

## COLOMBIA

Items	Regulations in force on 31 December 2019
1: Notification procedures in the case of individual dismissal of a worker with a regular contract	<p>No specific notification procedure is required in case of dismissal with justified cause or without justified cause (Articles 62 and 64 of the Labour Code –hereinafter CST), but the reasons for dismissal must be communicated to the employee the termination date (article 66 CST). The employer must expressly and unequivocally state the specific reasons or the grounds (s) that he invokes to dispense with the services of a worker, whenever he is going to terminate the contract unilaterally in accordance with the provisions of article 7 A of the legislative decree 2351 of 1965. This statement must be made at the moment of termination of the contract to be valid. Subsequently the employer cannot be alleged validly different causes or reasons or under different conditions. The Law has established the need for employers to make a prior diligence with the worker before notified a decision, informing them of the justified cause, guaranteeing due process and right of defense of the employee.</p> <p>However a prior 15 day notice is required only in certain specific situations of dismissal with justified cause related to employee's misconduct or low performance (Article 62 CST numerals 9 to 15).</p> <p>Therefore a statement must be supplied to the employee in all cases as its absence implies the acknowledgement of lack of just cause. Calculations (for EPL indicators): 1.25 (average of 0 without justified cause and 2.5 with justified cause)</p> <p>As of a certain number of dismissals (see Item 18): see Item 19.</p>
2: Delay involved before notice can start	<p>All workers: No delays involved. The notice can be given the date of termination.</p> <p>Prior notice in case of employee's misconduct or low performance, are considered in Item 3.</p> <p>Calculations (for EPL indicators): 3 days (average of 1 day without cause and 5 days with cause for consultation for consultation of the employee)</p> <p>As of a certain number of dismissals (see Item 18): 2 months (see Item 20)</p>
3: Length of notice period at different tenure durations (a)	<p>General basis: No notice period. Notification of dismissal can be given the date of termination (Article 66 CST). However in the following cases, related to employee' misconduct or low performance, a 15 days prior notice is required (Article 62 numerals 9 to 15). These cases are: a) poor performance; b) systematic failure to comply with the legal or conventional obligations; c) addiction of the worker that disturbs the discipline of the company; c) breach of the safety and health recommendations prescribed by the employer's doctors or by the authorities to prevent illnesses or accidents; d) ineptitude to perform the given task; e) chronic or contagious disease, not of a professional nature.</p> <p>Calculation for EPL indicators for individual dismissals: (average of 0 days to 15 days regardless tenure duration) 7.5 days.</p>
4: Severance pay at different tenure durations (a)	<p>No severance pay in the case of dismissal with justified reason ("justa causa"), which essentially corresponds to employee's misconduct or poor performance, as stated in Item 5 (Article 62 CST).</p> <p>Severance pay for unfair dismissal ("sin justa causa") varies depending on the employee's monthly salary (Article 64 CST):</p> <p>a) Remuneration lower than 10 (ten) minimum legal monthly salaries (MLMS):</p> <ol style="list-style-type: none"> <li>1) 30 d &lt; 1 y</li> <li>2) 20 d (in addition to the 30 d of numeral 1), for each subsequent year and in proportion per fraction of year.</li> </ol> <p>b) Remuneration in excess of 10 (ten) MLMS:</p> <ol style="list-style-type: none"> <li>1) 20 d &lt; 1 y</li> <li>2) 15 d (in addition to the 20 d of numeral 1), for each subsequent year and in proportion per fraction of year.</li> </ol> <p>Calculation (for EPL indicators): (averages just cause and without just cause -in this case using higher values-): 9 months tenure: 0.5 months; 4 years tenure: 1.5 months; 20 years tenure: 6,83 months</p> <p>As of a certain number of dismissals (see Item 18): Severance pay for dismissal without justified cause</p>

