

NICARAGUA

Items	Regulations in force on 31 December 2013
Item 1: Notification procedures in the case of individual dismissal of a worker with a regular contract	Individual termination: The Labour Code (hereinafter LC) distinguishes between: dismissal with just cause (article 48 LC) and dismissal without cause (article 45 LC). <u>Dismissal with just cause</u> : employer has to request prior approval to the Labour Inspector, who will not issue his decision without hearing the employee (article 48 LC). <u>Dismissal without cause</u> : no specific notification procedure stated by the LC (article 45 LC). Calculation (for EPL indicators): (only dismissal without cause is considered, as capacity is not a just cause for dismissal): 0
Item 2 Delay involved before notice can start	<u>Dismissal with cause</u> : employer must exercise the right to dismiss with cause within 30 days of the knowledge of the fault committed by the employee (article 48 LC). This is an expiry term for the employer to allege the just cause for dismissal. Delays are those of the prior approval procedure before the Labour Inspector. <u>Dismissal without cause</u> : no statutory provision for notification procedure nor delays involved. Calculation (for EPL indicators): 0
Item 3 Length of notice period at different tenure durations (a)	There are no notice periods to be observed. Calculation (for EPL indicators): 0
Item 4 Severance pay at different tenure durations (a)	Dismissal with just cause: No severance pay (article 48 LC). Dismissal without cause: Severance pay varies according to different tenure durations (article 45 LC): a) ≤ 3y: 1m salary for each year of service b) 4y onwards: 20 days per year of service with a ceiling of 5 monthly salaries. In no event, severance pay shall be lower than one monthly salary Calculation (for EPL indicators): dismissal without cause: 9 months tenure: 1month; 4 years tenure: 3,66 months; 20 years tenure: 5 months
Item 5 Definition of unfair dismissal (b)	<u>Fair dismissal</u> : Article 48 LC sets out just causes for dismissal which are related to workers misconduct: a) severe lack of integrity, b) serious offence against life and physical integrity of the employer or coworkers, c) slanderous speech to the employer which discredits and damages the company, d) breach of the obligations of the employment agreement or the internal bylaws, which severely damage the company. <u>Unjustified dismissal</u> : According to article 45 LC unjustified dismissal occurs when no just cause is alleged. Under Nicaragua's LC, the employer can always dismiss an employee without cause provided severance indemnity (indemnización por antigüedad) is paid (article 45 LC). Thus dismissal on personal grounds and redundancy is always possible.
Item 6 Length of trial period (c)	Trial period cannot exceed 30 days (article 28 LC).
Item 7 Compensation following unfair dismissal (d)	In case of unfair dismissal (under situations referred to in article 46 LC –see item 8), if allegations are proved, the Labour Judge can order reinstatement plus back pay. If the employer does not comply with the order, double severance payment will be ordered. Calculation (for EPL indicators): 20 years' tenure employee: backpay (6 months) plus 10 months' salary (double severance payment) minus the amount reported in item 4 = 11 months.
Item 8 Reinstatement option for the employee following unfair dismissal (b)	According to article 46 LC, when termination of the employment agreement has been made in violation of prohibited rules contained in the LC and other labour regulations, or when termination is a consequence of the employee having exercised his labour or trade union rights, the worker can request reinstatement before the Labour Judge. If the latter understands that the allegations are proved, reinstatement plus back pay will be ordered. However, if the employer does not comply with the order, he must pay the employee double severance indemnity. Reinstatement does not apply to employee's in position of trust. According to the EPL methodology, when the employer can avoid reinstatement by paying severance indemnity, the situation is not considered for the scoring. In addition, reinstatement option under Nicaraguan law is available only on prohibited grounds (pregnancy, trade union membership, retaliation). Calculation (for EPL indicators): 0
Item 9 Maximum time period after dismissal notification up to which an unfair dismissal claim can be made (e)	The maximum time period to claim for unjustified dismissal is of 1 year (article 257 LC). However, the limit to ask for reinstatement according to article 46 LC is 1 month (art. 260 LC) Calculation (for EPL indicators): average of the two cases: $(12+1)/2 = 6.5$ months
Item 10 Valid cases for use of standard fixed term contracts	LC presumes that the employee is employed by an indefinite contract, except: a) when both parties stipulate a period of time, b) to perform a task or render a service of limited duration, c) for seasonal and cyclic work (articles 25 and 26 LC). Calculation (for EPL indicators): 2
Item 11 Maximum number of successive standard FTCs (initial contract plus renewals and/or prolongations)	LC stipulates that FTC can be renewed twice (article 27 LC). If the second extension lapses, the labour relationship will be construed as an indefinite term agreement. Calculation (for EPL indicators): 3 (initial contract plus 2 renewals).
Item 12 Maximum cumulated duration of successive standard FTCs	No statutory limit in LC.

