



## DETAILED DESCRIPTION OF EMPLOYMENT PROTECTION LEGISLATION, 2012-2013

### OECD COUNTRIES

#### TABLE OF CONTENTS

|                      |     |
|----------------------|-----|
| AUSTRALIA.....       | 3   |
| AUSTRIA.....         | 6   |
| BELGIUM.....         | 8   |
| CANADA.....          | 11  |
| CHILE.....           | 14  |
| CZECH REPUBLIC.....  | 17  |
| DENMARK.....         | 20  |
| ESTONIA.....         | 23  |
| FINLAND.....         | 27  |
| FRANCE.....          | 29  |
| GERMANY.....         | 34  |
| GREECE.....          | 37  |
| HUNGARY.....         | 40  |
| ICELAND.....         | 42  |
| IRELAND.....         | 44  |
| ISRAEL.....          | 47  |
| ITALY.....           | 50  |
| JAPAN.....           | 54  |
| KOREA.....           | 56  |
| LUXEMBOURG.....      | 59  |
| MEXICO.....          | 62  |
| NETHERLANDS.....     | 64  |
| NEW ZEALAND.....     | 67  |
| NORWAY.....          | 70  |
| POLAND.....          | 73  |
| PORTUGAL.....        | 76  |
| SLOVAK REPUBLIC..... | 82  |
| SLOVENIA.....        | 85  |
| SPAIN.....           | 88  |
| SWEDEN.....          | 92  |
| SWITZERLAND.....     | 96  |
| TURKEY.....          | 98  |
| UNITED KINGDOM.....  | 100 |
| UNITED STATES.....   | 102 |

### NON-OECD LATIN AMERICAN & CARIBBEAN COUNTRIES

### OTHER NON-OECD COUNTRIES AND TERRITORIES



| Items  | Regulations in force on 1 January 2013  |
|--|---|
| 1: Notification procedures in the case of individual dismissal of a worker with a regular contract | An employer must not terminate an employee's employment unless the employer has given the employee written notice of the day of the termination (which cannot be before the day the notice is given (Fair Work Act, s.117(1) – all references are to this act, except when differently specified).<br>Section 123 limits the scope of the above provision for regular employees in the case of serious misconduct.<br>The FW Act does not establish a general obligation to provide reasons before any dismissal. However, this obligation is implied since notification to the employee is one of the criteria to be considered by Fair Work Australia when assessing whether dismissal was harsh, unjust or unreasonable (s.387)  |
| 2: Delay involved before notice can start  | <b>Redundancy:</b> written or oral notice with statement of reasons; <b>Personal reasons:</b> if disputed, fwa takes into account whether the employee was warned about unsatisfactory performance and given time to respond before dismissal.<br>Calculation (for EPL indicators): 4 = average of redundancy (1 day) and personal reasons (6 days for warning + 1 day for notice)  |
| 3: Length of notice period at different tenure durations (a)                                       | <b>All workers:</b> 1w<1y, 2w<3y, 3w<5y, 4w>5y. These notice periods are increased by one week if employee is over 45 years old and has over 2 years continuous service. Notice periods may be increased through collective agreements, particularly in cases of redundancy (s.117 (3)).<br>Calculation (for EPL indicators): 9 months tenure: 1week, 4 years tenure: 3 weeks, 20 years tenure: 4 weeks.  |
| 4: Severance pay at different tenure durations (a)   | Redundancy pay under the Fair Work Act as prescribed by s119(2): 0<1y; 4w<2y; 6w<3y; 7w<4y; 8w<5y; 10w<6y; 11w<7y; 13w<8y; 14w<9y; 16w<10y; 12w>10y.<br>No obligation to pay redundancy pay for an employee whose period of continuous service with the employer<12 months or where the employer is a small business employer (<15 employees) (s.121)   |
| 5: Definition of unfair dismissal (b)  | Whether a dismissal is unfair is decided by Fair Work Australia (which is the national workplace relations tribunal)(ss385, 390).<br>An <b>unfair dismissal</b> occurs where an employee is dismissed, and i) the dismissal was harsh, unjust or unreasonable, and ii) the dismissal was not a case of genuine redundancy, and iii) the dismissal was not consistent with the Small Business Fair Dismissal Code, where the employee was employed by a small business. (A <b>small business</b> is a business that employs fewer than 15 employees.) (s.385).<br>This phrase 'harsh, unjust or unreasonable' is not defined but factors taken into account in determining whether it applies are: whether there was a valid reason for the termination related to the capacity/conduct of the employee, whether the employee was notified of reason, whether the employee given opportunity to respond to reason related to capacity/conduct, whether warned of unsatisfactory performance if that's the ground of termination, degree to which employer's business affects procedures, degree to which absence of dedicated HR people impacts on employer's procedures.<br>A person's dismissal is a 'genuine redundancy' if i) the person's employer no longer required the person's job to be performed by anyone because of changes in the operational requirements of the employer's enterprise, and ii) the employer has complied with any obligation in a modern award or enterprise agreement that applied to the employment to consult about the redundancy.<br>A person's redundancy is not a genuine redundancy if it would have been reasonable in all the circumstances for the person to be redeployed within the company or an associated entity of the company. This means that an employer cannot dismiss a worker on the basis of redundancy without first considering opportunities for redeployment.<br>FW Act also contains a set of general protections against discriminatory or wrongful treatment which includes but is not limited to protection against dismissal on certain prohibited grounds.<br>Prohibited grounds: marital status; pregnancy; maternity leave; family responsibilities; filing a complaint against the employer; temporary work injury or illness; race; colour; sex; sexual orientation; religion; political opinion; social origin; age; trade union membership and activities; disabilities; parental leave; adoption leave. |
| 6: Length of trial period (c)  | Employees are eligible to make an application for unfair dismissal if they have completed the minimum employment period of: i) 1yr – where the employer is a small business (fewer than 15 employees); or ii) 6 months – where the employer is not a small business (s.382)   |
| 7: Compensation following unfair dismissal (d)   | In addition to entitlements (that would have been) accrued until the end of notice period, FWA may award compensation for up to 26 week pay or half the amount of the 'high income threshold' (which was \$123,000 as at 1 July 2012 [it is indexed annually], so \$61,650), whichever is lesser. (s.392)   |

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| <b>8:</b> Reinstatement option for the employee following unfair dismissal (b)                              | Reinstatement is the preferred remedy if FWA is satisfied an employee was unfairly dismissed then it may order the employee's reinstatement together with continuity of service and lost remuneration. (FWA web site; and see ss390 and 391). However, reinstatement is typically granted in no more than 20% of the cases in which the dismissal is found harsh, unjust or unreasonable by FWA.   |
| <b>9:</b> Maximum time period after dismissal up to which an unfair dismissal claim can be made (e)         | 21 days, but FWA may allow further period if it is satisfied that there are exceptional circumstances (s.366(1) and s.394(2), as amended by the Fair Work Amendment Act 2012).   |
| <b>10:</b> Valid cases for use of standard fixed term contracts   | No restrictions in legislation   |
| <b>11:</b> Maximum number of successive standard FTCs (initial contract plus renewals and/or prolongations) | <b>Estimated 1.5</b> No legal limit specified; but risk that, upon continuous renewal, the courts will find that the primary purpose of the contract is to avoid termination laws.   |
| <b>12:</b> Maximum cumulated duration of successive standard FTCs   | No limit specified.  |
| <b>13:</b> Types of work for which temporary work agency (TWA) employment is legal                          | General  |
| <b>14:</b> Are there restrictions on the number of renewals and/or prolongations of TWA assignments? (f)    | No.  |
| <b>15:</b> Maximum cumulated duration of TWA assignments (f)  | No limit.  |
| <b>16:</b> Does the set-up of a TWA require authorisation or reporting obligations?                         | No   |
| <b>17:</b> Do regulations ensure equal treatment of regular workers and agency workers at the user firm?    | Under FW Act, such workers must receive at least the minimum entitlements in the relevant modern award and National Employment Standards or where the agency has its own enterprise agreement relating to wages and working conditions, that agreement.  |
| <b>18:</b> Definition of collective dismissal (b)   | Dismissal of 15 or more employees for reasons of an economic, technological, structural or similar nature, or for reasons including such reasons. (Fair Work Act, s.530).<br>[Specific rules on notification and consultation in case of collective dismissal do not apply in relation to certain employees under s.534]   |
| <b>19:</b> Additional notification requirements in cases of collective dismissal (g)                        | An employer is required to notify Centrelink in writing if the employer has decided to dismiss 15 or more employees for reasons of an economic, technological, structural or similar nature, or for reasons including such reasons. (s.530(1)) The notice must be given as soon as practicable after the decision is made and before the employees are dismissed in accordance with the decision (s.530(3)).<br>The employer also is obliged to notify or consult a registered employee association. (s.532(2)). |
| <b>20:</b> Additional delays involved in cases of collective dismissal (h)                                  | No specific delay in Act or Regulations, but must go through consultation steps with relevant unions, including measures to avert the terminations, or minimise the terminations, and measures (such as finding alternative employment) to mitigate the adverse effect of the termination(s) (s.531(3)).<br>Calculation (for EPL indicators): 2 days: 6 days for consultations – 4 days for item 2   |
| <b>21:</b> Other special costs to employers in case of collective dismissals (i)                            | <b>Type of negotiation required:</b> Consultation on alternatives to redundancy and selection standards.<br><b>Selection criteria:</b> Law requires fair basis of employee selection.<br><b>Severance pay:</b> No special regulations for collective dismissal.  |

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



## Australia

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.

## AUSTRIA

| Items  | Regulations in force on 1 January 2013   |
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| 1: Notification procedures in the case of individual dismissal of a worker with a regular contract   | Notification first to Works Council (if one exists), then to employee. (Works councils covered 70% of employees in 2002 – source: EIRO).<br>Firms with less than five employees are not required to establish a works council so there is no requirement to inform the works council of impending dismissals nor possibility for the works council to challenge unfair dismissals. In enterprises where works councils could be established but where the employees do not set up a works council, the requirement to notify the works council about dismissals is also waived.  |
| 2: Delay involved before notice can start  | Maximum one week for Works Council to react. Notice can then be served, usually orally.<br>Calculation (for EPL indicators): 1 day to notify Works Council + 7 days for response + 1 days for oral notification.   |
| 3: Length of notice period at different tenure durations (a)   | <b>Blue collar:</b> Usually 2 weeks (but ranging from 1 day in construction industry to 5 months in some collective agreements). <b>White collar:</b> 6w<2y, 2m<5y, 3m<15y, 4m<25y, 5m>25y.<br>Calculation (for EPL indicators): average of usual blue and white collar notice periods.  |
| 4: Severance pay at different tenure durations (a)   | The Employees' Income Provision Act (BMSVG) introduced a regulated severance pay scheme in Austria for all work contracts concluded after 31 December 2002, as well as to existing work contracts in force on 31 December 2002 provided that BMSVG applicability has been agreed upon for such individual contracts. Under the BMSVG, employers withhold a legally defined contribution from the monthly pay and transfer this contribution to the employees' chosen income provision fund. In the case of dismissal by the employer, an employee with at least three years of job tenure can choose between receiving his/her severance payment from the account, or saving the entitlement towards a future pension. If the employee quits or if job tenure is shorter than three years, no severance payment will be made but the balance of the account is carried over to the next employer. The amount of severance pay will depend on the capital accrued in the fund, the investment income earned and the capital guaranteed. |
| 5: Definition of unfair dismissal (b)  | <b>Fair:</b> dismissals for "serious reason", including non-performance or lack of competence, and for operational reasons or other business needs. In the case of dismissal for operation reasons, the court may examine whether dismissal was actually necessary or whether it would have been possible to transfer the worker to another post.<br><b>Unfair:</b> "socially unjustified" dismissals (which would affect the dismissed employee more unfavourably than other comparable employees of the company, or which would impair the interests of the employee to a greater degree than the interest of the firm in dissolving the employment relationship); and dismissals on inadmissible motive (e.g. discrimination, trade union activity or imminent military service). Employers intending to terminate older workers' contracts with job tenure greater than 2 years have to take social aspects into account if it appears to be difficult for such workers to get another job.  |
| 6: Length of trial period (c)  | Usually 1 month  |
| 7: Compensation following unfair dismissal (d)   | In the event of socially unjustified dismissal, the employee is entitled to compensation equal to earnings between the dismissal and the legal settlement of the case. Sums earned by the employee in the interim are set off against the award.<br>Calculation (for EPL indicators): Typical compensation at 20 years tenure: 6 months.   |
| 8: Reinstatement option for the employee following unfair dismissal (b)                              | The employee has the right to choose between reinstatement and compensation, although this option is rarely taken up by the employee concerned.  |
| 9: Maximum time period after dismissal up to which an unfair dismissal claim can be made (e)         | If the works council does not comment on the dismissal, the employee himself/herself can challenge the dismissal in court within two weeks of receiving the notice.<br>If the works council has expressly objected to the intend dismissal within one week, it may contest the dismissal in court within another week after having been informed that the notice has been served. If the works council refuses to do so, the dismissed employee himself/herself can challenge the dismissal within two weeks after the expiry of the period set for the works council.<br>Calculation (for EPL indicators): 2/4 weeks minus average notice period (cf. item 3)   |
| 10: Valid cases for use of standard fixed term contracts   | No restrictions for first contract.  |
| 11: Maximum number of successive standard FTCs (initial contract plus renewals and/or prolongations) | <b>Estimated 1.5.</b> A succession of fixed-term contracts will automatically result in an open-ended employment contract of indeterminate length unless objective or material reasons can be shown to justify the need to renew a fixed-term contract.  |

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| <b>12:</b> Maximum cumulated duration of successive standard FTCs  | No limit specified.  |
| <b>13:</b> Types of work for which temporary work agency (TWA) employment is legal                       | General, if the contract between the agency and the worker is open-ended but limited to "objective reasons" if it is of fixed duration.<br><br>However, according to labour constitution law (Arbeitsverfassungsgesetz § 97 Abs 1 Z 1a) there is the possibility to regulate the extent of temporary work at the level of the user-company. In compliance with this law, assignments can be regulated by an enforceable company agreement. According to prevailing jurisprudence such a company agreement can contain regulations on the ratio of permanent staff to temporary workers and thereby limit the use of temporary workers at the user-company level. |
| <b>14:</b> Are there restrictions on the number of renewals and/or prolongations of TWA assignments? (f) | There are no restrictions that limit the number of assignments at one and the same worksite company. The number of fixed-term contracts between the TWA and the temporary workers is not restricted, if there are objective and justified reasons to establish fixed-term contracts (otherwise a succession of fixed-term TWA contracts will automatically result in an open-ended employment contract of indeterminate length unless objective or material reasons can be shown to justify the need to renew a fixed-term contract.).   |
| <b>15:</b> Maximum cumulated duration of TWA assignments (f)   | The personnel leasing act puts no constraint on the duration of employment contracts or the duration of the assignments/leases.  |
| <b>16:</b> Does the set-up of a TWA require authorisation or reporting obligations?                      | Requires special administrative authorisation as well as periodic reporting obligations.   |
| <b>17:</b> Do regulations ensure equal treatment of regular workers and agency workers at the user firm? | Regulations ensure equal treatment regarding pay as well as other working conditions.  |
| <b>18:</b> Definition of collective dismissal (b)  | Within 30 days, 5+ workers in firms 20-99; 5%+ in firms 100-599; 30+ workers in firms>600; 5+ workers >50 years old.<br><br>Firms with less than 20 employees are exempt from requirements for collective dismissals.  |
| <b>19:</b> Additional notification requirements in cases of collective dismissal (g)                     | <b>Notification of employee representatives:</b> General duty to inform the Works Council about changes affecting the business. <b>Notification of public authorities:</b> Notification of local employment office.  |
| <b>20:</b> Additional delays involved in cases of collective dismissal (h)                               | 30 days waiting period before first notice can become effective.<br>Calculation (for EPL indicators): 30 days waiting period – 9 days for individual dismissal (item 2)  |
| <b>21:</b> Other special costs to employers in case of collective dismissals (i)                         | <b>Type of negotiation required:</b> Consultation on alternatives to redundancy and ways to mitigate the effects: social plan to be established in firms with >20 employees. <b>Selection criteria:</b> No criteria laid down by law. <b>Severance pay:</b> No legal requirements, but often part of social compensation plans.  |

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.



## BELGIUM

| Items  | Regulations in force on 1 January 2013  |
|--|---|
| 1: Notification procedures in the case of individual dismissal of a worker with a regular contract | Notification of employee by registered letter. Oral notification possible if the employer chooses severance pay in lieu of notice but only if the worker does not challenge the dismissal.  |
| 2: Delay involved before notice can start  | <p>In the case of written notification:</p> <ul style="list-style-type: none"> <li>- the letter takes effect on the 3rd working day after dispatch,</li> <li>- the notice period starts on the 1st day of the month following the date on which the notification by registered letter takes effect (two weeks on average),</li> <li>- the notice period for blue-collar workers starts on the 1st Monday following the date on which the notification by registered letter takes effect (3.5 days on average).</li> </ul> <p>Calculation (for EPL indicators): average of blue collar and white collar workers:<br/> <math>3 + (3.5 + 15) / 2 = 12.25</math> days</p>   |
| 3: Length of notice period at different tenure durations (a)                                       | <p>I) Regulations applicable to contracts whose performance began <b>before 1 January 2012</b>:</p> <p><b>Blue collar:</b> no notice during trial period; 7d&lt;6m (if provided for in individual contracts); 28d&lt;6 m; 35 d&lt;5y; 42 d&lt;10 y; 56 d&lt;15 y; 84 d&lt;20 y; 112 d&gt;20 y unless stipulated otherwise in a royal decree, collective branch agreement or collective bargaining agreement.</p> <p><b>White collar:</b> 7d during trial period; 3m&lt;5y. Additional three months' notice for each started 5-year period of tenure (e.g. 6 m&lt;10 years, 9 m&lt;15 years, etc.). This is the legal minimum.</p> <p>If annual remuneration is above EUR 32 254, the parties must agree to a reasonable notice period which cannot be less than the legal minimum. If they fail to reach an agreement, the courts shall rule on a reasonable notice period. Some methods, such as the Claeys formula, have been developed by legal experts to calculate this appropriate notice period, but they are in no way binding.</p> <p>II) Regulations applicable to contracts whose performance began <b>after 1 January 2012</b>:</p> <p><b>Blue collar:</b> no notice during trial period; 7d&lt;6 months (if provided for in employment agreement); 28d&lt;6 months, 40d&lt;5 years, 48d&lt;10 years, 64d&lt;15 years, 97d&lt;20 years and 129d&gt;20 years.</p> <p><b>White collar:</b></p> <ol style="list-style-type: none"> <li>1) If the employee's gross annual remuneration is not over EUR 32 254: same arrangements as those for contracts whose performance began before 1 January 2012: see above.</li> <li>2) If the employee's gross annual remuneration is over EUR 32 254 but not more than EUR 64 508: 91 d&lt;3 years, 120 d&lt;4 years, 150 d&lt;5 years, 182 d&lt;6 years and 30 d per year of tenure started if the employee has 6 years' tenure or more.</li> <li>3) If the employee's gross annual remuneration is over EUR 64 508, the notice period can be set by agreement concluded at the latest at the commencement of the job. It shall in no case be less than the notice period applicable to employees covered under (1) for employees whose gross annual remuneration is less than EUR 32 254.</li> </ol> <p>Calculation (for EPL indicators): average of blue collar and white collar workers (average of the first two scenarios for white collar employees)</p> <p><b>9 months:</b> <math>(1.33 + 3) / 2 = 2.15</math> months</p> <p><b>4 years:</b> <math>(1.33 + (3+5)/2) / 2 = 2.65</math> months</p> <p><b>20 years:</b> <math>(4.33 + (15+21)/2) / 2 = 11.15</math> months</p> |
| 4: Severance pay at different tenure durations (a)   | In the event of dismissal without a notice period, severance pay depends on the length of the notice period that should have been observed. For example, if the notice period is 3 months, severance pay shall be equivalent to 3 months' salary.   |
| 5: Definition of unfair dismissal (b)  | <p><b>Unfair dismissal of blue collar workers (with an open-ended employment contract):</b> a dismissal is deemed unfair if the reasons given have nothing to do with the individual's capability or conduct or do not concern any operational requirements of the firm, establishment or department.</p> <p><b>For white collar workers,</b> there are no provisions for the notion of unfair dismissal in regulations; only the general concept of abuse of rights. The right to dismiss an employee must be exercised for the purposes for which it is granted, i.e. in the interests of the enterprise. It is then up to the employee to prove that the dismissal is unfair.</p>  |



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| <b>6: Length of trial period (c )</b>   | Optional trial period clause: certain conditions have to be observed when it is included in the employment contract.<br><b>Blue collar:</b> minimum 7 days, maximum 14 days<br><b>White collar:</b> minimum 1 month, maximum 6 months [may be extended up to 12 months if gross annual remuneration is above EUR 37 721 (2012)]<br>Calculation (for EPL indicators): average of maximum values for blue collar and white collar workers (average of both cases for white collar workers) = 4.75 months   |
| <b>7: Compensation following unfair dismissal (d)</b>   | Blue collar and white collar workers: payment of compensation (normal entitlement for dismissal) at least equivalent to the notice period (in the event that the notice period is not observed).<br>In addition to this normal compensation (or pay in lieu of notice period):<br>Blue collar workers: compensation for unfair dismissal equivalent to six months' salary<br>White collar workers: damages to be decided by the court.<br><b>Typical compensation for 20 years' tenure.</b> Blue collar workers: 129 days + 6 months<br>White collar workers: if gross annual remuneration is not more than EUR 32 254: 15 months. If gross annual remuneration is more than EUR 32 254: minimum of 600 days.<br>These compensation payments include amounts due for dismissal without a notice period<br>Calculation (for white collars): average of mean (average of minimum – 3 weeks – and maximum – 17 weeks) and maximum compensation (10 + 17 weeks)/2= 3.11 months<br><br>Calculation: average for blue and white collar workers: (6+3.11)/2 = 4.55 months |
| <b>8: Reinstatement option for the employee following unfair dismissal (b)</b>                              | There is no right to reinstatement.  |
| <b>9: Maximum time period after dismissal up to which an unfair dismissal claim can be made (e)</b>         | The time limit for making a claim of unfair dismissal is 1 year from the date at which the contract is terminated.   |
| <b>10: Valid cases for use of standard fixed term contracts</b>   | Fixed-term contracts (FTCs) are permitted without specifying an objective reason.  |
| <b>11: Maximum number of successive standard FTCs (initial contract plus renewals and/or prolongations)</b> | No maximum number if these successive FTCs can be justified by the nature of the work or other legitimate reasons.<br>If no justification can be given as to the nature of the work or other legitimate reasons: 4 successive FTCs, of a minimum duration of 3 months and total duration of two years or, 6 contracts with the authorisation of the Labour Inspectorate ( <i>Inspection des lois sociales</i> ), for a maximum total duration of 3 years with contracts of a minimum of 6 months.<br>With legitimate reasons: no maximum number, but assessed by employment tribunals.   |
| <b>12: Maximum cumulated duration of successive standard FTCs</b>   | Unlimited for the first contract. In the case of successive FTCs not justified by the nature of the work or other legitimate reasons: 2 years (or 3 years with the authorisation of the Labour Inspectorate).<br>If these successive FTCs are justified by the nature of the work or other legitimate reasons: no maximum cumulated duration.  |
| <b>13: Types of work for which temporary work agency (TWA) employment is legal</b>                          | Use of services of temporary work agencies (TWA): temporary replacement of a permanent employee; temporary increase in workload; work of an exceptional nature.  |
| <b>14: Are there restrictions on the number of renewals and/or prolongations of TWA assignments? (f)</b>    | Authorisation procedures and time limits on the use of temporary employment (assignments).<br>No particular restrictions with regard to the contract between the TWA and the worker.   |
| <b>15: Maximum cumulated duration of TWA assignments (f)</b>  | Replacement of a worker: 6 months, can be renewed once up to a maximum of 12 months or for the length of time that the employment contract of the worker being replaced is suspended.<br>Temporary increase in workload: 18 months or more (to be negotiated with trade union representatives)<br>Work of an exceptional nature: 3 months (except for certain specific cases: 7 days or 12 months)<br>There are no restrictions for the duration of successive contracts between the TWA and workers.  |
| <b>16: Does the set-up of a TWA require authorisation or reporting obligations?</b>                         | Authorisation from regional authorities is required for the setting up of a TWA.   |
| <b>17: Do regulations ensure equal treatment of regular workers and agency workers at the user firm?</b>    | Yes  |

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| <b>18: Definition of collective dismissal (b)</b>                                    | Dismissal is collective when it affects:<br>1. firms with more than 20 workers<br>2. and is deployed over a period of at least 60 days: 10 workers in firms with between 21 and 99 employees; 10% of employees in firms with between 100 and 299 workers; 30 employees in firms with 300 and more workers.   |
| <b>19: Additional notification requirements in cases of collective dismissal (g)</b> | Collective dismissal requires 2 notifications:<br>1st notification: Notification to staff representatives: duty to notify and consult with the works council, trade union delegates and staff representatives.<br>This notification must also be sent to the public authorities:<br>to the Director of the Sub-Regional Employment Service ( <i>Directeur du service subrégional de l'emploi</i> ) and the Chairman of the Executive Committee of the Federal Public Service, Employment, Labour and Social Dialogue ( <i>Président du Comité de Direction du Service public fédéral Emploi, Travail et concertation sociale</i> ).<br>2nd notification: once the consultation procedure is completed, a new notification must be sent to the above-mentioned public authorities detailing the planned redundancies (number of workers to be dismissed, category, etc.) with a copy sent to staff representatives. |
| <b>20: Additional delays involved in cases of collective dismissal (h)</b>           | Redundancies are prohibited during the 30 days following the 2 <sup>nd</sup> notification (notification to the Sub-Regional Employment Service). This period can be reduced or extended up to a maximum of 60 days on the decision of the Director of the Sub-Regional Employment Service.<br>Staff representatives have a period of 30 days from the second notification during which they can claim that certain points concerning the information and consultation procedure have not been respected.<br><br>Calculation (for EPL indicators): At least five days for consultation between the 1 <sup>st</sup> and the 2 <sup>nd</sup> notification plus $(30+60)/2$ days on average following the 2 <sup>nd</sup> notification.  |
| <b>21: Other special costs to employers in case of collective dismissals (i)</b>     | Type of negotiation required: Consultation with staff representatives on solutions other than redundancies and on how to mitigate the negative effects of dismissals. A voluntary social plan may be introduced but there is no legal obligation. However, the employer is required to set up an "employment cell" and provide outplacement services to workers.<br>Compensation for collective dismissal: compensation will vary according to the duration of the notice period. The longer the notice period, the lower the compensation.  |

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.

## CANADA

| Items   | Regulations in force on 1 January 2013  |
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| <b>1:</b> Notification procedures in the case of individual dismissal of a worker with a regular contract | Written or oral notification to the employee or, sometimes, to the employee's representative (union).   |
| <b>2:</b> Delay involved before notice can start  | Written or oral notification.   |
| <b>3:</b> Length of notice period at different tenure durations (a)                                       | Varies depending on the jurisdiction. No notice of termination required if the employee has been dismissed for just cause. In all cases, an employee must have completed a minimum period of service in order to be entitled to notice. Notice can be exchanged for termination pay.<br>Federal jurisdiction: 2 weeks.<br>Ontario: 1w<1y; 2w<3y; 3w<4y; 4w<5y, up to 8w>8y..<br>Québec: 1w<1y; 2w<5y; 4w<10y; 8w>10y.<br>British Columbia: 1w<1y; 2w<3y; 3w<4y; 4w<5y, up to 8w>8y.<br>Alberta: 1w<2y; 2w<4y; 4w<6y; 5w<8y, 6w<10y, 8w>10y.<br>Calculation (for EPL indicators): Weighted average over Quebec (0.28), Ontario (0.45), Alberta (0.11) and BC (0.15). Weights depend on the relative size of each jurisdiction in terms of working-age population. Overall these 4 jurisdictions represent more than 85% of the working-age population in Canada. <b>On average:</b> 9 months tenure: 1 week, 4 years tenure: 3.4 weeks, 20 years tenure: 8 weeks.  |
| <b>4:</b> Severance pay at different tenure durations (a)   | <b>Federal jurisdiction:</b> 0<12m, after which 2 days for each year of tenure, but with a minimum of 5 days.<br>9 months tenure: 0, 4 years tenure: 8 days, 20 years tenure: 40 days.<br><b>Ontario:</b> for workers who have completed at least five years of service, 1w per year of service, up to 26w maximum, if tenure >5y, and if in a firm with a payroll of \$ 2.5 million or more.<br>9 months tenure: 0, 4 years tenure: 0, 20 years tenure: 20 weeks.<br><b>Other jurisdictions:</b> no legislated severance pay.<br>Calculation (for EPL indicators): Weighted average over Quebec (0.28), Ontario (0.45), Alberta (0.11) and BC (0.15). Weights depend on the relative size of each jurisdiction in terms of working-age population. Overall these 4 jurisdictions represent more than 85% of the working-age population in Canada. <b>On average:</b> 9 months tenure: 0, 4 years tenure: 0 weeks, 20 years tenure: 9 weeks.  |
| <b>5:</b> Definition of unfair dismissal (b)  | <b>Prohibited dismissals:</b> Dismissals are prohibited if they are based on a prohibited ground of discrimination (e.g., sex, race, disability, religion, sexual orientation), pregnancy, garnishment proceedings, or the exercise by an employee of a right under human rights or labour statutes (e.g., employment standards, occupational safety and health and labour relations legislation).<br><b>Unjust dismissal:</b> Legislation in three jurisdictions contains "unjust dismissal" provisions, whereby an employee who meets specific eligibility requirements (e.g., minimum length of service) may not be dismissed unless specific conditions are met:<br>• Federal jurisdiction: a person employed for more than 12 months and who is not covered by a collective agreement may seek recourse against what he/she considers an unjust dismissal, unless laid off due to lack of work or the discontinuance of a function.<br>• Quebec: an employee with two years or more of uninterrupted service in the same enterprise may not be dismissed without "good and sufficient reason".<br>• Nova Scotia: an employee with 10 years or more of service may not be discharged or suspended without just cause, unless it is for a reason beyond the control of the employer (e.g., destruction of a plant, labour dispute, weather conditions), the employee has refused the employer's offer of reasonable other employment or the employee has reached the age of retirement. Certain occupations and industries (e.g., construction industry) are excluded from these provisions. |
| <b>6:</b> Length of trial period (c)  | An employee must have completed a minimum period of service in order to be entitled to notice (typically 3 months, except in Manitoba - 30 days - and in New Brunswick, Prince Edward Island and Yukon - 6 months). By contrast, the minimum period of service required to be covered by unjust dismissal provisions is typically longer in the three jurisdictions where legislation specify them (24 months in Quebec, 12 months under the Federal jurisdiction and 10 years in Nova Scotia). However, in all other jurisdictions, legislation does not contain "unjust dismissal" provisions.  |
| <b>7:</b> Compensation following unfair dismissal (d)   | It varies. Employees discharged on prohibited grounds are entitled to compensation for wages and benefits lost by reason of the dismissal. Some statutes also provide that additional compensation may be ordered for pain and suffering or as punitive damages where an employer has engaged wilfully or recklessly in unlawful practices.   |

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| <b>8:</b> Reinstatement option for the employee following unfair dismissal (b)                              | Depending on the circumstances of a case, an employer may be ordered to reinstate an employee.  |
| <b>9:</b> Maximum time period after dismissal up to which an unfair dismissal claim can be made (e)         | It varies. With respect to unjust dismissal provisions, a complaint must be filed within the following time period after dismissal: 90 days in the federal jurisdiction; 45 days in Quebec; 6 months in Nova Scotia. In Alberta, British Columbia and Ontario, there is no recourse against unfair dismissal.<br>[Note: an employee in other provinces can file a complaint within 6 months (2 years in Ontario) with the Director of Employment Standards if they believe their dismissal was in contravention of the Employment Standards Code (e.g. if they were dismissed because they requested maternity or parental leave).]<br>Calculation (for EPL indicators): Weighted average over Quebec (0.28), Ontario (0.45), Alberta (0.11) and BC (0.15). Weights depend on the relative size of each jurisdiction in terms of working-age population. Overall these 4 jurisdictions represent more than 85% of the working-age population in Canada.   |
| <b>10:</b> Valid cases for use of standard fixed term contracts   | No restrictions   |
| <b>11:</b> Maximum number of successive standard FTCs (initial contract plus renewals and/or prolongations) | No limit  |
| <b>12:</b> Maximum cumulated duration of successive standard FTCs   | No limit  |
| <b>13:</b> Types of work for which temporary work agency (TWA) employment is legal                          | General   |
| <b>14:</b> Are there restrictions on the number of renewals and/or prolongations of TWA assignments? (f)    | No  |
| <b>15:</b> Maximum cumulated duration of TWA assignments (f)  | No limit  |
| <b>16:</b> Does the set-up of a TWA require authorisation or reporting obligations?                         | Requirements vary across jurisdictions. In Alberta, British Columbia, Manitoba, Yukon, Nunavut and the Northwest Territories, the owner of an employment agency is required to hold a licence (a certificate of registration in Yukon) in order to operate. Specific record-keeping requirements apply to employment agencies in Alberta, British Columbia, Manitoba and in the Northwest territories and Nunavut. In Yukon, such agencies must provide a statistical statement and financial report every year. There are no authorisations or reporting requirements in the federal jurisdiction, New Brunswick, Newfoundland and Labrador, Nova Scotia, Prince Edward Island, Quebec or Saskatchewan. Provinces that require special administrative authorisation for TWAs account for less than a third of the Canadian workforce. In most cases, TWAs do not face particular legal constraints.<br>Calculation (for EPL indicators): $(0.11+0.15) * 1$ for special administrative authorisation.   |
| <b>17:</b> Do regulations ensure equal treatment of regular workers and agency workers at the user firm?    | No  |
| <b>18:</b> Definition of collective dismissal (b)   | It varies (note: in some statutes, a collective dismissal is deemed to occur only if a set number of employees are discharged in a "single location" or in one "establishment".) Federal jurisdiction, Alberta, Manitoba, Newfoundland and Labrador: dismissal of 50 employees or more in 4-week period. Ontario: dismissal of 50 employees or more in 4-week period, (a) representing more than 10% of employees at an establishment or (b) where the termination is caused by the permanent discontinuance of part or all of the employer's business at an establishment.<br>British Columbia: dismissal of 50 employees or more in 2-month period.<br>Northwest Territories, Nunavut, Yukon: 25 employees or more in 4-week period.<br>Nova Scotia, Saskatchewan: 10 employees or more in 4-week period.<br>Quebec: 10 employees or more in 2-month period (some exceptions).<br>New Brunswick: more than 10 employees in 4-week period, representing at least 25% of employer's workforce.<br>Prince Edward Island: no collective dismissal provisions.<br>Calculation (for EPL indicators): Weighted average of the values for Alberta, British Columbia, Ontario and Quebec |

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| <p><b>19:</b> Additional notification requirements in cases of collective dismissal (g)</p> | <p><b>Notice to employees:</b> in seven jurisdictions, the notice that must be given to each employee affected by a collective dismissal is normally longer than for an individual termination of employment. Depending on the number of employees dismissed, notice ranges from 4 to 12 weeks in Saskatchewan; 8 to 16 weeks in British Columbia, Newfoundland and Labrador, Nova Scotia, Ontario and Quebec; 10 to 18 weeks in Manitoba; 4 to 16 weeks in the Northwest Territories, Nunavut and Yukon; 4 weeks in Alberta and 6 weeks in New Brunswick. Moreover, in British Columbia an employee must be given notice of individual termination in addition to a notice of collective dismissal (the two notice periods are consecutive, not concurrent). Notice to public authorities: in all jurisdictions (except Prince Edward Island), the employer must notify the competent labour authorities (e.g., Minister of Labour). Notice to trade union: a copy of the notice must be given to the bargaining agent of each affected employee in the federal jurisdiction, British Columbia, Manitoba, New Brunswick, Quebec and Saskatchewan. Posting of notice: in some jurisdictions, a collective dismissal notice must also be posted in conspicuous places in the workplace.</p> |
| <p><b>20:</b> Additional delays involved in cases of collective dismissal (h)</p>           | <p>Minimum and maximum notice in the case of collective dismissals for the four largest provinces is 8-16 weeks in Ontario and Quebec, 4 weeks in Alberta and 8-16 weeks in British Columbia (Art. 58, Ontario's Employment Standards Act, Sec. 137 Alberta's Employment Standards Code, Art. 64 British Columbia's Employment Standards Act and Art. 84.0.4 Quebec's Lois sur le Normes du Travail / Act Respecting Labour Standards). In British Columbia an employee must be given notice of individual termination in addition to a notice of collective dismissal (the two notice periods are consecutive, not concurrent). However, in Ontario, Alberta and Quebec, notice of collective dismissal can be concurrent with individual notification.</p> <p>Calculation (for EPL indicators): weighted average of mean weeks of notice for four largest provinces. In the case of Alberta, Quebec and Ontario, where individual and collective notifications may be concurrent, individual notice periods (at 4 years tenure) are subtracted (that is 4 weeks in Ontario and Alberta and 2 weeks in Quebec, cf. Item 3): <math>0.45*(12-4)+0.28*(12-2)+0.11*(4-4)+12*0.15 = 57</math> days.</p>  |
| <p><b>21:</b> Other special costs to employers in case of collective dismissals (i)</p>     | <p><b>Type of negotiation required:</b> In 4 jurisdictions, an employer who intends to proceed with a collective dismissal is required (federal jurisdiction) or may be required (British Columbia, Manitoba, Quebec) to establish a joint committee to develop an adjustment program aimed at minimizing the number and impact of job losses and assisting affected workers in finding new employment. In Quebec, an employer may also be required to make a financial contribution to the operating costs of the committee and its reclassification activities. This is obligatory in the federal jurisdiction. The obligation to establish a joint committee under federal law can be waived by the Minister of Labour. <b>Selection criteria:</b> As laid down in any collective agreements. <b>Severance pay:</b> No additional severance pay obligations if notice requirements for collective dismissal are met. However, in Ontario, severance pay (cf. Item 4) must also be paid to employees where the employment of 50 or more employees is severed in a six-month period as a result of a permanent discontinuance of all or part of the employer's business at an establishment (independently of the payroll size of the firm).</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.