<p><b>5: Definition of unfair dismissal (b)</b></p>	<p>Fair dismissal: Article 62 CST provides an exhaustive list of reasons for dismissal with justified cause, which are related to employee's conduct or capacity: 1) dishonest acts related to the submission of false certificates to obtain a position in the company, 2) acts of violence, serious breaches of discipline, insults and disrespect addressed to the employer, member of his family, representatives, senior staff or other workers, whether they take place inside or outside the workplace; 3) deliberate damage to buildings, plant, works, machinery, instruments, documents, raw materials and other goods belonging to the enterprise, 4) disclosure of confidential information or trade secrets to third parties, 5) poor performance; 6) systematic failure to comply with the legal or conventional obligations; 7) criminal conviction, unless the sentence has been suspended, 8) addiction of the worker that disturbs the discipline of the company; 9) breach of the safety and health recommendations prescribed by the employer's doctors or by the authorities to prevent illnesses or accidents; 10) ineptitude to perform the given task; 11) chronic or contagious disease, not of a professional nature. In these cases, no severance payment is due.</p> <p>However, the employer can always dismiss employee's without justified reason provided severance indemnity is paid.</p> <p>Unfair dismissal: when no justified cause can be alleged and proved by the employer, or when the employee terminates the employment agreement due to the employer's misconduct – constructive dismissal (Articles 62 and 64 CST).</p> <p>As of a certain number of dismissals (see Item 18): (Article 67 of Law 50 of 1990)</p> <p>The judge who studies a collective dismissal has full freedom to study all aspects. Within the process it may question the dismissal decision and the operational necessity of the decision. The employer in the first instance, when requesting authorization from the Ministry of Labor, must provide financial, accounting, technical, commercial and administrative evidence, as the case may be, that justifies the measure of collective dismissal. These same means of proof may be requested by the Judge, in the event that it corresponds to him to study a labor demand for dismissal without just cause.</p>
<p><b>6: Length of trial period (c)</b></p>	<p>2 months (Article 78 CST). The trial period must be expressed in written.</p>
<p><b>7: Compensation following unfair dismissal (d)</b></p>	<p>In case of unfair dismissal only prescribed severance payments are due. However, if the employer can't prove at Court a just cause for dismissal, he will be condemned to pay severance indemnity.</p> <p>Calculation (for EPL indicators at 20 years tenure) 13.66 months</p>
<p><b>8: Reinstatement option for the employee following unfair dismissal (b)</b></p>	<p>There is no reinstatement option for the employee following unfair dismissal.</p>
<p><b>9: Maximum time period after dismissal up to which an unfair dismissal claim can be made (e)</b></p>	<p>3 years (Article 488 CST).</p>
<p><b>10: Valid cases for use of standard fixed term contracts</b></p>	<p>No restrictions on the use of standard fixed-term contracts, other than written version and maximum duration of 3 years (Articles 45 and 46 CST).</p>
<p><b>11: Maximum number of successive standard FTCs (initial contract plus renewals and/or prolongations)</b></p>	<p>No limitation.</p> <p>Standard FTC can be renewed indefinitely (Article 46 CST). In effect, there are no limitations on the number of successive standard FTCs. Although the maximum duration of a FTC is of 3 years, they can be renewed indefinitely.</p>
<p><b>12: Maximum cumulated duration of successive standard FTCs</b></p>	<p>No limitation.</p> <p>As stated, although the maximum duration of a FTC is of 3 years, they can be renewed indefinitely. Therefore, there is no limit on the maximum cumulated duration of successive FTCs.</p>
<p><b>13: Types of work for which temporary work agency (TWA) employment is legal</b></p>	<p>According to article 77 of Law 50 of 1990, TWA employment is legal:</p> <ol style="list-style-type: none"> <li>1) For services required on occasional, accidental or transitory basis as stated in article 6 CST.</li> <li>2) To replace workers of the user firm which are on vacation, maternity or sickness leave.</li> <li>3) To attend an increase in production, transport, sales of goods, stationary periods of harvest and in the provision of services.</li> </ol> <p>Law 50 of 1990 prohibits use of TWA to replace workers on strike at the User firm.</p>
<p><b>14: Are there restrictions on the number of renewals and/or prolongations of TWA assignments? (f)</b></p>	<p>Assignments: Yes.</p> <ol style="list-style-type: none"> <li>1) For services required on occasional, accidental or transitory basis: 30 days (article 6 CST)</li> <li>2) Replacements: limited to the period to cover the particular event</li> <li>3) Production increases and services: for a term of 6 months renewable for another period of 6 months.</li> </ol> <p>Calculation (for EPL indicators): Yes</p>

