

EL SALVADOR

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 form is required. Dismissal must be notified to the employee by the employer or his representative (Article 55 of the Labour Code – hereinafter LC-). The communication made by a person different from the employer or his representative is null and void, unless a written notification signed by the employer or his representative is provided to the employee. Upon request of the employee, the employer must issue a certificate which must include the reasons for termination. Economic reasons: considered in Item 18 and 19. Calculation (for EPL indicators): 1
2: Delay involved before notice can start	No delays involved. The notice must be communicated to the employee Calculation (for EPL indicators): 1 day
3: Length of notice period at different tenure durations (a)	There are no notice periods to be observed in the event of dismissal.
4: Severance pay at different tenure durations (a)	No severance payment in case of dismissal with justified reason, which essentially corresponds to employee's misconduct (or capacity for employees in supervising positions). <u>Redundancy:</u> No severance pay in case of dismissal due to: a) closure of all or part of the undertaking or establishment, or final reduction of the activities, resulting from the unprofitability of the business and authorized by the competent labour judge. b) business closure caused by the exhaustion of the substance exploited by the extractive industry and authorized by the labour judge. Any dismissal for economic reasons which do not fall within the limited categories specified above will be treated as a 'de facto dismissal' and will therefore entail payment of compensation for unjustified dismissal. . <u>Unjustified dismissal:</u> In case of dismissal without cause ("despido incausado"), the severance payment amounts to 30 days basic salary per each year of service or in proportion for any fraction of year, with a minimum of 15 days' basic salary (Article 58 LC). The same severance payment applies to the termination of the employment agreement due to the employer's breach of its obligations, as defined in article 53 LC (despido de facto). Calculation (for EPL indicators): average of employees without and with supervising duties. For the former, severance pay for unjustified dismissal is taken. For the latter, see Item 5 numeral 3, the value is the average of economic (unjustified) and personal reasons (averaging between with and without just cause: 9 months tenure:19,69 days; 4 years tenure: 3.5 months; 20 years tenure: 17.5 months.
5: Definition of unfair dismissal (b)	<u>Fair dismissal:</u> Article 50 LC provides a limited list of justified grounds for dismissals which relate mainly to the worker's conduct and capacity: 1) if the worker deceived the employer by means of false letters of recommendation or certificates when the contract was concluded. This ground ceases to be operative after the worker has completed 30 day's employment; 2) due to the worker's repeated negligence, 3) if the employer lost confidence in an employee exercising managerial supervision, surveillance, audit functions, or similar functions – however lack of confidence of employees holding supervising duties is difficult to prove at court. As stated by the Supreme Court of Justice –Sala de lo Civil. Sentencia N° 436-2002 de 13/08/2002, sufficient objective evidence must be submitted by the employer to convince the Judge that the actions that led to the dismissal for lack of confidence are indubitable –; 4) if the worker reveals manufacturing secrets or communicates administrative matters to the detriment of the undertaking; 5) if the worker commits serious acts of immorality inside the undertaking or while performing work outside the workplace, 6) if the worker commits disrespectful acts against the employer or his/her relatives, except in the case of provocation, 7) if the workers commits acts causing serious disruption to the company's activity; 8) f the worker (either intentionally or by negligence) seriously endangers the safety or operation of the establishment, or the persons therein safety or activity of the workers, or their health, 9) if the worker deliberately damages the plant, machinery, tools, work implements, goods or merchandise, 10) if the worker is absent from work without any justification for two consecutive working days, or a total of three days within the same months; 11) if the worker, after imprisonment or pre-trial detention, comes back to work, within three days from the date of release, and s/he committed a crime against the employer or his/her relatives, 11) if the worker commits serious breaches of the obligations under the contract of employment, 12) in the event of disobedience to the employer (or employer's representative), 13) if the worker drinks alcohol or takes drugs during working time or if s/he works under the effect of alcohol or drugs, 14)If the worker does not fulfil his/her obligations under art 24 LC. In these cases, no severance payment is due. Additionally, following a judicial decision authorizing the dismissal, no severance payment is due in case of: 1) closure of all or part of the undertaking or establishment, or final reduction of the activities, resulting from the unprofitability of the business, 2) business closure caused by the exhaustion of the substance exploited by the extractive industry (article 49 LC). However, employers can always dismiss workers with no justified cause provided severance payments are observed (both for personal reasons and for redundancy). <u>Unjustified dismissal:</u> According to article 55 LC unjustified dismissal occurs when the employer can't allege a justified cause for dismissal or when the employee decides to terminate the agreement due to the employer's breach of its obligations as referred to in article 53 of the LC (despido de facto).