## CHILE

| Items  | Regulations in force on 1 January 2013   |
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| 1: Notification procedures in the case of individual dismissal of a worker with a regular contract | <p>A written dismissal letter is always mandatory. This letter must state the legal cause of termination and the facts supporting such cause.</p> <p>This letter must be either handed directly to the employee or sent as registered letter to the employee's domicile.</p> <p>A copy of such letter must be sent to the competent Labor Inspection within 3 working days as of the date of termination.</p>  |
| 2: Delay involved before notice can start  | <p>The notification letter must be either handed directly to the employee or sent as registered letter to the employee's domicile, within within 3 working days as of the date of termination.</p> <p>Calculation (for EPL indicators): average of 1 day for verbal notice and 3 days for registered letter.</p>   |
| 3: Length of notice period at different tenure durations (a)                                       | <p>The employee must be given a 30-day notice, or payment in lieu of notice of one month's salary. The last monthly salary on which the payment in lieu of prior notice is based has a statutory cap of 90 "<i>monetary indexed units</i>" (At the end of 2012, about US\$ 4,280 - this unit is adjusted daily to inflation by the Chilean government. At the end of 2012 1 monetary indexed unit is equivalent to approximately US\$48), except if modified by the parties by mutual agreement.</p>   |
| 4: Severance pay at different tenure durations (a)   | <p>Employees with at least one year of continuous service shall receive severance pay equivalent to 30 days of employee's last monthly salary per year of service and fraction higher than six months. Notwithstanding the latter, this severance is subject to two statutory limits:</p> <ul style="list-style-type: none"> <li>a.- The last monthly salary on which the severance pay is based is capped at 90 "<i>monetary indexed units</i>" (currently US\$ 4,280 approx.).</li> <li>b.- The seniority is capped at 330 days (11 years). However, this limit is not applicable to employees hired before August 14<sup>th</sup>, 1981.</li> </ul> <p>These caps may be modified by the parties by mutual agreement.</p> <p>However, the employer's contribution to the worker's individual unemployment insurance saving account, plus the yield of this account minus all applicable fees, may be deducted from the severance pay. In practice, this implies a deduction of 20% from severance payments due in the case of dismissal.</p>  |
| 5: Definition of unfair dismissal (b)  | <p>The Labor Code permits an employer to dismiss an employee <i>without fault</i>. According to the position held by the employee, the understanding of "<i>termination without fault</i>" could be tailored under two venues: (i) for business necessities or economic redundancy ("<i>necesidades de la empresa</i>") and (ii) dismissal at will ("<i>desahucio escrito del empleador</i>").</p> <p>Firstly, dismissal based on business necessities or economic redundancy is generally applicable to employees in general. It does not mean that the employer is entitled to determine them at his sole discretion, but means that the dismissal must be justified by financial or economic circumstances that make the termination of the employee's contract unavoidable. Furthermore, court practice tends to be more restrictive since courts usually require that the economic justification be based on objective situations that cannot be attributed to the responsibility of the employer and meet a general situation of crisis for the whole company and not for a branch alone.</p> <p>Secondly, dismissal at will is only applicable to employees who bear at least general authority management, such as managers, assistant managers, attorneys and agents, as well as domestic workers. This reason requires the mere written notice of termination.</p> <p>The termination letter plays a key role in determining whether a dismissal is or not wrongful. In this regard, the employer is strictly bound by the statements made in the termination letter since, in the case the employee challenges the termination before a court for wrongful dismissal, the employer has the burden of proof of the veracity of the facts stated in the termination letter, not being allowed to claim any different facts supporting his/her dismissal decision.</p> |
| 6: Length of trial period (c)  | No trial period is admitted in legislation (except for domestic workers).  |

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| <p><b>7: Compensation following unfair dismissal (d)</b></p>   | <p>In the event of wrongful dismissal of permanent regular workers, the current legal framework envisages two options in challenging such dismissal:</p> <p><b>1.-</b> If the dismissal was based by the employer on economic reasons and this was eventually wrongful, the additional compensation the Court can award is a 30%-surcharge over the employee's severance pay.</p> <p><b>2.-</b> If the dismissal was not based on any cause, or was based by the employer on reasons other than economic reasons or redundancy (e.g., employee's serious breach of the obligations) and this was eventually wrongful, the employee is entitled to a payment in lieu of notice of one monthly salary. Also, the employee is entitled to his/her severance pay, including an additional surcharge varying from 50% to 100% over the employee's severance pay.</p> <p>Higher compensation is possible if termination is in fact based on discriminatory grounds.</p> <p>Calculation (for EPL indicators): Typical compensation at 20 years of tenure: average of 65% x 11 months' severance pay = 7.2 months.</p>  |
| <p><b>8: Reinstatement option for the employee following unfair dismissal (b)</b></p>                              | <p>Reinstatement is available to permanent employees who were dismissed without fault while being under medical leave. It also applies to employees who have dismissal protection privilege ("fuero"). Dismissal protection privilege is granted by law to those employees in situations that may imply a vulnerable condition for keeping their employment (e.g. pregnancy, maternity leave, union representation). This privilege means that employer is prevented from dismissing permanent employees bearing such capacity without prior judicial authorization based on employee's fault.</p> <p>Moreover, the Labour Protection Procedure sets forth the prohibition of termination based on discriminatory grounds (eg. union activity, social extraction, sex).</p> <p>In general, if dismissal is deemed as "seriously discriminatory" by the Court, the employee may choose between either compensation or reinstatement. Similarly, in case of wrongful dismissal based on anti-union practices of employees who do not have dismissal protection privilege in virtue of union activity (e.g. union representatives, employees involved in collective bargaining), the employee may choose between either compensation or his/her reinstatement.</p> <p>In case of wrongful dismissal based on anti-union practices of employees who have dismissal protection privilege in virtue of union activity (e.g. union representatives, employees involved in collective bargaining), reinstatement is the only available remedy.</p> <p>All these alternatives allow employees to claim the amounts the employee did not receive during the period of undue separation.</p> |
| <p><b>9: Maximum time period after dismissal up to which an unfair dismissal claim can be made (e)</b></p>         | <p>Employees may lodge a complaint for wrongful dismissal before Labour Courts within 60 working days as of the date of effective termination.</p> <p>If a complaint for wrongful dismissal has been filed before the Labour Inspection prior to the jurisdictional stage, the 60 working days will be increased by the time the complaint is pending before the Labour Inspection. However, this latter increase may not exceed 30 working days.</p>   |
| <p><b>10: Valid cases for use of standard fixed term contracts</b></p>   | <p>No restrictions.</p>   |
| <p><b>11: Maximum number of successive standard FTCs (initial contract plus renewals and/or prolongations)</b></p> | <p>A second renewal of a fixed term contract will be taken to be a contract of indefinite length.</p>   |
| <p><b>12: Maximum cumulated duration of successive standard FTCs</b></p>   | <p>The duration of a fixed term contract may not exceed one year (two years for managers or persons with a professional or technical degree bestowed upon by a University certified by the State.). A worker who has been employed intermittently under more than two fixed-term contracts for 12 out of a continuous period of 15 months is presumed to be hired under a contract of indefinite length.</p> <p>Exceptions apply for arts and show business employment contracts as well as professional football players and direct assistance staff.</p> <p>Calculation (for EPL indicators): average of the two situations mentioned above.</p>  |
| <p><b>13: Types of work for which temporary work agency (TWA) employment is legal</b></p>                          | <p>TWA workers can be employed in the following circumstances: (i) to replace workers on leave; (ii) for extraordinary events e.g. exhibitions, conferences; (iii) for new projects or expansion into new markets; (iv) when starting a new business; (v) to cover occasional increases in workload; (vi) for urgent and precise work requiring immediate performance without delay (e.g. conducting repairs).</p> <p>TWA employment is illegal in certain circumstances. This means the TWA may not place employees at the user firm in the following circumstances: (i) to perform positions entailing the representation of the user firm, such as managers, assistant managers; (ii) to substitute employees of a user firm who have gone legally strike within a collective bargaining process; and (iii) to place the employee at the disposal of a third TWA.</p>  |



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| <b>14:</b> Are there restrictions on the number of renewals and/or prolongations of TWA assignments? (f) | No restrictions within the maximum term of cumulated duration as specified in answer to Item 15 below.<br>Additionally, numerous assignments at the user firm of the same TWA employee aimed at hiding a permanent labour relationship with the user firm are illegal. In this case, the user firm shall be considered the employer.   |
| <b>15:</b> Maximum cumulated duration of TWA assignments (f)   | TWA assignments for extraordinary events or to cover occasional increases in workload have a maximum duration of 90 days. TWA assignments for new businesses or projects have a maximum duration of 180 days. TWA assignments to (i) replace employees on leave and (ii) for urgent and precise work requiring immediate performance at the user firm can last as long these situations truly exist.<br>Calculation (for EPL indicators): average of 3 months and 6 months = 4.5 months.   |
| <b>16:</b> Does the set-up of a TWA require authorisation or reporting obligations?                      | No prior authorization is required. However, TWA can operate only if they are enrolled in a special registry run by the Labor Directorate and pay a money deposit guarantee. Hence, if no registration exists, no operation is allowed.<br>This registration is conditional and exposed to cancellation by the labor authority upon the following situations:<br>a.- When the TWA has an ownership relationship with the user firm;<br>b.- When the TWA commits repeated and serious labor offences. This will be understood in the case of (i) 3 or more labor infringements within one year or (ii) infringements having significant impact against the protection of child labor, maternity and remunerations.<br>The Labor Directorate may take the autonomous initiative to verify the existence of these offences. |
| <b>17:</b> Do regulations ensure equal treatment of regular workers and agency workers at the user firm? | No requirement for equal treatment.  |
| <b>18:</b> Definition of collective dismissal (b)  | No requirements in legislation.  |
| <b>19:</b> Additional notification requirements in cases of collective dismissal (g)                     | No requirements in legislation.  |
| <b>20:</b> Additional delays involved in cases of collective dismissal (h)                               | No requirements in legislation.  |
| <b>21:</b> Other special costs to employers in case of collective dismissals (i)                         | No requirements in legislation.  |

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.

**CZECH REPUBLIC**

| Items  | Regulations in force on 1 January 2013   |
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| 1: Notification procedures in the case of individual dismissal of a worker with a regular contract | <p><b>Personal reasons:</b> Notification of employee and trade union body, after previous warning.</p> <p><b>Redundancy:</b> Notification of employee and trade union.</p> <p>Regarding the compulsory consultations with the trade union, the Labour Code (LC hereafter, art. 61) stipulates that the employer shall consult on dismissal or immediate termination of an employment relationship with the trade union organization in advance regardless of the reason. A fixed time period for this consultation has not been set by the Labour Code but the consultation has to be concluded before the dismissal notification is handed to the employee.</p> <p>The consultation implies the communication of employer's intention to give notice of termination or immediate termination of an employment relationship and the hearing of the views of trade unions, which have a right to give their opinion on all notices given by the employer although the decision by trade union is not legally binding for the employer. In the case the employer does not consult on dismissal or immediate termination of an employment relationship with the trade unions or makes only an announcement without consultation, the legal act concerning notice cannot be made void; however, the relevant labour inspectorate can take an action against the employer according to law No. 251/2005 Coll. on labour inspection.</p> <p>In the special case where notice of termination or immediate termination of an employment relationship concerns a member of the body of trade union organization (i.e. trade union representative) operating within the employer's undertaking (business) during the member's term of office or for a period of one year afterwards, the employer shall ask the trade union organization for its prior consent to such notice of termination or immediate termination. Consent of the trade union organisation is considered as given where the trade union organization does not refuse to give its consent in writing within 15 days of the date when the employer asked for it.</p> |
| 2: Delay involved before notice can start  | <p><b>Personal reasons:</b> Letter sent by mail or handed out directly, after previous warning.</p> <p><b>Redundancy:</b> Advance consultation, with offer of another job or re-training if feasible; then letter sent by mail or handed directly to employee.</p> <p>The notice period shall start to run on the first day of the calendar month following delivery of the notice and come to an end upon the expiry of the last day of the relevant calendar month (Art. 51, LC)</p> <p>Calculation (for EPL indicators): <math>((1+6+15+2)+(1+15+2))/2=21</math>.</p> <p>((personal reasons: 1 day for notice + 6 days for prior warning procedure + 15 days on average for first day of following month + 2 days for consultation with unions) + (economic reasons: 1 day for notice + 15 days on average for first day of following month + 2 days for consultation with unions))/2 = 21</p>  |
| 3: Length of notice period at different tenure durations (a)                                       | <b>All workers:</b> 2 months.  |
| 4: Severance pay at different tenure durations (a)   | <p>On termination of an employment relationship, an employee whose employment relationship is terminated by notice given by his employer for redundancy or by agreement for the same reasons is entitled to receive from the employer severance pay (redundancy payment) at least in the amount equal to:</p> <p>(a) once his average (monthly) earnings where an employment relationship to the employer lasted less than one year;</p> <p>(b) twice his average earnings where an employment relationship to the employer lasted at least one year and less than two years;</p> <p>(c) three times his average earnings where an employment relationship to the employer lasted at least two years;</p> <p>(d) the sum of three times his average earnings and the amounts laid down in (a) to (c) where his employment relationship is terminated in a period when he is subject to a working hours account.</p> <p>In cases of dismissal due to work-related accident or illness: 12 months.</p> <p>Calculation (for EPL indicators): average of personal reasons and redundancy.</p>  |
| 5: Definition of unfair dismissal (b)  | <p><b>Fair:</b> Dismissals for failure to meet performance requirements and for reasons of technological and organisational change, gross breaches of the obligation to dwell, during their temporary incapacity for work, at the place of employee's stay and to observe the time and scope of permitted walks pursuant to the Sickness Insurance Act, if any. <b>Unfair:</b> Dismissals based on discrimination (age, sex, colour, religion, union membership, etc.).</p>  |

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| <b>6: Length of trial period (c )</b>   | <p>Maximum 6 months for managerial employees; 3 months for other workers</p> <p>For all employees, the trial period may not be longer than one half of the agreed period of the employment relationship.</p> <p>Calculation (for EPL indicators): average of managerial and other employees</p>  |
| <b>7: Compensation following unfair dismissal (d)</b>   | <p>Unfair dismissal gives rise to a right to reinstatement. If reinstatement is not requested by the employee, compensation is made through severance pay and award of lost earnings during the court case (Art. 69(1) LC). Sums earned by the employee in the interim are set off against the award. There is no maximum amount for compensation.</p> <p>Where a total period for which the employee should be entitled to compensatory wage or salary exceeds six months, based on a motion filed by his employer, the court may adequately reduce the employer's obligation to pay compensatory wage or salary to the employee for a period in excess of six months; in considering the matter, the court shall take particularly into account whether in between the employee was employed somewhere else, the type of work he performed and the amount of his earnings or the reason for which he did not take up work.</p> <p>Calculation (for EPL indicators): Typical compensation at 20 years tenure: 6 months.</p> |
| <b>8: Reinstatement option for the employee following unfair dismissal (b)</b>                              | Reinstatement is always available to the employee.   |
| <b>9: Maximum time period after dismissal up to which an unfair dismissal claim can be made (e)</b>         | Two months after the day on which the contract was due to end (Art. 72, LC).   |
| <b>10: Valid cases for use of standard fixed term contracts</b>   | Generally permitted.   |
| <b>11: Maximum number of successive standard FTCs (initial contract plus renewals and/or prolongations)</b> | <p>A fixed-term employment relationship between the same contracting parties may be recurrently agreed no more than twice. An extension of an employment relationship shall also be considered as a recurrently agreed employment relationship. After the expiry of a period of three years from the termination of the preceding fixed-term employment relationship between the same contracting parties, the preceding employment relationship shall not be taken into account.</p> <p>Maximum number of successive standard FTCs is 3.</p>  |
| <b>12: Maximum cumulated duration of successive standard FTCs</b>   | A fixed-term employment relationship between the same contracting parties may not exceed three years and it may be recurrently agreed no more than twice. An extension of an employment relationship shall also be considered as a recurrently agreed employment relationship. After the expiry of a period of three years from the termination of the preceding fixed-term employment relationship between the same contracting parties, the preceding employment relationship shall not be taken into account.   |
| <b>13: Types of work for which temporary work agency (TWA) employment is legal</b>                          | <p>Section 66 of act No. 435/2004 Coll. on employment:</p> <p>In case of employment by temporary assignment, TWAs are not allowed to mediate employment for persons with disabilities and foreign nationals from third countries.</p>  |
| <b>14: Are there restrictions on the number of renewals and/or prolongations of TWA assignments? (f)</b>    | No   |
| <b>15: Maximum cumulated duration of TWA assignments (f)</b>  | <p>A Temporary work agency may not temporarily allocate the same employee to work at the same user for a period longer than 12 consecutive calendar months. This limitation shall not apply in those cases where this is requested by the agency employee or where it concerns replacement of a user firm's employee who is on maternity or parental leave.</p> <p>No limitation on the duration of contracts between the agency and the worker. Open-ended TWA contracts are possible and frequent.</p>   |
| <b>16: Does the set-up of a TWA require authorisation or reporting obligations?</b>                         | Requires authorization and periodic reporting obligations.   |
| <b>17: Do regulations ensure equal treatment of regular workers and agency workers at the user firm?</b>    | Equal treatment on wages and conditions.   |

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| <b>18: Definition of collective dismissal (b)</b>                                    | Collective dismissal is understood to be the termination of employment relationships within a period of 30 calendar days based on notice given by the employer to no less than:<br>a) Ten employees of an employer employing from 20 to 100 employees, or<br>b) 10% of employees of an employer employing from 101 to 300 employees, or<br>c) 30 employees of an employer employing more than 300 employees<br><br>Firms with less than 20 employees are exempt from requirements for collective dismissals. |
| <b>19: Additional notification requirements in cases of collective dismissal (g)</b> | <b>Notification of employee representatives:</b> Duty to inform competent employment representatives.<br><b>Notification of public authorities:</b> Notification of district labour office.  |
| <b>20: Additional delays involved in cases of collective dismissal (h)</b>           | Information to trade union and PES office 30 days before implementation.<br><br>Calculation: 30 days - 21 days in case of individual dismissal (cf. item 2)  |
| <b>21: Other special costs to employers in case of collective dismissals (i)</b>     | <b>Type of negotiation required:</b> Consultation on alternatives to redundancy and measures for finding new jobs. The employer is also required to submit a written report to the labour office about the results of discussions with the relevant union body or employee council. <b>Selection criteria:</b> not set out by legislation.<br><b>Severance pay:</b> No special regulations for collective dismissal.   |

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.

**DENMARK**

| Items   | Regulations in force on 1 January 2013   |
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| <b>1:</b> Notification procedures in the case of individual dismissal of a worker with a regular contract | Specific dismissal procedures may apply depending on the status of the employee (civil servant, employee covered by collective agreement, trade union representative), but generally, notifications on dismissal must be handed out or send to the employee in writing, and the employee's trade union organization must be notified hereof.<br><br>If the trade union organization considers the dismissal unjustified/unfair, a negotiation with the employer can be requested.  |
| <b>2:</b> Delay involved before notice can start  | For white collar workers, the notice must be given before the first day of a calendar month and the notice period starts from the first day of the calendar month following receipt of the notice.<br><br>Some collective agreements (e.g. Manufacturing) stipulate that the negotiation, if requested, must be concluded within 10 days.<br><br>Calculated by averaging figures for blue and white collar workers (with and without negotiation): Blue collar: 1 day + 2.5 days on average for negotiations = 3.5 days; white collar: 1 day for written notice + 2.5 days on average for negotiations+ 15 days on average for start of next month = 18.5 days   |
| <b>3:</b> Length of notice period at different tenure durations (a)                                       | Blue collars: 0<9m, 21d<2y, 28d<3y, 56d<6y, 70d>6y (based on collective agreements). White collars: 14d<3m, 1m<5m, 3m<33m, 4m<68m, 5m<114m, 6m>114m.<br><br>Calculation (for EPL indicators): average of blue and white collar workers:<br>Blue collars: 9 months tenure: 3 weeks, 4 years tenure: 8 weeks, 20 years tenure: 10 weeks.<br>White collars: 9 months tenure: 3 months, 4 years tenure: 4 months, 20 years tenure: 6 months.   |
| <b>4:</b> Severance pay at different tenure durations (a)   | White collars: 1m>12y, 2m>15y, 3m>18y.<br><br>Blue collars: Regulated by collective agreement: In the 2010 round of collective bargaining it was agreed, that if a worker has been employed uninterruptedly in the same company for at least years and his/her contract is terminated, the employer pays severance pay according to a special calculation. The monthly amount of severance pay is calculated as follows, monthly salary minus 15% minus the monthly unemployment benefit. This amount is payable for a month after 3 years of service; two months after 6 years of employment and three months after 8 years of employment. However, since initial replacement rates are most often above 85%, severance pay is rarely paid.<br><br>Calculation (for EPL indicators): average of white and blue collar workers (averaging across types for the latter) |
| <b>5:</b> Definition of unfair dismissal (b)  | <b>Fair:</b> Lack of competence and economic redundancy are legitimate reasons. <b>Unfair:</b> Dismissals founded on arbitrary circumstances" (blue collar workers) or "not reasonably based on the employee's or the company's circumstances". Dismissals based on association matters, gender, belief, political opinion, sexual orientation, age, disability and social or ethnic origin, etc. and as a result of a corporate take-over are also unfair.<br><br>Special rules for dismissal apply to trade union representatives.   |
| <b>6:</b> Length of trial period (c )   | Blue collars: 9 months (based on collective agreements). White collars: 3 months.<br><br>EPL indicators calculated by averaging figures for blue and white collar workers.   |
| <b>7:</b> Compensation following unfair dismissal (d)   | Blue collars: compensation is limited to 52 weeks of pay for long service cases. Average is 10.5 weeks according to Danish Confederation of Trade Unions.<br><br>White collars: compensation cannot exceed the pay for half the period of the notice period of the worker. For workers older than the age of 30 years compensation can be up to 3 months pay. For workers with more than 10 years tenure compensation can be up to 4 months pay. After 15 years tenure compensation can be max 6 months pay.<br><br>Calculation (for EPL indicators): Typical compensation at 20 years tenure: average of that of white and blue collars, the latter obtained as average of mean and maximum compensation $((10.5+52)/2=31.25 \text{ weeks} = 7.2 \text{ months})$ . Overall average: 6.6 months.  |
| <b>8:</b> Reinstatement option for the employee following unfair dismissal (b)                            | Reinstatement orders are possible but rare (the possibility of reinstatement was introduced in the Main Agreement in 1981 - blue collar workers - but until now there have been only a few decisions in which a tribunal decided that the dismissed employee should be reinstated - Section 61 of the Labour code).  |

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| <b>9:</b> Maximum time period after dismissal up to which an unfair dismissal claim can be made (e)         | <p>Unfair dismissal claims can be made within a short period after notification. For example the 1973 General Agreement stipulates that "If the employee claims that the dismissal is unfair an unwarranted by the situation of the employee and the company, a request may be made for the case to be settled locally between representatives of management and employees. The local negotiations shall be completed within two weeks of notice being given." In addition, "in cases where claim is made to set aside a dismissal, the proceedings shall, as far as possible, be completed before the relevant employee's term of notice expires." (Section 4, 1973 General Agreement concluded by the Danish Employers' Confederation and the Danish Confederation of Trade Unions).</p> <p>Calculation (for EPL indicators): 2 weeks on average (minus average notice period)</p> |
| <b>10:</b> Valid cases for use of standard fixed term contracts   | <p>Fixed-term contracts allowed for specified periods of time and/or for specific tasks</p> <p>Particularly used in professional services and construction, but also in other industries. Renewal of fixed term contracts must be based on "objective criteria".</p>   |
| <b>11:</b> Maximum number of successive standard FTCs (initial contract plus renewals and/or prolongations) | <p>Generally, there is no legal limit for the maximum number of successive fixed-term contracts, but renewal of fixed-term contracts must be based on objective reasons ("objective criteria such as a specific date, the completion of a specific task or the occurrence of a specific event", as stated e.g. in the Act on the Legal Relationship between Employers and Salaried Employees, Sec. 1(4)).</p> <p>The Confederation of Salaried Employees and Civil Servants in Denmark (FTF) states that usually 2 successive renewals can be based on objective reasons. 3 or more insinuate suspicion of breaches of e.g. Salaried Employees Act, so that there is a risk that a court will declare the contract null and void, in case the contract is not renewed based on objective reasons.</p>  |
| <b>12:</b> Maximum cumulated duration of successive standard FTCs   | There are no limits if objective reasons but in practice max. 2 years  |
| <b>13:</b> Types of work for which temporary work agency (TWA) employment is legal                          | Generally allowed  |
| <b>14:</b> Are there restrictions on the number of renewals and/or prolongations of TWA assignments? (f)    | No but the Danish Confederation of Trade Unions states that court rulings suggest that 4-5 renewals entail notification procedures.  |
| <b>15:</b> Maximum cumulated duration of TWA assignments (f)  | The Danish Confederation of Trade Unions states that there is no limit, if employment breaks in between consecutive assignments.   |
| <b>16:</b> Does the set-up of a TWA require authorisation or reporting obligations?                         | No requirements except company registration.   |
| <b>17:</b> Do regulations ensure equal treatment of regular workers and agency workers at the user firm?    | Yes, equal treatment regarding pay and working conditions  |
| <b>18:</b> Definition of collective dismissal (b)   | <p>Within 30 days, &gt;9 workers in firms 21-99 employees; &gt;9% in firms 100-299; &gt;29 workers in firms 300+ employees.</p> <p>Firms with 20 employees or less are exempt from requirements for collective dismissals.</p>   |
| <b>19:</b> Additional notification requirements in cases of collective dismissal (g)                        | Notification of Regional Employment Council (tripartite council) plus the Union and Employers org. (collective agreements provisions).   |
| <b>20:</b> Additional delays involved in cases of collective dismissal (h)                                  | Negotiations with unions before informing the Regional Employment Council (at least 21 days in firms >100 workers or that seek to dismiss over half of staff). Within ten days, this communication is followed by the communication of the list of affected employees to Regional Employment Council but no earlier than 30 days before effective termination (longer requirements in firms >100 workers or that seek to dismiss over half of staff). Affected workers cannot be notified before PES. Individual notice can be given at the same time as the list is communicated to the Regional Employment Council – cf. Act respecting advance notice etc. in connection with mass lay-offs, sec. 7 and 8.  |
| <b>21:</b> Other special costs to employers in case of collective dismissals (i)                            | <p>Type of negotiation required: National agreement obliges companies to organise transfer and/or retraining whenever possible.</p> <p>Selection criteria: No criteria laid down by law.</p> <p>Severance pay: No special regulations for collective dismissal. The collective agreement for the financial sector requires obligatory outplacement and severance pay above the law plus other provisions.</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.



## ESTONIA

| Items   | Regulations in force on 1 January 2013   |
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| <b>1:</b> Notification procedures in the case of individual dismissal of a worker with a regular contract | <p>An employment contract may be terminated by a declaration of termination made in a format which must be reproduced in writing. A declaration of termination made in breach of the formal requirement or a contingent declaration of termination is void. An employer shall justify termination. Before termination of the employment contract with the employees' representative the employer shall seek the opinion of the employees who elected the person to represent them or the trade union about the termination of the employment contract. The employer shall take the opinion of the employees into account to a reasonable extent. The employer shall justify disregard for the opinion of the employees.</p> <p>The employer must also give communication to the Unemployment Insurance Fund within 5 days of termination if the employee job tenure is at least 5 years (art. 100 Employment Contracts Act, ECA hereafter, and Art. 14.1 and 14.3 of the Unemployment Insurance Act).</p> <p>Calculation (for EPL indicators): average of more and less than 5-year tenure: <math>(1+2)/2=1.5</math></p>   |
| <b>2:</b> Delay involved before notice can start  | <p>The term of advance notice begins to run on the day following the calendar day when the declaration of termination was delivered. Advance warning is required in the case of unsuitability.</p> <p>An employer may not terminate an employment contract with a pregnant woman or a woman who has the right to pregnancy and maternity leave due to lay-off, except upon cessation of the activities of the employer or declaration of the employer's bankruptcy if the activities of the employer cease or upon termination of bankruptcy proceedings, without declaring bankruptcy, by abatement.</p> <p>An employer may not terminate an employment contract with a pregnant woman or a woman who has the right to pregnancy and maternity leave arguing a decrease in the employee's capacity for work.</p> <p>The previous two sections shall be applied only if the employee has notified the employer of her pregnancy or of the right to pregnancy and maternity leave before receipt of a declaration of termination or within 14 calendar days thereafter.</p> <p>Calculation (for EPL indicators): 1 day for notice + 6/2 days for warning = 4 days</p> |
| <b>3:</b> Length of notice period at different tenure durations (a)                                       | <p>An employer shall give an employee advance notice of termination if the employee's employment relationship with the employer has lasted:</p> <ol style="list-style-type: none"> <li>1) less than one year of employment – no less than 15 calendar days;</li> <li>2) one to five years of employment – no less than 30 calendar days;</li> <li>3) five to ten years of employment – no less than 60 calendar days;</li> <li>4) ten and more years of employment – no less than 90 calendar days.</li> </ol> <p>Calculation (for EPL indicators): 9 months tenure -15 calendar days, 4 years tenure 30 calendar days, 20 years tenure 90 calendar days.</p>  |
| <b>4:</b> Severance pay at different tenure durations (a)   | <p>Upon termination of an employment contract due to lay-off, an employer shall pay an employee compensation in the amount of one month's average wage of the employee.</p> <p>Also an insurance benefit shall be paid by the Estonian Unemployment Insurance Fund to an employee whose employment relationship with an employer or to an official whose employment in the service has lasted for:</p> <ol style="list-style-type: none"> <li>1) five to ten years - in the amount of one month's average salary or wage;</li> <li>2) over ten years - in the amount of two months' average salary or wage.</li> </ol> <p>Calculation (for EPL indicators): average of layoff and personal reasons: 9 months – 0.5 months; 4 years – 0.5 months; 20 years – 0.5 month</p>  |

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| <b>5: Definition of unfair dismissal (b)</b>  | <p>Fair: An employer may extraordinarily terminate an employment contract with good reason arising from the employee as a result of which, upon respecting mutual interests, the continuation of the employment relationship cannot be expected, especially if the employee has:</p> <p>1) for a long time been unable to perform his or her duties due to his or her state of health which does not allow for the continuation of the employment relationship (decrease in capacity for work due to state of health). A decrease in capacity for work due to state of health is presumed if the employee's state of health does not allow for the performance of duties over four months; 2) for a long time been unable to perform his or her duties due to his or her insufficient work skills, non-suitability for the position or inadaptability, which does not allow for the continuation of the employment relationship (decrease in capacity for work); 3) in spite of a warning, disregarded the employer's reasonable instructions or breached his or her duties; 4) in spite of the employer's warning been at work in a state of intoxication; 5) committed a theft, fraud or another act bringing about the loss of the employer's trust in the employee; 6) brought about a third party's distrust in the employer; 7) wrongfully and to a significant extent damaged the employer's property or caused a threat of such damage; 8) violated the obligation of maintaining confidentiality or restriction of trade.</p> <p>Before termination of an employment contract, in particular on the basis specified in cases 1) and 2), the employer shall offer other work to the employee, where possible. The employer shall offer other work to the employee, including organise, if necessary, the employee's in-service training, adapt the workplace or change the employee's working conditions if the changes do not cause disproportionately high costs for the employer and the offering of other work may, considering the circumstances, be reasonably expected. An employer may cancel an employment contract due to a breach of an employee's obligation or decrease in his or her capacity for work. An employer may also extraordinarily cancel an employment contract if the continuation of the employment relationship on the agreed conditions becomes impossible due to a decrease in the work volume or reorganisation of work or other cessation of work (lay-off).</p> |
| <b>6: Length of trial period (c)</b>  | <p>A probationary period shall not exceed 4 months.</p> <p>In the case of the employment contract entered into for a specified term of up to eight months the probationary period may not be longer than half of the contract term.</p>  |
| <b>7: Compensation following unfair dismissal (d)</b>   | <p>Employer shall pay employee compensation in the amount of three months' average wages of the employee. In the case of an employee who is pregnant, who has the right to pregnancy and maternity leave or who has been elected employees' representative, the employer shall pay the employee compensation in the amount of six months' average wages of the employee. The court or labour dispute committee may change the amount of the compensation, considering the circumstances of the termination of the employment contract and the interests of both parties.</p>   |
| <b>8: Reinstatement option for the employee following unfair dismissal (b)</b>                              | <p>Reinstatement is possible if both parties agree to that. If the employer is not agreeing to this, the reinstatement is possible if, at the time of the termination, the employee is pregnant or has the right to pregnancy or maternity leave or has been elected employees' representative, unless it is reasonably not possible considering mutual interests (Art. 107 ECA).</p>  |
| <b>9: Maximum time period after dismissal up to which an unfair dismissal claim can be made (e)</b>         | <p>An action with the court or an application filed with a labour dispute committee for establishment of nullity of termination shall be filed within 30 calendar days as of the receipt of the declaration of termination.</p>  |
| <b>10: Valid cases for use of standard fixed term contracts</b>   | <p>An employment contract may be entered into for a specified term of up to five years if it is justified by good reasons arising from the temporary fixed-term characteristics of the work, especially a temporary increase in work volume or performance of seasonal work.</p> <p>There are some additional valid cases for use of fixed-term contracts for example the director of a state museum, members of the teaching staff or research staff of a university, etc.</p>  |
| <b>11: Maximum number of successive standard FTCs (initial contract plus renewals and/or prolongations)</b> | <p>If an employee and employer have on more than two consecutive occasions entered into an employment contract for a specified term for the performance of similar work or extended the contract entered into for a specified term more than once in five years, the employment relationship shall be deemed to have been entered into for an unspecified term from the start. Entry into employment contracts for a specified term shall be deemed consecutive if the time between the expiry of one employment contract and entry into the next employment contract does not exceed two months.</p>  |
| <b>12: Maximum cumulated duration of successive standard FTCs</b>   | <p>120 months</p>  |
| <b>13: Types of work for which temporary work agency (TWA) employment is legal</b>                          | <p>If fixed-term duties are performed by way of temporary agency work, an employment contract may be entered into for a specified term also if it is justified by the temporary characteristics of the work in a user undertaking.</p>   |

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| <b>14:</b> Are there restrictions on the number of renewals and/or prolongations of TWA assignments? (f) | If duties are performed by way of temporary agency work, the restriction on consecutive entry into or extension of an employment contract for a specified term mentioned in item 11 shall be applied to every user undertaking separately.   |
| <b>15:</b> Maximum cumulated duration of TWA assignments (f)   | The restriction on consecutive entry into or extension of an employment contract for a specified term mentioned in items 11 and 12 shall be applied to every user undertaking separately. By contrast, there is no limit on regulations on number and duration of the contracts between the TWA and the employee.  |
| <b>16:</b> Does the set-up of a TWA require authorisation or reporting obligations?                      | Temporary agency work services may be provided by a legal person in private law who has been registered as an intermediary of temporary agency work in the register of economic activities.  |
| <b>17:</b> Do regulations ensure equal treatment of regular workers and agency workers at the user firm? | There is no legislation stipulating equal treatment specifically for TWA workers. However, the Employment Contracts Act prohibits applying to employees who have fixed-term contracts less favourable conditions than those applied to regular workers, except when justified by objective reasons deriving from legislation or collective agreements.   |
| <b>18:</b> Definition of collective dismissal (b)  | Redundancy within 30 days if:<br>(1) an employer who employed up to 19 employees terminates the employment contracts of at least 5 employees;<br>(2) an employer who employs 20-99 employees terminates the employment contracts of at least 10 employees;<br>(3) an employer who employs 100-299 employees terminates the employment contracts of at least 10% of employees;<br>(4) an employer who employs at least 300 employees terminates the employment contracts of at least 30 employees.  |
| <b>19:</b> Additional notification requirements in cases of collective dismissal (g)                     | Before an employer decides on collective termination he or she shall consult in good time the trustee / shop steward or, in his or her absence, employees with the goal of reaching an agreement on prevention of the planned terminations or reduction of the number thereof and mitigation of the consequences of the terminations, including re-employment assistance or re-training of the employees to be laid off. After consultations an employer shall submit in writing the information about collective terminations and consultations to the Estonian Unemployment Insurance Fund.<br><br>Calculation (for EPL indicators): 2 minus the notification requirements required for individual dismissals (counted for 0.5 in Item 1)  |
| <b>20:</b> Additional delays involved in cases of collective dismissal (h)                               | Collective termination of employment contracts enters into force upon the expiry of the term for advance notice of termination, but no sooner than 30 calendar days after the time when the Estonian Unemployment Insurance Fund received the information. Given average notice period this does not imply additional constraints. However, consultation with unions, for up to 15 days, must be undertaken before notifying the Estonian Unemployment Insurance Fund.<br><br>The Estonian Unemployment Insurance Fund may extend the term up to 60 calendar days if it finds that it cannot resolve the employment problems relating to the collective termination within 30 calendar days.<br><br>Calculation: 15 days for consultation + 30 for Fund notification minus average values reported in Items 2 (4 days) and 3 (1 month) = 11 days |
| <b>21:</b> Other special costs to employers in case of collective dismissals (i)                         | No additional requirements.  |

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



## Estonia

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.