Item 13 Types of work for which temporary work agency (TWA) employment is legal	No statutory regulation. However a draft regulation (Anteproyecto de Ley) is being considered by Parliament since 2009. This draft contains provisions regarding outsourcing, subcontracting and intermediation of workers. The objective of the future law is to protect employees under these types of employment.
Item 14 Are there restrictions on the number of renewals and/or prolongations of TWA contracts? (f)	No statutory regulation up to date. However a draft regulation is being considered by Parliament.
Item 15 Maximum cumulated duration of TWA contracts (f)	No statutory regulation. However a draft regulation is being considered by Parliament.
Item 16 Does the set-up of a TWA require authorisation or reporting obligations?	No statutory regulation. However a draft regulation is being considered by Parliament.
Item 17 Do regulations ensure equal treatment of regular workers and agency workers at the user firm?	No statutory regulation.
Item 18 Definition of collective dismissal (b)	<p>No statutory definition of collective dismissal for economic reasons and no threshold involved. However, Nicaragua requires that employers, who definitively cease their industry, service or commerce due to economic reasons, get approval from the Ministry of Labour (article 41 letter d) LC). Only pending vacation pay and 13th salary must be paid (article 42 LC). This prior approval procedure is mandatory in case of establishment closure due to economic reasons.</p> <p>Standard procedures for individual dismissals can be applied to any other type of collective dismissals.</p> <p>In addition, there are certain situations which determine the suspension of the employment agreements (article 38 LC): a) lack of raw material, b) company's shut-down ordered by competent authority following preventive or corrective reasons of hygiene or security, c) temporary closing-up of the establishment due to economic or technical reasons, d) fortuity or force majeure. Prior approval from the Ministry of Labour is required. . Although this does not apply to permanent closures, if the employer subsequently re-opens the establishment he incurs the risk of being accused of violation of article 38 LC.</p> <p>Calculation (for EPL indicators): average of permanent closure of an establishment due to economic reasons (4) and standard procedures for individual dismissals (0): 2.</p>
Item 19 Additional notification requirements (compared to Item 1) in cases of collective dismissal (g)	Article 41 letter d) requires approval from the Ministry of Labour for collective dismissals involving definitive termination of activities for economic reasons. For collective dismissals due to other reasons, standard procedures for dismissal without cause can be followed. Therefore there are no additional notification requirements. Calculation (for EPL indicators): average of permanent colosure due to economic reasons (1) and standard procedures for individual dismissals (0): 0.5
Item 20 Additional delays involved (compared to Item 2) in cases of collective dismissal (h)	In case of permanent closure of an establishment, prior approval from the Labour Ministry requires certain days of delays. Calculation (for EPL indicators): some delays in the case the permanent closure of establishment could be considered: <25
Item 21 Other special costs to employers in case of collective dismissals (i)	There are no other special costs involved. However authorisation is not necessarily granted Calculation (for EPL indicators): 0.5

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:

- 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.
- Based also on case law, if court practice tends to be more (or less) restrictive than what specified in legislation.
- Initial period within which regular contracts are not fully covered by employment protection provisions and unfair dismissal claims cannot usually be made.
- 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.
- Maximum time period after dismissal up to which an unfair dismissal claim can be made.
- 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.
- 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.