

ECUADOR

Items	Regulations in force on 31 December 2013
1: Notification procedures in the case of individual dismissal of a worker with a regular contract	<p>According to article 169 of the Labour Code (LC), employment agreements may terminate, amongst other causes, by the following:</p> <ol style="list-style-type: none"> 1) <u>Just cause for dismissal alleged by the employer</u>, prior approval by the Labour Inspector (“visto bueno”). The notification procedure is as follows: The employer has to file a petition before the Labour Inspector. The latest will qualify the request for prior approval and notify the worker within 24 hours. The employee has 2 days to oppose to the petition. After such period, the Labour Inspector will determine a date to follow an investigation at the workplace, after which the final resolution, granting or rejecting, the prior approval (“visto bueno”) will be issued (articles 172, 545 number 5, 621, 622 LC, information from website of Ministry of Labour Relations). At the request of the employer, the Labour Inspector can proceed to suspend the labour relationship, if the former deposits the amount of one monthly salary. If the Labour Inspector rejects the prior approval, such amount will be given to the employee. In addition an order of reinstatement will be issued. Failure to comply with said order, determines the payment of indemnities corresponding to unfair dismissal (“despido intempestivo”). 2) <u>Just cause alleged by the employee</u>, when the employer breaches the employment agreement. Prior approval (“visto bueno”) by the Labour Inspector is also needed (article 173). 3) <u>Unjustified dismissal</u> (“despido intempestivo”): when no cause is alleged by the employer and no prior notification is given (article 188 LC). 4) <u>Desahucio</u>: when either party terminates the employment agreement without alleging a cause. The party who decides to terminate must request the Labour Inspector to notify the other party of such situation. Within 24 hours, the Labour Inspector must proceed to notify the termination (articles 184, 545 number 5 and 624 LC). For employers, desahucio only applies if the employee is engaged in a fixed term contract. Not considered for EPL purposes. <p><u>Economic reasons</u>: considered in Item 18 and 19. Calculation (for EPL indicators): Only dismissal without just cause (“despido intempestivo”) was considered: 0. (When dismissal with just cause relates principally to employee’s misconduct, it is not considered in the averaging for EPL purposes)</p>
2: Delay involved before notice can start	<p>Delays are those of the procedures that must be followed for dismissal with just cause (“visto bueno”) and without just cause (“despido intempestivo”). For dismissal with just cause, the prior approval procedure (“visto bueno”) takes approximately 15 days. However as dismissal with just cause relates mainly to employee’s misconduct, it is not considered in the averaging for EPL purposes. Calculation (for EPL indicators): 1 day for dismissal without just cause.</p>
3: Length of notice period at different tenure durations (a)	<p>Personal grounds: For dismissal with just cause and without just cause (“despido intempestivo”): no statutory length of notice period. Notification was considered in Items 1 and 2. However Art. 14 LC establishes that no worker can be dismissed if he/she has less than one year of tenure. In practice, this implies a “notice period” of 3 months at 9 months of tenure. Redundancy: article 193 establishes a 30 prior notice for the termination of all employment agreements due to final closure of the company. Considered in Items 19 and 20.</p>
4: Severance pay at different tenure durations (a)	<p><u>Dismissal with just cause</u>: relates principally with employee’s misconduct (lack of capacity as a just cause for dismissal is only considered if the employer proves that the employee shows a manifest professional inaptitude). No severance payment. <u>Unjustified dismissal</u>: In case of dismissal without just cause (“despido intempestivo”), the employer is obliged to pay <u>severance payment</u> in accordance to length of service (article 188 LC) plus <u>bonus for desahucio</u>: Severance (article 188 LC):</p> <ul style="list-style-type: none"> • < 3 y: 3m • >3 y: 1m salary per each year of service with a ceiling of 25m. Fraction of year is considered a complete year for the purposes of the calculation. <p>Bonus for “desahucio”: amounts to 25% of last monthly remuneration per year of service (articles 188 and 185 LC). If dismissal is for an alleged just cause but prior approval (“visto bueno”) is denied, then the amount of one monthly salary deposited by the employer is given to the employee, in addition to severance pay and bonus for desahucio. This situation only applies if the employer requests the suspension of the employee during the prior approval (“visto bueno”) procedure. <u>Redundancy</u>: In case of final business closure which determines the termination of all employment agreements, the employer is obliged to pay severance indemnity for unjustified dismissal (despido intempestivo) plus bonus for desahucio (articles 193, 185 and 188 LC). Considered in Items 18 to 21 as collective dismissals. Calculation (for EPL indicators): dismissal without just cause: 9 months tenure: 3 months; 4 years tenure: 5 months; 20 years tenure: 25 months. (Severance payment and bonus for desahucio were considered in the calculation). No averages were taken as dismissal with just cause relates principally to employee’s misconduct.</p>