## FINLAND

| Items  | Regulations in force on 1 January 2013  |
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| 1: Notification procedures in the case of individual dismissal of a worker with a regular contract | <p><b>Personal reasons:</b> Statement of reasons and information on appeals procedures given to the employee upon request. Before the employment relationship can be ended, the employer is required by the law to give an opportunity to the employee to be heard concerning the grounds of dismissal. Advance discussion with employee and trade union if requested by employee.</p> <p><b>Lack of work:</b> In companies with 20 or more employees, notification to employment office and trade union representatives and consultation on reasons and ways to avoid lay-off; in companies with less than 20 employees, only notification to the employment office.</p> <p>Calculation (for EPL indicators): average of the two situations: 1.5 for personal reasons because third party notification upon request; 2 for lack of work</p>  |
| 2: Delay involved before notice can start  | <p><b>Personal reasons:</b> Notice orally or in writing. If notice sent by letter, it is then deemed to have been received by the recipient at the latest on the seventh day after the notice was sent (Chapter 9, Sec. 4, Employment Contract Act, Työsopimuslaki). Before the employment relationship can be ended, the employer is required by the law to give an opportunity to the employee to be heard concerning the grounds of dismissal. Advance discussion with the employee and trade union if requested by the employee.</p> <p><b>Lack of work:</b> In companies with 20 or more employees: prior to notice, invitation to consultation, 5 day delay, then consultation for 14 days, then notice orally or in writing. In companies with less than 20 employees: notice orally or in writing.</p> <p>Calculation (for EPL indicators): average of personal reasons <math>(6+(1+7)/2=10)</math> days and lack of work <math>(1+5+14+1=21)</math> days = <math>(10+21)/2 = 15.5</math></p> |
| 3: Length of notice period at different tenure durations (a)                                       | <p><b>All workers:</b> 14d&lt;=1y, 1m&lt;=4y, 2m&lt;=8y, 4m&lt;=12y, 6m&gt;12y.</p> <p>Calculation (for EPL indicators): 9 months tenure: 14 days, 4 years tenure: 1 months, 20 years tenure: 6 months.</p>   |
| 4: Severance pay at different tenure durations (a)   | <b>All workers:</b> None.   |
| 5: Definition of unfair dismissal (b)  | <p><b>Fair:</b> Dismissals are justified for "specific serious reasons", including personal characteristics and urgent business needs.</p> <p><b>Unfair:</b> Dismissals for an employee's illness, participation in a strike, union activities and political or religious views.</p> <p>Dismissals for economic and personal reasons are valid only if employees cannot be reasonably, in view of their skills and abilities, transferred or retrained.</p> <p>Economic reasons is not a ground for dismissal if the employer, either before giving notice or soon after the employment contract has been terminated, hires a new employee for tasks similar to those performed by the dismissed employee (Chapter 7, Sec. 3, employment Contracts Act).</p>  |
| 6: Length of trial period (c)  | 4 months (all workers)  |
| 7: Compensation following unfair dismissal (d)   | <p>Compensation between 3 and 24 months. The following factors must be taken into account when determining the amount of compensation: estimated time without employment, estimated loss of earnings, duration of the employment relationship, and degree of guilt found on the side of employer. The highest compensations are used only in cases of gross injustice.</p> <p>Calculation (for EPL indicators): Typical compensation at 20 years tenure (all workers): 14 months.</p>   |
| 8: Reinstatement option for the employee following unfair dismissal (b)                            | No reinstatement.   |
| 9: Maximum time period after dismissal up to which an unfair dismissal claim can be made (e)       | After the termination of employment the claim for compensation based on unfairness of the dismissal must be filed within 2 years  |
| 10: Valid cases for use of standard fixed term contracts   | Permitted for temporary replacements, traineeship, and special business needs (unstable nature of service activity, etc.). At the request of the employee, the employment contract can always be concluded for a fixed term, and the contract is binding upon the employer and the employee.  |

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| <b>11:</b> Maximum number of successive standard FTCs (initial contract plus renewals and/or prolongations) | In the case of successive contracts, justification of limitation of contract subject to court examination.  |
| <b>12:</b> Maximum cumulated duration of successive standard FTCs   | No limit  |
| <b>13:</b> Types of work for which temporary work agency (TWA) employment is legal                          | General, but there are restrictions in several collective agreements as far as the use of TWA employment by the user company. The type of restrictions and their substance vary from one collective agreement to another. The most common ones restrict the use TWA employees for a limited time and for limited tasks.                                     |
| <b>14:</b> Are there restrictions on the number of renewals and/or prolongations of TWA assignments? (f)    | No for assignments. For contracts: same restrictions as for fixed-term contracts if the contract between the agency and the worker is fixed-term. It is not possible to use fixed-term TWA contracts when the agency has a permanent need of labour.  |
| <b>15:</b> Maximum cumulated duration of TWA assignments (f)  | Restrictions on the length of assignments in certain collective agreements.<br>No limit for contracts, if the latter are open-ended.  |
| <b>16:</b> Does the set-up of a TWA require authorisation or reporting obligations?                         | No  |
| <b>17:</b> Do regulations ensure equal treatment of regular workers and agency workers at the user firm?    | Yes, equal treatment regarding pay and working conditions   |
| <b>18:</b> Definition of collective dismissal (b)   | >9 workers in firms >20 employees, in case of dismissal for financial or production-related reasons.  |
| <b>19:</b> Additional notification requirements in cases of collective dismissal (g)                        | <b>Notification of employee representatives:</b> Consultation with trade union or personnel representatives.<br><b>Notification of public authorities:</b> Notification to local employment office.   |
| <b>20:</b> Additional delays involved in cases of collective dismissal (h)                                  | When an employer with more than 30 employees is considering laying off at least 10 employees, the mandatory period for negotiating with employees or their representatives is extended from 14 days to six weeks.   |
| <b>21:</b> Other special costs to employers in case of collective dismissals (i)                            | <b>Type of negotiation required:</b> Consultation on alternatives to redundancy and ways to mitigate the effects.<br><b>Selection criteria:</b> As laid down in collective agreements, selection procedure usually takes account of seniority, family circumstances and the retention of skilled personnel.<br><b>Severance pay:</b> No legal requirements. |

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).
- 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).
- 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.

## FRANCE

| Items  | Regulations in force on 1 January 2013  |
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| 1: Notification procedures in the case of individual dismissal of a worker with a regular contract | <p>Any employer who plans to terminate an open-ended employment contract must follow a strict procedure for the dismissal of an employee on personal or economic grounds:</p> <p><b>Dismissal on personal grounds:</b></p> <ul style="list-style-type: none"> <li>- before any decision is taken, summon the employee to a preliminary meeting by registered letter or by letter delivered personally with acknowledgment of receipt.</li> <li>- draft and send a dismissal letter to the employee.</li> <li>- comply with a notice period.</li> </ul> <p><b>Dismissal on economic grounds:</b></p> <ul style="list-style-type: none"> <li>- before any decision is taken, summon the employee to a preliminary meeting by registered letter or by letter delivered personally with acknowledgment of receipt.</li> <li>- draft and send a redundancy letter to the employee: redundancy notification must be sent by registered letter with acknowledgment of receipt.</li> <li>- comply with a notice period.</li> <li>- Within 8 days of the redundancy notification, inform the <i>Direction régionale des entreprises, de la concurrence, de la consommation, du travail et de l'emploi</i> (DIRECCTE).</li> </ul> <p>Other specific procedures must be complied with in the event of the planned dismissal of a protected employee. These include consultation with the works council and obtaining the authorisation of the labour inspector (<i>inspecteur du travail</i>).</p> |
| 2: Delay involved before notice can start  | <p><b>Personal grounds:</b> Minimum delay to be respected between receipt of the letter summoning the employee to the preliminary meeting (minimum 5 working days); delay of not less than two working days after the scheduled date for the preliminary meeting; thereafter, the date of receipt of the registered letter notifying the employee of dismissal dictates the start of the notice period (3 days).</p> <p><b>Economic grounds:</b> Minimum delay to be respected between receipt of the letter summoning the employee to the preliminary meeting (minimum 5 working days); delay of 7 days between the preliminary meeting and the date of receipt of the registered letter notifying the employee of dismissal (2 weeks for managers); thereafter, the written notification of dismissal marks the beginning of the notice period.</p> <p>Calculation (for EPL indicators): average for personal grounds (1+5+2+3) and economic grounds (average for managers and non-managers): <math>(1+5+(7+15)/2+3)</math></p>   |
| 3: Length of notice period at different tenure durations (a)                                       | <p>Less than 6 months' tenure: no legal minimum notice period; 6 months' to 2 years' tenure: 1 month; over 2 years' tenure: 2 months (collective agreements may provide for longer notice periods or more favourable tenure conditions. They usually make a distinction between notice periods for managers and non-management staff).</p> <p>Calculation (for EPL indicators): All employees: 9 months' tenure: 1 month, 4 years' tenure: 2 months, 20 years' tenure: 2 months.</p>  |
| 4: Severance pay at different tenure durations (a)   | <p>Severance pay is paid only to staff with at least one year of tenure.</p> <p><b>All employees:</b> 1/5<sup>th</sup> of monthly salary per year of tenure, plus an additional 2/15<sup>ths</sup> after ten years' tenure.</p> <p>Calculation (for EPL indicators): 9 months' tenure: 0; 4 years' tenure: 0.8 months; 20 years' tenure: 5.4 months.</p>  |



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| <p><b>5: Definition of unfair dismissal (b)</b></p>                                   | <p><b>Fair:</b> There must be real and serious grounds for a dismissal to be deemed fair. Grounds may be personal or economic.</p> <p><u>Dismissal on personal grounds:</u> the employer must justify grounds that are valid and related to the individual in order to proceed with dismissal. These may include professional misconduct, incompetence, inaptitude, etc.</p> <p><u>Dismissal on economic grounds:</u> the employer must justify economic grounds in order to dismiss an employee. Dismissal on economic grounds is taken as dismissal on grounds that are not personal and related to the employee as a result of reorganisation, employment reduction or a modification, refused by the employee, of an essential provision in the employment contract, as a result of economic difficulties or technological developments. Dismissal of an employee on economic grounds can be contemplated only once all efforts have been made with regard to retraining and if the employee cannot be reassigned within the firm or the enterprises of the group to which the firm in question belongs (Art. L1233-4 French Labour Code)</p> <p><b>Unfair:</b> <u>An unfair dismissal</u> is a dismissal that is not based on real and serious grounds. For example, for a dismissal claimed to be on economic grounds, the sole aim of saving money or boosting the firm's profits cannot be used as an argument to define economic difficulties. The following conditions may not be used to justify dismissal on economic grounds: economic difficulties when there is a marked increase in sales and when the dismissal is designed to boost profitability at the expense of stable employment.</p> <p><b>Void:</b> <u>A void dismissal:</u> dismissal for reasons with regard to the employee's private life, based on discriminatory grounds or as a result of psychological or sexual harassment.</p> |
| <p><b>6: Length of trial period (c)</b></p>   | <p>Pursuant to Article L1221-19 of the French Labour Code, "the maximum duration of trial periods in relation to open-ended employment contracts are as follows: (1) two months for blue collar and white collar workers; (2) three months for supervisors and technicians; (3) four months for managers". The trial period may be renewed once if expressly provided for under the applicable branch-level collective bargaining agreement. This agreement stipulates the conditions and durations of renewals (Art. L1221-19 French Labour Code). Longer durations are possible if provided for under an extended branch-level collective bargaining agreement.</p> <p>Most collective bargaining agreements provide for trial periods of between 2 and 3 months for blue collar and white collar workers, and between 4 and 6 months for managers, including any renewal. A written agreement must be drawn up between the parties and is usually required for any renewal of the trial period.</p> <p>Calculation (for EPL indicators): average trial periods for blue collar/white collar workers and managers: <math>[(2+3)/2 + (4+6)/2]/2 = 3.75</math> months.</p>  |
| <p><b>7: Compensation following unfair dismissal (d)</b></p>                          | <p>In addition to severance pay, compensation equivalent to a minimum of 6 months' salary (as a general rule, 12 to 24 months, and sometimes more) is paid to workers with at least 2 years' continuous service in an enterprise with more than 11 employees. For workers with less than 2 years' continuous service, and/or who work in an enterprise with fewer than 11 employees, the courts may order payment of compensation for the damages suffered, but no minimum amount is provided for in law.</p> <p>Calculation (for EPL indicators): Typical compensation for 20 years' tenure: 16 months' salary.</p>  |
| <p><b>8: Reinstatement option for the employee following unfair dismissal (b)</b></p> | <p>If the court rules that the dismissal is unfair, it may order the reinstatement of the employee upon the latter's request. However, if the employer refuses, reinstatement does not occur and the worker is awarded compensation.</p> <p>In cases of dismissal on economic grounds, for a redundancy plan concerning at least 10 employees in the same period of 30 days (Art. L1235-10 French Labour Code), the absence (or insufficiency) of the redeployment scheme (integrated into the employment preservation plan) may entail the nullity of the redundancy procedure; as a result, if the judge orders the reinstatement of the employee upon his/her request, the employer cannot refuse.</p> <p>In cases of dismissal on personal grounds, if a redundancy is declared void on grounds of discrimination, reinstatement is legally binding and the employee is considered to have never ceased exercising his/her duties.</p>  |

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| <p><b>9:</b> Maximum time period after dismissal up to which an unfair dismissal claim can be made (e)</p>         | <p>As a general rule, the time limit for making a claim of unfair dismissal is the same as the general statute of limitation provided for under ordinary law, <i>i.e.</i> 5 years.</p> <p>More specifically, as regards dismissal on economic grounds, the time limit for making a claim for unfair dismissal is 12 months in the event of claims likely to entail the nullity of the collective redundancy plan on economic grounds, because of the absence or insufficiency of an employment preservation plan (<i>Plan de Sauvegarde de l'Emploi</i>), <i>i.e.</i> a collective redundancy plan containing measures aimed at limiting the number of redundancies. This duration applies only to situations in which dismissal on economic grounds may be declared void, <i>i.e.</i> because of the absence or insufficiency of an employment preservation plan and under no circumstances to situations in which the employer faces only the payment of compensation for an abuse of rights (no economic grounds given, failure to reassign staff, failure to comply with procedure, etc.). In all other cases, the time limit for making a claim of unfair dismissal is the same as the general period of limitation provided for under ordinary law, <i>i.e.</i> 5 years.</p>   |
| <p><b>10:</b> Valid cases for use of standard fixed term contracts</p>   | <p>A fixed-term contract (FTC), whatever its grounds, cannot be used on a long-term basis to fill jobs that are related to the company's regular and permanent business.</p> <p>In principle, a fixed-term contract may be entered into only for a specified and temporary assignment.</p> <p><b>Valid cases for use of fixed-term contracts:</b></p> <ul style="list-style-type: none"> <li>- <b>Replacement of a salaried employee:</b> A fixed-term contract may be used to replace temporarily absent employees or if a contract is suspended (due to illness, maternity leave, paid holiday leave, parental leave, etc.); if the employee has shifted temporarily to part-time work (parental leave, leave of absence to set up or take over a business, etc.); or, if the employee has left the company, until his/her post is suppressed.</li> <li>- <b>Replacement of a non-salaried worker:</b> A fixed-term contract may be used to replace a company owner, a person exercising a liberal profession or a farm manager. An absent spouse may also be replaced when s/he plays an active role in the business or farm.</li> <li>- <b>Temporary increase in workload:</b> A fixed-term contract may also be used in the event of a temporary increase in the company's workload. However, in the 6 months following a redundancy on economic grounds, it is possible to use a fixed-term contract for jobs concerned by the redundancy only if the fixed-term contracts are for no more than 3 months and cannot be renewed, or in the event of exceptional export orders that require the deployment of more significant qualitative or quantitative resources than the enterprise usually requires, subject to informing and consulting with the staff representatives.</li> <li>- <b>Delay before a new employee can begin employment on an open-ended contract:</b> the post-holder must be recruited but is unable to start work immediately.</li> <li>- <b>Seasonal employment</b></li> <li>- <b>Jobs for which the use of fixed-term contracts is common practice:</b> the business sectors are set out by decree or are covered by extended collective bargaining agreements. They include the entertainment industry, hotels, restaurants and catering, holiday and leisure centres, forestry operations, among others.</li> </ul> |
| <p><b>11:</b> Maximum number of successive standard FTCs (initial contract plus renewals and/or prolongations)</p> | <p>FTCs may be renewed under certain conditions. This is done by extending the initial contract; not by entering into a new contract.</p> <p>The fixed-term contract may be renewed once if this is provided for in the terms of the contract or in an amendment in the form of a supplementary agreement that is submitted to the employee before the end of the contract and if the total duration of the contract, taking into account the renewal, does not exceed the maximum allowed duration (variable according to the grounds for the use of a fixed-term contract).</p> <p>Successive fixed-term contracts may be entered into with the same employee in the following cases:</p> <ul style="list-style-type: none"> <li>- to replace an employee who is absent or whose employment contract has been suspended;</li> <li>- in the event of seasonal work or cases in which the use of open-ended contracts is not common practice;</li> <li>- to replace a company owner or farm manager.</li> </ul> <p>Except as otherwise provided for, when a fixed-term contract terminates, a new fixed-term contract may not be entered into <i>for the same post</i> before the expiry of a specific deadline known as a grace period (<i>periode de carence</i>). The grace period is equivalent to: either one third of the duration of the fixed-term contract (if the duration of the contract, renewal included, is at least 2 weeks), or half the duration of the fixed-term contract (if the duration of the contract, renewal included, is less than 2 weeks).</p> <p><b>Estimated number: 2</b></p>   |
| <p><b>12:</b> Maximum cumulated duration of successive standard FTCs</p>   | <p>The maximum cumulated duration of FTCs depends on the reasons for using such contracts. But, in principle, the maximum duration is 18 months, although this can vary from 9 months (while awaiting the arrival in the enterprise of an employee recruited on an open-ended contract) to 24 months (permanent abolition of a post, overseas mission or exceptional export order).</p>  |

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| <b>13:</b> Types of work for which temporary work agency (TWA) employment is legal                       | Use of TWA employment is restricted to "objective" cases, as for FTCs (temporary work assignments may not be used on the grounds of a temporary increase in the company's workload for a position that has been subject to a redundancy on economic grounds until 6 months have elapsed).  |
| <b>14:</b> Are there restrictions on the number of renewals and/or prolongations of TWA assignments? (f) | Yes. A new contract/assignment for the same position may start only after the expiry of a delay equivalent to one third of the duration of the initial contract.   |
| <b>15:</b> Maximum cumulated duration of TWA assignments (f)   | Each assignment gives rise to the conclusion of: (1) a service contract between the TWA and the user (client) firm; and (2) an employment contract known as the "assignment contract" between the temporary worker and the employer, <i>i.e.</i> the temporary work agency (Article L1251-1, French Labour Code).<br><br>The duration of the assignment with the user firm ( <i>i.e.</i> the enterprise to which the temporary worker is assigned) is subject to the same rules as those governing fixed-term contracts.   |
| <b>16:</b> Does the set-up of a TWA require authorisation or reporting obligations?                      | Yes. Specific administrative authorisation is required.  |
| <b>17:</b> Do regulations ensure equal treatment of regular workers and agency workers at the user firm? | Equal treatment in terms of remuneration and other working conditions.   |
| <b>18:</b> Definition of collective dismissal (b)  | Collective dismissal is defined as the termination of the employment contracts of a number of employees as a result of redundancies on economic grounds. Regulations provide for different arrangements and procedures according to the number of employees concerned (fewer than 10 or 10 or more) by this measure at the same time. For cases of 10 or more dismissals in a given period of 30 days, the employer must comply with significantly more obligations.   |
| <b>19:</b> Additional notification requirements in cases of collective dismissal (g)                     | The procedure for dismissal on economic grounds varies according to the number of employees concerned. For the dismissal of at least 10 employees in a given period of 30 days, the employer must comply with specific procedural rules to notify, inform and consult with staff representatives, hold preliminary interviews and inform the administrative authorities ( <i>Direction régionale des entreprises, de la concurrence, de la consommation, du travail et de l'emploi</i> - DIRECCTE).<br><b>Notification of staff representatives:</b> Informing and consulting with staff representatives.<br><b>Notification of the public authorities:</b> informing the administrative authorities ( <i>Direction régionale des entreprises, de la concurrence, de la consommation, du travail et de l'emploi</i> (DIRECCTE)).   |
| <b>20:</b> Additional delays involved in cases of collective dismissal (h)                               | The procedure varies according to the number of employees concerned, the size of the enterprise and the presence (or not) of staff representative bodies.<br>- collective dismissal of 10 or more workers in a firm with fewer than 50 employees and which has staff representatives: notification to the administrative authority not before the day following the first meeting of the staff representatives, then notification of dismissal by registered letter 30 days after notification is given to the administrative authorities = 1+30+3=34 days)<br>- collective dismissal of 10 or more workers in a firm with 50 or more employees and which has a works council or staff representatives but where an auditor is not designated: notification to the administrative authority not before the day following the first meeting of the staff representatives, then notification of dismissal by registered letter 30-60 days after notification is given to the administrative authorities = 1+45+3= 49 days.<br>- collective dismissal of 10 or more workers in a firm with 50 or more employees and which has a works council or staff representatives and where an auditor is designated: notification to the administrative authority not before the day following the first meeting of the staff representatives, then notification of dismissal by registered letter 44-74 days after notification is given to the administrative authorities = 1+59+3= 63 days.<br>Calculation (for EPL indicators): 39.5 days <i>i.e.</i> [(49+63)/2] – 15.5 days for individual dismissal. |

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| <p>21: Other special costs to employers in case of collective dismissals (i)</p> | <p>When the dismissal concerns at least 10 workers in a 30-day period in an enterprise with at least 50 employees, the employer must put in place an employment preservation plan (<i>plan de sauvegarde de l'emploi – PSE</i>) which includes a number of measures aimed at limiting the number of redundancies and encouraging the reassignment of the workers who are laid off. The absence (or insufficiency) of the redeployment scheme (integrated into the employment preservation plan) may entail the nullity of the redundancy procedure; as a result, if the judge orders the reinstatement of the employee upon his/her request, the employer cannot refuse. The plan may include measures:</p> <ul style="list-style-type: none"> <li>- for the internal reassignment of employees – creation of new tasks within the enterprise;</li> <li>- for the redeployment of employees outside the enterprise, particularly by supporting growth in the local employment area;</li> <li>- for lending support to the creation or takeover of businesses;</li> <li>- for reducing or reorganising working hours.</li> </ul> <p>A certain number of measures are designed to spur growth in the employment areas where enterprises that are dismissing employees on economic grounds are located. These measures are applied differently, depending on whether the enterprise concerned is or is not required to offer redeployment leave. Measures to spur growth in employment areas are decided after consultations with the local authorities, chambers of commerce and the social partners from the regional interbranch joint committee (<i>commission paritaire interprofessionnelle régionale</i>).</p> <p>Severance pay: no specific measures for collective dismissals.</p> |
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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:

- 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).
- 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).
- 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.

**GERMANY**

| Items   | Regulations in force on 1 January 2013  |
|---|---|
| <b>1:</b> Notification procedures in the case of individual dismissal of a worker with a regular contract | Legal requirement for notification to employee to be in writing, after oral or written warnings to employee in case of dismissal for lack of performance. Previous notification of planned dismissal, including reasons for termination, to works council (if one exists - works councils covered 47% of employees in 2004 - source EIRO) is necessary. Works council can make a statement within 1 week. In case of notice given despite works council objection and subsequent law suit, dismissal has to wait for decision by Labour Court.<br><b>Special cases:</b> notice to a disabled person requires prior consent of public authorities (Integrationsamt); notice to a pregnant woman and until 4 months after delivery requires prior consent of public authorities (Behörde für Arbeitsschutz)   |
| <b>2:</b> Delay involved before notice can start  | Before notification, the employer must wait 1 week so that works council can make a statement. Notice can then be served, but takes effect either on the 1 <sup>st</sup> or on the 15 <sup>th</sup> day of the month.<br>Calculation: 16 days (1 day for notification of works council + 7 days for statement + 1 day for notification of employee + 7 days on average for 1st/15th of month)<br>Establishments employing 10 or fewer employees are exempted from these provisions.   |
| <b>3:</b> Length of notice period at different tenure durations (a)                                       | <b>All workers:</b> 2w in trial period, 4w<2y, 1m<5y, 2m<8y, 3m<10y, 4m<12y, 5m<15y, 6m<20y, 7m>20y. (Notice periods >4w only apply to workers above 25 years of age.)<br>Calculation (for EPL indicators): 9 months tenure: 4 weeks, 4 years tenure: 1 month, 20 years tenure: 7 months.   |
| <b>4:</b> Severance pay at different tenure durations (a)   | <b>Personal reasons:</b> there is no right to severance pay in cases of dismissal for personal reasons, although severance pay may be provided through collective agreements or social plans.<br><b>Operational reasons:</b> If a dismissal is based on business needs or compelling operational reasons, the employee has a right to a severance payment if he does not bring his case to the court within 3 weeks. The right is only given if the employer points out in the notice that the dismissal is caused by business needs or urgent operational reasons and that the employee has a right to severance payment if he accepts the dismissal. The amount of the severance payment is a half month pay for each year of tenure.<br>Calculation: 0 months since the employer is free to offer or not severance pay.<br>No severance pay in establishments employing 10 or fewer employees. |
| <b>5:</b> Definition of unfair dismissal (b)  | <b>Fair:</b> Dismissals based on factors inherent in the personal characteristics or behaviour of the employee (such as insufficient skill or capability), or business needs and compelling operational reasons. <b>Unfair:</b> Dismissals where the employee can be retained in another capacity within the same establishment or enterprise, and redundancy dismissals where due account has not been taken of "social considerations" (e.g. seniority, age, alimony). Rehabilitation must already have been attempted before dismissal, or the dismissal is considered unfair.<br>Establishments employing 10 or fewer employees are exempt from regular employment protection legislation. Special protection is still provided to protect employees against discriminatory dismissal and arbitrary dismissal.  |
| <b>6:</b> Length of trial period (c )   | 6 months (all workers)  |
| <b>7:</b> Compensation following unfair dismissal (d)   | Compensation of up to 12 months, depending on length of service (15 months if aged over 50 and tenure >15 years, 18 months if aged over 55 and tenure > 20). Compensation must be requested for by employee or employer during court action; continuation of employment must be unreasonable for one of the parties. In some cases, additional liability for wages from the expiry date of the notice to the conclusion of the court hearing.<br>Calculation (for EPL indicators): Typical compensation at 20 years tenure (all workers): 18 months   |
| <b>8:</b> Reinstatement option for the employee following unfair dismissal (b)                            | A reinstatement order is possible, although rarely taken up by the employee concerned.<br>However, courts can dissolve the employment relationship upon request of either party when continuation of employment is no longer possible even when the dismissal is found to be unfair. In such cases, the Court awards compensation. The evidence on court rulings suggests that, in practice, this often occurs.   |
| <b>9:</b> Maximum time period after dismissal up to which an unfair dismissal claim can be made (e)       | 3 weeks   |

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| <b>10:</b> Valid cases for use of standard fixed term contracts   | Fixed-term contracts without specifying an objective reason are possible up to 2 years or up to 4 years if an employer launches a new business. <b>Exception:</b> with employees over 52 years of age and unemployed for more than 4 months or participating in a public employment measure for more than 4 months, fixed-term contracts are possible without any restrictions.   |
| <b>11:</b> Maximum number of successive standard FTCs (initial contract plus renewals and/or prolongations) | <b>4</b> , up to an entire length of 2 years. <b>Exception:</b> employees who are older than 52 when beginning the employment. <b>Objective reason:</b> Successive fixed-term contracts with objective reason are possible without any restrictions, but there must be an objective reason for each successive contract.  |
| <b>12:</b> Maximum cumulated duration of successive standard FTCs   | <b>24 months</b> (No legal limit in case of objective reason). Exceptions: launching a new business: 48 months, older unemployed (see above): 60 months<br>Calculation (for EPL indicators): average of 24 and 48 months.   |
| <b>13:</b> Types of work for which temporary work agency (TWA) employment is legal                          | General, with exception of construction industry. In the construction industry the law does not prohibit the use of TWA employment if there is a universally-binding collective agreement allowing its use, which in January 2013 was not the case.   |
| <b>14:</b> Are there restrictions on the number of renewals and/or prolongations of TWA assignments? (f)    | No for assignments<br>Yes for contracts between the agency and the worker (see fixed term contracts - item 10)  |
| <b>15:</b> Maximum cumulated duration of TWA assignments (f)  | No legal limit for assignments. However, limits can be set by collective agreements. The collective labour agreement of the metalworking sector limits, with few exceptions, the maximum length of assignments in the metalworking sector to 24 months.<br>Contracts between the agency and the worker can be open-ended.   |
| <b>16:</b> Does the set-up of a TWA require authorisation or reporting obligations?                         | TWA needs permission by labour authority and needs to report regularly.   |
| <b>17:</b> Do regulations ensure equal treatment of regular workers and agency workers at the user firm?    | Equal treatment on pay and conditions, but the principle of equal treatment can be waived as far as the employees are protected by applicable collective agreements. Collective agreements in the metalworking sector and the chemical industry guarantee workers a percentage of pay supplements received by regular employees in the user firm, and this percentage rises with job tenure.  |
| <b>18:</b> Definition of collective dismissal (b)   | Within 30 days, >5 dismissals in firms 21-59 employees; 10% or > 25 dismissals in firms 60-499; >30 dismissals in firms > 500 employees.<br>Firms with 20 employees or less are exempt from requirements for collective dismissals.   |
| <b>19:</b> Additional notification requirements in cases of collective dismissal (g)                        | <b>Notification of employee representatives:</b> Consultation with Works Council. <b>Notification of public authorities:</b> Notification of local employment office.   |
| <b>20:</b> Additional delays involved in cases of collective dismissal (h)                                  | Minimum 2 weeks negotiation with works council before notification to PES. 1 month delay after notice to PES (which can be extended to two months), but procedures for individual notification (cf. items 2 and 3) can be implemented simultaneously to notification to PES (§17 Kündigungsschutzgesetz).   |
| <b>21:</b> Other special costs to employers in case of collective dismissals (i)                            | <b>Type of negotiation required:</b> Consultation on alternatives to redundancy and ways to mitigate the effects; social plan to be set up in conjunction with Works Council, regulating selection standards, transfers, lump-sum payments, early retirement etc. <b>Selection criteria:</b> Social as well as economic considerations can enter the selection criteria, e.g. labour market prospects of concerned employees and economic viability of the company. <b>Severance pay:</b> No legal requirements, but the social plan usually includes termination payments for affected employees. Very often a termination payment is calculated using the formula Tenure x Monthly wage x Factor, where the factor varies between 0.5 and 1.5 and tends, therefore, to be greater than what reported in Item 4. |

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





## Germany

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.



## GREECE

| Items  | Regulations in force on 1 January 2013  |
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| 1: Notification procedures in the case of individual dismissal of a worker with a regular contract | Written notice to employee, plus additional notification to OAED local office (public employment service). Previous warning in case of dismissal for poor performance may be advisable.   |
| 2: Delay involved before notice can start  | Letter sent by mail or handed directly to the employee.<br>Previous warning in case of dismissal for poor performance may be advisable.<br>In the case of termination of a private sector employee's open-ended employment contract, having lasted more than twelve (12) months, the notice period comes into effect from the day following its notification to the employee.<br>Calculation (for EPL indicators): average of personal and economic reasons. Advisable previous warning (conventionally evaluated at 6 days) counting for half weight (3 days) in the case of personal reasons.   |
| 3: Length of notice period at different tenure durations (a)                                       | <b>Blue collar:</b> None.<br><b>White collar:</b> The employer can choose whether to provide advance notice for termination of employment or not. If the employer does not make prior notification, severance pay is higher (see below). If notice periods are respected, notice period must be (according to the Law):<br>0<1y, 1m<2y, 2m<5y, 3m<10y, 4m≥20y.<br>Calculation (for EPL indicators): average of blue and white collar notice periods, assuming that prior notification is given for white collars as this is less costly for the employer in most situations:<br>9 months tenure: 0, 4 years tenure: 1 month, 20 years tenure: 2 months.   |
| 4: Severance pay at different tenure durations (a)   | <b>Blue collar:</b> 0<1y, 7d<2y, 15d<5y, 30d<10y, 60d<15y, 100d<20y, 120d<25y, 145d<30y, 165d≥30.<br><b>White collar:</b> Half of the severance pay is waived if notice period is respected; otherwise, severance pay according to the following schedule: 0<1y, 2m<4y, 3m<6y, 4m<8y, 5m<10y, plus 1m per additional year of service, up to 12m for tenure duration of 16y and more. For the calculation, monthly wages capped at 8 times the daily wage of unskilled workers multiplied by 30. More generous severance pay for those who had at least 17 years of job tenure on 12-11-2012.<br>Calculations (for EPL indicators): Blue collar: 9 months tenure: 0 days, 4 years tenure: 15 days, 20 years tenure: 4 months.<br>White collar: 9 months tenure: 0 days, 4 years tenure: 1.5 months, 20 years tenure: 6 months. (Calculated assuming that notice is given).<br>Value calculated as average of blue and white collars  |
| 5: Definition of unfair dismissal (b)  | The termination of an employment contracts according to Greek law is a unilateral, non-causative legal act, except for those cases stipulated otherwise by law (e.g. dismissal of employee representatives, recent mothers, or for reasons of pregnancy or discrimination), according to Law 2112/1920, Law 3198/1955 and Civil Code article 669/para2. The definition of fair or unfair (abusive) dismissal is based on case law. Generally, dismissals for non-performance of business needs are considered fair. However, a dismissal can be qualified as unfair and thus void following article 281 of Civil Code, which prevents the exercise of a right where it manifestly exceeds the bounds of good faith, morality or the social or economic purpose of that right (for example, contract termination by the employer on grounds of empathy, hatred or enmity or a revenge). According to case law, a dismissal which is not justified by the well-meant interests of the employer (i.e. reasons attributable to the dismissed employee such as incompetence, or economic reasons) is void. |
| 6: Length of trial period (c )   | Law 3899/2010 (art.17, para5) establishes the probationary period to be 12 months unless the Parties decide differently. However, as regards unfair dismissals based on the abuse of the employer's termination right, workers on probationary have essentially the same rights as regular workers with more than 1 year of tenure.   |
| 7: Compensation following unfair dismissal (d)   | Compensation through regular severance pay, plus a sum equal to earnings between the dismissal and the legal settlement of the case. According to case law, any dismissal not justified by the employer's legitimate business interests is deemed to constitute unfair dismissal and is rendered null and void. The consequence of nullity in cases of unfair dismissal is that the contract of employment is deemed to have continued to exist without interruption (hence, in a strict sense, no legal order of reinstatement is necessary) and the employer is obliged to pay the employee the remuneration due for the whole of the intervening period since the date of the nullified termination.<br>In the case the court rules that termination is null and void, the employer is liable to pay the employee compensation. No data is available for regular compensation in such cases and for 20 years of service (tenure).  |

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| <b>8:</b> Reinstatement option for the employee following unfair dismissal (b)                              | Frequent reinstatement orders, accompanied by indemnity for the period of time between notice of termination and court ruling. No reinstatement if severance pay has been requested.   |
| <b>9:</b> Maximum time period after dismissal up to which an unfair dismissal claim can be made (e)         | Three months.  |
| <b>10:</b> Valid cases for use of standard fixed term contracts   | No specific reason is required to be mentioned for the validity of a fixed-term contract. Fixed-term contracts are regulated by the Civil Code.<br>In any case, in cases that an employee with a fixed-term contract or its renewals covers fixed or permanent needs of an enterprise, then a contract for an indefinite period is presumed (Law 2112/1920).<br>Calculation (for EPL indicators): A value of 1 is attributed because specific time-limited situations (e.g. launching a new firm) can be easily qualified as non-permanent needs of an enterprise.   |
| <b>11:</b> Maximum number of successive standard FTCs (initial contract plus renewals and/or prolongations) | In the case that the total duration of successive employment contracts or relationships exceeds three years or the number of successive contracts or employment relationships within the same time span is bigger than three, then it is presumed that the employee is covering fixed, permanent needs of the enterprise, thus resulting in the conversion of such contracts into a contract or relationships of indefinite duration<br><br>According to Law 3986/2011 (article 41), unlimited renewals of fixed-term contracts is permitted (without restrictions) if justified by an objective reason. In any case, the reasons justifying the renewal of the contract or employment relationship of a specified duration should be reported in the parties' agreement, to be concluded in writing, or arising directly from this.   |
| <b>12:</b> Maximum cumulated duration of successive standard FTCs   | Parties are free to stipulate the duration of the employment contract, provided however that there is an upper limit of 3 years total duration or up to three renewals within a 3-year period (Law 3986/2011-article 41). If no objective reason is given and provided that the duration of successive fixed-term contracts or employment relationships exceeds a total of three years, then it is presumed that these contracts are aimed at covering fixed and constant needs of the enterprise, resulting in the conversion of such contracts into an employment contract or relationships of indefinite term/ duration.  |
| <b>13:</b> Types of work for which temporary work agency (TWA) employment is legal                          | TWA employment is generally allowed to cover temporary, seasonal or extra needs for employment in the user firm (indirect employer). Prohibition is provided a) when TWA employment substitutes employees on strike, b) when the indirect employer during the last 6 months has dismissed employees of the same occupational category for economic reasons or in the course of group dismissals, c) when the business of the indirect employer is in a state of clearance, d) when the employment by its nature exposes the employees to health and safety risks, e) when the employee is subject to the special provisions concerning the insurance of building workers   |
| <b>14:</b> Are there restrictions on the number of renewals and/or prolongations of TWA assignments? (f)    | No restriction in the number of renewals of assignments with the indirect employer (user firm).  |
| <b>15:</b> Maximum cumulated duration of TWA assignments (f)  | Law 4052/2012, article 117 provides that the duration of the placement of an employee with an indirect employer, which includes any renewals made in writing, shall not be greater than thirty-six (36) months.  |
| <b>16:</b> Does the set-up of a TWA require authorisation or reporting obligations?                         | From 2/07/2011 and onwards, with the national law 3919/2011 regarding " <i>the principle of freedom in practicing professions and the abolishment of unjustified constraints in accessing and practicing a profession</i> " the administrative license that was issued for the operation of a TWA is abolished. In particular, the legislation regarding the Temporary Working Agencies was amended, in order to comply with the latter law, through Law 4052/2012 (1.3.2012) (articles 122-133). Nowadays, the service providers that wish to operate a Temporary Working Agency should notify the Directorate of Employment of Ministry of Labour and Social Security the "announcement of practicing the Temporary Working Agency's activity". Nonetheless, the applicant should prove that it fulfils the specific preconditions and rules of functioning.<br>If the applicant does not meet the necessary criteria, the competent authority can ban the operation of the Temporary Working Agency within a three months period. Thus, under the spectrum of the new law, the administrative procedure of issuing the necessary license is abolished, even though the specific preconditions and rules of functioning are maintained in order to safeguard the public order, public security and the protection of service recipients.<br>The TWA is still obliged to submit a report of activity (including in general elements of the contracted TWA work contracts) to the Ministry of Labour, Social Security and Welfare every six months. A copy of the report should also be submitted to the National Institute of Labour and Human Resources. |
| <b>17:</b> Do regulations ensure equal treatment of regular workers and agency workers at the user firm?    | Law 3846/2010 amended Art.22 of Law 2956/2001 and included clear regulations for non-discrimination in employment terms, including payment, for the TWA employees working in the firm of the indirect employer.  |

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| <b>18: Definition of collective dismissal (b)</b>                                    | Within a month, at least 7 employees in firms of 20-150 employees (at the beginning of the month) or 5% of the personnel and at least 31 employees in firms with more than 150 employees (at the beginning of the month)<br>In any of the above cases, the dismissals of employees aged 55-64, cannot exceed 10% of the overall dismissals.  |
| <b>19: Additional notification requirements in cases of collective dismissal (g)</b> | <b>Notification of employee representatives:</b> Notification of reasons to employee representatives.<br><b>Notification of public authorities:</b> Notification to Prefect and Labour Inspection. If the enterprise has branches in different regions a notification is requested to the Ministry of Labor, Social Security and Welfare instead of the Prefect.   |
| <b>20: Additional delays involved in cases of collective dismissal (h)</b>           | If social partners agree the procedure ends and notice can be given after 10 days. If no agreement is reached, the Ministry can extend time for negotiation by another 20 days after request or can set its own terms.<br>Calculation (for EPL indicators): 20 days on average minus delays reported in Item 2   |
| <b>21: Other special costs to employers in case of collective dismissals (i)</b>     | <b>Type of negotiation required:</b> Negotiation with employee representatives on dismissal procedures. There is no legal requirement for a social plan, but implementing it would reduce the risk that the redundancies be considered abusive by the court. <b>Selection criteria:</b> The dismissals of employees aged 55-64, cannot exceed 10% of the overall dismissals.<br><b>Severance pay:</b> No special regulations for collective dismissal. |

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.

