel after amendment of employment contracts; (iv) another material change in the objective economic circumstances relied upon at the time of the conclusion of the employment contracts occurs, making the performance thereof impossible.
19: Additional notification requirements in cases of collective dismissal (g)	The employer may perform a collective personnel cutback after explaining the circumstances to the labour union or all of the staff and workers 30 days in advance, listening to the opinions of the labour union or staff and workers and reporting its personnel cutback plan to the labour administrative department.
20: Additional delays involved in cases of collective dismissal (h)	No additional delays
21: Other special costs to employers in case of collective dismissals (i)	When carrying out a personnel cutback, the following persons shall be retained on a priority basis: (i) those who have concluded relatively long-term fixed-term contracts with the employer; (ii) those who have concluded open-ended contracts with the employer; (iii) those who do not have other employed persons in the household and are supporting elderly persons or minors. If an employer that has carried out a personnel cutback hires again within six months, it shall notify the personnel that were cut back and, all things being equal, employ them on a preferential basis. There is no additional severance pay.

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.



China

- 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.