<p>5: Definition of unfair dismissal (b)</p>	<p>Fair dismissal: Articles 172 and 310 LC provide a limited list of just causes for dismissal which relate mainly to worker's misconduct and manifest professional inaptitude. In these cases, the employer can terminate the labour contract, prior approval ("visto bueno") from the Labour Inspector (article 172 and 183 LC). If approved, no severance payment is due: 1) Repeated and unjustified lateness, absence or abandonment of the job for more than 3 consecutive days within a period of 1 month, 2) Indiscipline or gross infringement of employer's internal rules ("Reglamento interno") duly approved by the authority, 3) Immoral behaviour, 4) Gross disrespectful acts against the employer, relatives or representatives, 5) Manifest professional inaptitude for the required task or position, 6) Unjustified denunciation against the employer of its obligations before the Social Insurance, 7) Failure to comply with safety, preventive and hygienic measures required by law, rules or by the competent authority; or with medical prescriptions, 8) Reveal of manufacturing secrets or communications to the detriment of the employer, 9) Deceive the employer by means of false letters of recommendation or certificates when the contract was concluded.</p> <p>Unjustified dismissal ("despido intempestivo"): when the employer dismisses without just cause and with no prior notice (article 188 LC) or when the employee decides to terminate the agreement due to the employer's breach of its obligations (article 173 LC). Thus employers can dismiss workers with no justified cause provided severance payment and bonus for desahucio are paid.</p>
<p>6: Length of trial period (c)</p>	<p>Trial period is of a maximum of 90 days (Article 15 LC).</p>
<p>7: Compensation following unfair dismissal (d)</p>	<p>In case of unjustified dismissal, severance payment and bonus for desahucio should be paid by the employer. If the employee claims before Court, he will receive the stated payments. Thus there is no additional compensation following unfair dismissal. Calculation (for EPL indicators): 0 month</p>
<p>8: Reinstatement option for the employee following unfair dismissal (b)</p>	<p>Although job stability applies for employees during the first year of employment (article 14 LC), it is not treated as reinstatement (employer can always wait for the expiration of the period). In case of dismissal with just cause, if the Labour Inspector rejects the request for prior approval ("visto bueno") and the labour relationship was suspended, an order of reinstatement will be issued. However, if the employer does not comply with the order, the remedy is the payment of indemnities corresponding to unfair dismissal ("despido intempestivo"), article 622 LC. For EPL purposes, if the employer can reject an order of reinstatement by paying severance indemnity, the situation is not considered. Calculation (for EPL indicators): 0.</p>
<p>9: Maximum time period after dismissal up to which an unfair dismissal claim can be made (e)</p>	<p>The maximum time period to claim for unfair dismissal is of 3 years (Article 635 LC).</p>
<p>10: Valid cases for use of standard fixed term contracts</p>	<p>Classification of FTC include (article 11 LC): 1) Fixed term contracts for permanent activities, however limited in time, from a minimum of 1 year to a maximum of 2 years (article 11c, 14 and 184), 2) seasonal contracts for cyclic and discontinuous activities, repeated each season (article 11c and 17) –however not a fixed term contract if repeated each season, as the worker is entitled to severance payment if not hired for the next season, 3) eventual contracts to: a) replace a worker on vacation, illness, maternity leave or b) to attend an increase on demand of goods and services limited to 6 months within a period of 1 year (article 17 LC), 4) On call contracts to attend extraordinary non-core activities of the employer, limited to 30 days within a period of 1 year (article 17 LC), 5) Contracts for specific work or service, which in its nature is of limited duration (article 16 LC). Thus FTC are allowed for: a) permanent activities with the time limit of 2 years, b) objective or material reasons or to perform a task or work which in itself is of limited duration, c) special needs of the employer, . Calculation (for EPL indicators): 3</p>
<p>11: Maximum number of successive standard FTCs (initial contract plus renewals and/or prolongations)</p>	<p>FTC cannot exceed 2 years. Renewals and prolongations are not permitted (article 184 LC). Calculation (for EPL indicators): 1 (initial contract)</p>
<p>12: Maximum cumulated duration of successive standard FTCs</p>	<p>24 months (article 184 LC)</p>
<p>13: Types of work for which temporary work agency (TWA) employment is legal</p>	<p>Article 327 of the Constitution and Legislative Decree N° 8 of 2008 state that labour relationships shall be bilateral and direct. All forms of job insecurity and instability are forbidden, such as labour intermediation and outsourcing of the employer's core and permanent activities, hiring by the hour, or any other that may affect the rights of workers, either individually or collectively. Default on obligations, fraud, deceit and embezzlement in labour affairs shall be penalized and sanctioned by law. Legislative Decree N° 8 only permits the provision of complementary services by companies authorized by the Ministry of Labour, such as vigilance, security, messenger, cleaning. This type of work does not fall under the definition of TWA.</p>
<p>14: Are there restrictions on the number of renewals and/or prolongations of TWA assignments? (f)</p>	<p>TWA employment is illegal (article 327 Constitution, Legislative Decree N°8)</p>

15: Maximum cumulated duration of TWA assignments (f)	TWA employment is illegal (article 327 Constitution, Legislative Decree N°8)
16: Does the set-up of a TWA require authorisation or reporting obligations?	TWA employment is illegal (article 327 Constitution, Legislative Decree N°8)
17: Do regulations ensure equal treatment of regular workers and agency workers at the user firm?	TWA employment is illegal (article 327 Constitution, Legislative Decree N°8)
18: Definition of collective dismissal (b)	No statutory definition of collective dismissal for economic reasons. However, final business closure determines the termination of all employment agreements (article 193 LC). Employer is obliged to pay severance indemnity (article 188 LC) plus bonus for desahucio (article 185) and follow the procedure described in Item 20. Calculation (for EPL indicators): average of business closure (4) and other types of redundancy, where that can be treated as simple despidos intempestivos (0): 2
19: Additional notification requirements in cases of collective dismissal (g)	No additional notification requirements. Calculation (for EPL indicators): 0
20: Additional delays involved in cases of collective dismissal (h)	In case of collective dismissals due to final closure of the business a 30 day prior notice must be given to the employees (article 193 LC). Calculation (for EPL indicators): average of business closure (30 days) and despido intempestivo (1 day) minus 1 day for item 2 ("despido intempestivo"): 14.5 days.
21: Other special costs to employers in case of collective dismissals (i)	No additional costs involved other than the ones applicable to individual termination (severance payment plus bonus for "desahucio"). According to article 193, employer is obliged to re-hire workers if business opens within 1 year (not considered for EPL calculations). Calculation (for EPL indicators): there are no additional restrictions: 0

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.