## HUNGARY

| Items   | Regulations in force on 1 January 2013  |
|---|---|
| <b>1:</b> Notification procedures in the case of individual dismissal of a worker with a regular contract   | The employer shall justify the notice. The justification shall clearly indicate the cause of the notice. Agreements and statements of termination of an employment relationship shall be made in writing.   |
| <b>2:</b> Delay involved before notice can start  | The notice period starts on the next day after the written notification is given to the employee.<br>Calculation (for EPL indicators): 1 day for letter   |
| <b>3:</b> Length of notice period at different tenure durations (a)   | <b>All workers:</b> 30d<3y, 35d<5y, 45d<8y, 50d<10y, 55d<15y, 60d<18y, 70d<20y, 90d>=20y.<br>Calculation (for EPL indicators): 9 months tenure: 30 days, 4 years tenure: 35 days, 20 years tenure: 90 days.   |
| <b>4:</b> Severance pay at different tenure durations (a)   | <b>All workers:</b> 0<3y, 1m<5y, 2m<10y, 3m<15y, 4m<20, 5m<25y and 6m>25y.<br>Calculation (for EPL indicators): 9 months tenure: 0, 4 years tenure: 1 month, 20 years tenure: 5 months.   |
| <b>5:</b> Definition of unfair dismissal (b)  | A regular employment contract may be lawfully terminated:<br>(a) by mutual consent of the employer and employee;<br>(b) by ordinary notice (e.g. for reasons in connection with the employee's ability, conduct or the employer's operations);<br>(c) by extraordinary notice (where the employee has seriously violated key obligations under the employment relationship deliberately or by serious carelessness or otherwise acts in such a way that makes it impossible to sustain the employment relationship); or<br>(d) with immediate effect during the trial period.<br>A termination is regarded as unfair/unlawful if it is not undertaken according to the cases mentioned above. |
| <b>6:</b> Length of trial period (c)  | In the employment contract the parties may stipulate a probationary period of no more than three months from the date of commencement of the employment relationship. In the event that a shorter probationary period has been stipulated the parties may extend the probationary period once. In either case, the duration of the probationary period may not exceed three months. It may be extended by collective agreement up to 6 months.<br>Calculation (for EPL indicators): average of individual contracts and collective agreements   |
| <b>7:</b> Compensation following unfair dismissal (d)   | The employer shall be liable to provide compensation for damages resulting from the wrongful termination of an employment relationship. Compensation for income loss may not exceed 12 months' base pay. In addition, the employee is entitled to ordinary severance pay.   |
| <b>8:</b> Reinstatement option for the employee following unfair dismissal (b)                              | Reinstatement is possible in the case of violation of equal treatment, or dismissal on prohibited grounds or of protected categories such as for maternity or of trade union official or employees' representative. It is also possible when the employee successfully challenged termination by mutual consent. But reinstatement is not available in ordinary dismissal cases other than those above.   |
| <b>9:</b> Maximum time period after dismissal up to which an unfair dismissal claim can be made (e)         | A dismissal claim may be filed within 30 days after the written notice is received.   |
| <b>10:</b> Valid cases for use of standard fixed term contracts   | There are no restrictions for the first contract, but the extension of the fixed-term contracts must be based on objective grounds that have no bearing on work organization and must not infringe upon the employee's legitimate interest.   |
| <b>11:</b> Maximum number of successive standard FTCs (initial contract plus renewals and/or prolongations) | No limit specified. But the extension of the fixed-term contracts must be based on objective grounds that have no bearing on work organization and must not infringe upon the employee's legitimate interest.   |
| <b>12:</b> Maximum cumulated duration of successive standard FTCs   | The duration of a fixed-term employment relation may not exceed five years, including the duration of an extended relation and that of another fixed-term employment relation started within six months of the termination of the previous fixed-term employment relation.  |
| <b>13:</b> Types of work for which temporary work agency (TWA) employment is legal                          | Generally allowed. It is forbidden to hire TWA employees for unlawful work, to break a strike or if the same employee had their employment with the user firm terminated in the last six months, during the trial period or by way of ordinary dismissal for reasons in connection with the employer's operations.  |
| <b>14:</b> Are there restrictions on the number of renewals and/or prolongations of TWA assignments? (f)    | No special regulations for assignments<br>Where a fixed-term TWA contract is renewed or extended between the same parties without any connected justified interest of the employer and the conclusion of the renewed/extended contract is aiming at derogating from the justified interests of the employee, the employment relationship shall be regarded as indefinite term.  |

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| <b>15:</b> Maximum cumulated duration of TWA assignments (f)   | The duration of assignment may not exceed five years, including any period of extended assignment and re-assignment within a period of six months from the time of termination of his/her previous employment, irrespective of whether the assignment was made by the same or by a different temporary-work agency. Contracts between the agency and the worker can be open-ended.  |
| <b>16:</b> Does the set-up of a TWA require authorisation or reporting obligations?                      | In order to obtain a license, a temporary agency must have headquarter in Hungary and be either a limited liability business association or a non-profit company or a cooperative. It must satisfy the requirements prescribed in the Labour Code and in other legal regulations and must be registered by the public employment agency. Once a year, temporary agencies shall give certain data about temporary agency workers to the public employment agency where they are registered.  |
| <b>17:</b> Do regulations ensure equal treatment of regular workers and agency workers at the user firm? | Equal treatment shall be granted for temporary agency workers from the first day of the employment, excluding wages. As regards wages, equal treatment shall be granted after 6 months employment at the same user firm.  |
| <b>18:</b> Definition of collective dismissal (b)  | 10+ workers in firms 20-99 employees; >10% in firms 100-299; 30+ workers in firms 300+ employees.   |
| <b>19:</b> Additional notification requirements in cases of collective dismissal (g)                     | <b>Notification of employee representatives:</b> consultations with the local works council or, in the absence of a works council, with the committee set up by the local trade union branch and by workers' representatives.<br><b>Notification of public authorities:</b> Notification of local employment office.  |
| <b>20:</b> Additional delays involved in cases of collective dismissal (h)                               | When an employer is planning to implement collective redundancies, he shall begin consultations with the local works council or, in the absence of a works council, with the committee set up by the local trade union branch and by workers' representatives no later than 15 days prior to the decision and shall continue such negotiations until the decision is adopted or until an agreement is reached. The works council must be informed at least 7 days in advance of negotiations<br>The employer shall notify in writing the employment center competent for the place where the affected place of business is located at least 30 days prior to delivery of the ordinary dismissal or the statement for the termination of an employment relationship. (This notification shall contain the details - including Social Insurance Numbers -, the last position, the qualification, and the average earnings of the employees to be made redundant.)<br>The employer shall notify the employees affected of its decision of collective redundancy at least 30 days prior to delivery of the ordinary notice of dismissal.<br>Calculation: 30 days for extra individual notification + 7 days for notification to works council + 15 days for negotiations – 1 day for individual dismissals= 51 days |
| <b>21:</b> Other special costs to employers in case of collective dismissals (i)                         | <b>Type of negotiation required:</b> Consultation on principles of staff reduction, and ways to mitigate its effects.<br><b>Selection criteria:</b> Negotiation with workers' representatives, but no specific selection criteria for dismissal.<br><b>Severance pay:</b> No special regulations for collective dismissal.  |

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.



## ICELAND

| Items   | Regulations in force on 1 January 2013   |
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| <b>1:</b> Notification procedures in the case of individual dismissal of a worker with a regular contract   | A worker must be notified of dismissal in writing.   |
| <b>2:</b> Delay involved before notice can start  | After notification in writing, the notice period begins first day of the month following notification.<br>Calculation: 1 day for notice in writing plus 15 days on average for first day of following month.   |
| <b>3:</b> Length of notice period at different tenure durations (a)   | Under minimum standards legislation, employees with more than one year of continuous service are entitled to one month notice, those with three years of service are entitled to two months' notice and those with five years of service are entitled to three months' notice.<br>Notice periods in collective agreements for affiliates to the two largest private sector trade union federations (SGS and LIV) are: SGS: 2 weeks: 12 days; 3 months: 1 month; 3 years: 3 months; LIV: under 3 months: 1 week; 3-6 months: 1 month; 6 months: 3 months; 10 years: 55 years of age: 4 months; 60 years of age: 5 months; 63 years of age: 6 months. Around 88% of workers are trade union members.<br>Calculation (for EPL indicators): based on collective agreements: 9 months: average of 1 month and 3 months = 2 months; 4 years: 3 months; 20 years (assume aged under 55 years): 3 months |
| <b>4:</b> Severance pay at different tenure durations (a)   | There is no legal right to severance pay   |
| <b>5:</b> Definition of unfair dismissal (b)  | Employment can generally be terminated by either the employer or the employee without giving reasons for termination. A worker who is dismissed due to the fact that he/she has given notice of intended maternity/paternity/parental leave, during maternity/paternity/parental leave or when pregnant or soon after childbirth cannot be dismissed without reasonable cause and must be given written explanation of dismissal. Dismissal is also prohibited on the basis of gender, family responsibilities or trade union activity.  |
| <b>6:</b> Length of trial period (c)  | 3 months   |
| <b>7:</b> Compensation following unfair dismissal (d)   | Compensation is normally provided only for financial loss (e.g. taking up a new occupation at a lower salary).   |
| <b>8:</b> Reinstatement option for the employee following unfair dismissal (b)                              | If the termination is found to be unfair, the court does not typically order reinstatement.  |
| <b>9:</b> Maximum time period after dismissal up to which an unfair dismissal claim can be made (e)         | Generally, dispute cases lapse if not claimed without four years.  |
| <b>10:</b> Valid cases for use of standard fixed term contracts   | No restrictions  |
| <b>11:</b> Maximum number of successive standard FTCs (initial contract plus renewals and/or prolongations) | No limit.  |
| <b>12:</b> Maximum cumulated duration of successive standard FTCs   | Maximum length of fixed term contracts is 24 months including renewals. Fixed-term contracts for managerial personnel are not time-limited.  |
| <b>13:</b> Types of work for which temporary work agency (TWA) employment is legal                          | Generally allowed. However, TWA's are not permitted to hire out a worker to a user firm if the worker has worked directly for the user firm in the previous six months.  |
| <b>14:</b> Are there restrictions on the number of renewals and/or prolongations of TWA assignments? (f)    | No   |
| <b>15:</b> Maximum cumulated duration of TWA assignments (f)  | No limit   |
| <b>16:</b> Does the set-up of a TWA require authorisation or reporting obligations?                         | Temporary work agencies must notify and report regularly to the Directorate of Labour.   |
| <b>17:</b> Do regulations ensure equal treatment of regular workers and agency workers at the user firm?    | TWA workers enjoy basic pay and working conditions as agreed in collective agreements.<br>Calculation (for EPL indicators): half point for wages and half point for working conditions   |
| <b>18:</b> Definition of collective dismissal (b)   | Within a period of 30 days, dismissal of (i) at least 10 workers in enterprises usually employing more than 20 and less than 100 workers; (ii) at least 10% of all workers in enterprises employing more than 100 and less than 300 persons; or (iii) at least 30 workers in enterprises usually employing at least 300 workers. Firms with less than 20 employees are exempt from requirements for collective dismissals.   |



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| <b>19:</b> Additional notification requirements in cases of collective dismissal (g) | An employer contemplating collective dismissal must consult with the workers' representatives or with the workers and provide them with the opportunity to suggest ways to avoid or limit the dismissals or their impact. The employer must also notify the regional employment office. |
| <b>20:</b> Additional delays involved in cases of collective dismissal (h)           | The time taken for consultation between the employer and the workers' representatives varies widely.  |
| <b>21:</b> Other special costs to employers in case of collective dismissals (i)     | No additional costs.  |

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.

## IRELAND

| Items  | Regulations in force on 1 January 2013   |
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| 1: Notification procedures in the case of individual dismissal of a worker with a regular contract | <p><b>Individual termination:</b> No prescribed procedure. Notice may be oral or in writing but must be certain. There is no specific procedure outlined in the Minimum Notice and Terms of Employment Act 1973, but there is a Code of Practice on Grievance and Disciplinary Procedure, which sets out best practice in terms of procedures to be followed.</p> <p><b>Redundancy:</b> A written notice is required for an employee with no less than 2 years tenure.</p>   |
| 2: Delay involved before notice can start  | <p>None specified in legislation. Notice may be oral or written as long as it is certain. In case of individual termination, advisable to serve notice in writing after warnings specifying what aspect of behaviour is sub-standard. The Code of Practice on Grievance and Disciplinary Procedure prescribe providing full opportunity for defence, prior warning and written notice.</p> <p>Calculation (for EPL indicators): average of personal reasons (1 day for notice plus 6 days for warning) and redundancy (1 day for notice)</p>               |
| 3: Length of notice period at different tenure durations (a)                                       | <p><b>All workers</b> covered by the Minimum Notice &amp; Terms of Employment Act excluding inter alia, Defence Forces, Police and certain Merchant Shipping employment agreements: notice as follows: 0&lt;13w, 1w&lt;2y, 2w&lt;5y, 4w&lt;10y, 6w&lt;15y, 8w&gt;15y.</p> <p><b>Redundancy cases:</b> 2w min.</p> <p>Calculation (for EPL indicators) 9 months tenure: 1.5 week, 4 years tenure: 2 weeks, 20 years tenure: 8 weeks.</p>  |
| 4: Severance pay at different tenure durations (a)   | <p><b>All workers:</b> none.</p> <p>In <b>redundancy cases</b> with at least two years tenure: 1 week's pay ('bonus week'), plus two weeks' pay per year worked, subject to a ceiling on weekly pay of 600 EUR. Employers are reimbursed 15% by a redundancy fund financed by ordinary employer and employee social security contribution - they pay therefore only 85%.</p> <p>Calculation (for EPL indicators): Redundancy cases: 9 months tenure: 0, 4 years tenure: 9 weeks (cost is only 7.65w), 20 years tenure: 41 weeks (cost is only 34.85w).</p> |
| 5: Definition of unfair dismissal (b)  | <p><b>Fair:</b> Dismissals for lack of ability, competence or qualifications, conduct, or redundancy.</p> <p><b>Unfair:</b> Dismissals reflecting discrimination on grounds of race, religion, age, gender, etc., including when these factors bias selection during redundancies. Exercise or proposed exercise of rights under carer's leave, maternity leave, parental leave, adoption leave or minimum wage legislation.</p>   |
| 6: Length of trial period (c)  | <p>All workers: 12 months (shorter trial periods are commonly agreed between employer and employee, but claims under statutory unfair dismissal legislation are not normally possible until after the periods shown). The 12 month limit does not apply in certain dismissal situations e.g. pregnancy, exercise or contemplated exercise of rights under maternity, adoptive, parental or carer's leave legislation, for trade union activity or rights under minimum wage legislation.</p>   |
| 7: Compensation following unfair dismissal (d)   | <p>Maximum compensation equals 104 weeks' pay. Compensation awards based on financial loss. Maximum 4 weeks' award where no loss established. (Average Employment Appeals Tribunal award in 2011 was 18,047.85 EUR)</p> <p>Calculation (for EPL indicators): average of average and maximum compensation minus average severance pay reported in Item 4 = 10.7 months</p>  |
| 8: Reinstatement option for the employee following unfair dismissal (b)                            | <p>A reinstatement order, with back pay from the date of dismissal, is possible. Also re-engagement from a date after the date of dismissal with no back pay from the date of dismissal also possible. Deciding body must specify why re-instatement/re-engagement not applied if compensation awarded. In 2011, reinstatement was ordered in 6 cases and re-engagement was ordered in 7 cases. More generally, reinstatement or re-engagement orders are typically made in 4%-5% of the cases where a remedy order is granted.</p>                        |
| 9: Maximum time period after dismissal up to which an unfair dismissal claim can be made (e)       | <p>6 months, extended to 12 months in exceptional circumstances</p>  |

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| <b>10:</b> Valid cases for use of standard fixed term contracts   | Employers do not have to justify recourse to initial fixed-term contracts.<br>The Protection of Employees (Fixed-Term Work) Act 2003 provides that where an employer proposes to renew a fixed-term contract the employee shall be informed in writing, no later than the date of renewal, of the objective grounds justifying the renewal and the failure to offer a contract of indefinite duration. The Act also provides that a fixed-term employee shall be informed in writing by his/her employer as soon as practicable of the objective condition determining the contract i.e. whether it is (a) arriving at a specific date (b) completing a specific task, or (c) the occurrence of a specific event. |
| <b>11:</b> Maximum number of successive standard FTCs (initial contract plus renewals and/or prolongations) | No limit in case of objective grounds justifying the renewal but some possibility for unfair dismissal/penalisation claims under unfair dismissals/fixed-term legislation after having been employed for successive contracts. But this does not apply if the contract contains a specific clause stating that the Unfair Dismissals Acts will not apply to the expiry of the term of the contract.   |
| <b>12:</b> Maximum cumulated duration of successive standard FTCs   | The maximum cumulated duration of two or more successive fixed-term contracts is 4 years, unless there are objective grounds justifying the renewal on a fixed-term basis.<br>No limits for the first contract  |
| <b>13:</b> Types of work for which temporary work agency (TWA) employment is legal                          | All employment.   |
| <b>14:</b> Are there restrictions on the number of renewals and/or prolongations of TWA assignments? (f)    | No. The Protection of Employees (Fixed-Term Work) Act 2003 does not apply to agency workers placed by a temporary work agency at the disposition of a user enterprise.  |
| <b>15:</b> Maximum cumulated duration of TWA assignments (f)  | No limit. The Protection of Employees (Fixed-Term Work) Act 2003 does not apply to agency workers placed by a temporary work agency at the disposition of a user enterprise.  |
| <b>16:</b> Does the set-up of a TWA require authorisation or reporting obligations?                         | In order to operate in the State, an employment agency must obtain an employment agency license from the Minister for Jobs, Enterprise and Innovation.  |
| <b>17:</b> Do regulations ensure equal treatment of regular workers and agency workers at the user firm?    | The Protection of Employees (Temporary Agency Work) Act 2012 ensures the protection of temporary agency workers by applying the principle of equal treatment in their basic working and employment conditions, as if they had been directly recruited by the hirer to the same or similar job.  |
| <b>18:</b> Definition of collective dismissal (b)   | 'Collective redundancies' means dismissals effected by an employer for one or more reasons not related to the individual concerned where in any period of 30 consecutive days the number of such dismissals is 5+ workers in firms 20-49 employees; 10+ workers in firms 50-99; 10% in firm 100-299; 30+ in firms 300+ employees.   |
| <b>19:</b> Additional notification requirements in cases of collective dismissal (g)                        | <b>Notification of employee representatives:</b> Duty to inform and consult with competent trade union. Further requirement to consult with representatives of employees whether unionized or not under 2000 Regulations. Civil remedy introduced for failure to do so.<br><b>Notification of public authorities:</b> Notification of Ministry competent for labour and employment.   |
| <b>20:</b> Additional delays involved in cases of collective dismissal (h)                                  | Information to trade union and Ministry 30 days before implementation.<br>Calculation (for EPL indicators): 30-4 for individual dismissal   |
| <b>21:</b> Other special costs to employers in case of collective dismissals (i)                            | <b>Type of negotiation required:</b> Consultation on alternatives to redundancy and ways to mitigate the effects. Consultations, since 2000 Regulations, must include employee representatives in non-union employment.<br><b>Selection criteria:</b> Law lays down union participation, but no specific selection criteria for dismissal.<br><b>Severance pay:</b> No special regulations for collective dismissal, but legally required severance pay usually topped up in cases of mass redundancies.  |

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.



## Ireland

- 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.

**ISRAEL**

| Items  | Regulations in force on 1 January 2013   |
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| 1: Notification procedures in the case of individual dismissal of a worker with a regular contract | Notice of dismissal must be given in writing. Some collective agreements contain provisions requiring the employer to notify and consult with the employee's representative prior to dismissal. Court decisions have held that the employer has a duty to consult with the employee's representative prior to dismissal. In some cases (e.g. dismissal of a pregnant employee, dismissal of a worker undergoing fertility treatment, dismissal of a worker within 60 days after maternity leave or dismissal of a worker on military reserve duty), an employee may be dismissed only with the permission of the Minister of Industry, Trade and Labour.   |
| 2: Delay involved before notice can start  | Written notice can be handed to the employee (1 day). If an employee is on maternity leave, dismissal notice will not be given during the leave or for 60 days following leave, or to a female employee while staying at a shelter for battered women or for 90 days after her stay.   |
| 3: Length of notice period at different tenure durations (a)                                       | <p><b>Salaried workers:</b> tenure less than 6 months: 1 day per month of service; tenure 7-12 months: 6 days plus 2.5 days per month of service beyond 6 months; tenure more than one year: 1 month.</p> <p><b>Wage workers:</b> in first year of service: 1 day per month of service; in second year: 14 days plus 1 day for every 2 months of service beyond 1 year; in third year: 21 days plus 1 day for every 2 months of service beyond 2 years; after third year: 1 month.</p> <p>Payment of wages for the duration of the notice period can be made in lieu of notice.</p> <p>Calculation (for EPL indicators): average of salaried and wage workers: 9 months: <math>(13.5+9)/2=11.25</math> days; 4 years: 1 month; 20 years: 1 month.</p>  |
| 4: Severance pay at different tenure durations (a)   | <p>A person who has been employed continuously for one year or, in the case of a seasonal employee, has been employed for two seasons in two consecutive years, by the same employer or at the same place of employment and has been dismissed is entitled to receive severance pay from the employer who has dismissed him. The rate of severance pay shall be a month's wages per year of employment.</p> <p>For the purposes of determining severance pay, the following situations are also deemed to be "dismissal": (i) where an employee resigns due to ill health or the ill health of a family member; (ii) where a parent resigns within nine months of the birth of a child or adoption of a child under 13 years of age to care for the child; (iii) where an employee resigns in order to transfer his/her residence after marriage or to work in an agricultural settlement or a settlement in a development area; (iv) where a fixed-term contract is not renewed by the employer; (v) where an employee resigns due to a deterioration in his/her conditions of work or for other labour-relations related issues; (vi) where a seasonal worker is not offered ongoing seasonal work; (vii) where an employee resigns to take up national, civil or military service or the Israel Police or the Israel Prison Service; (viii) where an employee resigns because he/she has been elected head or deputy head of a local authority; and (ix) if a female employee resigns due to a stay at a shelter for battered women which was approved by welfare services.</p> |
| 5: Definition of unfair dismissal (b)  | Indefinite contracts can be terminated at the will of the employer for any reason except for (i) discriminatory reasons such as age, parenthood, fertility treatments, race sex, nationality, pregnancy, disability, military reserve duty; (ii) filing a complaint with a legal authority against his employer or an employee of the employer concerning violations of a law at the workplace; (iii) when a worker is absent from work according to instructions of security forces during an attack or other national emergency; or (iv) reasons specified in a collective agreement, employment contract or case law. Collective agreements typically contain provisions requiring employers to have a just cause for dismissing a worker and specify a consultation procedure to be followed. In any case and without any connection to collective agreements, the determination of labour relations must be bona fide.  |
| 6: Length of trial period (c)  | Legislation does not regulate trial periods. Most collective agreements have trial periods ranging from 6 months to 3 years. The most common length of trial periods in collective agreements is 6-24 months. Employers have the power to extend trial periods under certain circumstances. Even dismissals within trial period must be fair and just and on a basis of reasonable discretion by the employer. This is an outcome of Labour Courts decisions.  |
| 7: Compensation following unfair dismissal (d)   | Compensation depends on the severity of the unlawfulness of the dismissal, the period of employment and the damage suffered. According to the Employment of Women Law (1954) the compensation is 150% of the wages the employee would have received had she worked during the period she was entitled to protection of the law. If an employee was dismissed because he/she filed a complaint against his employer or an employee of his/her employer, who violated a law at the workplace, the Labour Court is entitled to rule up to 50 000 NIS or 500 000 NIS punitive compensation without proving damages (according to the Protection of Employees (Exposure of Offences of Unethical Conduct and Improper Administration) Law (1997). Typical compensation at 20 years tenure: 6-9 months pay   |

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| <b>8:</b> Reinstatement option for the employee following unfair dismissal (b)                              | In the private sector, the most common recourse following unfair dismissal is compensation, but the National Labour Court may order reinstatement in special circumstances. If the dismissal is in violation of the Employment of Women Law, the common route is reinstatement at the workplace   |
| <b>9:</b> Maximum time period after dismissal up to which an unfair dismissal claim can be made (e)         | The time period is the period of limitation applied according to Israeli law to every financial claim (7 years). Claims according to the Employment (Equal Opportunities) Law (1988) – except for damages incurred by sexual harassment – and claims according to the Protection of Employees (Exposure of Offences of Unethical Conduct and Improper Administration) Law (1997) are limited to one year. Claims for dismissal on the basis of sexual harassment are limited to 3 years.  |
| <b>10:</b> Valid cases for use of standard fixed term contracts   | No restrictions on the use of fixed-term contracts.   |
| <b>11:</b> Maximum number of successive standard FTCs (initial contract plus renewals and/or prolongations) | No limit  |
| <b>12:</b> Maximum cumulated duration of successive standard FTCs   | No limit  |
| <b>13:</b> Types of work for which temporary work agency (TWA) employment is legal                          | No restrictions   |
| <b>14:</b> Are there restrictions on the number of renewals and/or prolongations of TWA assignments? (f)    | No, within maximum time for assignments. No for the contracts between the agency and the worker.  |
| <b>15:</b> Maximum cumulated duration of TWA assignments (f)  | An employee of a TWA shall not be employed with the user firm for a continuous period in excess of nine months. Employment will be deemed to be continuous even where employment has ceases for a period of up to nine months. The Minister of Industry, Trade and Labour may give his approval for an employee to be employed with a user firm for a period in excess of nine months provided that the total period of employment with the user firm does not exceed 15 months. The employment contract between the agency and the worker can be open-ended. |
| <b>16:</b> Does the set-up of a TWA require authorisation or reporting obligations?                         | TWAs (“manpower contractors”) must obtain a license by applying to the Minister of Industry, Trade and Labour. The license shall be granted for one year and may be renewed for periods of one year at a time. TWAs must report to the Minister once a year on their activities (number of employees, branches of employment, work places, periods of work, wages, payments, etc). The Minister has the authority to revoke or not to renew the permit.   |
| <b>17:</b> Do regulations ensure equal treatment of regular workers and agency workers at the user firm?    | The Agency has to provide a guarantee ensuring workers' rights to the Labour Law Enforcement Administration. The provisions of a collective agreement applying at the user firm apply to TWA workers working at that firm. Where more than one collective agreement covers a TWA worker, the most favourable to the worker will apply. But if the working conditions of the TWA workers were regulated according to a general collective agreement, on which an extension order was issued, equalising the conditions of work will not apply.                 |
| <b>18:</b> Definition of collective dismissal (b)   | Ten or more workers in a period of one month. Collective agreements may contain different definitions of collective dismissal.  |
| <b>19:</b> Additional notification requirements in cases of collective dismissal (g)                        | The employer must give prior notice of dismissal to the Employment Service Bureau.  |
| <b>20:</b> Additional delays involved in cases of collective dismissal (h)                                  | No additional delays  |
| <b>21:</b> Other special costs to employers in case of collective dismissals (i)                            | No additional costs.  |

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.

## ITALY

| Items  | Regulations in force on 1 January 2013  |
|--|---|
| 1: Notification procedures in the case of individual dismissal of a worker with a regular contract | <p>Written notice to the employee.</p> <p>In the case of objective reasons (economic redundancy): the territorial employment office and the employee, are notified at the same time. Detailed reasons for dismissal are provided in the written notice.</p> <p>In the case of dismissal for subjective reasons ("significant non-compliance with contractual obligations"), the employee can request conciliation by the territorial employment office or through conciliation committees set up under collective agreements.</p>   |
| 2: Delay involved before notice can start  | <p>Letter sent by mail or handed directly to employee.</p> <p>In the case of dismissals for subjective reasons ("significant non-compliance with contractual obligations"), notice can start at the earliest 5 days after the fact originating the sanction (art. 7 Law 300/70).</p> <p>According to most collective agreements notice starts only on 1<sup>st</sup> or the 16<sup>th</sup> day of the month (e.g. collective agreement of metal workers, tourism industry, textile workers, chemical workers, trade industry, food industry),</p> <p>In the case of dismissal for objective reasons (economic redundancy) notice also to territorial employment office - TEO - (and the employee) for request conciliation procedure. Within 7 days of receiving the communication the TEO must convene a meeting between employer and employee to consider alternatives to dismissal and, failing this, try to settle the dispute without the parties going to court. The procedure must be concluded within 20 days from the date the TEO sends the convocation letter, unless the parties wish to continue in order to pursue a settlement agreement. If negotiations over the settlement agreement fail or the 20-day time limit expires, the employer may send the dismissal letter to the employee. However, the date of start of the notice period will be that of the first communication to the employee and the TEO.</p> <p>Calculation (for EPL indicators): 1 day for letter plus 7 days on average for the 1<sup>st</sup> or the 16<sup>th</sup> day of the month plus 5/2 days for the waiting period in the case of subjective reasons.</p> |
| 3: Length of notice period at different tenure durations (a)                                       | <p>Length of notice period is provided by each collective agreement. In most collective agreements (e.g. collective agreement of metal workers, tourism industry, textile workers, chemical workers, trade industry, food industry) notice is as follows:</p> <p>9 months tenure: 10-75 days, 4 years tenure: 10-75 days, 20 years tenure: 30-180 days.</p>   |
| 4: Severance pay at different tenure durations (a)   | <p>An end-contract indemnity is paid to employees according to general principles set forth by art. 2120 of the civil code, and as provided by each collective agreement. However, this is paid upon any type of separation. Nonetheless, upon dismissal, the employer must pay a contribution equal to 41% of the monthly unemployment benefit ceiling for each of the first three years of tenure (or fraction of it). In 2013 this contribution amounts to 362.85 EUR, for 9-month job tenure, and 1451 EUR for job tenure longer than 3 years (§31 of art. 2, law 92/201, §250 of art.1, law 228/2012, Circolare INPS No. 44, 22-03-2013). For comparison, the gross annual wage for employees with an open-ended contract was 29 852 EUR in 2012 (Source ISTAT).</p>   |
| 5: Definition of unfair dismissal (b)  | <p><b>Fair:</b> Termination of contract only possible for "just cause" or "just motive", including significant non-compliance with contractual obligations by the employee (subjective reasons), and compelling business reasons (objective reasons). <b>Unfair:</b> Dismissals reflecting discrimination on grounds of race, religion, gender, trade union activity, etc.</p> <p>Law 604/66 establishes that dismissal is fair in cases of serious misconduct or for reasons concerning productive activity, work organization and its regular functioning. Except for additional provisions in Law 428/90, which sets that company delocalisation is not a fair reason for dismissal, the law is sufficiently general that case law should determine how broad the definition is. The notion that "repechage" (that is of transfer of the redundant worker to other functions in the company) must be attempted prior to dismissal is "very" extensive in case law and applies also to other companies of the same group (for example: Pret. Milano 2/8/95, est. Negri della Torre; Trib. Milano 15/7/2008, Est. Casella; Cass. n. 5403/2010; Cass n. 6559/2010; n. 3040/2011; Cass. n.6026/2012).</p> <p>In the case of collective dismissals, it is an established court practice that judges verify only that the procedure has been respected (see Items 19 and 20) and do not typically examine the validity of the economic justification for redundancy, except in cases of misguided personal reasons (for example: Cass. 6/7/2000, n. 9045; Trib. Vallo della Lucania, 1/2/2011, est. de Angelis; Cass. 11/03/2011 n.5888).</p>                  |
| 6: Length of trial period (c )   | <p>The length of trial period is specified in each individual employment contract or collective agreements. In most collective agreements (e.g. collective agreement of metal workers, tourism industry, textile workers, chemical workers trade industry, food industry) maximum trial period is between 30 and 180 days.</p>  |

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| <p><b>7: Compensation following unfair dismissal (d)</b></p>   | <p>Case of large companies (Law n.92/2012): In the case of workers in companies employing &gt;15 employees in one establishment or in the same municipality and, anyway, in companies with more than 60 employees (even if distributed in production units or municipalities with less than 15 employees), if the labour court finds that the dismissal is unfair or unjustified, it will order the employer to pay the employee an indemnity of between 12 and 24 months' salary, depending on circumstances such as age, length of service, number of employees and size of company. In the case of ineffective termination of employment, due to the absence of written reasons in the termination letter or breach of procedural aspects (such as in case of disciplinary procedures), the labour court establishes an indemnity ranging from 6 to 12 months' salary, without prejudice for the application for stronger protection in the case the alleged reasons of dismissal are deemed unfair or unlawful. Reinstatement (with backpay) will be ordered instead of monetary compensation in the case of discriminatory dismissal or if the reason is manifestly false or inapplicable (see Item 8)</p> <p>Case of small companies: for establishments not included in the above cases, Law 604/66 gives the employer the choice between re-employment (different from reinstatement because it does not give rise to compensation for the period between the date of dismissal and the court decision) and compensation of 2.5-6 months (depending on seniority and firm size). This can be increased up to 10 months for job tenure &gt; 10 years.</p> <p>Calculation (for EPL indicators): Typical compensation at 20 years tenure (large companies): 21 months (computed as average of mean and maximum compensation, excluding the case of ineffective termination).</p> |
| <p><b>8: Reinstatement option for the employee following unfair dismissal (b)</b></p>                              | <p>If the labour court finds that the alleged breach or failure did not take place, and should have been penalised by a measure less severe than dismissal according to the applicable national collective agreements or disciplinary codes or that it was a discriminatory dismissal, or that the objective reason indicated in the dismissal letter clearly does not apply or is inexistent, or that the employee was dismissed in breach of Article 2110 of Civil Code (ie if the dismissal is communicated to the absent employee before the end of the provided sick leave or maternity leave), it will revoke the dismissal and will order the employer to:</p> <ul style="list-style-type: none"> <li>-reinstate the employee (although the employee may refuse reinstatement and instead receive 15 months' salary as an indemnity);</li> <li>- pay employee an indemnity equal to the salary due from the date of the dismissal to the date of reinstatement, to a maximum of 12 months' salary, minus any remuneration earned by employee from working during this period (aliunde perceptum) or that he would have earned had he duly sought new employment (aliunde percipiendum);</li> <li>-pay social security contributions from the date of the dismissal to the date of the reinstatement.</li> </ul> <p>In practice, case law suggests that reinstatement remain the most frequent remedy in the case of unfair dismissal for personal reasons and that it is often ordered also in cases of unfair dismissal for economic reasons if the proof of having attempted transfer is not provided by the employer.</p> <p>However, small companies (see Item 7) are not required to pay back-pay or reinstate workers who are found to be unfairly dismissed.</p>  |
| <p><b>9: Maximum time period after dismissal up to which an unfair dismissal claim can be made (e)</b></p>         | <p>60 days</p>  |
| <p><b>10: Valid cases for use of standard fixed term contracts</b></p>   | <p>Fixed term contracts can be used for technical, production and organizational reasons including the replacement of absent workers, and for types of work normally carried out by the firm.</p> <p>The first contract between an employer and a worker does not need justifications if its duration is no longer than one year</p>  |
| <p><b>11: Maximum number of successive standard FTCs (initial contract plus renewals and/or prolongations)</b></p> | <p>One extension is possible provided that the duration initially agreed is less than three years.</p> <p>No extension is possible in cases that do not require any justification (see Item 10) – in that case a new FTC contract, with justified reasons, must be established.</p> <p>It is possible to conclude successive FTCs within a time frame of 36 months.</p>   |
| <p><b>12: Maximum cumulated duration of successive standard FTCs</b></p>   | <p>36 months, with further renewal possible with agreement of Territorial Employment Office, unless collective agreements define a longer duration.</p> <p>One year in cases that do not require any justification (see Item 10).</p>   |
| <p><b>13: Types of work for which temporary work agency (TWA) employment is legal</b></p>                          | <p>TWA employment can be used for technical, production and organizational reasons including the replacement of absent workers and for types of work normally carried out by the enterprise. Collective agreement often lay down upper limits for the use of temporary workers. The use of TWA employment is forbidden in firms which have resorted to collective dismissals in the previous 6 months and for the replacement of striking workers.</p> <p>Only for the first fixed-term assignment at the user firm there is no necessity to justify technical, production or organizational reasons (Law 92/2012).</p>   |

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| <b>14:</b> Are there restrictions on the number of renewals and/or prolongations of TWA assignments? (f) | Yes for assignments, in the cases and for the duration set forth in the collective agreement used by temporary work agencies.<br>Contracts between the agency and the worker can be open-ended   |
| <b>15:</b> Maximum cumulated duration of TWA assignments (f)   | There is no legal maximum duration of TWA assignments or contracts, but it is set by collective agreements applied by temporary work agencies. The current agreement stipulates no limit for both assignments and contracts if open-ended and 36 months for assignments and 42 months for contracts if fixed-term.   |
| <b>16:</b> Does the set-up of a TWA require authorisation or reporting obligations?                      | The requirements laid down by Legislative Decree 276/2003 in order to obtain the administrative authorisation as TWA are as follows:<br>a) the agency must be set up as a limited liability company or as a co-operative, registered as a company based in Italy or in another EU Member State, with capital stock of no less than 600,000 euros; as a guarantee of sums due to the workers and the corresponding contributions to social insurance funds, for the first two years the agency is required to make a deposit of some 350,000 euros in a bank based (or with branches) in Italy; as from the third year of business, the agency may replace this deposit with a bank or insurance guarantee of no less than 5% of the annual turnover, net of value added tax, recorded in the previous financial year, but amounting to no less than 350,000 euros;<br>b) premises and qualified personnel for carrying out the tasks associated with temporary agency work must be available;<br>c) a guarantee that the business can provide nationwide cover, or a presence in at least four regions, must be provided;<br>d) providing labour supply has to be the main activity of the agency<br>e) the members of the board, general manager, the managers with powers to represent the company and partners of the company must not have been found guilty, even if not in definitive terms, of any of a series of offences listed in the Act;<br>f) the regular contribution to the funds for the vocational training and income support of the temporary agency workers must be paid.<br>Periodic reporting is necessary to maintain the administrative authorisation. |
| <b>17:</b> Do regulations ensure equal treatment of regular workers and agency workers at the user firm? | TWA workers are entitled to receive the same pay and conditions as other workers in the user firm for equal work, equivalent tasks or jobs of the same nature.   |
| <b>18:</b> Definition of collective dismissal (b)  | In firms with 15 and more employees and over a period of 120 days, 5+ workers in a single production unit; 5+ workers in several units within one province.  |
| <b>19:</b> Additional notification requirements in cases of collective dismissal (g)                     | <b>Notification of employee representatives:</b> Duty to inform employee representatives and competent trade union and set up a joint examination committee. <b>Notification of public authorities:</b> Notification of labour authorities.  |
| <b>20:</b> Additional delays involved in cases of collective dismissal (h)                               | Up to 45 days negotiation in joint examination committee at plant level. If parties fail to reach an agreement, the next step is a conciliation phase chaired by the Labour office, which may last for a maximum of 30 days. (if parties agree this second phase may be extended to reach an agreement).<br>These delays are reduced by one half for less than 10 dismissals.<br>Calculation: average of 10+ dismissals (45 days for negotiation + 30/2 on average for conciliation) and <10 dismissals (22.5 days for negotiation + 15/2 on average for conciliation) minus the number reported in item 2   |
| <b>21:</b> Other special costs to employers in case of collective dismissals (i)                         | <b>Type of negotiation required:</b> Good faith consultation on alternatives to redundancy, scope for redeployment and ways to mitigate the effects; severance agreement usually reached after negotiation with union and (in major cases) labour authorities, - determining selection criteria and use of financial support. <b>Selection criteria:</b> Law specifies social and economic criteria (length of service, number of dependants, technical and production requirements), but does not specify priorities. <b>Severance pay:</b> first, monthly payments from a redundancy fund (financed from company contributions) - "Cassa Integrazione Guadagni". Second, when CIG fund is exhausted or the firm is not eligible to CIG, mobility payments (mobility indemnities are financed through the social security system, when accessing the scheme firms have to pay, for every worker dismissed, a sum equal to six times the first-month mobility allowance).  |

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.

