

MONTENEGRO

Items	Regulations in force on 1 January 2013
<p>1: Notification procedures in the case of individual dismissal of a worker with a regular contract</p>	<p>An employer may pass a decision on termination of a contract of employment in cases referred to in Article 143 paragraph 1, items 1, 2 and 3 of Labour Law after giving a previous warning notice to the employee of the possible reasons for termination of employment.</p> <p>The warning notice referred to in paragraph 1 of this Article shall be given in written form and shall contain the grounds for termination of employment, evidence pointing to realized conditions for termination and the time period to reply to the warning notice.</p> <p>The time period referred to in paragraph 2 of this Article may not be less than five working days.</p> <p>An employer shall deliver the warning notice referred to in paragraph 2 of this Article to the trade union the employee is a member of, for the purpose of obtaining its opinion, and the trade union shall provide statement of the warning notice in writing within five working days.</p> <p>(Art.143b, Labour law)</p> <p>Calculation: average of personal reasons (2) and redundancy (1) = 1.5</p>
<p>2: Delay involved before notice can start</p>	<p>If an employer determines that the number of redundant employees with a contract of employment for an indefinite period will be less than the census determinate in item 18, the employer shall notify the employee at least five days prior to the decision to terminate his/her employment.</p>
<p>3: Length of notice period at different tenure durations (a)</p>	<p>(Article 144 paragraph 1, Labour law)</p> <p>An employee shall have the right and duty to remain working for at least 30 days as of the day of receipt of termination of the contract of employment, i.e. decision on termination of employment (termination notice), in cases determined by collective agreement and contract of employment.</p>
<p>4: Severance pay at different tenure durations (a)</p>	<p>(Art. 94, paragraph 1 and 2, Labour Law)</p> <p>The employer shall pay his worker a severance pay in the amount of at least 1/3 of his/her average monthly pay less the taxes and contributions in the previous six months for each year of employment with the employer, or 1/3 of the average monthly pay less the taxes and contributions in Montenegro, if the latter is more favourable for the employee.</p> <p>The severance pay referred to in paragraph 1 of this Article may not be lower than three average monthly pays.</p>
<p>5: Definition of unfair dismissal (b)</p>	<p>(Art. 143a Labour law)</p> <p>The following shall not constitute justified grounds for termination of a contract of employment:</p> <ol style="list-style-type: none"> 1) temporary absence from work due to illness, accident at work or professional disease; 2) maternity, or parental, leave, absence from work for child care and absence from work due to special child care; 3) membership in a political organization, trade union, difference according to a personal trait of an employee (gender, language, ethnicity, social status, religion, political or other beliefs or other personal traits of the employee); 4) acting as a representative of employees, in accordance with the law; 5) in case when an employee addresses trade unions or competent authorities for protection of employment rights in accordance with the law and contract of employment; 6) in case when an employee addresses the competent public authorities for justified suspicion of corruption or filing a complaint of such suspicion in good faith. 7) in case when an employee addresses or points out to compromising of environment connected to the employer's operations to the employer or the relevant public authorities.
<p>6: Length of trial period (c)</p>	<p>(Art. 19 paragraph 2, Labour law)</p> <p>Probationary period shall not exceed six months, except in case of a crew member of deep-sea merchant marine where a probationary period may be negotiated for a longer period, i.e. until the return of the ship into the main harbour.</p> <p>(Art. 20 paragraph 2 and 3, Labour law)</p> <p>If an employee fails to satisfy requirements of the position in the probationary period, his/her employment shall cease upon expiry of the term defined by the contract of employment.</p> <p>During probationary period each contractual party may terminate contract of employment unilaterally even prior to expiry of the term of the contract with written explanation, in accordance with collective agreement and contract of employment.</p>
<p>7: Compensation following unfair dismissal (d)</p>	<p>(Art. 143d paragraph 4, Labour law)</p> <p>If the court or Agency for Amicable Settlement of Labour Disputes determines that employee's contract of employment was terminated without legal or justifiable grounds, he/she shall be entitled to a compensation of financial damage in the amount of the lost salary and other earnings he/she would earn at work, in accordance with the law, collective agreement and contract of employment, and payment of contributions for mandatory social insurance</p>