<b>15:</b> Maximum cumulated duration of TWA assignments (f)	<p>Assignments: Yes</p> <ol style="list-style-type: none"> <li>1) For services required on occasional, accidental or transitory basis: 30 days</li> <li>2) To cover replacements: the time is given to cover the particular event</li> <li>3) Production increases and services: 6 (six) months renewable for another period of 6 (six) months. Total 12 months</li> </ol> <p>Calculation (for EPL indicators): (average of 1 month and 12 months): 6.5 months.</p>
<b>16:</b> Does the set-up of a TWA require authorisation or reporting obligations?	<p>Authorization, registration and periodic statistics reporting obligations to the Labour Ministry (Articles 84 and 88 of Law 50 of 1990 and Decree 4369).</p>
<b>17:</b> Do regulations ensure equal treatment of regular workers and agency workers at the user firm?	<p>Yes. Article 79 of Law 50 of 1990 requires equal treatment of regular workers and agency workers at the user firm.</p>
<b>18:</b> Definition of collective dismissal (b)	<p>Labour Ministry considers that a collective dismissal occurs when it affects (Article 67 Law 50 of 1990):</p> <ol style="list-style-type: none"> <li>a) In a company between 10 and 50 employees: 30% of its workers;</li> <li>b) In a company of more than 50 employees and up to 100: 20% of its workers;</li> <li>c) In a company of more than 100 employees and up to 200: 15% of its workers;</li> <li>d) In a company of more than 200 employees and up to 500: 9% of its workers;</li> <li>e) In a company of more than 500 employees and up to 1000: 7% of its workers;</li> <li>f) In a company of more than 1000 employees: 5% of its workers.</li> </ol>
<b>19:</b> Additional notification requirements in cases of collective dismissal (g)	<p>Yes. In case of collective dismissals, the employer is obliged to obtain a prior authorization from the Labour Ministry. Simultaneously, the employer has to notify its workers in written.</p>
<b>20:</b> Additional delays involved in cases of collective dismissal (h)	<p>The additional days of delay are those of the duration of the administrative procedure required to obtain the authorization from the Labour Ministry. According to article 67 of Law N° 50 of 1990, the Labour Ministry is obliged to issue its decision in a period of 2 months.</p> <p>Calculation (for EPL indicators): 2 months minus notice period Item 3: 52.5 days.</p>
<b>21:</b> Other special costs to employers in case of collective dismissals (i)	<p>No special costs involved.</p> <p>According to article 67 of Law N° 50 of 1990, there are no other special costs than the payment of the severance indemnity (that applies for dismissal without justified cause). Notwithstanding, if the assets of the employer are below one thousand (1.000) MLMS, the severance payment can be reduced to 50%.</p>
<b>22:</b> The worker alone has the burden of proof when filing a complaint for unfair dismissal	<p>Yes</p>
<b>23:</b> Ex-ante validation of the dismissal limiting the scope of unfair dismissal complaints	<p>No</p> <p>As of a certain number of dismissals (see Item 18):</p> <p>Yes. In case of collective dismissals, the employer is obliged to obtain a prior authorization from the Labour Ministry.</p>
<b>24:</b> Pre-termination resolution mechanisms granting unemployment benefits	<p>Regardless of the way in which the termination of the employment relationship has been presented, if the worker is unemployed, he can access the benefits (Article 13 of Law 1636 of 2013).</p>

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.
- g) There can be notification requirements to works councils (or employee representatives), and to government authorities such as public employment offices. Countries are scored according to whether there are additional notification requirements on top of those requirements applying to individual redundancy dismissal.
- h) 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.