**JAPAN**

| Items   | Regulations in force on 1 January 2013   |
|---|--|
| <b>1:</b> Notification procedures in the case of individual dismissal of a worker with a regular contract   | An employer shall provide at least 30 days advance notice, or pay the average wage for a period of not less than 30 days.<br>Oral notification is sufficient.<br>A written statement on the reasons of dismissal must be provided upon request.  |
| <b>2:</b> Delay involved before notice can start  | There are no prescribed procedures.  |
| <b>3:</b> Length of notice period at different tenure durations (a)   | 30 days, regardless of job tenure.   |
| <b>4:</b> Severance pay at different tenure durations (a)   | Severance pay is not legally required.   |
| <b>5:</b> Definition of unfair dismissal (b)  | <b>Fair:</b> Dismissals for "reasonable cause": incompetence of the employee or violation of disciplinary rules. Redundancy dismissals require business reasons for reducing the number of staff; efforts to avoid dismissal, reasonableness of selection criteria and procedures. <b>Unfair:</b> Dismissal due to gender, of workers recovering from work-related accidents, before and after childbirth leave, during childbirth and maternity leave and when conditions on fair dismissal have not been satisfied.  |
| <b>6:</b> Length of trial period (c)  | Length of trial period is not legally regulated. (It usually varies from 2 to 6 months. The most common period is 3 months).   |
| <b>7:</b> Compensation following unfair dismissal (d)   | If dismissed workers file a civil lawsuit and get an unfair dismissal sentence not entering into a settlement, compensation of a sum equal to earnings between the dismissal and the legal settlement of the case is paid. Sums earned by the employee in the interim can only partially be set off against the award.<br><br>Dismissed workers and their employers are reconciled by the labor tribunal or by the mediation of Prefectural Labor Bureaus on a case-by-case basis. If mediation fails, the labour tribunal can adjudicate the case. And if parties appeal to the court, a settlement may be reached on a case-by-case basis.<br><br>Typical compensation at 20 years tenure (all workers): 6 months. |
| <b>8:</b> Reinstatement option for the employee following unfair dismissal (b)                              | A settlement may be reached on a case-by-case basis through the labor tribunal or the mediation of Prefectural Labor Bureaus, or the case is adjudicated by the labor tribunal. In that case, reinstatement is rarely made. If dismissed workers file a civil lawsuit and get an unfair dismissal sentence, not entering into a settlement, remedies for unjust dismissals are limited to nullifying dismissals, ordering reinstatement and payment for wages during the dismissed period. However, in a number of cases, monetary compensation is paid without reinstatement even after the annulment of dismissal is ordered.  |
| <b>9:</b> Maximum time period after dismissal up to which an unfair dismissal claim can be made (e)         | A lawsuit about dismissal does not require a special type of lawsuit and proceeds according to the rules of normal civil litigation.<br><br>Therefore, there is no statutory limit on the period where an employee, who has been unduly dismissed by an employer, can file a claim for reinstatement. However, there are also court cases in which complaints filed a long period after the date of dismissal have not been allowed, based on the principle of good faith.   |
| <b>10:</b> Valid cases for use of standard fixed term contracts   | Fixed-term contracts under 3 year duration widely possible without specifying an objective reason. The contract can be of 5 years for highly skilled employees or those aged 60+.  |
| <b>11:</b> Maximum number of successive standard FTCs (initial contract plus renewals and/or prolongations) | No legal limit specified in terms of the number of renewals; after repeated renewals the employee becomes entitled to expect renewal of his contract and the employer must have just cause to refuse renewal.  |
| <b>12:</b> Maximum cumulated duration of successive standard FTCs   | There are no limits for the cumulative duration of FTCs. However, each contract cannot be concluded for a term exceeding three years, except if concluded for the completion of a specified project (Labour Standards Act – Art. 14). The contract can be of 5 years for highly skilled employees or those aged 60+.   |
| <b>13:</b> Types of work for which temporary work agency (TWA) employment is legal                          | "Dispatching agencies" are allowed for all occupations except port transport services, construction work, security services, medical-related work at hospital etc.   |
| <b>14:</b> Are there restrictions on the number of renewals and/or prolongations of TWA assignments? (f)    | No restrictions  |



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| <b>15:</b> Maximum cumulated duration of TWA assignments (f)   | In the 26 original occupations, there is no limit for occupations that need special employment management and 36 months for occupations that need specialised knowledge. In all other allowed occupations, there is no limit for the duration of the temporary work contract itself, but the possible duration of temporary work assignment at the user-firm is 36 months maximum.  |
| <b>16:</b> Does the set-up of a TWA require authorisation or reporting obligations?                      | Setting up a TWA requires the permission or notification of the Ministry for Health, Labour and Welfare. After set-up, the TWA is required to report on its operations, etc., once a year.  |
| <b>17:</b> Do regulations ensure equal treatment of regular workers and agency workers at the user firm? | Legally, user firms should endeavour to take necessary measures concerning dispatched workers to maintain an appropriate workplace, etc. The labour conditions of dispatched workers are secured by making the user firm employer subject to the parts of the relevant laws on labour protection and sharing responsibilities between the TWA and the user firm.<br>The Revised Worker Dispatching Act (2012), stipulates that dispatching business operators shall consider the situation of workers directly hired by clients and engaged in the same type of work in setting wages, rights to education and training, welfare programs, etc., and that clients shall make efforts to provide necessary information upon requests by dispatching business operators.  |
| <b>18:</b> Definition of collective dismissal (b)  | Firms expecting 30+ workers turnover in one month will have additional notification requirements  |
| <b>19:</b> Additional notification requirements in cases of collective dismissal (g)                     | Firms are required to notify the public employment service. (Employment Measure Act Art 27) and to submit a re-employment assistance plan to the public employment service (EMA Art 24). Firms are required to listen to the opinion of union or workers' representative when making the plan. (EMA Art 24).<br>Courts may also require that the firm has engaged in sincere negotiation with the trade union prior to making dismissals when deciding whether dismissals are justified.  |
| <b>20:</b> Additional delays involved in cases of collective dismissal (h)                               | Firms are required to notify the public employment service one month prior to the last dismissal and to set up a re-employment assistance plan, which must be submitted to the public employment service one month prior to the first dismissal and obtain approval (Art. 7/3 of the Ministerial Decree of application of the Employment Measure Act). Also, firms are required to listen to the opinion of union or workers representative when making a re-employment assistance plan (Employment Measure Act art.24). Therefore the process must start more than 1 month before the first dismissal and it is estimated that at least 2 days are necessary for the consultation. However, individual notice can be served simultaneously, since it is independent from those procedures.<br>Calculation (for EPL indicators): at least 2 days for negotiations +30 for PES notification minus 1 day for individual notification (Item 2) minus 30 days for notice. |
| <b>21:</b> Other special costs to employers in case of collective dismissals (i)                         | Firms expecting 30 or more workers' turnover within one month due to business contraction are obliged to make a re-employment assistance plan and submit it to the public employment service.   |

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.

## KOREA

| Items  | Regulations in force on 1 January 2013  |
|--|---|
| 1: Notification procedures in the case of individual dismissal of a worker with a regular contract | <p><b>Personal reasons:</b> Written notice. The reasons for and date of dismissal should be clearly stated to the employee.</p> <p><b>Managerial reasons:</b> Advance notice to the union representing the majority of the workforce (in the absence of such union, workers' representatives) 50 days prior to dismissal and sincere consultation with them over efforts to avoid dismissal, and fair and rational criteria for selecting workers to be dismissed.</p> <p>Workplaces with four workers or less are exempted from all the provisions concerning dismissals except for prior notice or notice allowance (cf. Items 1-9).</p> <p>Calculation (for EPL indicators): 1.5 = average of 1 for personal reasons and 2 for managerial reasons.</p>   |
| 2: Delay involved before notice can start  | <p><b>Personal reasons:</b> Written notice. The reasons for and the date of dismissal should be clearly stated to the employee.</p> <p><b>Managerial reasons:</b> Advance notice to the union (workers' representatives in absence of such union) 50 days prior to dismissal and sincere consultation with them over efforts to avoid dismissal, and fair and rational criteria for selecting workers to be dismissed.</p> <p>However, the Supreme Court ruled that the duty of consultation with union or workers' representatives 50 days prior to dismissal on managerial reasons does not constitute a requirement for the validity of the layoff. Therefore, the court stated that if other requirements are met, the layoff could be validated. (Supreme Court Decision 2001du 1154 decided on Oct.15. 2004.).</p> <p>Calculation (for EPL indicators): average of personal reasons (1 day) and managerial reasons (evaluated at 39 days, on average, to take into account the Supreme Court ruling).</p>   |
| 3: Length of notice period at different tenure durations (a)                                       | <p><b>All workers:</b> 30d (applies to every worker to be dismissed regardless of job tenure). Exceptionally, an advance notice of dismissal may not be given to workers who have been employed: (i) on a daily basis for less than 3 consecutive months, (ii) for a fixed period not exceeding 2 months, (iii) as a monthly-paid worker for less than 6 months, (iv) for seasonal work for a fixed period not exceeding 6 months and (v) on probation for less than 3 months.</p> <p>Instead of giving an advance notice, an employer may pay 30 days' ordinary wages to the worker as dismissal notice allowance. This is a separate payment and not related with severance pay.</p> <p>Calculation (for EPL indicators): 9 months tenure: 1 month, 4 years tenure: 1 month, 20 years tenure: 1 month.</p>  |
| 4: Severance pay at different tenure durations (a)   | There is no severance pay. All firms are required to pay at least 30 days pay per year of service regardless of the reason for separation (i.e. voluntary quit or involuntary dismissal) to those with at least one year of tenure.   |
| 5: Definition of unfair dismissal (b)  | <p><b>Fair:</b> Dismissals for "just cause". According to court precedents, a just cause means that a worker is accountable for a certain cause that makes it impossible to maintain an employment contract according to social norms or that there are indispensable managerial reasons for dismissal. (Supreme Court Decision 91da 17931 decided on Apr.24. 1992). Just causes include violation of work regulation, illegal activities, misconduct, apparent lack of abilities to carry out duties, inability to carry out duties due to physical disability, false statement of career experience, etc.) or urgent managerial needs (including individual redundancy and dismissals due to mergers and acquisitions when employees or union have been consulted on urgency, selection criteria and transfer/retraining alternatives). <b>Unfair:</b> dismissal without any just cause or dismissal in violation of legitimate procedures that are stipulated in statutes (dismissal for managerial reasons), or collective agreement or company's work rule.</p> <p>In the case a worker receives medical treatment for occupational diseases or injuries or takes maternity leave before and after childbirth, the worker cannot be dismissed during such periods and within 30 days thereafter.</p> |
| 6: Length of trial period (c )   | <p>No statutory restriction on the length of trial period, but it should be reasonable according to case law. Dismissal during reasonable trial period is allowed if there is a reasonable cause which is wider in scope than just cause applicable to a regular worker for dismissal.</p> <p>- However, firing workers on a trial period for less than 3 months is possible without giving 30 days prior notice or notice allowance.</p>   |
| 7: Compensation following unfair dismissal (d)   | Workers can get money equivalent to their wages corresponding to the period from the beginning of unfair dismissal until they are reinstated. Compensation in lieu of reinstatement varies widely. Typical compensation at 20 years tenure (all workers): Wide range, on case-to-case basis. (6 months between court decision and dismissal)  |

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| <b>8:</b> Reinstatement option for the employee following unfair dismissal (b)                              | If courts determine that dismissal is invalid and that employment relations continue, it orders reinstatement with back pay. If the dismissed worker does not want to be reinstated, he/she can ask for monetary compensation in lieu of reinstatement. The Labor Relations Commission can order the employer to pay the amount equivalent to wages or more.   |
| <b>9:</b> Maximum time period after dismissal up to which an unfair dismissal claim can be made (e)         | Within three months after unfair dismissal for adjudication by the Labor Relations Commission.<br>(There is no statutory time limit regarding the direct claim calling for the nullity of the dismissal to the court but such claim should be filed within a reasonable period.)   |
| <b>10:</b> Valid cases for use of standard fixed term contracts   | Fixed term contracts do not require objective situations or reasons (no restrictions).   |
| <b>11:</b> Maximum number of successive standard FTCs (initial contract plus renewals and/or prolongations) | The number of renewals is not limited within the 2-year limit for fixed term contracts.  |
| <b>12:</b> Maximum cumulated duration of successive standard FTCs   | Employers are allowed to employ a fixed-term worker only for up to two years. If the contract is renewed, the total period of consecutive employment should not exceed two years. If a fixed term worker is employed for more than two years, he/she is considered as a worker whose employment period is not fixed from the moment when the employment contract exceeds two years, except in the following exceptional cases: (i) the period needed to complete the project is fixed; (ii) the fixed-term worker is hired to fill a vacancy caused by a worker's temporary suspension from duty; (iii) the period needed to complete study at school or vocational training is fixed; (iv) the job is provided by the government as an unemployment or welfare measure, etc.; and (v) the job requires professional knowledge and skills. |
| <b>13:</b> Types of work for which temporary work agency (TWA) employment is legal                          | TWA employment, in principle, is allowed in only 32 occupations determined on the basis of professional knowledge, skills, experience and the nature of jobs. However, where TWA employment is required for temporary or intermittent reasons, it is possible to use TWA employment in other occupations. In some occupations, such as construction work, seamen, harmful and dangerous work, work with dust, etc., the use of TWA employment is completely prohibited.  |
| <b>14:</b> Are there restrictions on the number of renewals and/or prolongations of TWA assignments? (f)    | Yes. Assignments for temporary and intermittent reasons can be renewed once (Art. 6, Act on the Protection etc. of Dispatched Workers). No limitation on other assignments.<br>There are no limits for contracts between the worker and the agency provided that the worker changes user employer once maximum assignment duration is reached.   |
| <b>15:</b> Maximum cumulated duration of TWA assignments (f)  | The maximum cumulated duration of temporary work assignments is 2 years in the case of the 32 occupations for which TWA employment is allowed. But in the case of temporary and intermittent reasons, the maximum duration of assignment is three months, in principle, and can be extended for up to another three months, raising the maximum duration up to six months.<br>There are no limits for contracts between the worker and the agency provided that the worker changes user employer once maximum assignment duration is reached. In fact, the contract between the agency and the worker can even be open-ended.<br>Calculation (for EPL indicators): average max duration of assignments in the 32 occupations and other cases.  |
| <b>16:</b> Does the set-up of a TWA require authorisation or reporting obligations?                         | The set-up of a TWA requires administrative approval, which should be renewed every three years. With regard to worker dispatch services (the business of providing temporary agency workers), a report should be made to the competent authorities every six months.  |
| <b>17:</b> Do regulations ensure equal treatment of regular workers and agency workers at the user firm?    | If a temporary agency worker is engaged in a job that is the same as or similar to the one of another worker of the user firm, both TWA and user firm should not discriminate against the TWA worker in terms of wages or other working conditions without reasonable cause, and the worker who was discriminated against can file a discrimination claim with the Labor Relations Commission.   |
| <b>18:</b> Definition of collective dismissal (b)   | The Labor Standards Act requires firms to report to Ministry of Labor and Employment in the case of managerial dismissals above a certain size. (>10 workers in firms <100 employees; >10% of workers in firms 100-999 employees; >100 workers in firms >1000 employees.)  |
| <b>19:</b> Additional notification requirements in cases of collective dismissal (g)                        | Notification to Ministry of Labor and Employment 30 days before the dismissal is necessary when dismissing a certain number of employees or more.  |
| <b>20:</b> Additional delays involved in cases of collective dismissal (h)                                  | Notification to Ministry of Labor and Employment 30 days before the dismissal. Beyond this requirement, no special regulations (as for the case of dismissal for managerial reasons, an employer should have a sincere consultation with workers' representatives over efforts to avoid dismissal and fair and rational criteria for selecting workers to be dismissed for 50 days).   |

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| <b>21: Other special costs to employers in case of collective dismissals (i)</b> | <b>Type of negotiation required:</b> Sincere consultation on need for redundancy, dismissal standards and employee selection. An employer should make efforts to avoid dismissal for managerial reasons in order to justify it. He/she should take such measures as voluntary retirement, reassignment, out-placement, temporary shutdown, and working hour reduction. <b>Selection criteria:</b> Law lays down union participation, but no specific selection criteria for dismissal other than "rational and fair standards". <b>Severance pay:</b> No special regulation for collective dismissal. |
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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.

## LUXEMBOURG

| Items   | Regulations in force on 1 January 2013  |
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| <b>1:</b> Notification procedures in the case of individual dismissal of a worker with a regular contract | Employees must be notified of dismissal by registered mail. If the firm employs more than 150 workers, workers' representatives or, if they do not exist, the labour inspectorate must also be notified (Art. L124-2 code du travail, CT hereafter). For dismissals affecting the volume or structure of employment, the enterprise's works council (if applicable) must also be notified of impending dismissals (Art L423-3 CT). Works councils are compulsory in firms having normally employed at least 150 workers in the last 3 years (Art L421-1 CT)   |
| <b>2:</b> Delay involved before notice can start  | The employer must notify the employee of the dismissal by registered mail. The notice period starts either on the 1 <sup>st</sup> or 15 <sup>th</sup> day of the month following notice being received by the employee, whichever is the earliest.<br><br>Firms with more than 150 employees (that account for e.g. more than 60% of manufacturing employment – source: OECD SDBS database) must invite, through registered letter, the worker to an interview before notifying the dismissal (art L124-2 CT).<br><br>Calculation (for EPL indicators): based on large firms: 3 days for letter sent by registered mail, 7 days on average until start of notice period, plus 3 days for inviting to the interview.   |
| <b>3:</b> Length of notice period at different tenure durations (a)                                       | In the event of termination of an employee at the initiative of the employer, the employment contract ends: after two months' notice to an employee with less than five years' continuous service; after four months' notice to an employee with between five and ten years of continuous service; after six months' notice to an employee with ten years of continuous service.  |
| <b>4:</b> Severance pay at different tenure durations (a)   | Employees with at least five years of continuous service are entitled to severance pay if their indefinite contract is terminated by the employer. The severance pay shall not be less than one month salary after five years service; two months after 10 years service; three months after 15 years service; six months after 20 years service; nine months after 25 years service; and 12 months after 30 years' continuous service. Firms with less than 20 employees can choose between making severance payments or giving additional notice equivalent to the amount of severance pay.   |
| <b>5:</b> Definition of unfair dismissal (b)  | Dismissal is fair if it is based on serious misconduct; worker capability; economic needs of the business. In assessing the conduct of the employee in unfair dismissal cases, judges take into account education, work histories, social status and elements affecting the employee's responsibility and consequences of dismissal.  |
| <b>6:</b> Length of trial period (c )   | The maximum length of the trial period for a contract of unlimited duration is 6 months.<br><br>But the following exceptions apply:<br><br>3 months for a level of qualification inferior to "certificat d'aptitude technique et professionnelle de l'enseignement secondaire technique" ; and 12 months if the initial gross monthly wage is greater than a given threshold (in 2012, 4053,61 € or 756,27 of the re-evaluation index – equal to 536€ for a value of 100).<br><br>Calculation (for EPL indicators): average of the three situations.  |
| <b>7:</b> Compensation following unfair dismissal (d)   | If the dismissal is found to be unfair, the employer may be required to pay damages to the employee. In determining the amount of damages, the court will consider a period which should have been sufficient for the employee to find a new job (typically 4-6 months). The dismissed employee must demonstrate that he/she has taken necessary steps to find a new job. The court also takes into account various factors such as seniority, age and family situation. One month of additional compensation must be paid by the employer if he/she does not want to reinstate the employee.<br><br>Calculation (for EPL indicators): Typical compensation at 20 years of tenure: 5 months + 1 month in the case the employer does not want to reinstate the worker. |
| <b>8:</b> Reinstatement option for the employee following unfair dismissal (b)                            | When ruling on unfair dismissal, judges may request that the employee is reinstated. If the employer does not want to reinstate the employee, the employer can pay one months' salary as additional compensation.   |
| <b>9:</b> Maximum time period after dismissal up to which an unfair dismissal claim can be made (e)       | The time limit for making a claim of unfair dismissal is three months from the date of the notification or the date when the employee received the requested reasons for dismissal.   |
| <b>10:</b> Valid cases for use of standard fixed term contracts   | Fixed-term contracts can be used to replace temporarily absent employees (except where the absence is due to an industrial dispute), where the work is of a seasonal, temporary, urgent or occasional nature, in response to a temporary increase in work in the enterprise, to hire approved categories of unemployed persons registered with the <i>Agence pour le Développement de l'Emploi</i> (the authorisation takes into account age, training and duration of unemployment), and with the authorisation of the Labour Ministry, employment intended to promote the hiring of some categories of workers or to engage in training.  |



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| <b>11:</b> Maximum number of successive standard FTCs (initial contract plus renewals and/or prolongations) | A fixed-term contract can be renewed twice. Some categories of workers (teachers, artists, performers, athletes, coaches) are not subject to restrictions on renewals of fixed-term contracts.  |
| <b>12:</b> Maximum cumulated duration of successive standard FTCs   | A fixed-term contract cannot exceed 24 months in duration (including renewals). Fixed-term contracts for seasonal work cannot exceed 10 months in a 12 month period.  |
| <b>13:</b> Types of work for which temporary work agency (TWA) employment is legal                          | TWA workers may be employed to replace an absent employee or an employee whose employment contract is suspended for a reason other than a labour dispute or to replace an employee whose position became vacant before the entry into service of his successor; for seasonal jobs; for jobs in specific sectors or occupations where the nature of the work is temporary; or to perform urgent work.  |
| <b>14:</b> Are there restrictions on the number of renewals and/or prolongations of TWA assignments? (f)    | The contract can be renewed twice without exceeding the 12 month limit.   |
| <b>15:</b> Maximum cumulated duration of TWA assignments (f)  | Except for seasonal jobs, the contract should not exceed 12 months in duration for the same employee in the same job, including renewals.   |
| <b>16:</b> Does the set-up of a TWA require authorisation or reporting obligations?                         | Temporary work agencies require authorization from the Ministry of Labour and the Ministry of Small Enterprises, which is granted initially for 12 months. A request for extension of authorization must be made three months before the expiry of the authorisation. If granted, the authorisation runs for a further two years. After a period of three years of authorised operation, the agency will be granted unlimited authorisation.  |
| <b>17:</b> Do regulations ensure equal treatment of regular workers and agency workers at the user firm?    | A TWA worker is required to receive the same pay and conditions as an employee with the same or an equivalent qualification hired by the user firm as a permanent employee.   |
| <b>18:</b> Definition of collective dismissal (b)   | Additional regulations apply for dismissals of 7 or more workers within a 30 day period or 15 or more workers within a 90 day period.   |
| <b>19:</b> Additional notification requirements in cases of collective dismissal (g)                        | The works council and the labour inspectorate must be notified of the dismissal.<br>Calculation (for EPL indicators): 2 minus notification requirements specified in item 1 (1 for works councils and 0 for the labour inspectorate: worker representatives must be elected in firms with more than 15 employees (Art. L411-1 CT); therefore, for individual redundancies in large firms, there is no obligation of notifying the labour inspectorate).   |
| <b>20:</b> Additional delays involved in cases of collective dismissal (h)                                  | Once notification has been given, negotiations start on a social plan, which must be finalised within 2 weeks. If there is no agreement, the parties resort to the <i>Office national de conciliation</i> , which invite them to a conciliation hearings within 2-5 days. Conciliation hearings must be concluded in 2 weeks. After the social plan has been agreed to, individual notification can be given to workers. Dismissals cannot effectively take place before 75 days from notification (art. L166-2, L166-5, L166-6 CT).<br>Calculation (for EPL indicators): average with and without agreement: $75+14 + ((2+5)/2+14)/2 - 11.5$ (delays reported in item 2) - 60 (average notice period reported in item 3). = 26.25 days |
| <b>21:</b> Other special costs to employers in case of collective dismissals (i)                            | The social plan typically contains internal and external reclassification measures and the amount of additional compensation payable.   |

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).





### Luxembourg

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.

## MEXICO

| Items  | Regulations in force on 1 January 2013  |
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| 1: Notification procedures in the case of individual dismissal of a worker with a regular contract   | The employer who dismisses a worker shall give written notice to the employee clearly indicating the conduct or conducts that motivate his/her dismissal and the date or dates on which they were committed. The notice shall be delivered personally to the employee at the moment of the dismissal or the employer shall notify to the Conciliation and Arbitration Board competent within five business days. The Board will notify the employee (Art. 47 Federal Labour Law, FLL hereafter).  |
| 2: Delay involved before notice can start  | The notice must be communicated to the employee.  |
| 3: Length of notice period at different tenure durations (a)   | <b>All workers:</b> No minimum notice period.   |
| 4: Severance pay at different tenure durations (a)   | Dismissals are justified only if the worker in the course of his employment is guilty of a dishonest or dishonourable act. Dismissed workers shall be entitled to a service bonus of 12 days per year of service. In the case of physical or mental disability or manifest unfitness of the worker that makes impossible continued employment, severance pay is 1 month plus 12 days per year of service (Art. 54 FFL). However, permanent workers shall be entitled to a length-of- service bonus, consisting in twelve days' wages for each year of service even if they resign voluntarily, on condition that they have completed at least fifteen years of service. (Art. 162 FLL).<br>Calculation (for EPL indicators): severance pay minus entitlements upon quitting.  |
| 5: Definition of unfair dismissal (b)  | <b>Justified:</b> Dismissals are justified only when the employer can demonstrate the worker's lack of integrity or actions prejudicial to the company's interests (such as negligence, imprudence, or disobedience). Dismissal for physical or mental disability or manifest unfitness of the worker that makes impossible employment continuation is also justified.<br><b>Unfair:</b> In all other cases, including where relevant notification procedures have not been followed, the dismissal will usually be ruled unfair.   |
| 6: Length of trial period (c )   | The FLL regulates the trial period as follows:<br>Article 39A: In an employment relation of unspecified duration or when exceeding 180 days, the trial period, may not exceed 30 days, with the only purpose to verify that the employee meets the requirements and skills needed to develop the work requested.<br>The trial period may be extended up to 180 days, only in the case of workers in management positions, managerial and other involved in the management or administrative functions in the company or establishment or the performance of specialized, professional, or technical work. At the end of the trial period, if the worker cannot prove to satisfy the qualifications and skills needed to develop the work, the employer, taking into account the opinion of the Joint Commission on Productivity, Development and Training, will terminate the employment relationship without liability.<br>Calculation (for EPL indicators): average of the 2 situations: 3.5 months |
| 7: Compensation following unfair dismissal (d)   | In the case of dismissal without "just cause", compensation of 3 months plus 20 days per year of service. Back pay accrues from the date of dismissal.<br>Calculation (for EPL indicators): Typical compensation at 20 years tenure (all workers): 15 months (compensation plus backpay minus seniority bonus minus severance pay mentioned in Item 4).   |
| 8: Reinstatement option for the employee following unfair dismissal (b)                              | The employee may request reinstatement, but the employer can be exempted from reinstating the employee by paying compensation to the employee in cases where the employee had tenure of less than one year, was employed on a casual basis or where an ongoing employment relationship is not possible the worker, because of the position he/she holds or the nature of his/her work, is in direct and permanent contact with the employer.<br>Calculation (for EPL indicators): average of the two cases  |
| 9: Maximum time period after dismissal up to which an unfair dismissal claim can be made (e)         | In accordance with the provisions of Art. 518 FLL, the legal prescription for unfair dismissal claims is two months. The prescription runs from the day following the date of termination of the employment relationship.   |
| 10: Valid cases for use of standard fixed term contracts   | Restricted to objective situations (replacement, temporary increase in workload, work on a project that is itself of a fixed-term nature, etc.), with the exception of a few occupations. Extent of use determined in consultation with union delegates.  |
| 11: Maximum number of successive standard FTCs (initial contract plus renewals and/or prolongations) | No limit specified, negotiable by both parties.   |

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| <b>12:</b> Maximum cumulated duration of successive standard FTCs  | No limit specified, negotiable by both parties. If the fixed term contract is to perform work of a fixed-term nature, the contract will extend as long as the work extends.   |
| <b>13:</b> Types of work for which temporary work agency (TWA) employment is legal                       | The FLL regulates TWA employment in Articles 15-A, 15-B, 15-C and 15-D.<br>The use of TWA employment should not cover the same activities that are normally performed in the user establishment. Moreover, jobs of regular and TWA workers at the user establishment must be different. Moreover, TWA employment must be justified by its specialized nature.<br>The use of TWA employment is not permitted when worker's contract are transferred from the user firm to the agency, with the clear aim of reducing labor rights. |
| <b>14:</b> Are there restrictions on the number of renewals and/or prolongations of TWA assignments? (f) | No limit for both contracts and assignments   |
| <b>15:</b> Maximum cumulated duration of TWA assignments (f)   | No limit for both contracts and assignments   |
| <b>16:</b> Does the set-up of a TWA require authorisation or reporting obligations?                      | No requirements   |
| <b>17:</b> Do regulations ensure equal treatment of regular workers and agency workers at the user firm? | Article 14 of the FLL establishes responsibilities for companies that use intermediaries for hiring workers. Workers shall have the right to provide their services under the same conditions and have the same rights that apply to other workers who perform work in the company or similar establishment.  |
| <b>18:</b> Definition of collective dismissal (b)  | The Federal Labour Law does not contain a definition of collective dismissal, but it contemplates the collective termination of employment relationships, following the closure of establishments or undertakings or by the permanent reduction of their production, mainly for economic reasons (Chapter VIII, FLL).   |
| <b>19:</b> Additional notification requirements in cases of collective dismissal (g)                     | <b>Notification of employee representatives:</b> Duty to inform and consult with trade union/employee representatives. <b>Notification of public authorities:</b> Notification to Conciliation and Arbitration Board if no agreement with union can be found.   |
| <b>20:</b> Additional delays involved in cases of collective dismissal (h)                               | Type of negotiation required: Negotiation with employee representatives on conditions and procedures of dismissal. If no agreement is reached, agreement by Conciliation and Arbitration Board on terms of dismissal is required. For the related procedure, a hearing must be performed within the fifteen working days following the date in which the complaint was presented or at the conclusion of the investigations (Art. 893 FLL).   |
| <b>21:</b> Other special costs to employers in case of collective dismissals (i)                         | <b>Type of negotiation required:</b> Negotiation with employee representatives on conditions and procedures of dismissal. If no agreement is reached, agreement by Conciliation and Arbitration Board on terms of dismissal required. <b>Selection criteria:</b> Usually seniority-based. <b>Severance pay:</b> 3 months in addition to seniority bonus (Art. 436 FLL)  |

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.

## NETHERLANDS

| Items  | Regulations in force on 1 January 2013  |
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| 1: Notification procedures in the case of individual dismissal of a worker with a regular contract | <p>Dutch dismissal law is governed by a dual system. <b>Termination via PES:</b> where a private sector employer wishes to terminate an employment contract and the parties do not agree about ending the contract, the employer requires prior permission from a public administrative body, UWV Werkbedrijf. This procedure acts as a preventive check to determine the reasonableness of any intended dismissal. It is financially less onerous than the alternative one but takes longer. In fact, if the dismissal is not sufficiently founded on reasonable grounds the employer is denied a permit to dismiss; if dismissal nonetheless follows, the employee has legal grounds to contest its validity.</p> <p><b>Termination via courts:</b> instead of turning to the public employment service, both employers and employees can file a request to Court to dissolve the employment contract "for important reasons". This is more expensive (see items on severance pay) but is shorter and administratively less onerous.</p> <p>Courts are used in 50% of the cases</p> <p>Calculation (for EPL indicators): the reduction in procedural inconveniences is meant to reflect the simplicity of court procedure over the use of the PES system. On the other hand, the higher cost is reflected in the increase in average severance pay.</p> |
| 2: Delay involved before notice can start  | <p><b>Termination via PES:</b> Authorisation procedure normally takes 4-6 weeks.</p> <p><b>Termination via courts:</b> The delay in cases which proceed to court varies from 1-30 days.</p> <p>Calculation (for EPL indicators): average of PES (5 weeks on average) and courts (15 days on average).</p>   |
| 3: Length of notice period at different tenure durations (a)                                       | <p>Termination via PES: 1m for the first five years of service, extended by one more month for every additional 5 years of service, up to a maximum of 4 months. In practice, the maximum is closer to 3 months since time spent for the prior authorisation procedure is compensated by lowering the notice period by one month.</p> <p>9 months tenure: 1 month (no compensation), 4 years tenure: 1 month (no compensation), 20 years tenure: 4 months (3 months if compensation applies).</p> <p>Termination via Court: decision is effective immediately, i.e. there is no notice period in this case (and labour courts are used in 50% cases).</p> <p>Calculation (for EPL indicators): average of PES /courts (0)</p>   |
| 4: Severance pay at different tenure durations (a)   | <p><b>Termination via PES:</b> no severance pay.</p> <p><b>Termination via Court:</b> The court may determine severance pay, roughly according to the formula: <math>A \times B \times C</math> where:</p> <p>A = tenure of a person (until age 35: 0.5 * years of tenure; age 35-45 1 * years of tenure; age 45-55: 1.5 * years of tenure; age over 55: 2 * years tenure).</p> <p>B = monthly gross salary.</p> <p>C = correction factor (no maximum, but a correction factor above 2 is extremely exceptional).</p> <p>In this case (1 in 2 cases), 9 months tenure: 0 month, 4 years tenure: 3.2 month, 20 years tenure: 20 months (takes into account the correction factor mentioned above - as estimated by Dutch gov.).</p> <p>Calculation (for EPL indicators): average of PES (0)/courts</p>   |

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| 5: Definition of unfair dismissal (b)  | <p><b>Fair:</b> Dismissals on grounds of employee conduct or unsuitability, and for economic redundancy. In the latter case, data on the financial state of the company and proof that alternatives to redundancy have been considered must be given, and the selection of dismissed employees be justified. In the former case, concerning an open-ended employment contract, employers can fire a person in one of the following situations:</p> <ul style="list-style-type: none"> <li>- If an employee no longer fulfils his or her job in a satisfactory way or if he or she has become or is unsuitable for the job (except in case of illness).</li> <li>- If there is a serious conflict between employee and employer.</li> <li>- If the employee has conscientious objections to performing his or her job and the employer cannot offer other suitable work.</li> <li>- If the employee is long-term disabled for work.</li> <li>- If the employee behaves inappropriately for instance in case of theft or being drunk during working hours.</li> </ul> <p><b>Unfair:</b> Unfair are "obviously unreasonable" terminations, and dismissals of pregnant women, the disabled, new mothers and works council members, including, more precisely:</p> <ul style="list-style-type: none"> <li>- On grounds concerning for instance religion, race, age, or disability (discrimination).</li> <li>- During the first 2 years of illness or labour disability of an employee.</li> <li>- Due to pregnancy or during maternity leave.</li> <li>- Because the employee wants to make use of his or her rights to parental leave.</li> <li>- Because the employee is member of a works council or association for personnel; member of a certain political party; trade union member; and in some other cases.</li> </ul> |
| 6: Length of trial period (c )   | It is not mandatory by law to agree upon a trial period, but most jobs contain such an agreement. The maximum duration is two months. A maximum of 1 month applies to temporary contracts which last shorter than 2 years or if it involves a temporary contract that has no end date. A maximum of 2 months applies to an open-ended employment contract and to a temporary contract that last more than 2 years.  |
| 7: Compensation following unfair dismissal (d)   | <p><b>Termination via PES:</b> The employee can still file a claim at the court for unfair dismissal. If the court comes to the conclusion that the dismissal was unfair it usually grants financial compensation according to the same formula mentioned at Item 4 minus the salary paid during the processing time of UWV Werkbedrijf and during the notice period. <b>Termination via court:</b> If the court thinks that termination is unfair, but upholds the contract as not feasible, then the correction factor will be more than one.</p> <p>Recent research documents the average compensation for dissolving a contract is equivalent to about 7 months pay.</p>  |
| 8: Reinstatement option for the employee following unfair dismissal (b)                              | The option of reinstatement is rarely made available to the employee.   |
| 9: Maximum time period after dismissal up to which an unfair dismissal claim can be made (e)         | 6 months from the effective date of termination (Civil Code, art. 7:683).   |
| 10: Valid cases for use of standard fixed term contracts   | No restrictions.  |
| 11: Maximum number of successive standard FTCs (initial contract plus renewals and/or prolongations) | 3. Three successive fixed-term contracts not exceeding a period of 3 years. A fourth renewal or a renewal exceeding a total period of 3 years will alter the fixed-term contract automatically into a contract of indefinite time. The number of renewals (3) and/or the time (3 years) can be changed (more/less) by collective agreement.   |
| 12: Maximum cumulated duration of successive standard FTCs   | No limit for first fixed-term contracts, but 3 years in case of renewals.   |
| 13: Types of work for which temporary work agency (TWA) employment is legal                          | General, with the exception of seamen.  |
| 14: Are there restrictions on the number of renewals and/or prolongations of TWA assignments? (f)    | <p>No restriction for assignments</p> <p>Legally no restriction for contracts in the first half year. This period has been extended by collective agreement to 78 weeks. Then a maximum of 8 renewals of TWA contracts each for a period of 3 months. After that period a further renewal will change a TWA contract into a contract for an indefinite period with the Temporary Work Agency.</p>   |
| 15: Maximum cumulated duration of TWA assignments (f)  | Unlimited. After 3.5 years of accumulation of TWA contracts, the last fixed-term contract will be altered into a contract for an indefinite period with the TWA.  |
| 16: Does the set-up of a TWA require authorisation or reporting obligations?                         | No  |

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| <b>17:</b> Do regulations ensure equal treatment of regular workers and agency workers at the user firm? | Yes, equal treatment on pay and conditions, but can deviate from this regulation by collective agreement. In fact, Art.19, §5b of the Collective Labour Agreement for Temporary Agency Workers stipulates that deviations concerning wages are possible in the first 26 weeks of an assignment.   |
| <b>18:</b> Definition of collective dismissal (b)  | Over 3 months, 20+ workers dismissed by one employer in one employment service region. Terminations by mutual agreement shall also be included in the number of dismissed employees for the purpose of determining whether a collective dismissal is taking place (Act No. 197/2011 dated 17 November 2011: amendment to the Collective Redundancy Notification Act, 24 March 1976, Art. 3 (1)).  |
| <b>19:</b> Additional notification requirements in cases of collective dismissal (g)                     | <b>Notification of employee representatives:</b> Duty to inform and consult with Works Council and trade union delegation.<br><b>Notification of public authorities:</b> Notification of regional employment office.  |
| <b>20:</b> Additional delays involved in cases of collective dismissal (h)                               | 30 days waiting period to allow for social plan negotiations (unless the social partners have agreed in writing to refrain from the waiting period).  |
| <b>21:</b> Other special costs to employers in case of collective dismissals (i)                         | <b>Type of negotiation required:</b> Consultation on alternatives to redundancy and ways to mitigate the effects; social plan will normally be agreed outlining transfers, re-training, early retirement measures and financial compensation.<br><b>Selection criteria:</b> "Mirror-image" of existing workforce (age balance of the workforce).<br><b>Severance pay:</b> No legal entitlement, but social plans often contain severance pay or top-ups to unemployment benefits. Severance pay through social plans is often lower than the formula mentioned in Item 4. |

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.