8: Reinstatement option for the employee following unfair dismissal (b)	(Art 143d paragraph 3, Labour law) If a procedure determines that there were no legal or justifiable grounds for termination of a contract of employment, the employee shall be entitled to return to work, as well as to a compensation of financial and non-financial damage in a procedure prescribed by the law.
9: Maximum time period after dismissal up to which an unfair dismissal claim can be made (e)	(Art.143d paragraph 1, Labour law) An employee that finds a decision of the employer unsatisfactory shall be entitled begin litigation with the competent court with the purpose of seeking protection of defined rights, not later than 15 days from the date of the receipt of the decision, and he/she may also begin litigation before the Agency for Amicable Settlement of Labour Disputes.
10: Valid cases for use of standard fixed term contracts	(Art. 25 paragraph 1,2 and 4, Labour law) A contract of employment may be concluded for a fixed term, for the purpose of performing certain jobs whose duration is predetermined for objective reasons or due to occurrence of unforeseeable circumstances or events. An employer may not conclude one or more contracts of employment referred to in paragraph 1 of this Article with the same employee if their duration, continuously or with interruptions, is longer than 24 months. Exceptionally of paragraph 2 of this Article, a fixed-term contract of employment may last even longer than 24 months only if it is necessary for the purpose of substituting a temporary absent employee, performance of seasonal jobs or work on a specific project until the completion of the project, in accordance with the law and collective agreement. (Art.34 Labour law) A foreigner or a person without citizenship may conclude a contract of employment if he/she meets the conditions prescribed by this Law, a special law and international conventions. (Art. 39 paragraph 1, Labour law) An employer may sign a contract with a person being employed for the first time as a trainee for a specific level of education, or professional qualification, in accordance with the law and collective agreement. Other cases laid down by law and/or branch collective agreement.
11: Maximum number of successive standard FTCs (initial contract plus renewals and/or prolongations)	No limit, within 2-year time limit for fixed term contracts
12: Maximum cumulated duration of successive standard FTCs	(Art. 25 paragraph 2, Labour law) An employer may not conclude one or more contracts of employment with the same employee if their duration, continuously or with interruptions, is longer than 24 months.
13: Types of work for which temporary work agency (TWA) employment is legal	(Art. 43b paragraph 3, Labour law) Generally allowed, except for the purpose of: 1) substitution of employees during strike, in accordance with the law, with the beneficiary where the strike is on; 2) assignment of an employee to perform jobs for which the beneficiary had terminated contracts of employment on the grounds of redundant employees in the last 12 months; 3) performance of jobs within the scope of the activity of the Agency, and 4) performance of jobs in other cases established by a collective agreement which is binding for the beneficiary.
14: Are there restrictions on the number of renewals and/or prolongations of TWA assignments? (f)	No restrictions.
15: Maximum cumulated duration of TWA assignments (f)	No limit if the contract between the agency and the worker is open-ended. Otherwise same rules as for FTCs.
16: Does the set-up of a TWA require authorisation or reporting obligations?	(Art. 43a paragraph 2 and 3, Labour law) Agency shall obtain the capacity of a legal person upon entry into the registry maintained by the public administration authority in charge of labour affairs (hereinafter referred to as: the Ministry). Agency may undertake assigning of employees to a beneficiary only provided that it is its sole activity and that it has a licence for work issued by the Ministry.

<p>17: Do regulations ensure equal treatment of regular workers and agency workers at the user firm?</p>	<p>(Art.43c paragraph 4, Labour law) Salary of an employee assigned to a beneficiary may not be lower than the salary of a person employed with the beneficiary working on the same or similar jobs with the same professional qualification, or the level of education and occupation.</p>
<p>18: Definition of collective dismissal (b)</p>	<p>(Art. 92 paragraph 1, Labour law)</p> <p>Cancellation of employment of a large number of workers occurs if an employer determines that, due to technological, economic and restructural changes, in the period of 30 days the number of redundant employees with a contract of employment for an indefinite period is at least:</p> <ol style="list-style-type: none"> 1) 10 employees with an employer employing more than 20, and less than 100 employees with a contract of employment for an indefinite time period; 2) 10% employees with an employer employing at least 100, and maximum 300 employees with a contract of employment for an indefinite time period; 3) 30 employees with an employer employing more than 300 employees with a contract of employment for an indefinite time period. <p>Also, previously said refers to employer that determines at least 20 redundant employees in the period of 90 days, regardless of the total number of employees.</p>
<p>19: Additional notification requirements in cases of collective dismissal (g)</p>	<p>The Employment Agency is notified only in the case of collective dismissals. There is no notification to unions in the case of individual redundancy</p>
<p>20: Additional delays involved in cases of collective dismissal (h)</p>	<p>(Art. 144) A 30-day notice must be given to all workers.</p> <p>(Art. 92) The employer has to inform trade unions and Employment Agency immediately, and they have 15 days to respond. The Employment contract can only be terminated after that (giving one month notice).</p>
<p>21: Other special costs to employers in case of collective dismissals (i)</p>	<p>(Art.93 paragraph 1, Labour law) Upon receiving the opinion of the trade union, or the representatives of employees and the Agency, the employer shall pass a programme to facilitate re-employment of redundant employees.</p> <p>However, the implementation of the social plan might exempt the employer from paying the standard redundancy pay (Art. 94 Labour Law).</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 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.