6: Length of trial period (c)	Trial period is of a maximum of 30 days (Article 28 LC).
7: Compensation following unfair dismissal (d)	In case of unjustified dismissal, if the employee claims before Court, he is entitled to receive, apart from severance payment, back pay as from the date of complaint until court decision, will a ceiling of 35 days' wages. If the case goes to appeal or cassation, this amount can be increased up to a maximum of 20 days (Article 420 LC). Calculation (for EPL indicators): (20 months –17.5 months) plus 55 days= 4.5 months.
8: Reinstatement option for the employee following unfair dismissal (b)	No. The LC does not provide reinstatement option for the employee following unfair dismissal. However, there are certain categories of workers which have special protection: pregnant women or on maternity leave (article 113 LC), trade union representatives (article 214 and 248 LC). These workers can't be dismiss during certain periods of time or without following a special procedure.
9: Maximum time period after dismissal up to which an unfair dismissal claim can be made (e)	The maximum time period to claim for unfair dismissal is of 60 days (Article 610 LC).
10: Valid cases for use of standard fixed term contracts	Only permitted for objective and material reasons. The LC authorizes FTC for a limited and specific term, to perform a specific work or to replace an employee whose contract is temporarily suspended (Articles 25 to 27 LC).
11: Maximum number of successive standard FTCs (initial contract plus renewals and/or prolongations)	No statutory limitation. However, FTC are the exception, thus successive renewals can be construed as a unique contract of indefinite duration. Calculation (for EPL indicators): estimated 2 (initial contract plus 1 renewal)
12: Maximum cumulated duration of successive standard FTCs	No limitation.
13: Types of work for which temporary work agency (TWA) employment is legal	No statutory regulation.
14: Are there restrictions on the number of renewals and/or prolongations of TWA assignments? (f)	No statutory 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 statutory regulation. FTC rules apply to FTCs between the agency and the worker
16: Does the set-up of a TWA require authorisation or reporting obligations?	No statutory regulation.
17: Do regulations ensure equal treatment of regular workers and agency workers at the user firm?	No statutory regulation.
18: Definition of collective dismissal (b)	No statutory definition of collective dismissal for economic reasons. Jurisprudence defines it as the redundancy of at least two workers (Sala de lo civil de la Corte Suprema de Justicia 30/06/2000, N° 420-2000). Employers can dismiss workers by paying the corresponding severance indemnity. However, in certain situations, as ; a) Closure of all or part of the company or establishment, or final reduction of the activities, resulting from the unprofitably of the business and b)business closure due to the exhaustion of the substance exploited by the extractive industry, prior authorization by the labour judge, no severance indemnities are due (article 49). Calculation (for EPL indicators): as standard rules applying to individual redundancies can always be followed, there are no additional restrictions: 0
19: Additional notification requirements in cases of collective dismissal (g)	Prior judicial authorization is required to avoid paying the severance indemnity in situations a) and b) Item 18. For other collective dismissals, no notification procedures are required (if severance indemnity is paid). Calculation (for EPL indicators): as standard rules applying to individual redundancies can always be followed, there are no additional restrictions: 0
20: Additional delays involved in cases of collective dismissal (h)	If requested, the judicial authorization will determine certain days of delay. For closure of all or part of the company, the situation of unprofitability must have lasted for a period of 3 months, before the judicial authorization can be requested. Calculation (for EPL indicators): as standard rules applying to individual redundancies can always be followed, there are no additional restrictions: 0

21: Other special costs to employers in case of collective dismissals (i)	No additional costs involved but prior authorisation is required for cases described in Item 18. Calculation (for EPL indicators): as standard rules applying to individual redundancies can always be followed, there are no additional restrictions: 0
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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.