## NEW ZEALAND

| Items  | Regulations in force on 1 January 2013  |
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| 1: Notification procedures in the case of individual dismissal of a worker with a regular contract | <p><b>Personal reasons:</b> Under the Employment Relations Act 2000 (ERA), employers, employees and unions must deal with each other in good faith. This means that before an employer can dismiss an employee, an employer must give their employee warnings and provision of an opportunity to the employee to answer allegations and improve performance, clear explanations and reasonable notification of the reasons for that employee's dismissal. Further, all employment agreements must set out, in plain language, the procedure for resolving employment relationship problems, which may include a procedure for notification. The minimum requirements for a fair disciplinary process are: i) having regard to the resources available, did the employer sufficiently investigate the allegations against the employee; ii) did the employer raise his or her concerns with the employee before taking action; iii) did the employer give the employee a reasonable opportunity to respond to those concerns; and iv) did the employer genuinely consider the employee's explanation (if any) in relation to the allegations.</p> <p><b>Redundancy:</b> the principle of good faith also applies specifically to making employees redundant. This means that an employer must give unions and employees explicit, reasonable notice before redundancies are implemented. Employment agreements must contain provisions to prescribe procedures when restructuring occurs due to contracting out or the sale or transfer of the employee's work. The employer's action must be that of a fair and reasonable employer taking all the circumstances of the case into account. Calculation (for EPL indicators): <math>1.5 = (1+2)/2</math></p> |
| 2: Delay involved before notice can start  | <p><b>Personal reasons:</b> Notification orally or in writing (as provided for in contract), after previous warning.</p> <p><b>Redundancy:</b> The principle of good faith requires consultation with employees and unions over matters that affect collective employment interests (such as selection and ways of avoiding dismissal). Calculation (for EPL indicators): average of redundancy and personal reasons Personal reasons 1 day for notice + 6 days for prior warning procedure; 1 day for notice and at least 2 days for consultation</p>  |
| 3: Length of notice period at different tenure durations (a)                                       | <p><b>All workers:</b> No specific period is required under the ERA, but the duty of good faith, as well as case law, requires that reasonable notice be provided. Usually 1-2 weeks for blue collar and 2+ weeks for white collar workers.</p> <p>An analysis of collective employment agreements (CEA) by a New Zealand university in 2012 indicated that 4 weeks' notice for redundancy is the most common provision in CEAs.</p>  |
| 4: Severance pay at different tenure durations (a)   | <p><b>Personal reasons:</b> none.</p> <p><b>Redundancy cases:</b> no statutory requirements to pay severance pay. However, collective agreements often require severance pay. But only a small percentage of workers are covered by collective agreements.</p> <p>There are some entitlements in the case of redundancy due to outsourcing of part of the production process to a contractor. In such cases, the affected workers have the right to transfer to the new employer (the contractor). If the new employer refuses the transfer of one or more workers, the affected workers are entitled to redundancy entitlement from the new employer including compensation upon agreement of both parties. If they fail to agree, the authority will determine such entitlement (Part 6A of ERA).</p>   |
| 5: Definition of unfair dismissal (b)  | <p>Dismissal is justified if there is a good substantive reason to dismiss (where it could be open to a fair and reasonable employer to dismiss an employee in those particular circumstances) and the employer carries out the dismissal fairly and reasonably in those circumstances. However, the legislation recognises that there may be more than one fair and reasonable response or outcome that might be justifiably applied by a fair and reasonable employer in these circumstances.</p> <p>What is a "good substantive reason" for dismissal will depend upon the circumstances of each individual case, but there are three main grounds: misconduct, lack of competence, redundancy.</p> <p>What is 'fair' process of dismissal will also depend upon the circumstances of each individual case. The Authority and the Court have generally placed most emphasis on the fact that an employee must be given reasonable notice of the specific allegation against them, a reasonable opportunity to respond to those allegations. An employer must also give unbiased consideration to an employee's explanation.</p> <p>The test used by the Employment Relations Authority (and the Courts) also sets out the minimum requirements of a fair process (as above), but the Authority must not determine that a dismissal is unjustifiable solely because of defects in the process, if the defects are minor and did not result in the employee being treated unfairly.</p>  |

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| <b>6: Length of trial period (c )</b>   | <p>The maximum length of trial periods is 90 days. Employers and employees can agree on a shorter trial period.</p> <p>Trial periods must be agreed to in writing before the employee starts work and they may only be entered into with new employees (they cannot have worked previously for that employer). An employee who is dismissed before the end of a trial period cannot raise a personal grievance on the grounds of unjustified dismissal. They can raise a personal grievance on other grounds, such as discrimination or harassment or unjustified action by the employer.</p>   |
| <b>7: Compensation following unfair dismissal (d)</b>   | <p>Compensation is set on a case-by-case basis. The ERA's provisions on personal grievances provide for some of the following remedies: reinstatement, reimbursement of lost wages; and payment of compensation, including compensation for humiliation, loss of dignity, injury to employee's feelings, and for loss of any benefit.</p> <p>Statistics on the amounts awarded by the Authority for all personal grievance cases (including unfair dismissal) are published on the Ministry of Business, Innovation and Employment's website: <a href="http://www.dol.govt.nz/er/services/law/case/costaward/">http://www.dol.govt.nz/er/services/law/case/costaward/</a></p> <p>In the 2011 calendar, the average amount of compensation awarded was NZ\$5,322.49 per case or NZ\$5,048.76 per applicant.</p> <p>Calculation (for EPL indicators): Typical compensation at 20 years tenure: backpay of 6 months (assumes case takes 6 months to complete) + median compensation payment of NZ\$5,000 in the first half of 2012 (equivalent to 6.2 weeks wages based on median weekly wages and salaries earnings taken from 2008 New Zealand Income Survey).</p> |
| <b>8: Reinstatement option for the employee following unfair dismissal (b)</b>                              | <p>The Authority may provide for reinstatement as a remedy where practicable and reasonable.</p> <p>In determining whether it is practicable to order reinstatement, the Authority will determine whether the level of mutual trust and confidence that remains between the parties would enable them to resume a productive employment relationship if reinstatement were ordered.</p>   |
| <b>9: Maximum time period after dismissal up to which an unfair dismissal claim can be made (e)</b>         | <p>90 days, but a potential applicant may ask the Employment Relations Authority to allow for filing a claim out of time in exceptional circumstances, including trauma of employee caused by the dismissal, failure to file due to a dilatory agent, no explanation of employment relationship resolution problems in the employee's employment agreement and the failure of the employer to provide, on request, a written statement of the reasons for dismissal.</p>  |
| <b>10: Valid cases for use of standard fixed term contracts</b>   | <p>The ERA provides that before an employee and an employer agree that the employee's employment will be based on a fixed term, the employer must have genuine reasons based on reasonable grounds for specifying that the employment of the employee is to be fixed term.</p> <p>The ERA also provides that the following reasons are not genuine reasons for agreeing to fixed term employment: to exclude or limit the rights of an employee under the ERA; and to establish the suitability of the employee for permanent employment.</p>   |
| <b>11: Maximum number of successive standard FTCs (initial contract plus renewals and/or prolongations)</b> | <p>There is no limit specified in legislation. However, there is a risk that that the Courts will find a fixed-term agreement does not meet the requirements for a fixed-term agreement if there is continuous renewal of the agreement. This will be decided on the individual circumstances of the case.</p>  |
| <b>12: Maximum cumulated duration of successive standard FTCs</b>   | <p>No limit, unless it is shown that the employer does not have genuine reasons based on reasonable grounds.</p>  |
| <b>13: Types of work for which temporary work agency (TWA) employment is legal</b>                          | <p>General</p>  |
| <b>14: Are there restrictions on the number of renewals and/or prolongations of TWA assignments? (f)</b>    | <p>New Zealand does not have any specific provisions on temporary agency workers in its employment relations legislation. No limit specified in the case of assignments.</p> <p>A worker who has an employment relationship with an agency has the same employment rights and obligations as any other type of employee.</p> <p>If an agency employs a worker on a fixed term agreement, then they must have genuine reasons based on reasonable grounds for the fixed term (as per item 10).</p>   |
| <b>15: Maximum cumulated duration of TWA assignments (f)</b>  | <p>No limit, unless it is shown that the employer does not have genuine reasons based on reasonable grounds.</p>  |
| <b>16: Does the set-up of a TWA require authorisation or reporting obligations?</b>                         | <p>No</p>   |

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| 17: Do regulations ensure equal treatment of regular workers and agency workers at the user firm? | There are no specific provisions on temporary agency workers that require their wages or working conditions to be equal to that of regular workers.   |
| 18: Definition of collective dismissal (b)  | No definition of collective dismissal.  |
| 19: Additional notification requirements in cases of collective dismissal (g)                     | <b>Notification of employee representatives:</b> No special regulations for collective dismissal. Good faith applies to redundancy and requires consultation with employees and unions over matters that affect collective employment interests. This covers prior consultation over matters such as how to avoid dismissals.<br><b>Notification of public authorities:</b> Not required.   |
| 20: Additional delays involved in cases of collective dismissal (h)                               | No special regulations for collective dismissal.  |
| 21: Other special costs to employers in case of collective dismissals (i)                         | <b>Type of negotiation required:</b> No legal requirements apart from procedural fairness and consultation requirements plus additional employment protection for employees where the work they are performing is contracted out, sold, or transferred to another business (see Item 4 and below)<br><b>Selection criteria:</b> The duty of good faith requires that an employer's basis for redundancy selection be fair. In redundancy situations employees providing certain services (cleaning and food catering, laundry services in hospitals, age-related residential care facilities and the education sector, orderly services in hospitals and the age-related residential care facilities and caretaking in the education sector) have the right to transfer to a new employer on the same terms if they wish.<br><b>Severance pay:</b> No special regulations for collective dismissal. |

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.

## NORWAY

| Items   | Regulations in force on 1 January 2013  |
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| <b>1:</b> Notification procedures in the case of individual dismissal of a worker with a regular contract | Written notice to employee, with statement of reasons upon request. Before making a decision regarding dismissal with notice, the employer shall, to the extent that it is practically possible, discuss the matter with the employee and the employee's elected representatives unless the employee himself does not desire this (Working Environment Act, WEA hereafter, Section 15-2).<br>Calculation (for EPL indicators): average of with and without consent of the employee - $(2+1)/2=1.5$ .  |
| <b>2:</b> Delay involved before notice can start  | The written notice can be handed directly to the employee or sent as a registered letter. The notice period runs from the first day of the month following that in which notice was given. Before making a decision regarding dismissal with notice, the employer shall, to the extent that it is practically possible, discuss the matter with the employee and the employee's elected representatives unless the employee himself does not desire this.<br>Calculation (for EPL indicators): 16 days = 1 day for notice + 2/2 days for discussion + 15 days on average until start of next month  |
| <b>3:</b> Length of notice period at different tenure durations (a)                                       | <b>All workers:</b> 14d<6m, 1m<5y, 2m<10y, 3m>10y. If an employee is dismissed after at least ten years' employment with the same undertaking, the period of notice shall be at least four months when given after the employee is 50 years of age, at least 5 months after the age of 55 and at least six months after the age of 60.  |
| <b>4:</b> Severance pay at different tenure durations (a)   | None by law, but collective agreements may under certain conditions require additional payment. However, severance pay schemes in collective agreements usually take the form of fee-based insurance schemes, with employers' contributions.  |
| <b>5:</b> Definition of unfair dismissal (b)  | <b>Fair:</b> Dismissals for personal and economic reasons (rationalisation measures, etc.) are possible. However, the courts have restricted personal reasons mainly to cases of material breach of the employment contract (disloyalty, persistent absenteeism, etc.). Social considerations, age or job tenure do not determine the choice of which worker to dismiss but can to a certain extent influence the decision.<br><b>Unfair:</b> Dismissals for economic reasons are unfair if the employee could have been retained in another capacity. Dismissals for reasons of age (under the age of 70), for trade union activities, military service, pregnancy and of recent mothers and employees on sick leave are also unfair.  |
| <b>6:</b> Length of trial period (c )   | By law up to 6 months trial period (14 days notice required for dismissal during the trial period).   |
| <b>7:</b> Compensation following unfair dismissal (d)   | In the case of unfair dismissal, the employee is entitled to compensation. The amount of compensation is determined by a court and varies depending on the financial loss, circumstances relating to the employer and employee and other facts of the case. Typical compensation of up to 6 months pay (although it can go up to 3 years in rare cases), plus back pay for the duration of the court case.<br>Calculation (for EPL indicators): Typical compensation at 20 years tenure (all workers): 12 months.   |
| <b>8:</b> Reinstatement option for the employee following unfair dismissal (b)                            | Reinstatement orders fairly frequent.   |
| <b>9:</b> Maximum time period after dismissal up to which an unfair dismissal claim can be made (e)       | An employee who wishes to claim that a dismissal with notice or summary dismissal is unlawful, that it is a breach of the provisions of the WEA concerning preferential rights or that an unlawful temporary appointment, hiring or suspension has been made may demand negotiations with the employer. The time limit for requesting negotiations is 2 weeks. By contrast, The time period for claiming an unfair dismissal is eight weeks. If an employee claims compensation only, the time limit shall be six months. In individual cases, the parties may agree upon a longer time limit for initiating legal proceedings. The time limit starts to run from the conclusion of negotiations. If negotiations are not conducted, the time limit runs from the date of summary dismissal or the date notice start running. If the dismissal does not meet the formal requirements according to law, there is no time limit for such claims.<br>Calculation: average of normal limit (8 weeks) and limit if only claiming compensation (6 months) minus average notice period (1 month) |

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| <b>10:</b> Valid cases for use of standard fixed term contracts   | Fixed-term contracts are valid when warranted by the nature of the work and the work differs from that which is ordinarily performed in the undertaking, for work as a temporary replacement for another person or persons, trainee, participants in labour market schemes under the auspices or in cooperation with the Labour and Welfare Service, athletes, trainers, referees and other leaders within organised sports, chief executives of firms and when necessary as a result of an agreement with a foreign state or international organisation. National unions may enter into collective agreements with an employer or employers' association concerning the right to make temporary appointments within a specific group of workers employed to perform artistic work, research work or work in connection with sport. If a collective agreement is binding for a majority of the employees within a specified group of employees at the firm, the employer may on the same conditions enter into temporary contracts of employment with other employees who are to perform corresponding work. |
| <b>11:</b> Maximum number of successive standard FTCs (initial contract plus renewals and/or prolongations) | <b>Estimated 1.5</b><br>In the case of successive contracts, justification of limitation of contract is subject to court examination.  |
| <b>12:</b> Maximum cumulated duration of successive standard FTCs   | The provisions concerning termination of employment relationships shall apply to employees who have been employed on fixed-term contracts for more than four consecutive years, with the exemption of trainees, participants in labour market schemes under the auspices or in cooperation with the Labour and Welfare Service, athletes, trainers, referees and other leaders within organised sport.   |
| <b>13:</b> Types of work for which temporary work agency (TWA) employment is legal                          | TWA employment is legal under the same conditions as fixed-term contracts, which means when warranted by the nature of the work and the work differs from that which is ordinarily performed in the undertaking, for work as a temporary replacement for another person or persons, for work as a trainee, for participants in labour market schemes under the auspices of or in cooperation with the Labour and Welfare Service, for athletes, trainers, referees and other leaders within organised sport.   |
| <b>14:</b> Are there restrictions on the number of renewals and/or prolongations of TWA assignments? (f)    | No limit specified, as long as there is an objective reason. In the case of successive assignments, if the subject is brought to court, justification of repeated use of TWA employment is subject to court examination.   |
| <b>15:</b> Maximum cumulated duration of TWA assignments (f)  | The provisions concerning termination of employment relationships shall apply to employees who have been temporarily employed for more than four consecutive years, with the exemption of trainees, participants in labour market schemes under the auspices or in cooperation with the Labour and Welfare Service, athletes, trainers, referees and other leaders within organised sport. Consequently, the maximum duration of assignments of the same worker within the same user firm is 4 consecutive years.<br>Contracts between the agency and the worker can be open-ended.  |
| <b>16:</b> Does the set-up of a TWA require authorisation or reporting obligations?                         | The set up of a TWA requires periodic reporting obligations.   |
| <b>17:</b> Do regulations ensure equal treatment of regular workers and agency workers at the user firm?    | A regulation ensures equal treatment of regular workers and agency workers at the user firm. According to this, the TWA must ensure that the agency workers are given at least the same wage and working conditions (i.e. working time, holiday and holiday pay, wages, cost coverage) as the regular workers at the user firm.  |
| <b>18:</b> Definition of collective dismissal (b)   | 10+ employees within a month.  |
| <b>19:</b> Additional notification requirements in cases of collective dismissal (g)                        | <b>Notification of employee representatives:</b> Duty to inform and consult with trade union/employee representatives.<br><b>Notification of public authorities:</b> Notification of Labour and Welfare Administration.  |
| <b>20:</b> Additional delays involved in cases of collective dismissal (h)                                  | 30 days waiting period after the notification of the employment service. This period runs concurrently with the notice periods issued to the employees (Sec. 15-2(5) Working Environment Act.<br>Good faith consultations with trade union/employee representatives preceding individual notice (evaluated at least 2 days).<br>Calculation: at least 1 additional day for consultations with respect to delays indicated in item 2.   |
| <b>21:</b> Other special costs to employers in case of collective dismissals (i)                            | <b>Type of negotiation required:</b> Consultation on alternatives to redundancy and selection standards.<br><b>Selection criteria:</b> Accepted customary practice is by seniority, but recent case law gives more weight to business needs.<br><b>Severance pay:</b> No legal requirements.   |

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.



## POLAND

| Items  | Regulations in force on 1 January 2013  |
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| 1: Notification procedures in the case of individual dismissal of a worker with a regular contract | Notification to representative trade union (establishment's trade union body, which represents the worker) of intention to terminate, including reasons for dismissal. If the employee is not protected by the union, the employer does not have to consult with the union about the dismissal. Written notice is usually given to the employee personally. In the case the employee takes the case to the labour court, the court may require evidence of a warning procedure.   |
| 2: Delay involved before notice can start  | The employer must establish whether the employee is represented by trade union. If yes, the employer must consult with the trade union, giving the union 5 days to respond. If the employee is not protected by the union, the employer does not have to consult with the union about the dismissal. Written notice is usually given to the employee personally.<br>Calculation (for EPL indicators): Union members: 13 = 1 day to send enquiry + 5 days for response + 1 day to notify union + 5 days for consultations + 1 day for notice<br>Non-union members: 7 = 1 day to send enquiry + 5 days for response + 1 day for notice<br>On average: 10 days   |
| 3: Length of notice period at different tenure durations (a)                                       | <b>All workers on open-ended contracts:</b> 2w<6m, 1m>6m, 3m>3y. 2w for school leavers in first job.<br>Calculation (for EPL indicators): 9 months tenure: 1 month, 4 years tenure: 3 months, 20 years tenure: 3 months.  |
| 4: Severance pay at different tenure durations (a)   | Usually none, but 1 month in case of termination due to disability or retirement.<br>Moreover severance pay is paid by employers employing at least 20 employees when the employment contract is terminated in collective redundancies or in individual cases, due to reasons not attributable to employees, if these reasons solely justify termination (by notice or mutual agreement).<br>Severance pay totalling:<br>i) a one-month pay provided that the employee has been employed with a given employer for less than two years, ii) a two-month pay if the employee has been employed with a given employer for 2-8 years, iii) a three-month pay if the employee has been employed with a given employer for more than 8 years,<br>Calculation (for EPL indicators): average of personal reasons and redundancy: 9 months: 0.5 months; 4 years: 1 month; 20 years: 1.5 months  |
| 5: Definition of unfair dismissal (b)  | <b>Termination with period of notice.</b><br>The employee may apply to court if the termination of an open-ended contract of employment is:<br>- found unjustified or<br>- contrary to the provisions on the termination of contracts of employment (for example: lack of notice in writing, lack of notification to representative trade union).<br><b>Fair/Justified:</b> Court practice. Dismissals based on factors inherent in the employee (e.g. lack of competence, insufficient performance at work) or on economic grounds of redundancy of the job.<br><b>Dismissal without notice.</b><br>Justified only in cases provided by the law.<br>Employee's fault:<br>- an employee commits serious violation of his/her basic duties;<br>- an employee commits an offence that makes his/her further employment impossible;<br>- an employee loses by his/her own fault the qualifications required by law to perform a particular job.<br><b>Unfair</b> Dismissal which cannot be attributed to the employee's fault or the justified reasons mentioned above as well as dismissal due to absence from work due to illness or other excused reasons for a long period stated in this provision. |
| 6: Length of trial period (c)  | All workers: There is a special type of contract: a contract for a trial period of no more than three months, which may precede any other contract.   |
| 7: Compensation following unfair dismissal (d)   | Compensation of up to 3 months depending on amount of salary earned in another job by the time of court decision.<br>Calculation (for EPL indicators): Typical compensation at 20 years tenure (all workers): 3 months.   |

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| <b>8:</b> Reinstatement option for the employee following unfair dismissal (b)                              | Reinstatement is possible (dismissal with notice as well as without notice), but not often made available by the court.  |
| <b>9:</b> Maximum time period after dismissal up to which an unfair dismissal claim can be made (e)         | An appeal against a notice of termination of a contract of employment shall be filed with the labour court within seven days of the delivery date of the letter terminating the contract of employment. A claim for reinstatement in employment or for payment of compensation shall be filed with the labour court within 14 days after the delivery date of the letter terminating the contract of employment without notice, or after the expiry of the contract of employment.   |
| <b>10:</b> Valid cases for use of standard fixed term contracts   | No restrictions on standard fixed-term contracts.  |
| <b>11:</b> Maximum number of successive standard FTCs (initial contract plus renewals and/or prolongations) | 2 successive fixed-term contracts allowed.   |
| <b>12:</b> Maximum cumulated duration of successive standard FTCs   | No limit   |
| <b>13:</b> Types of work for which temporary work agency (TWA) employment is legal                          | Only allowed for:<br>1. seasonal tasks, periodic tasks or ad hoc tasks;<br>2. tasks whose timely performance by the user company's permanent staff would be impossible;<br>3. tasks normally falling within the duties of a temporarily absent employee of the user company.   |
| <b>14:</b> Are there restrictions on the number of renewals and/or prolongations of TWA assignments? (f)    | No   |
| <b>15:</b> Maximum cumulated duration of TWA assignments (f)  | Over a period of thirty-six successive months, the total period of temporary work performed by the temporary worker for a single user employer may not exceed 18 months.<br><br>If the temporary worker performs temporary work for a given user employer in a continuous manner and his work includes tasks that fall within the duties of an absent worker of the user employer, the period of temporary work may not exceed thirty-six months.<br><br>After the period of temporary work referred to in the second paragraph above, performed for a given user employer, the temporary worker may be posted to the same user employer to perform temporary work not earlier than after thirty-six months.<br><br>There are no limits for contracts between the worker and the agency provided that the worker changes user employer once maximum assignment length is reached.<br><br>Calculation (for EPL indicators): $27 \text{ months} = (18+36)/2$ |
| <b>16:</b> Does the set-up of a TWA require authorisation or reporting obligations?                         | The set up of TWA in Poland requires special administrative authorisation and entails periodic reporting obligations.  |
| <b>17:</b> Do regulations ensure equal treatment of regular workers and agency workers at the user firm?    | A temporary employee during the period of performing work for a user firm cannot be treated less favourably with regard to working conditions and other terms of employment than employees employed by the user firm at the same or similar work station (remuneration included).  |
| <b>18:</b> Definition of collective dismissal (b)   | 10 workers in firms with 20-99 employees. 10% in firms <300 employees. 30 workers in firms with 300 or more workers  |
| <b>19:</b> Additional notification requirements in cases of collective dismissal (g)                        | <b>Notification of employee representatives:</b> Duty to inform competent trade unions. <b>Notification of public authorities:</b> Notification of local employment office.  |
| <b>20:</b> Additional delays involved in cases of collective dismissal (h)                                  | Information to trade union 20 days before implementation and notification to PES before start of notice period.<br><br>Calculation (for EPL indicators): 20 days - 10 days for individual dismissals   |

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| <p><b>21: Other special costs to employers in case of collective dismissals (i)</b></p> | <p><b>Type of negotiation required:</b> Agreement to be reached with trade unions on alternatives to redundancy and ways to mitigate the effects. The parties should hold consultations in good faith, namely, with the intention of reaching an agreement. If consent as to the content of the agreement cannot be reached, the employer must prepare regulations defining the procedure for mass layoffs with special regard to agreements agreed with the company trade unions in the course of the negotiations. The agreement or employer's layoff program should cover at least: reasons for the intended collective layoff, the number of the employees employed and occupational groups to which these employees belong, the occupational groups to which the employees to be laid off belong, the period in which the employees will be laid off, proposed criteria of selecting the employees to be laid off under the collective layoff program, the sequence of laying the employees off, proposed resolution of employee issues related to the intended collective layoff, and if these issues include pecuniary benefits, the employer shall additionally present the methods for determining their amounts.</p> <p><b>Selection criteria:</b> Law lays down union participation, but no specific selection criteria for dismissal.</p> <p><b>Severance pay:</b> no additional requirement</p> |
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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.

## PORTUGAL

| Items  | Regulations in force on 1 January 2013   |
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| 1: Notification procedures in the case of individual dismissal of a worker with a regular contract | <p><b>Dismissal due to extinction of work position:</b></p> <p>The employer notifies the grounds for dismissal, in writing, to: (i) the workers committee or, in its absence, the inter-union committee or union committee, (ii) the worker involved and, (iii) if the worker is a union representative, his/her union association, [number 1 of article 369 of the Labour Code (CT hereafter)].</p> <p>Any worker involved, committee representing these workers or union association may, within the three business days following the employer's notification, request to the competent inspection service of the ministry responsible for the labour area, to check the established requirements for dismissal, informing simultaneously the employer of this fact (number 2 of article 370 of the CT).</p> <p><b>Dismissal due to unsuitability:</b></p> <p>The employer notifies the grounds for dismissal, in writing, to the worker and, if the worker is a union representative, the union association (number 1 of article 376 of the CT). If the worker is not a union representative, three business days after having received the notification, the employer must send the same notification to the union association that the worker has indicated for that effect or, if the worker does not indicate any union, to the workers committee or, if it does not exist, the inter-union committee or union committee (number 2 of article 376 of the CT).</p>  |
| 2: Delay involved before notice can start  | <p><b>Dismissal due to extinction of work position:</b></p> <p>Procedure: During the 10 days following the notification referred to in the previous item, the organisation representing the worker, the worker involved and, if the worker is a union representative, the respective union association, may issue a statement. These same entities may request to the competent inspection service of the ministry responsible for the labour area to check the requirements for the dismissal, no later than three business days after the notification. This service prepares and sends to the employer and/or to the entity that requested its intervention the response to the inquiry on the matter subject to verification, within the period of seven days after receipt of the request (numbers 1, 2 and 3 of article 370 of the CT).</p> <p>Decision: After five days counted from the end of the period referred to above, the employer may proceed with the dismissal (number 1 of article 371 of the CT).</p> <p><b>Dismissal due to unsuitability:</b></p> <p>Procedure: A training and adaptation period or a previous warning must precede the beginning of the procedure of dismissal for unsuitability (see item 5). During the 10 days following the notification referred to in the previous item, the worker may attach documents and request the needed investigative evidences (number 1 of article 377 of the CT). If the worker requested to investigate evidences, the employer should inform the worker, the committee representing the worker and, if the worker is a union representative, the respective union association, of the result of this investigation (number 2 of article 377 of the CT). After these notifications, the worker and the committee representing the worker may, within the period of 10 business days, send to the employer their substantiated opinion, namely on the motives justifying the dismissal (number 3 of article 377 of the CT).</p> <p>Decision: After the receipt of the opinions referred to in the previous paragraph or the end of the period prescribed for this, the employer has 30 days to proceed with the dismissal, otherwise it will expire (number 1 of article 378 of the CT).</p> <p>Calculation (for EPL indicators): average of extinction of work position (16 days = 1 day for letter + 10 days for first notification and reactions + 5 days for employer to make decision) and unsuitability (24.5 days = 6 days for training and post-training adaptation or previous warning + 1 day for letter + 10 days for first notification plus 5/2 days for investigation plus 10/2 days for reaction to result of investigation). The last two items are divided by 2 to account for the possibility that investigation is not requested.</p> |
| 3: Length of notice period at different tenure durations (a)                                       | <p><b>Dismissal due to extinction of work position and dismissal due to unsuitability:</b></p> <p>The employer notifies the decision of the dismissal in advance at least by (number 3 of article 371 and number 2 of article 378, both of the CT):</p> <ul style="list-style-type: none"> <li>- 15 days, in the case of workers with job tenure of less than one year;</li> <li>- 30 days, in the case of workers with tenure equal to or above one year and less than five years;</li> <li>- 60 days, in the case of workers with tenure equal to or above five years and less than ten years;</li> <li>- 75 days, in the case of workers with tenure equal to or above ten years.</li> </ul>  |

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| <p><b>4: Severance pay at different tenure durations (a)</b></p> | <p><b>Severance payments in the case of termination of employment contracts signed after 1 November 2011:</b></p> <p>The worker is entitled to severance payments corresponding to 20 days of base wage and tenure-based increments for every year of tenure. The worker's monthly base wage and tenure-based increments that are considered for the calculation of the severance payments cannot be higher than 20 times the national minimum wage. The total amount of severance payments cannot be higher than 12 times the monthly base wage and tenure-based increments of the worker. In the case of fractions of years, the amount of severance payments is calculated proportionally (Article 366 CT).</p> <p><b>Severance payments in the case of termination of employment contracts of contracts signed before 1 November 2011:</b></p> <p>Severance pay is calculated as established in article 366 of the Labour Code, (number 1 of article 6 of Law number 23/2012):</p> <p>a) Regarding the contract period until 31<sup>st</sup> of October 2012, the amount of severance payments corresponds to one month of base wage and tenure based increments for every full year of tenure;</p> <p>b) Regarding the period of the contract after the date referred in the preceding subparagraph, the amount of severance payments corresponds to that established in article 366 of the CT (see above).</p> <p>c) The total amount of severance payments cannot be less than three months of base-wage and tenure based increments.</p> <p>Calculation (for EPL indicators): based on contracts signed after November 2011.</p>  |
| <p><b>5: Definition of unfair dismissal (b)</b></p>              | <p><b>Dismissal due to extinction of work position (art.368 CT):</b> Dismissal due to extinction of work position can only take place if the subsistence of the work relation is, in practice, impossible and there are no fixed term contracts at the company with tasks similar to those of the extinct job. If the division has several identical jobs for the position to be extinguished, the employer is responsible for defining the relevant and non-discriminatory criteria for the choice of redundant workers in view of the objective of the job suppressions. Any worker who, in the three months prior to the beginning of the dismissal procedure, has been transferred to a job which is then suppressed, is entitled to be reallocated to the previous job, if it still exists, with the same base wage. It is considered that the subsistence of the work relation is, in practice, impossible when the selection of redundant employees is consistent with the selection criteria mentioned above.</p> <p><b>Dismissal due to unsuitability: (art. 375 CT):</b> Dismissal due to unsuitability can occur if one of the following occurs: 1) continued reduction of productivity or of quality, repeated breakdowns in the resources allocated to the job and risks to the safety and health of the worker, other workers or third parties; or 2) the worker is allocated to a technically complex or management position and does not meet the objectives that were previously agreed in writing. Unsuitability under 1) can take place in two circumstances: i) in the previous six months, modifications of the job requirements occurred, vocational training suitable to the modifications of the job has been provided and after the training, the worker has been provided with a period of adaptation of at least 30 days; or ii) the following conditions are met, cumulatively: a) substantial modification of the output produced by the worker, determined by the poor performance of his/her duties which is predicted to be definitive; b) the employer informs the worker, attaching documents where the previously provided work is stated, demonstrating this way the substantial modification in the work provided (on which the worker may issue a statement in writing on the referred elements within a period of no less than five business days); c) after the worker statement or after the end of the period prescribed for that, the employer gives the worker, in writing, suitable orders and instructions relative to the execution of his/her tasks, with the purpose of correcting it; and d) suitable vocational training has been provided and after the training, the worker has been provided with a period of adaptation of at least 30 days.</p> <p>The procedure under ii) applies also to unsuitability under 2.</p> <p>Discriminatory dismissal is always unfair.</p> <p>Calculation (for EPL indicators): average of unsuitability (2) and redundancy (0.5).</p> |
| <p><b>6: Length of trial period (c )</b></p>                     | <p>The trial period, for an open ended employment contract, is of the following duration (number 1 of article 112 of the CT):</p> <ul style="list-style-type: none"> <li>- 180 days for workers who hold positions of technical complexity, high level of responsibility or which presuppose special qualification, as well as those who perform trustworthy duties;</li> <li>- 240 days for workers who hold directorship or senior management positions;</li> <li>- 90 days for other workers</li> </ul> <p>Calculation (for EPL indicators): average of qualified and other workers: 4.5 months</p>  |

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| <p><b>7: Compensation following unfair dismissal (d)</b></p>   | <p><b>Dismissal declared unfair (art. 389 CT):</b></p> <p>The employer is condemned to indemnify the worker for all the (material and moral) damages caused.</p> <p>In the case of mere irregularity of the procedure for dismissals, due to omission of required investigative measures required both for misconduct and unsuitability, and if the justifying motives claimed for the dismissal are declared founded, the worker is merely entitled to indemnity corresponding to half the value that would result from the application of what established as regards indemnity instead of reinstatement at the worker's request (number 2 of article 389 of the CT).</p> <p><b>Indemnity instead of reinstatement (art. 391 CT):</b></p> <p>If the worker chooses an indemnity, instead of reinstatement, the court determines the amount, between 15 and 45 days of base wage and tenure-based increments for every year or year fraction of tenure, depending on the value of the wage and degree of unfairness. The indemnity cannot be less than three months of base wage and tenure based increments.</p> <p>In the case of micro-enterprises or workers holding management or directorship positions, the employer may request the court to refuse reinstatement, with the worker being entitled to indemnity, determined by the court, between 30 and 60 days of base wage and tenure-based increments for every year or year fraction of tenure, which cannot be less than the value corresponding to six months of base wage and tenure based increments.</p> <p>Calculation (for EPL indicators): average of unsuitability and redundancy. For the former, average of irregular procedure (10 months) and indemnity in lieu of reinstatement (20 months): 15 months</p> |
| <p><b>8: Reinstatement option for the employee following unfair dismissal (b)</b></p>                      | <p><b>Dismissal declared unfair:</b></p> <ul style="list-style-type: none"> <li>- The employer is condemned to reinstate the worker in the same department of the company, keeping the previous category and tenure of the worker [subparagraph b) of number 1 of article 389 of the CT].</li> <li>- The worker may choose an indemnity, instead of reinstatement (article 391 of the CT), and the employer, in the case of a micro-enterprise or if the worker holds directorship or management positions, may request the court to avoid ordering reinstatement, based on facts and circumstances that would make the worker's return severely harmful and disturbing to the company's operation (article 392 of the CT).</li> </ul> <p>In the case of mere irregularity on procedure for dismissals, due to omission of required investigative measures required both for misconduct and unsuitability, and if the justifying motives claimed for the dismissal are declared founded, the worker is merely entitled to indemnity at a reduced rate.</p> <p>Calculation: average of unsuitability (2) and redundancy (3)</p>  |
| <p><b>9: Maximum time period after dismissal up to which an unfair dismissal claim can be made (e)</b></p> | <p>The worker may choose to object to the dismissal, through submission of an application, to the competent court, within the period of 60 days, which starts when the dismissal notification is received or when the contract ends, except in the case of collective dismissal, which must be filed within the period of six months from the date when the contract ends (numbers 1 and 2 of article 387 and number 2 of article 388, both of the CT).</p> <p>Calculation (for EPL indicators): 2 month minus average notice period (1 month)</p>  |



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| <p><b>10:</b> Valid cases for use of standard fixed term contracts</p>   | <p><b>Admissibility of fixed term contracts:</b></p> <p>Fixed term contracts can only be used to meet a temporary need of the company and for the period strictly necessary to meet this need (number 1 of article 140 of the CT).</p> <p>The following are considered as temporary needs of the company (number 2 of article 140 of the CT):</p> <ul style="list-style-type: none"> <li>- Direct or indirect replacement of a worker who is absent or, for any motive, is temporarily not capable of working [subparagraph a)];</li> <li>- Direct or indirect replacement of a worker to whom an action of assessment of unfair dismissal is pendent in court [subparagraph b)];</li> <li>- Direct or indirect replacement of a worker in a situation of unpaid leave [subparagraph c)];</li> <li>- Replacement of a full-time worker who now works on a part-time basis for a defined period [subparagraph d)];</li> <li>- Seasonal or other activity which annual production cycle shows irregularities arising from the structural nature of the respective market, including the supply of raw materials [subparagraph e)];</li> <li>- Exceptional increase of the company's activity [subparagraph f)];</li> <li>- Execution of occasional tasks or a certain service that is precisely defined and not long-lasting [subparagraph g)];</li> <li>- Execution of a defined and temporary work, project or other activity, including the execution, direction or supervision of work in the area of civil construction, public works, industrial assembly and repair, under contract or direct administration, as well as the respective projects or other complementary activity involving control and monitoring [subparagraph h)].</li> </ul> <p>A fixed term contract may also be signed for (number 4 of article 140 of the CT):</p> <ul style="list-style-type: none"> <li>- The launch of a new activity of an undefined duration, as well as the start-up of a company or establishment belonging to a company with less than 750 workers;</li> <li>- Contracting of workers in search of their first job, in a situation of long-term unemployment or other situation established in special employment policy legislation.</li> </ul> |
| <p><b>11:</b> Maximum number of successive standard FTCs (initial contract plus renewals and/or prolongations)</p> | <p><b>Renewal of fixed term contracts:</b></p> <p>A fixed term contracts may be renewed up to three times (number 1 of article 148 of the CT), which means that the maximum number of successive fixed term contracts is 4 (initial contract plus the three permitted renewals).</p> <p><b>Exceptional renewal regime (Law 3/2012):</b></p> <p>Two exceptional renewals are permitted in the case of fixed term contracts which, up to 30 June 2013, reach the maximum limit of duration established in number 1 of article 148 of the CT (number 1 of article 2).</p>  |
| <p><b>12:</b> Maximum cumulated duration of successive standard FTCs</p>   | <p><b>Duration of fixed term contracts:</b></p> <p>A fixed term contract may be renewed up to three times and their duration cannot exceed (number 1 of article 148 CT):</p> <ul style="list-style-type: none"> <li>- 18 months, when involving a person in search of a first job;</li> <li>- Two years, in the other cases established in number 4 of article 140 (referred to in <i>item 10</i>);</li> <li>- Three years, in all other cases.</li> <li>- Six years in cases of uncertain duration</li> </ul> <p><b>Exceptional renewal regime (Law 3/2012):</b></p> <p>The total duration of the renewals cannot exceed 18 months (number 2 of article 2) and the duration of each exceptional renewal cannot be less than one sixth of the maximum duration of the fixed term contract or its effective duration, whichever is lower (number 3 of article 2).</p> <p>The validity limit of a fixed term contract which has been renewed under exceptional conditions is 31 December 2014, without prejudice to the provisions in number 3 of article 2 (number 4 of article 2).</p> <p>Calculation: average of cases established in number 4 of article 140 and other cases<br/> <math display="block">(((24+24)/2)+((36+72)/2))/2= 40.5 \text{ months}</math></p>   |

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| <p><b>13:</b> Types of work for which temporary work agency (TWA) employment is legal</p>                       | <p>A contract for the use of temporary work (article 175 of the CT) can only be signed in the situations referred to in subparagraphs a) to g) of number 2 of article 140 (<i>Item 10</i>) and also in the following cases:</p> <ul style="list-style-type: none"> <li>- Job vacancy during a recruitment process for its filling;</li> <li>- Intermittent labour need, determined by fluctuation of the activity during days or parts of the day, provided that the use does not exceed, on a weekly basis, half the normal work hours typically undergone at the user;</li> <li>- Intermittent need to provide direct family support, of social nature, during days or parts of the day;</li> <li>- Implementation of a temporary project, namely company or establishment installation or restructuring, industrial assembly or repair.</li> </ul>   |
| <p><b>14:</b> Are there restrictions on the number of renewals and/or prolongations of TWA assignments? (f)</p> | <p>Renewal of contracts and assignments:<br/>They can be renewed for as long as the justifying motive is maintained (article 178, 179 and 182 of the CT).</p>   |
| <p><b>15:</b> Maximum cumulated duration of TWA assignments (f)</p>   | <p><b>Maximum duration of temporary employment contracts between the agency and the worker:</b><br/>A temporary employment contract cannot exceed the duration of the contract for the use of temporary work (number 1 of article 182).<br/>A temporary fixed term contract, including renewals, cannot exceed two years, or six or 12 months, in the case of a job vacancy when arising from a process of recruitment for its filling or exceptional increase of the company's activity, respectively (number 3 of article 182 of the CT).<br/>Contracts between the agency and the worker can, however, be open-ended (articles 183 and 184 of the CT).<br/><b>Maximum duration of contracts for the use of temporary work (assignments):</b><br/>A contract for the use of temporary work, including renewals, can neither exceed the duration of the justifying cause nor the limit of two years, or six or 12 months in the case of a job vacancy when a process of recruitment for its filling is already underway or exceptional increase of the company's activity, respectively (number 2 of article 178 of the CT).</p> |
| <p><b>16:</b> Does the set-up of a TWA require authorisation or reporting obligations?</p>                      | <p>The activity of temporary assignment of workers for occupation by users is subject to a license. Its granting depends on the observance of the following cumulative requirements: suitability; appropriate organisational structure; regular situation with respect to the tax administration and social security; legal designation of single or collective legal person under the designation «temporary work» and setting aside a financial guarantee (number 1 of article 5 of Decree-Law number 260/2009, of 25 September).<br/>Bi-annual reporting to PES about workers employed in the previous semester (number 2 of article 9 of Decree-Law number 260/2009, of 25 September).</p>  |
| <p><b>17:</b> Do regulations ensure equal treatment of regular workers and agency workers at the user firm?</p> | <p><b>Working conditions of temporary workers:</b><br/>During the assignment, the worker is subject to the regime applicable to the user with respect to place, working time and suspension of the employment contract, occupational safety and health and access to social facilities (number 2 of article 185 of the CT).<br/>The worker is entitled:<br/>- To the minimum wage defined in the collective agreement applicable to the temporary work agency or to the user, or to the same work, according to which is more favourable (number 5 of article 185 of the CT);<br/>- In proportion to the duration of the respective contract, to holidays, holiday and Christmas allowances, as well as other regular and period benefits to which the user's workers are entitled for the same work (number 6 of article 185 of the CT).</p>   |
| <p><b>18:</b> Definition of collective dismissal (b)</p>  | <p><b>Collective dismissal:</b><br/>Collective dismissal is considered the termination of employment contracts promoted by the employer in the period of three months, covering at least two workers, in micro-enterprise or a small company, and five workers in case of a medium-sized or large company, whenever the dismissal occur due to the closure of one or various divisions or equivalent structure or to the reduction of the number of workers as result of market, structural or technological motives (number 1 of article 359 of the CT). Conditions on fixed-term contracts and on workers recently transferred to redundant positions – required for individual redundancies (see Item 5) – do not apply for collective redundancies.</p>   |

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| <b>19: Additional notification requirements in cases of collective dismissal (g)</b> | <b>Notifications in the case of collective dismissal:</b><br>An employer intending to proceed with a collective dismissal notifies this intention, in writing, to the workers committee or, in its absence, to the inter-union committee or to the union committee of the company representing the workers who will be involved (number 1 of article 360 of the CT). In the absence of the entities referred to above, the employer notifies the intention of proceeding with the dismissal, in writing, to each worker potentially involved, who may appoint, amongst them, within the period of five business days counting from the receipt of the notification, a representative committee (number 3 of article 360 of the CT). The employer, on a date prior to the referred notification, must send a copy of the notification to the ministerial department responsible for the labour area entrusted with the monitoring and fostering of collective contracting (number 5 of article 360 of the CT). |
| <b>20: Additional delays involved in cases of collective dismissal (h)</b>           | <b>Information and negotiation with the structure representing the workers:</b><br>During the five days after the date of notification of the dismissal intention, the employer promotes a period of information and negotiation, with the organisation or committee representing the workers, with a view of reaching an agreement on the dimension and effects of the measures to be applied, in addition to other measures to reduce the number of workers to be dismissed (number 1 of article 361 of the CT).<br><b>Decision:</b><br>Once the agreement has been signed, or in its absence, after 15 days have passed since the date of notification of the dismissal intention, the employer notifies in writing each concerned worker involved, observing ordinary notice periods (number 1 of article 363 of the CT).<br>Calculation: 1 day for letter + 15 days for negotiation minus delays reported in item 2  |
| <b>21: Other special costs to employers in case of collective dismissals (i)</b>     | No additional requirements  |

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.

**SLOVAK REPUBLIC**

| Items  | Regulations in force on 1 January 2013   |
|--|--|
| 1: Notification procedures in the case of individual dismissal of a worker with a regular contract | Notice must be given in writing.   |
| 2: Delay involved before notice can start  | <p><b>Personal reasons</b> (e.g. continual minor breaches of work discipline or unsatisfactory work results) – If the employee does not satisfactorily fulfil the work tasks, notice can be given if the employer has, in the preceding six months challenged him in writing to rectify the insufficiencies, and the employee failed to do so within a reasonable period of time. For less serious breaches of labour discipline, the employee may be given a notice if, with respect to breach of labour discipline, he/she has been cautioned in writing within the previous six months as to the possibility of notice.</p> <p><b>Redundancy/economic/organisational reasons</b> – Standard notification procedure, no additional delay.<br/> Calculation (for EPL indicators): 4 days = 6/2 days for required warning procedure + 1 day for notice</p>               |
| 3: Length of notice period at different tenure durations (a)                                       | <p><b>Termination for organizational reasons (Section 63 (1a) or (1b), Labour Code):</b> at least 1m&lt;1y; at least 2m&lt;5y; at least 3m≥5y (cf. Section 62, labour Code).</p> <p><b>Termination for health or personal reasons (Section 63 (1c), (1d) or (1e), Labour Code):</b> 1m&lt;1y; 2m≥2y (cf. Section 62, labour Code).</p> <p>The period of employment relationship for the purpose of notice of termination shall include repeated fixed term employment relationships concluded with the same employer if they followed each other without break.<br/> Calculation (for EPL indicators): average of personal reasons and organizational reasons.</p>   |
| 4: Severance pay at different tenure durations (a)   | <p>If the employment is terminated by the employer by a notice for organisational or health reasons, and if the employee worked for the employer:</p> <ul style="list-style-type: none"> <li>A) At least 2 years but less than 5 years, he is entitled to one month severance pay</li> <li>B) At least 5 years but less than 10 years, he is entitled to two month severance pay</li> <li>C) At least 10 years but less than 20 years, he is entitled to three month severance pay</li> <li>D) At least 20 years, he is entitled to four month severance pay.</li> </ul> <p>No severance pay in the case of dismissal for personal reasons<br/> A specific situation (10 times of average wage) – apply in the cases of occupational injuries and other cases.</p>   |
| 5: Definition of unfair dismissal (b)  | An employer may only give notice for the reasons specified in the Labour Code (e.g. personal reasons: continual minor breaches of work discipline or unsatisfactory work results - redundancy/economic/organisational reasons). An employer cannot give notice for other reasons, such as, racial, discrimination, etc.  |
| 6: Length of trial period (c )   | Section 45 (1) of the Labour Code provides that a probationary period may be agreed in an employment contract for a maximum of three months, except in the case of an executive employee who reports directly to the statutory body or a member of the statutory body, where the maximum shall be six months. A probationary period may not be prolonged.  |
| 7: Compensation following unfair dismissal (d)   | <p>Section 79 (1) of the Labour Code provides that the employee shall be entitled to such compensation in the amount of average earnings from the day he/she announced to the employer that he/she insists on keeping employment, to such time for which the employer enables him/her to keep working, or until a court rules on termination of the employment relationship.</p> <p>Section 79 (2) of Labour code provides that, if the overall time for which an employee should be paid wage compensation is greater than twelve months, the court may, based on the request of the employer, decide to lower the wage compensation, provided it is greater than twelve months, or even decide that the worker will not get wage compensation above the twelve months compensation. The employee may be entitled to a wage compensation amounting up to 36 months.</p> |
| 8: Reinstatement option for the employee following unfair dismissal (b)                            | In the event that an employer gave an invalid notice to an employee and the employee notified the employer that he insists on further employment, his employment relationship does not terminate, except in the case when a court decides that the employer cannot be fairly required to further continue employing the employee.  |
| 9: Maximum time period after dismissal up to which an unfair dismissal claim can be made (e)       | The invalidity of unfair dismissal (by notice, summary dismissal, termination during a probationary period or by agreement) may be claimed at a court by the employee no later than 2 months from the effective date of dismissal.   |

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| <b>10:</b> Valid cases for use of standard fixed term contracts   | A fixed term employment contract may be agreed without specifying an objective reason. However, extensions or renewals of a fixed term employment is allowed for objective reason only (e.g. maternity leave of another employee, sudden increase of work) and has to be specified in the employment contract.  |
| <b>11:</b> Maximum number of successive standard FTCs (initial contract plus renewals and/or prolongations) | Fixed-term employment may only be agreed for a maximum of 2 years. Fixed-term employment may only be extended or renewed twice within the 2-year period. Another extension or renewal of fixed-term employment may only be agreed for material or objective reasons.  |
| <b>12:</b> Maximum cumulated duration of successive standard FTCs   | The cumulated duration of successive fixed-term contracts may reach a maximum of 36 months. This shall not apply if fixed-term contracts are concluded for material or objective reasons.   |
| <b>13:</b> Types of work for which temporary work agency (TWA) employment is legal                          | Section 58a (1) states that "The employer may agree on temporary assignment with the using employer only where there are objective operational reasons for such assignment" (cf. Act No. 348/2007).   |
| <b>14:</b> Are there restrictions on the number of renewals and/or prolongations of TWA assignments? (f)    | No for assignments. Same restrictions as for fixed-term contracts if the contract between the agency and the worker is fixed-term.  |
| <b>15:</b> Maximum cumulated duration of TWA assignments (f)  | No limit for both assignment and contract (with the TWA), if the latter is open-ended.  |
| <b>16:</b> Does the set-up of a TWA require authorisation or reporting obligations?                         | Requires administrative authorisation. The TWA is also required to submit annual reports of activities to the Centre of Labour, Social Affairs and Family.  |
| <b>17:</b> Do regulations ensure equal treatment of regular workers and agency workers at the user firm?    | Working conditions, including wage conditions and employment conditions for TWA workers must be at least as favourable as those of comparable workers at the user firm.<br>Cf. Section 58 (5) of the Labour Code  |
| <b>18:</b> Definition of collective dismissal (b)   | Section 73 (1) of Labour Code provides that collective redundancy shall occur if an employer or a part of an employer terminates within 30 days the employment relationship by notice for the reasons stipulated in § 63 paragraph (1) letter (a) and (b), or by another method or reason unrelated to personal characteristics of the employees, of<br>a) at least ten employees of an employer who employs more than 20 and less than 100 employees,<br>b) at least 10% of total up expenses of employees of an employer who employs at least 100 and less than 300 employees,<br>c) at least 30 employees of an employer who employs at least than 300 employees.  |
| <b>19:</b> Additional notification requirements in cases of collective dismissal (g)                        | <b>Notification of employee representative:</b> The employer shall be obliged to provide the competent trade union body with all necessary information and to inform such body in writing, in particular as to: the reasons for collective redundancies; the number and structure of employees to be subject to termination of employment; the overall number and structure of employees employed by the employer; the period over which collective redundancies shall be effectuated; the criteria for the selection of employees to be subject to termination of employment.<br><b>Notification of public authorities:</b> At the same time, the employer also delivers a copy of the written information to the National Labour Office.  |
| <b>20:</b> Additional delays involved in cases of collective dismissal (h)                                  | With the view of achieving an agreement, an employer is obliged, at the latest one month before the commencement of collective redundancies, to discuss measures allowing the prevention or limitation of the collective redundancies with a relevant trade union body or, if there is no trade union operating in the firm, any other employees' representative. The employer may give notice to employees at the earliest upon expiry of one month from the day of delivery of written information on the outcome of the negotiation with trade unions or employees' representatives to the Labour Office.<br>The Office of Labour, Social Affairs and Family may make a reasonable reduction of this period.<br>Calculation (for EPL indicators): at least 4 days for negotiations plus 30 days for informing the Labour Office minus delays reported in item 2. |
| <b>21:</b> Other special costs to employers in case of collective dismissals (i)                            | <b>Type of negotiation required:</b> Consultation with the relevant trade union body on alternatives to redundancy and measures to mitigate the adverse consequences of collective redundancies on employees. The competent trade union body may submit comments related to the collective redundancies to the Labour Office.<br><b>Severance pay:</b> No special regulations for collective dismissal.   |



## Slovak Republic

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.



## SLOVENIA

| Items  | Regulations in force on 1 January 2014   |
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| 1: Notification procedures in the case of individual dismissal of a worker with a regular contract | <p>Notice must be served in writing (Art. 87, Employment Relationship Act, ERA-1 hereafter),</p> <p>Prior to dismissal for <b>reasons of incapacity</b>, the employer must allow the worker to provide his/her own defence within a reasonable deadline, which must not be shorter than three working days (Art. 85 ERA-1), except where circumstances exist so that it would be unjustified to expect the employer to provide this opportunity to the worker.</p> <p>In cases where worker is a member of the trade union: If the worker so requests, the employer must notify in writing the union to which the worker belongs at the beginning of the procedure of dismissal for reasons of incapacity or for business reasons. The union may give its opinion within a deadline of six days. The employer is entitled to terminate the employment contract, even if (the works council or trade union or workers' representative) expresses a negative opinion on the fairness of the dismissal (Art. 86, ERA-1).</p>  |
| 2: Delay involved before notice can start  | <p><b>Reasons of incapacity</b> - defence within a deadline of up to three working days. In cases where the worker is a member of the trade union: on the expressed request of the worker, notification of the union.</p> <p><b>Business reasons</b> - prior notice to the worker of the intended cancellation. In cases where worker is a member of the trade union: on the expressed request of the worker notification of the union.</p> <p>Calculation (for EPL indicators): average of incapacity and personal reasons and of non-union and union workers: 1 day for notification + (4/2) days for defence and invitation to defence = 3 days.</p>  |
| 3: Length of notice period at different tenure durations (a)                                       | <p><b>Business reasons</b>: 15 days for less than 1 year of tenure, 30 days for one year or more but less than 2 years of tenure; then mandatory notice periods increase of 2 days per year of tenure with a maximum of 60 days. 80 days for workers with more than 25 years of tenure (for the latter category, a collective agreements can stipulate otherwise, but no less than 60 days)</p> <p><b>Reasons of incapacity</b>: 15 days for less than 1 year of tenure, 30 days for one year or more but less than 3 years of tenure. Then mandatory notice periods increase of 2 days per year of tenure with a maximum of 60 days. A collective agreement can stipulate 80 days for workers with more than 25 years of tenure.</p> <p>Shorter notice periods are allowed for small employers (10 employees or less) by collective agreement.</p> <p>Calculation (for EPL indicators): average of the two situations: 9 months: 15 days; 4 years: 34 days; 20 years: 60 days.</p>  |
| 4: Severance pay at different tenure durations (a)   | <p>The basis for calculating severance pay is the average monthly wage received by the worker or which the worker would have received if he had worked, in the last three months prior to dismissal. Workers are entitled to severance pay in the amount of: 1/5 months for each year of work if employed for more than 1 year but less than 10 years; 1/4 months for each year of work if employed from 10 to 20 years; 1/3 months for each year of work if employed more than 20 years. The amount of severance pay may not exceed 10 months pay (art. 108, ERA-1). In the case of forced settlement the worker and employer may agree in writing on the manner of payment, its form or a reduction of the level of severance pay if, owing to the payment of severance pay, the existence of a large number of jobs at the employer would be threatened.</p> <p>Calculation (for EPL indicators): 9 months: 0; 4 years: 0.8 months; 20 years: 6.7 months</p>  |
| 5: Definition of unfair dismissal (b)  | <p><b>Fair</b>: Termination is legitimate if there exists a justified reason for termination which prevents continued work under the conditions from the employment contract..</p> <p><b>Unfair</b>: Termination is not valid if it is discriminatory or made owing to a threat or deception by the employer. Unjustified reasons for regular termination are deemed to be: temporary absence from work owing to incapacity for work through illness or injury or to care for family members, or absence from work owing to parental leave; filing a suit or participating in proceedings against the employer owing to the assertion of a violation of contractual and other obligations from employment before arbitration, court or administrative authorities; participation in union activities outside working hours; participation in union activities during working hours in agreement with the employer; participation of the worker in a strike organised in accordance with the law; running as a candidate for the office of worker representative and the current or past service in such office; change of employer; race, nationality or ethnic origin, skin colour, gender, age, disability, marital status, family obligations, pregnancy, religious and political beliefs, national or social background; concluding a contract on voluntary military service, a contract on performing military service in the Slovenian Armed Forces reserve, a contract on serving in the Civil Protection and voluntary participation of citizens in protection and relief work in accordance with the law.</p> |

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| <b>6: Length of trial period (c )</b>   | Probation can last a maximum of six months. It can be extended in the event of temporary absence from work. Unsuccessful completion of probation is a reason for dismissal with a short notice period of 7 days (Articles 125 and 94 of ERA-1).   |
| <b>7: Compensation following unfair dismissal (d)</b>   | If there is no reinstatement, the court may grant the worker rights from tenure and other rights from the employment relationship and appropriate monetary compensation up to a maximum amount of 18 months of average wages paid in the last three months prior to dismissal.<br>Calculation (for EPL indicators): max. compensation minus ordinary severance pay.   |
| <b>8: Reinstatement option for the employee following unfair dismissal (b)</b>                              | If the court determines that the employer's termination is not legitimate, but the worker does not wish to continue employment, it may, on the proposal of either the worker or the employer: determine the duration of the employment; grant tenure-related and other rights from the employment relationship; and award appropriate monetary compensation. If the court determines that the continuation of the employment is no longer possible, it may still adopt the same decision, irrespective of the worker's or the employer's proposal (Art. 118, ERA-1).  |
| <b>9: Maximum time period after dismissal up to which an unfair dismissal claim can be made (e)</b>         | The worker may request a determination of the illegitimacy of dismissal within a deadline of 30 days from the day of being served notice of termination.<br>Since the average notice period is 30 days after the dismissal notification, the deadline for claiming unfair dismissal falls, on average, within the period before the dismissal takes effect.   |
| <b>10: Valid cases for use of standard fixed term contracts</b>   | Employment contracts may be concluded for fixed terms where this involves cases provided by: the ERA; another act or firm-level collective agreement; a sector-level collective agreement for small employers. The list of conditions in Art. 52 Employment Relationship Act – ERA – is as follows: i) work which by its nature is of limited duration, ii) replacing a temporarily absent worker, ii) temporarily increased volume of work, iii) employment of a foreigner or person without citizenship who was granted work permit for a definite period, except in case of a personal work permit, iv) managerial staff and those executive workers who manage a business field or organisational unit at the employer and are authorised to conclude legal transactions or to make independent personnel and organisational decisions, v) seasonal work, vi) a worker who concludes a fixed-term employment contract for the reason of preparation for work, vocational training or advanced study for work and/or education, vii) employment for a definite period of time due to working during the qualifying period for obtaining a certificate issued by the competent body in the procedure of recognition of qualifications pursuant to a special law, viii) performance of public works and/or inclusion in the measures of active employment policy pursuant to the law, xi) preparation or realization of work organised as a project, x) work required during the period of introduction of new programs, new technology and other technical and technological improvements of the working process or for training workers, xi) elected and appointed officials and/or other workers related to the term of office of a body or official in local communities, political parties, trade unions, chambers, associations and their federations, and xii) other cases laid down by law and/or branch collective agreement. |
| <b>11: Maximum number of successive standard FTCs (initial contract plus renewals and/or prolongations)</b> | No limit, within 2-year time limit for fixed term contracts.  |
| <b>12: Maximum cumulated duration of successive standard FTCs</b>   | Employers may not conclude one or more successive fixed-term employment contracts for the same job for which the uninterrupted duration would be longer than two years (even if different workers are involved in the successive contracts). Exceptions: individual cases set out in the law (such as project work, substitution, management workers).  |
| <b>13: Types of work for which temporary work agency (TWA) employment is legal</b>                          | Generally allowed, except for: substitution of striking workers; where the user has laid off large numbers of workers in the previous 12 months; in cases involving hazardous work that is performed for shorter durations; and where determined through a sector-level collective agreement, but only if these agreements ensure greater security of workers or are dictated by the requirements of workers' safety and health. TWA employment cannot exceed 25% of employment at the user firm, except if a collective agreement establishes otherwise (Art. 59, ERA-1).  |
| <b>14: Are there restrictions on the number of renewals and/or prolongations of TWA assignments? (f)</b>    | No restrictions.  |
| <b>15: Maximum cumulated duration of TWA assignments (f)</b>  | No limit if the contract between the agency and the worker is open-ended. Otherwise same rules as for FTCs.   |

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| <b>16:</b> Does the set-up of a TWA require authorisation or reporting obligations?                      | Agencies must be entered into the register of agencies. Agencies must upon a specific request from the Ministry also provide a report on their work and on any changes regarding the compliance with staff, organisational, spatial and other requirements that may affect the pursuit of their activity (Article 27 of Labour Market Regulation Act).<br>Calculation (for EPL indicators): average of with a without request of report  |
| <b>17:</b> Do regulations ensure equal treatment of regular workers and agency workers at the user firm? | During the performance of TWA work, the user and worker must take into account the provisions of the Employment Relationships Act, collective agreements binding on the user, and general acts of the user regarding those rights and obligations that are directly linked to performing work. In the employment contract, the employer and worker determine that the level of pay and compensation will depend on the actual performance of work at the user firm, taking into account collective agreements and general acts binding on the user firm.   |
| <b>18:</b> Definition of collective dismissal (b)  | Collective termination of employment of a large number of workers occurs when the employer determines that for business reasons within 30 days there will no longer be the need for work: of at least 10 workers at an employer employing 20-99 workers; of at least 10% of workers at an employer employing 100-299 workers; of at least 30 workers at an employer employing 300 or more workers.   |
| <b>19:</b> Additional notification requirements in cases of collective dismissal (g)                     | Obligation to inform and consult with the union and to notify the Employment Service.  |
| <b>20:</b> Additional delays involved in cases of collective dismissal (h)                               | The employer may terminate the employment contracts of redundant workers in accordance with the programme of redundancies, but not prior to the expiry of the 30-day deadline from the fulfilment of the obligation to notify the Employment Service. The notification to the employment service must include a report on the performed consultation with the union (Art. 98 ERA). The employer is bound to deal with and take into account possible proposals from the Employment Service on measures to prevent or limit the termination of employment of workers and measures to mitigate the damaging consequences of terminating employment. On the express request of the Employment Service, the employer may not terminate the employment contracts of workers prior to the expiry of a 60-day deadline from fulfilment of the obligation to notify the Employment Service.<br>Calculation (for EPL indicators): at least 3 days for negotiation with unions plus 30 days for notification to the Employment Service minus delay reported in Item 2. |
| <b>21:</b> Other special costs to employers in case of collective dismissals (i)                         | An employer who cancels the employment of a large number of workers for business reasons is bound: (i) to formulate a programme of worker redundancy that must be financially validated; (ii) to deal with and take into account possible proposals from the Employment Service on possible measures to prevent or limit the termination of employment of workers and measures to mitigate the damaging consequences of terminating employment.  |

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.

## SPAIN

| Items  | Regulations in force on 1 January 2013   |
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| 1: Notification procedures in the case of individual dismissal of a worker with a regular contract | <p>A written notice with statement of reasons for dismissal to be supplied to the employee ("Dismissal letter") plus notification to workers' representatives in the case of dismissal based on technical, organizational, economic or production-related grounds (art. 52c and 53c, Statute of Workers' Rights, SWR hereafter).</p> <p>In the case of objective dismissal (related to personal grounds or economic redundancy, but without fault) at the time the letter is sent, a compensation pay for dismissal is placed at the disposal of the worker.</p> <p>Other formal requirements for dismissal can be set out by collective agreements provisions. Information on sanctions imposed based on severe breach is provided to the representatives of workers.</p>   |
| 2: Delay involved before notice can start  | Letter sent by mail or handed directly to employee.  |
| 3: Length of notice period at different tenure durations (a)                                       | Workers dismissed for "objective" reasons: 15d.  |
| 4: Severance pay at different tenure durations (a)   | <p><b>Workers dismissed for "objective" reasons:</b> 2/3 of a month's pay per year of service up to a maximum of 12 months.</p> <p><b>Severance pay on grounds of expiring or end-date concerning fixed-term contracts:</b> specific task or service and temporary contracts. This compensation is provided for by Article 49.1c SWR. Severance pay is calculated on 12 days of salary per year of service (instead of 8 days before 2010) except for training contracts and interim contracts thus suppressing the reference to insertion contract as far as this section is concerned.</p> <p>The Thirteen Transitional Provision of Statute of Workers' Rights, introduced by Law 35/2010, stipulates a gradual schedule for the increases in severance pay on grounds of expiration of fixed-term contracts (from 8 to 12 days).</p> <p>As for permanent contracts drawn up by firms of less than 25 employees, where contracts are extinguished on grounds of objective reasons – also regarding collective dismissals- the Wage Guarantee Fund (FOGASA) pays part of the compensation due to worker – equivalent to 8 days pay per year of service, with the periods of up to 1 year prorated by months- the WGF is not responsible for any compensation if the extinct decision is declared unfair and so the employer must pay in such cases full severance pay.</p> <p>The amount to be received by the employee is the same applicable to firms with more than 25 employees.</p> |
| 5: Definition of unfair dismissal (b)  | <p><b>Fair:</b> Dismissal based on objective grounds, including economic grounds, absenteeism, unfitness for the job (emerged after hiring), lack of adaptation to technological changes made in the enterprise after, if appropriate, a training course, and lack of funding of public plans or programmes developed by the public administration or non-profit organisations. <b>Unfair dismissal:</b> dismissals where none of the above-mentioned grounds is proven. <b>Null and void:</b> dismissals based on discrimination or carried out with violation of fundamental rights, as well as those based on situations derived from maternity (pregnancy, birth, feeding, childcare, etc.).</p> <p>Calculation (for EPL indicators): 2 (as worker capability is sufficient ground for dismissal only in cases of unfitness or lack of adaptation to technological changes).</p>   |
| 6: Length of trial period (c)  | <p>The length of trial period shall be that which is established by collective agreements. If there is no provision on this matter, this period cannot be longer than six months for qualified technicians or two months for the rest of workers (3 months in firms with less than 25 workers).</p> <p>A new type of employment contract was created in 2012, the Permanent Employment Contract to Support Entrepreneurs available exclusively to SMEs with less than 50 employees that did not make unfair or collective dismissals in the 6 months preceding hiring. This contract sets the duration of trial period to 1 year.</p>  |

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| <p><b>7: Compensation following unfair dismissal (d)</b></p>   | <p>The level for severance pay concerning unfair dismissal is calculated as 33 days pay per year of service with an upper limit of 24 months pay. This is fully applicable to contracts signed as from the entry into force of the Royal Decree Law 3/2012, that is 12 February 2012.</p> <p>As for contracts started before this date and being extinguished after it, severance pay for unfair dismissal is calculated as 45 of salary per year of service prior to 12 February 2012 33 days of salary per year of service after that date. Nevertheless, the total amount cannot be higher than 720 days of salary unless the calculation of the compensation for the previous period prior to the entry into force of the RDL 3/2012 (12nd February 2012) resulted in a higher number of days, in which case it will be applied the latter as a maximum severance pay without this amount being higher than 42 months pay, in any case.</p> <p>No interim wages for the duration of the judicial procedure when the employer opts for the severance pay. These interim wages remain only if the employer accepts reinstatement as an option after a dismissal is declared unfair or as a consequence of the dismissal being declared null, except for legal representatives of workers and union delegates who can choose between reinstatement and severance pay and in both cases are entitled to receive interim wages.</p> <p>Calculation (for EPL indicators): 22-month compensation minus severance pay as reported in item 4 (12 months).</p> |
| <p><b>8: Reinstatement option for the employee following unfair dismissal (b)</b></p>                              | <p>In the case where the dismissal has been declared unfair, the employer has a choice between reinstatement and compensation, except where the dismissed employee is a legal representative of the workers or a union delegate, in which case the employee can choose between reinstatement and compensation. As regards null dismissal, reinstatement is immediate, according to Law. In addition, it implies paying the employee for the remainder of non-paid wages.</p>   |
| <p><b>9: Maximum time period after dismissal up to which an unfair dismissal claim can be made (e)</b></p>         | <p>The worker can file a claim against dismissal within 20 working days following the day at which the dismissal took effect.</p> <p>Calculation (for EPL indicators): 20 working days = approx. one calendar month</p>  |
| <p><b>10: Valid cases for use of standard fixed term contracts</b></p>   | <p>In addition to objective or "causal" reasons (for specific work, due to accumulation of tasks, replacement, temporary change in market conditions, etc.), FTCs may be stipulated for the following purposes: training contracts (professionalising contracts and contracts for training purposes); to hire workers with disabilities; and to cover the part of the working day left uncovered by an employee close to retirement with another worker who has concluded a temporary contract with the firm, or with an unemployed worker.</p>  |
| <p><b>11: Maximum number of successive standard FTCs (initial contract plus renewals and/or prolongations)</b></p> | <p><b>Temporary increase in workload:</b> the contract can be extended or renewed only once, within the maximum duration. <b>Specific task or service contracts:</b> no limit specified, within the maximum duration. <b>Training contracts:</b> may be extended for six months up to two years, or three years by collective agreement, and up to four years for workers with disabilities. <b>Professionalising contract</b> (<i>contrato de trabajo en prácticas</i>): no limit specified within maximum duration.</p>  |
| <p><b>12: Maximum cumulated duration of successive standard FTCs</b></p>   | <p><b>Specific task or service contract:</b> 3 years allowing for a 12 months possible extension.</p> <p><b>Temporary increase in workload:</b> 6 months within a period of 12 months or, as a maximum, 12 months within a period of 18 months.</p> <p><b>Training and apprenticeship contract:</b><br/>Since 12nd February 2012, 1 year minimum duration and 3 years maximum duration.<br/>No restriction on duration for a worker with disability.</p> <p><b>Professionalising contract</b> (<i>contrato de trabajo en prácticas</i>): 6 months minimum duration and 2 years maximum duration.</p> <p><b>Replacement contract for workers near retirement:</b> time left until the replaced worker reaches the age of 65, i.e. up to a maximum of 48 or 52 months, according to the age of the worker who retires.</p> <p>Calculation: average of increase in workload (12), specific task or service (48), training (36) and professionalising (24) contracts.</p>  |
| <p><b>13: Types of work for which temporary work agency (TWA) employment is legal</b></p>                          | <p>Same conditions of use as for fixed-term contracts. Additional restrictions imposed by collective agreements exist in the construction and steel industries.</p> <p>Since April 1, 2011 new restrictions cannot be set by collective agreements unless there are justified reasons based on general interest regarding the safety of TWA workers, on guaranteeing labour market functioning as well as to avoid possible abuse.</p>   |
| <p><b>14: Are there restrictions on the number of renewals and/or prolongations of TWA assignments? (f)</b></p>    | <p>General rules applicable to temporary contracts and fixed-term employment contracts.</p> <p>No limitation for renewals of contracts between the agency and the worker.</p>  |



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| <p><b>15:</b> Maximum cumulated duration of TWA assignments (f)</p>   | <p>Limits are the same as for fixed-term contracts (Article 15 SWR)</p> <p>However, it should be taken into account the prohibition rule on serial contracts (article 15.5 SWR): “without prejudice to what is provided for by section 1.a), 2 and 3 of this Article workers who –within a period of 30 months- had been hired during a period longer than 24 months, with or without continuity, for the same or different occupation within the same firm or group of companies and have been hired directly either on two or more fixed-term contracts or being placed at disposal by temporary work agencies with the same or different type of fixed-term contract will acquire the condition of permanent workers”</p> <p>Contracts between the agency and the worker can be open-ended.</p> <p>Calculation (for EPL indicators): average of specific task or service (48 months) and other reasons (24 months)</p>  |
| <p><b>16:</b> Does the set-up of a TWA require authorisation or reporting obligations?</p>                      | <p>TWAs need administrative authorisation to carry out their activities. The authorisation is valid for one year and will be extended for two successive years provided the TWA applies for the extension three months in advance of the expiry date and fulfils its legal obligations. The authorisation will be granted with no time limit when the TWA has been carrying out authorised activity for three years and expires when the TWA gives up its activity for one uninterrupted year. TWAs have monthly reporting requirements and are required to provide user firms and employee representatives with information when there is a new contract or transfer of contract.</p>   |
| <p><b>17:</b> Do regulations ensure equal treatment of regular workers and agency workers at the user firm?</p> | <p>Workers hired so as to be placed at disposal of user-firms will be entitled to the essential working/employment conditions applicable had they been hired directly by the user-firm for the same job and during the time of provision of service.</p> <p>Essential working/employment conditions include the following (as regards remuneration): all fixed and variable components on the wage linked to the job to be performed as set out by the collective agreement applied to the user-firm. In any case it should include the proportional part corresponding to weekly days off, extra payments, public holidays and annual leave.</p>  |
| <p><b>18:</b> Definition of collective dismissal (b)</p>  | <p>Within 90 days, 10+ workers in firms &lt;100 employees; 10%+ in firms 100-299 employees; 30+ workers in firms 300+ employees.</p>   |
| <p><b>19:</b> Additional notification requirements in cases of collective dismissal (g)</p>                     | <p><b>Notification of employee representatives:</b> Duty to inform and consult with Works Council or trade union delegation. <b>Notification of public authorities:</b> Notification of labour authority.</p> <p>The consultation should deal with, at least, the possibilities of avoiding or reducing collective dismissal while mitigating its effects by means of other accompanying social measures such as replacement measures or training and re-training actions for improving employability.</p> <p>The notification on the opening of a consultation period will be made by a written statement to representatives of workers whose content should include:</p> <ul style="list-style-type: none"> <li>-specification of causes</li> <li>-number and job classification of workers affected</li> <li>-number and job classification of workers employed during the last year.</li> <li>-time period to proceed with dismissals.</li> <li>-selection criteria regarding the workers affected by the measure.</li> </ul> <p>In addition, an explanatory report concerning the reasons for collective dismissal and issues related to them.</p> <p>In general terms, the written notification will be accompanied by all needed information so as to justify the reasons for collective dismissal.</p> |
| <p><b>20:</b> Additional delays involved in cases of collective dismissal (h)</p>                               | <p>Period of required consultation with the representatives of workers of 30 days (15 days in enterprises of less than 50 workers). There is also the possibility that the labour authority contest the arrangements achieved during the consultation period if considered to be concluded unlawfully, deceit, by coercion or abuse or where the benefit management institution reports irregularities. And the Labour and Social Security Inspectorate can intervene in the proceeding issuing a report on the issues raised in the employer's notification initiating the procedure, as well as concerning the unemployment benefits management institution.</p> <p>Once the period of consultation has ended, the employer must notify, on individual basis, the decision of dismissal to workers concerned.</p> <p>Calculation (for EPL indicators): 30 days for consultation.</p>   |



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| <p><b>21: Other special costs to employers in case of collective dismissals (i)</b></p> | <p>The consultation with representatives must be aimed at, at least, avoiding or reducing collective dismissal while mitigating its effects by means of accompanying social measures such as replacement measures, or training and occupational retraining for improving employability.</p> <p><b>Design for accompanying social measures:</b></p> <p>Firms carrying out a collective dismissal <b>affecting more than 50 workers</b> should offer to these employees concerned an external replacement plan through the authorized employment agencies. This plan, designed for a minimum period of 6 months should include training actions and professional counselling measures, personalized assistance to the employee concerned as well as an active job-seeking support. In any case, the abovementioned is not applicable to those firms that are subject to a bankruptcy procedure. The cost of carrying out this plan will not fall on workers, in any case.</p> <p>The non-compliance with this obligation as regards accompanying social measures taken on by the employer could result in a legal claim for its compliance by the workers.</p> <p>Calculation (for EPL indicators): average of large and small size of dismissal <math>(1+0)/2=0.5</math></p> |
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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.

SWEDEN

| Items  | Regulations in force on 1 January 2013  |
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| 1: Notification procedures in the case of individual dismissal of a worker with a regular contract | <p><b>Personal grounds (circumstances related to the employee personally)</b></p> <p>Termination (uppsägning): Written notification to the employee personally (section 8 and 10 Employment Protection Act, EPA hereafter). The employer shall if requested state the reasons for termination in writing (section 9 EPA). If the employee is a member of a union the employer shall at the same time inform the local union the employee belongs to. The employee and the trade union are entitled to consultations if requested (Section 30 EPA).</p> <p>Dismissal (avsked): Written notification to the employee personally (section 19 and 20 EPA). The employee and the trade union are entitled to consultations if requested (section 30 EPA). The employer shall if requested state the reasons for the termination in writing (section 19 EPA).</p> <p><b>Redundancy (circumstances not related to the employee personally)</b></p> <p>Written notification to the employee personally (section 8 and 10 EPA). The employer is obligated to initiate negotiations with the trade union with collective agreement before making the final decision to terminate a contract of employment due to redundancy (section 29 EPA and section 11 Co-determination act) The employer shall provide the trade union with detailed information (section 15 Co-determination act).</p>  |
| 2: Delay involved before notice can start  | <p><b>Personal grounds (circumstances related to the employee personally, except gross misconduct)</b></p> <p>Notification of the termination must be given at least 14 days before the notice is meant to start. The employee and the trade union are entitled to consultations if requested. If consultations are requested the employer may not execute the termination before the consultations are finished (section 30 EPA).</p> <p><b>Gross misconduct</b></p> <p>Summary dismissal (see Item 5): Notification of the termination must be given at least seven days before the notice is meant to start. The employee and the trade union are entitled to consultations if requested. If consultations are requested the employer may not execute the dismissal before the consultations are finished (section 30 EPA).</p> <p><b>Redundancy (circumstances not related to the employee personally)</b></p> <p>Redundancy: The employer is obligated to initiate negotiations with the relevant trade union before notice can be served. And notification cannot be served before negotiations are finished (Section 29 EPA and section 11 Co-determination act).</p> <p>Notice of termination shall be deemed effective when received by the employee. Where the employee cannot be reached and notice of termination has been dispatched by letter, notice of termination shall be deemed effective 10 days after the letter was submitted to the post office for delivery (section 10 EPA).</p> <p>Note: It is in both cases difficult to exactly estimate the time used for negotiations. Estimated at 7 days on average.</p> <p>Calculation (for EPL indicators): average of terminations on personal grounds <math>((1+10)/2</math> for letter + <math>7/2</math> days for consultation if requested + 14 days waiting period=23) and redundancy <math>(1+10)/2+7</math> days for negotiation = 12.5 days)</p> |
| 3: Length of notice period at different tenure durations (a)                                       | <p>Termination</p> <p>According to section 11 EPA.</p> <p>1m&lt;2y; 2m&lt;4y; 3m&lt;6y; 4m&lt;8y; 5m&lt;10y; 6m&gt;10y.</p> <p>Deviation is possible by collective agreement.</p> <p>Dismissal due to gross misconduct: No notice period.</p>   |
| 4: Severance pay at different tenure durations (a)   | <p>No legal entitlement, but often included in collective agreements, although in the form of fee-based insurance schemes, with employers' contributions payable as a percentage of payroll.</p>  |

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| <p><b>5: Definition of unfair dismissal (b)</b></p>  | <p>Termination of contract of employment:</p> <p>A termination is unfair if it lacks "objective reasons". The objective reasons are either circumstances related to the employee personally ("personal reasons") or shortage of work (redundancy) (section 7 EPA). The personal reasons may include lack of competence, misconduct, co-operation problems, harassment, refusal to work, criminal offences etc. Sickness or reduced working capacity due to old age is not considered as an objective reason unless there is a "permanent reduction, which is so considerable that the employee can no more be expected to perform work of any significance for the employer." In the case of lesser capability because of (e.g.) age, disease, etc., the employer has to try to adjust the workplace, rehabilitate the employee or transfer the employee to other suitable work. The termination based on circumstances related to the employee personally may not be based solely on circumstances that were known to the employer more than two months before.</p> <p>Redundancy as an objective reason includes restructuring etc.</p> <p>A termination of a contract of employment is also unfair if it is reasonable to require that the employer provide other work for the employee (section 7 (2) EPA).</p> <p>Summary dismissal:</p> <p>The employer is entitled to dismiss the employee if he has grossly neglected his or her obligations against the employer. If not, the dismissal is unfair. Dismissal may not be based solely on circumstances that were known to the employer more than two months before (Section 18 EPA).</p> |
| <p><b>6: Length of trial period (c )</b></p>   | <p>A probationary period up to six months is allowed (section 6) and which the employer and the employee may terminate the contract without providing any specific reasons. After six months the probationary employment contract is transformed into a regular contract of indefinite duration (section 6 EPA). The employer shall notify the employee and, if applicable, the relevant trade union two weeks in advance if he/she wishes to terminate the contract prior to six months (section 31 EPA).</p>   |
| <p><b>7: Compensation following unfair dismissal (d)</b></p>   | <p>An employee who is victim of an unfair dismissal/termination is entitled to economic and punitive damages (section 38) EPA. The economic damages shall cover economic losses suffered by the employee (normally wage losses). The punitive damages are a form of sanction for the breach of the employment protection act. There is a lack of reliable statistics on the average amount of punitive damages awarded to the employees for an unfair dismissal or termination. The amount awarded to the employee is dependent on the factual circumstances of the individual case.</p> <p>An estimate of the normal punitive damages are: 50 000 SEK for an unfair termination (breach of section 7 EPA) and 80 000 SEK for an unfair dismissal (breach of section 18 EPA).</p> <p>If the employer after a court procedure refuses comply with a court order that termination or dismissal is invalid the employer shall pay damages to the employee: 16 months' pay for less than five years of employment; 24 months' pay for at least five years but less than ten years of employment; 32 months' pay for ten or more years of employment.</p>   |
| <p><b>8: Reinstatement option for the employee following unfair dismissal (b)</b></p>                      | <p>The employee may apply for an invalidation of a termination /dismissal. If the court grants such an application, the employee may be reinstated (sections 34 and 35 EPA). An employee wishing to make an application for invalidation needs to notify the employer within two weeks or, under specific circumstances, one month after the employment contract was terminated (section 40 EPA).</p> <p>If the employer refuses to comply with a court order that termination or dismissal is invalid the employer shall pay damages to the employee: 16 months' pay for less than five years of employment; 24 months' pay for at least five years but less than ten years of employment; 32 months' pay for ten or more years of employment.</p>  |
| <p><b>9: Maximum time period after dismissal up to which an unfair dismissal claim can be made (e)</b></p> | <p>2 weeks if the employee wants to have the dismissal ruled invalid. If only damages are claimed, the time limit is 4 months (Sections 40 and 41, EPA).</p> <p>Calculation (for EPL indicators): Average of 2 weeks and 4 months</p>  |

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| <b>10:</b> Valid cases for use of standard fixed term contracts   | <p>FTC permitted in the following cases (section 5, EPA)</p> <p>(1) for general fixed-term employment (ALVA)</p> <p>(2) for temporary replacement of absent employees;(vikariat)</p> <p>(3) seasonal work; (säsongsanställning)</p> <p>(4) personnel above 67 years of age. (efter pension)</p> <p>(5) probationary employment contract (maximum six months) (provanställning).</p> <p>In addition, it is possible to have other rules on FTC in collective agreements.</p> <p>If an employee during a period of five years has been employed with the employer on either a general fixed term contract for in aggregate more than two years, or as a substitute for in aggregate more than two years, the employment is transformed into indefinite-term employment. A probationary contract is transformed into a regular contract of employment after a period of six months.</p>   |
| <b>11:</b> Maximum number of successive standard FTCs (initial contract plus renewals and/or prolongations) | No limit   |
| <b>12:</b> Maximum cumulated duration of successive standard FTCs   | <p>If an employee during a period of five years has been employed with the employer on either a general fixed term contract for in aggregate more than two years, or as a substitute for in aggregate more than two years, the employment is transformed into indefinite-term employment. It is possible combine different forms of FTCs, mentioned in item 10, and there is at the moment no fixed maximum limit to time period for the duration of successive FTCs of different type / for different reason. However an abusive use of FTC may be considered as not compatible with the Employment Protection Act.</p>   |
| <b>13:</b> Types of work for which temporary work agency (TWA) employment is legal                          | <p>TWA employment is generally allowed in all sectors of the labor market.</p> <p>The user undertaking has an obligation to consult the relevant trade unions before the use of a TWA employment. The trade union with collective agreement has the opportunity to veto the use of TWA employment if there is a threat that laws and collective agreements may be violated. (section 38-39 Co-determination act).</p>  |
| <b>14:</b> Are there restrictions on the number of renewals and/or prolongations of TWA assignments? (f)    | <p>No for assignments</p> <p>Yes for contracts, as stipulated by collective agreements</p>   |
| <b>15:</b> Maximum cumulated duration of TWA assignments (f)  | <p>No limit for assignments</p> <p>No specific rules for TWA contracts. Contracts are often open-ended. If an agency worker is employed with an FTC, the same rules as mentioned above are applied.</p> <p>The collective agreement for blue-collar workers limits duration of fixed-term contracts between the agency and the worker to 12 months.</p>  |
| <b>16:</b> Does the set-up of a TWA require authorisation or reporting obligations?                         | There is a voluntary authorisation system which is administered by the social partners   |
| <b>17:</b> Do regulations ensure equal treatment of regular workers and agency workers at the user firm?    | <p>The law on Agency Work implements the European Directive 2008/104/ on temporary agency work and is applicable to workers with a contract of employment or employment relationship with a temporary-work agency who are assigned to user undertakings to work temporarily under their supervision and direction. The law states, for instance, that the basic working and employment conditions of temporary agency workers shall be, for the duration of their assignment at a user undertaking, at least those that would apply if they had been recruited directly by that undertaking to occupy the same job. The norms that the comparison shall have reference to are conditions that are general and binding, such as norms in collective agreements. Exception from the principle of equal treatment can be made through collective agreements as long as the basic protection in the EU directive on temporary work is respected. Exception from the principle of equal treatment when it comes to salary can also be made for temporary agency workers who have an open ended work contract and who receive pay between the assignments.</p> |
| <b>18:</b> Definition of collective dismissal (b)   | <p>There is no specific definition of collective dismissals. It is one type of termination of employment contracts due to "shortage of work" (redundancy/arbetsbrist). There are however specific obligations that apply for the simultaneous dismissal of 5 workers or dismissal of twenty workers within 90 days (Act on Certain Employment Promoting Measures – Lag om vissa anställningsfrämjande åtgärder – SFS 1974:13 – Art. 1). Regardless of the number employees made redundant there is an obligation to inform and consult trade unions for firms covered by collective agreements (11-15 §§ Co-determination act).</p>  |
| <b>19:</b> Additional notification requirements in cases of collective dismissal (g)                        | <p><b>Notification of employee representatives:</b> Duty to inform and consult with competent trade union.</p> <p><b>Notification of public authorities:</b> Notification of Employment Agency.</p>  |

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| <p><b>20:</b> Additional delays involved in cases of collective dismissal (h)</p>       | <p>Waiting periods after notification of employment service are from 2 months (when 5-24 workers involved) to 6 months (when 100+ workers involved). These periods run concurrently with the notice periods issued to the employees.</p> <p>In addition, an employer who cannot foresee the need for a reduction of business, and therefore cannot leave notice at least 2, 4 or 6 months ahead, must notify the Employment Service as soon as possible, but at least one month before the reduction occurs.</p> <p>Calculation (for EPL indicators): 4 months (120 days, average of 2, 4 and 6 months) less 17.75 days for average delays before notice can start (in the case of individual termination) minus 3 months for mean notice period (Item 3).</p> |
| <p><b>21:</b> Other special costs to employers in case of collective dismissals (i)</p> | <p><b>Type of negotiation required:</b> Consultation on alternatives to redundancy, selection standards and ways to mitigate the effects; notice may not take effect before negotiation with trade union.</p> <p><b>Selection criteria:</b> Usually based on seniority within a job category, but deviations by collective agreement are possible.</p> <p><b>Severance pay:</b> No special regulations for collective dismissal.</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.

## SWITZERLAND

| Items  | Regulations in force on 1 January 2013   |
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| 1: Notification procedures in the case of individual dismissal of a worker with a regular contract   | Notification to employee who has the right to request a statement of reasons.  |
| 2: Delay involved before notice can start  | Letter sent by mail or handed directly to employee.<br>Art. 335c of the Code of Obligations stipulates that termination occurs at the end of the calendar month. This is reflected also in many collective agreements.<br>Calculation (for EPL indicators): 1 day for the notification and 15 days on average for the time period until the end of the month = 16 days.  |
| 3: Length of notice period at different tenure durations (a)   | <b>All workers:</b> 7d during the trial period (1 to 3 months), 1m<1y, 2m<10y, 3m>10y, always to the end of a calendar month.<br>Calculation (for EPL indicators): 9 months tenure: 1 month, 4 years tenure: 2 months, 20 years tenure: 3 months.  |
| 4: Severance pay at different tenure durations (a)   | <b>All workers:</b> No legal entitlement to severance pay. An "indemnité à raison de longs rapports de travail" is paid to workers over age 50 and more than 20 years seniority and cannot be less than 2 months wages, with a maximum amount of 8 months wages. However, this indemnity is paid upon termination of initiated by either party, with a few derogations (Art. 339c of the Code of Obligations).<br>Calculation (for EPL indicators): 9 months tenure: 0, 4 years tenure: 0, 20 years tenure: 0 months.  |
| 5: Definition of unfair dismissal (b)  | <b>Unfair:</b> Dismissals based, <i>inter alia</i> , on personal grounds such as sex, religion, union membership, marital status or family responsibilities, or on the exercise of an employee's constitutional rights or legal obligations, such as military service.<br>In addition the law defines as abusive a dismissal based on an employee's claim related to the employment contract or undertaken without respecting the procedure for collective dismissals.<br>Case law also considers abusive dismissals based on reasons of comparable severity, such as those not based on objective motives, not respecting the notice period, based on denunciation of an illegal action, when there is a strong disequilibrium between the interest of the employer and that of the employee or when dismissal is manifestly not given in good faith. |
| 6: Length of trial period (c)  | All workers: 1 month according to the law. It can be extended to maximum 3 months in written individual employment contracts.  |
| 7: Compensation following unfair dismissal (d)   | Compensation freely determined by the judge (6 months maximum). Criteria are the severity of the damage to the worker, economic and social consequences, job tenure, the employer's financial capacity and if there is a simultaneous worker's fault.<br><b>Typical compensation at 20 years tenure:</b> maximum 6 months.   |
| 8: Reinstatement option for the employee following unfair dismissal (b)                              | Courts are not empowered to order reinstatement (except in case of gender discrimination).   |
| 9: Maximum time period after dismissal up to which an unfair dismissal claim can be made (e)         | The employee has to object against the dismissal in writing by the end of the notice period. If the objection is valid and if the parties do not agree on continuing the contract, the employee is entitled to claim compensation within 180 days after the end of the contract.   |
| 10: Valid cases for use of standard fixed term contracts   | General  |
| 11: Maximum number of successive standard FTCs (initial contract plus renewals and/or prolongations) | <b>Estimated 1.5</b><br>No limit specified, but successive contracts imply the risk of a court declaring the fixed-term contract null and void.  |
| 12: Maximum cumulated duration of successive standard FTCs   | No limit specified.  |
| 13: Types of work for which temporary work agency (TWA) employment is legal                          | General  |
| 14: Are there restrictions on the number of renewals and/or prolongations of TWA assignments? (f)    | Renewals or prolongation of fixed-term contracts only possible if there is an objective reason for the conclusion of another temporary contract or for a temporary prolongation.<br>Chains of assignments of the same workers on the same post in the same firm are not allowed.   |



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| <b>15:</b> Maximum cumulated duration of TWA assignments (f)   | No limit  |
| <b>16:</b> Does the set-up of a TWA require authorisation or reporting obligations?                      | Requires administrative authorization.  |
| <b>17:</b> Do regulations ensure equal treatment of regular workers and agency workers at the user firm? | Equal treatment only in the field of extended collective bargaining agreements concerning minimal salary, hours of work, progression development, anticipated retirement.   |
| <b>18:</b> Definition of collective dismissal (b)  | 10+ workers in firms 20-99 employees; 10%+ in firms 100-299 employees; 30+ in firms with 300+ employees.  |
| <b>19:</b> Additional notification requirements in cases of collective dismissal (g)                     | <b>Notification of employee representatives:</b> Obligation to inform and consult with Works Council or trade union delegation.<br><b>Notification of public authorities:</b> Duty to notify cantonal employment service.   |
| <b>20:</b> Additional delays involved in cases of collective dismissal (h)                               | Maximum 30 days waiting period after notification to the cantonal employment service. However, Art. 335g al. 4 of the Code of Obligations states that this waiting period is concurrent with ordinary notice period (provided notification to the cantonal employment service does not occur after notice is given to the employee); therefore it is binding only when the notice period is shorter, implying in most cases no additional delays.<br>However, when envisaging a collective dismissal the employer must consult Works Council or trade union delegation before the notification to the cantonal employment service (art. 335f, al. 1, Code of Obligations). The latter must include the result of the consultation (art. 335g, al. 1, Code of Obligations). Case Law suggests that during consultations, the employer should allow enough time to let unions formulate proposals and to seriously consider them. Therefore, consultations cannot be too short (at least 1-2 weeks; cf. arrêt de la Ire Cour civile dans la cause X. contre A. et B. (recours en réforme) 4C.263/2003 du 16 décembre 2003). |
| <b>21:</b> Other special costs to employers in case of collective dismissals (i)                         | <b>Type of negotiation required:</b> Consultation on alternatives to redundancy and ways to mitigate the effects; obligation to negotiate a social plan frequently contained in collective agreements.<br><b>Selection criteria:</b> No selection criteria laid down in law.<br><b>Severance pay:</b> No legal requirements, but often part of social plans.  |

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.

## TURKEY

| Items   | Regulations in force on 1 January 2013  |
|---|---|
| <b>1:</b> Notification procedures in the case of individual dismissal of a worker with a regular contract   | Written notice to employee and notification, within 10 days, to SGK(Social Security Institution)  |
| <b>2:</b> Delay involved before notice can start  | Letter sent by mail or handed directly to employee.<br>The employer must, however, allow an employee under a contract with an indefinite duration to defend himself against the allegations made against him or her in the event of dismissal for reasons related to the worker's conduct or performance (Art. 19, Law 4857, 2003)  |
| <b>3:</b> Length of notice period at different tenure durations (a)   | All workers: 0<1m, 2w<6m, 4w<18m, 6w<3y, 8w>3y (can be extended by collective agreements).<br>Calculation (for EPL indicators): 9 months tenure: 4 weeks, 4 years tenure: 8 weeks, 20 years tenure: 8 weeks.  |
| <b>4:</b> Severance pay at different tenure durations (a)   | All workers: After one year's employment, one month for each year of service (can be extended by collective agreements).<br>Calculation (for EPL indicators): 9 months tenure: 0, 4 years tenure: 4 months, 20 years tenure: 20 months.   |
| <b>5:</b> Definition of unfair dismissal (b)  | <b>Fair:</b> Whenever "labour contracts are not terminated through misuse of the right to termination" (Art. 17, Law 4857, 2003). In firms with at least 30 employees and for an employee with at least 6 months of job tenure, the employer "has to ground the termination on a valid reason arising out of the qualifications or behaviour of the worker or the requirements of the enterprise, business or work" (art. 18, Law 4857, 2003).<br><b>Unfair:</b> Unfair dismissal occurs when the given reason for dismissal is incorrect or not suitable.  |
| <b>6:</b> Length of trial period (c )   | All workers: Maximum 2 months, can be extended by collective agreements to 4 months.<br>Calculation (for EPL indicators): average of the two cases.   |
| <b>7:</b> Compensation following unfair dismissal (d)   | If the worker is not reinstated, right to compensation of 4 months minimum and 8 month maximum (Art. 21 1 <sup>st</sup> paragraph, Law 4857, 2003). If there is a discrimination about dismissal (sex, race, language, religion, political thought etc.) compensation of up to 4 month is added. In case discrimination occurs because of union activity, compensation of up to 1 year is being added on.<br>Art. 21 (3 <sup>rd</sup> paragraph) of Law 4857, 2003 states that "the worker is paid the wages and other benefits that have accrued during maximum four months for the period that he/she has not been employed until the finalisation of the award."<br>Firms with less than 30 employees (representing about 52% of employment (source 2006 Turkish LFS)) are exempted from these provisions but still have to pay compensation if "labour contracts are terminated through misuse of the right of termination" (Art. 17, Law 4857, 2003).<br>Typical compensation at 20 years tenure: 6 months plus 4 months backpay in firms with at least 30 employees. 6 months in firms with less than 30 employees. |
| <b>8:</b> Reinstatement option for the employee following unfair dismissal (b)                              | In the case the employer does not assert a valid reason or the court or special arbitrator decides that the asserted reason is not valid and the termination is decided to be ineffective, the employer is obliged to reinstate the worker within one month. If upon his/her application, the employer does not reinstate the worker, the employer becomes liable to pay an indemnity equal to minimum four and maximum eight months' wage to the worker (see Item 7).<br>Employees with less than six months of job tenure or in firms with less than 30 employees have no right to reinstatement  |
| <b>9:</b> Maximum time period after dismissal up to which an unfair dismissal claim can be made (e)         | One month since notification.<br>Notification period starts when the notification arrived to worker.  |
| <b>10:</b> Valid cases for use of standard fixed term contracts   | Restricted to "objective situations", particularly seasonal and agricultural work.  |
| <b>11:</b> Maximum number of successive standard FTCs (initial contract plus renewals and/or prolongations) | <b>Estimated 1.5</b> Fixed-term contracts cannot be successively renewed without serious reason, otherwise the renewal will alter the fixed-term contract into a contract of indefinite time.<br>In case of valuable reasons for renewal, no limit specified.   |
| <b>12:</b> Maximum cumulated duration of successive standard FTCs   | No limit specified.   |

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| <b>13:</b> Types of work for which temporary work agency (TWA) employment is legal                       | Prohibited, with the exception of agricultural work. (Employers are allowed to transfer an employee to another firm for a period of up to 6 months - with 2 possible renewals - if the concerned employee agrees and provided that he will execute the same tasks as in his initial job.)   |
| <b>14:</b> Are there restrictions on the number of renewals and/or prolongations of TWA assignments? (f) | Not applicable  |
| <b>15:</b> Maximum cumulated duration of TWA assignments (f)   | Not applicable  |
| <b>16:</b> Does the set-up of a TWA require authorisation or reporting obligations?                      | Not applicable  |
| <b>17:</b> Do regulations ensure equal treatment of regular workers and agency workers at the user firm? | Not applicable  |
| <b>18:</b> Definition of collective dismissal (b)  | Within one month, 10 workers in firms with 20-100 employees, 20 workers in firms with 101-300 employees, 30 workers in firms with 300+ employees.<br>Firms with less than 20 employees are exempt from requirements for collective dismissals.  |
| <b>19:</b> Additional notification requirements in cases of collective dismissal (g)                     | <b>Notification of employee representatives:</b> Duty to notify to the business trade union representative (Art. 29, first paragraph, Law 4857, 2003).<br><b>Notification of public authorities:</b> Duty to notify regional employment office of number and categories of employees to be dismissed, reasons and periods planned for dismissals. |
| <b>20:</b> Additional delays involved in cases of collective dismissal (h)                               | 1 month waiting period starting from the notification to public authorities.<br>Calculation (for EPL indicators): 30 days.  |
| <b>21:</b> Other special costs to employers in case of collective dismissals (i)                         | <b>Type of negotiation required:</b> After the notification procedure, consultation of the relevant trade union body on alternatives to redundancy and way to mitigate the effects.<br><b>Selection criteria:</b> Usually employer prerogative.<br><b>Severance pay:</b> No special regulations for collective dismissal.                         |

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.

## UNITED KINGDOM

| Items  | Regulations in force on 1 January 2014  |
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| 1: Notification procedures in the case of individual dismissal of a worker with a regular contract   | <p><b>Individual termination:</b> Employees with 2 years' continuous service have the right to receive from their employers, on request, a written statement of the reasons for their dismissal. Employees dismissed during pregnancy or statutory maternity leave are entitled to receive a statement regardless of whether they have asked for one and regardless of length of service.</p> <p><b>Redundancy:</b> Consultation with recognised trade union recommended, but not legally required when few workers are affected.</p> <p>Calculation (for EPL indicators): average of 1 for individual termination and 1.5 for redundancy.</p>  |
| 2: Delay involved before notice can start  | <b>Individual termination:</b> Written or oral notification.  |
| 3: Length of notice period at different tenure durations (a)   | <p><b>All workers:</b> 0&lt;1m, 1w&lt;2y, plus one additional week of notice per year of service up to a maximum of 12 weeks.</p> <p>Calculation (for EPL indicators): 9 months tenure: 1 week, 4 years tenure: 4 weeks, 20 years tenure: 12 weeks.</p>   |
| 4: Severance pay at different tenure durations (a)   | <p><b>All workers:</b> none.</p> <p>Legally required only for redundancy cases with 2 years tenure: half a week per year of service (age up to 21); 1 week per year (ages 22 to 40); 1.5 weeks per year (ages 41 to 64), limited to 30 weeks and £ 464 per week (The Employment Rights (Increase of Limits) Order 2014) and indexed to inflation. According to a government study, 40% of firms exceed legal minima.</p> <p>Calculation: average of redundancy (assuming worker is aged 35 at the start of employment) and other cases (no severance pay): <b>9 months tenure: 0, 4 years tenure: 2 weeks, 20 years tenure: 13.5 weeks.</b></p>   |
| 5: Definition of unfair dismissal (b)  | <p><b>Fair:</b> Dismissals relating to the capability, qualifications or conduct of the employee; because he/she is redundant; because continued employment would be illegal; or some other "substantial reason". One year tenure generally necessary for being able to file for unfair dismissal. <b>Unfair:</b> Dismissals related to a range of reasons including trade union activity, health and safety whistleblowing, pregnancy or maternity, and the national minimum wage. No qualifying service required for complaints for these reasons</p>   |
| 6: Length of trial period (c)  | Trial periods are for agreement between employer and employee, but do not affect the employee's statutory employment rights. Claims under unfair dismissal legislation are not normally possible until 2 year's service has been completed.   |
| 7: Compensation following unfair dismissal (d)   | <p>Compensation may consist of various elements: basic award (up to £12 900); compensatory award (up to £72 300); and additional awards (up to £22 360). Unlimited, if the dismissal is connected with health and safety matters or whistleblowing. Compensation under discrimination legislation is also unlimited. Median award is around £4500. Taking all this into account, it is reasonable to assume that average compensation of someone with 20 years of service who is earning close to median salary would reach about 8 months' pay. For those that earn significantly more, or for those where all or most of their 20 years' service was carried out below the age of 41, this award will typically be less (often substantially less) than 8 months of wage.</p> <p>Calculation (for EPL indicators): Typical compensation at 20 years tenure: 8 month – ordinary severance pay = 5.5 months</p> |
| 8: Reinstatement option for the employee following unfair dismissal (b)                              | Employers are not obliged to reinstate but if a tribunal orders reinstatement or re-engagement in a comparable job and the employer refuses to comply, the tribunal may make an additional award on top of the basic and compensatory awards.   |
| 9: Maximum time period after dismissal up to which an unfair dismissal claim can be made (e)         | Within three months of the employee's effective date of termination. If the application is received any later than that date, the tribunal will consider the complaint only if they believe it was not reasonably practicable for the employee to have made the complaint within the three-month period and that it has been made within such further period as they consider reasonable. However, the time limit will be extended in certain circumstances by a further three months where the employee has reasonable grounds for believing that a dismissal or disciplinary procedure (statutory or otherwise) is still in progress at the point where the normal time limit would have expired.   |
| 10: Valid cases for use of standard fixed term contracts   | No restrictions.  |
| 11: Maximum number of successive standard FTCs (initial contract plus renewals and/or prolongations) | No limit  |

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| <b>12:</b> Maximum cumulated duration of successive standard FTCs  | 4 years, after which will be treated as a permanent employee.  |
| <b>13:</b> Types of work for which temporary work agency (TWA) employment is legal                       | General  |
| <b>14:</b> Are there restrictions on the number of renewals and/or prolongations of TWA assignments? (f) | No restrictions  |
| <b>15:</b> Maximum cumulated duration of TWA assignments (f)   | No limit   |
| <b>16:</b> Does the set-up of a TWA require authorisation or reporting obligations?                      | No authorisation or reporting requirements.  |
| <b>17:</b> Do regulations ensure equal treatment of regular workers and agency workers at the user firm? | From day 1 of an assignment, agency workers are given access to certain facilities provided by the hirer, and access to information about job vacancies.<br>After a 12 week qualifying period, agency workers are entitled to the same basic terms and conditions of employment as if they had been employed directly by the hirer.  |
| <b>18:</b> Definition of collective dismissal (b)  | For collective redundancies (defined as "dismissal for a reason not related to the individual concerned" by section 195 of the Trade Union and Labour Relations Act, TULRA), regulations apply for dismissal of 20+ employees within 90 days.  |
| <b>19:</b> Additional notification requirements in cases of collective dismissal (g)                     | <b>Notification of employee representatives:</b> Duty to inform and consult with recognised trade union or other elected employee representatives. <b>Notification of public authorities:</b> There is a requirement to notify the Department for Business, Innovation and Skills (BIS), so that the appropriate Government agencies can take action to help the affected employees. |
| <b>20:</b> Additional delays involved in cases of collective dismissal (h)                               | Dismissals may not take effect until 30 days after notifying BIS if 20-99 workers are involved, and 45 days when 100+ workers are involved.  |
| <b>21:</b> Other special costs to employers in case of collective dismissals (i)                         | <b>Type of negotiation required:</b> Consultation on selection standards and dismissal procedures. <b>Selection criteria:</b> No criteria laid down in law, except for prohibition of discrimination. Often mix of seniority and performance-based criteria. <b>Severance pay:</b> No special regulations for collective dismissal.  |

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.

## UNITED STATES

| Items  | Regulations in force on 1 January 2013  |
|--|---|
| 1: Notification procedures in the case of individual dismissal of a worker with a regular contract | <p>U.S. law does not expressly address notification procedures for dismissal of a worker with a contract. Workers in the United States generally do not have contracts. However, if an employment contract exists, the parties can bargain for terms in a contract to govern notification procedures. Similarly, if collective bargaining agreements or employee handbooks prescribe the circumstances for notice, then such documents would govern.</p> <p>In some states, eligible workers, regardless of whether the worker is under contract or not, may obtain a "service letter" that indicates the reasons for the dismissal. In other states where there is no "service letter" concept, the worker can request the reason for termination. Typically, the worker must first submit a request for the "service letter" or for the reasons for his or her termination. However, no federal law mandates a service letter.</p> <p>The number of states with service letters or similar obligations, approximately amount to 28% of the US population (excluding states where the service letter cannot be used in a labour dispute, e.g. Texas, as well as states in which the letter should be provided only on request but with no obligation of truly stating the reason of separation, e.g. Kansas).</p> <p>Calculation (for EPL indicators): 1 multiplied by the population share of states with service letters or similar obligations.</p> |
| 2: Delay involved before notice can start  | <p>There are no notice requirements prior to dismissal, with certain exceptions, as discussed above.</p> <p>Calculation (for EPL indicators): coded as 1 day for oral notification or where written notice can be given to the employee</p>   |
| 3: Length of notice period at different tenure durations (a)                                       | No legal regulations (but can be regulated in collective agreements or company policy manuals).   |
| 4: Severance pay at different tenure durations (a)   | No legal regulations (but can be regulated in collective agreements or company policy manuals).   |
| 5: Definition of unfair dismissal (b)  | <p><b>Fair:</b> With the exception of unionized workers or public sector workers, it is generally fair to terminate an employment relationship without justification or explanation according to employment at-will principles, unless the parties have placed specific restrictions on terminations, through a contract, for example.</p> <p><b>Unfair:</b> Dismissals based on breach of Equal Employment Opportunity principles (e.g., national origin, race, sex, religion) and dismissals of employees with physical or mental impairments, dismissal of pregnant women, dismissals based on genetic information, dismissals based on sexual orientation, dismissals based on age, or dismissals in violation of a collective bargaining agreement, or dismissals in violation of the terms of a contract, or dismissals in violation of a public policy, or dismissals for whistle blowing. In addition, there are increasing numbers of cases where employees pursue wrongful termination claims by alleging that dismissal was based on an "implied contract" for continued employment where there is no actual contract, but whereby certain assurances for continued employment on behalf of the employer created a contract of sorts.</p>  |
| 6: Length of trial period (c)  | Wide range. Typically, the range in collective bargaining agreements is between 60-90 days.   |
| 7: Compensation following unfair dismissal (d)   | <p>A wrongfully discharged worker employed under a fixed-term contract is entitled to damages corresponding to what he/she would have earned over the life of the contract (less any salary from newly entered employment). Workers under open-ended contracts may be entitled to damages corresponding to past and future financial losses, and accompanying psychic injuries.</p> <p>There is no average compensation. Claims filed with the Equal Employment Opportunity Commission (EEOC), for example, may get settled with the employer for an agreed-upon amount, depending on worker approval. Claims may also go to court, just like claims pursued under an implied contract theory, or claims for breach of contract. Claims that go to court may result in awards setting the amount of compensation, taking into account the salary amount.</p> <p>Typical compensation at 20 years tenure (all workers): Disparate rulings.</p>   |
| 8: Reinstatement option for the employee following unfair dismissal (b)                            | Reinstatement is often ordered where discrimination is established in the context of a union grievance, where a worker has been discharged in violation of laws such as the National Labor Relations Act or the Civil Rights Act. In these situations workers do not have contracts, aside from a collective bargaining agreement. But in general, workers who sue for breach of contract or implied contract are offered damages to make them whole, not reinstatement.  |



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| <b>9:</b> Maximum time period after dismissal up to which an unfair dismissal claim can be made (e)         | <p>In general statutes of limitations vary by state and according to the act that is violated.</p> <p>A number of examples are reported below:</p> <p>The statutory limit for complaints for dismissal due to whistle blowing under the Occupational Health and Safety Act is 30 days.</p> <p>For an unfair dismissal claim in an "implied contract" situation, or regarding a breach of contract claim where there is a contract, the timeline is governed by the state jurisdiction's statute of limitations for the type of matter and varies state by state. For example, in New York, the statute of limitations is 6 years for a claim of breach of a written contract. For the same type of claim it is 4 years in California (2 years, if the contract is oral or implied-in-fact, it must be filed within two years of the breach.).</p> <p>The Equal Employment Opportunity Commission (EEOC) requires that a charge of discriminatory discharge is filed before a private law suit is filed in court. A charge must be filed with the EEOC within 180 days from the date of the alleged violation, but the deadline may be extended to 300 days if the charge is also covered by state or local anti-discrimination laws. If the EEOC does not resolve the unfair dismissal claim, then the time limit is governed by a state's tort statute of limitations, which is usually two years.</p> <p>Calculation (for EPL indicators): estimate based on EEOC requests: <math>(180+300)/2 = 240</math> days = 8 months.</p> |
| <b>10:</b> Valid cases for use of standard fixed term contracts   | No restrictions.  |
| <b>11:</b> Maximum number of successive standard FTCs (initial contract plus renewals and/or prolongations) | No limit  |
| <b>12:</b> Maximum cumulated duration of successive standard FTCs   | No limit.   |
| <b>13:</b> Types of work for which temporary work agency (TWA) employment is legal                          | General   |
| <b>14:</b> Are there restrictions on the number of renewals and/or prolongations of TWA assignments? (f)    | No  |
| <b>15:</b> Maximum cumulated duration of TWA assignments (f)  | No limit  |
| <b>16:</b> Does the set-up of a TWA require authorisation or reporting obligations?                         | Licenses for employment agencies are issued in accordance with individual states' licensing statutes. Often, these statutes delegate the authority to a "Commissioner of Licenses" who decides on the issuance of a license based on the applicant's character. The license may have a short duration, such as for two years, and would need to get renewed.  |
| <b>17:</b> Do regulations ensure equal treatment of regular workers and agency workers at the user firm?    | <p>There is no requirement for equal treatment in US federal law beyond minimum standards guaranteed to all workers. Some states may require equal treatment. In general, both groups of workers, permanent and temporary, may bargain for additional benefits.</p> <p>For example, on August 6, 2012, Massachusetts passed a law that allows temporary workers the right to know who their employer is, their job description, their rate of pay, their starting and ending times and expected duration of the job, among other pieces of information. Healthcare Cost Containment Act, 2012 Mass. Acts S 2400</p>   |
| <b>18:</b> Definition of collective dismissal (b)   | <p>The Worker Adjustment and Retraining Notification (WARN) Act outlines procedures for notice for covered plant closures and covered mass layoffs-in firms with 100 or more full-time employees or 100 or more employees who together work at least 4000 hours per week (exclusive of overtime) and over a period of 30 days: 50+ full-time workers in case of plant closure; 500+ full-time workers in case of layoff; 50-499 full-time workers, if they make up at least one third of the employer's full-time workforce at a single employment site.</p> <p>Firms with less than 100 employees are exempt from requirements for collective dismissals.</p>  |
| <b>19:</b> Additional notification requirements in cases of collective dismissal (g)                        | <b>Notification of employee representatives:</b> Duty to inform affected workers or labour unions (where they exist). <b>Notification of public authorities:</b> Duty to notify state and local authorities   |
| <b>20:</b> Additional delays involved in cases of collective dismissal (h)                                  | Special 60-day notice period. Exceptions to the notice period include layoffs due to risk of bankruptcy, unforeseen circumstances, or ending of a temporary business activity.  |

**21:** Other special costs to employers in case of collective dismissals (i)

**Type of negotiation required:** No legal requirements. **Selection criteria:** As laid down in collective agreements or company manuals; usually seniority-based. **Severance pay:** No special regulations for collective dismissal.

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.

## ARGENTINA

|  | Regulations in force on 31 December 2013  |
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| 1: Notification procedures in the case of individual dismissal of a worker with a regular contract   | A written notification is required (Article 231 and 235 of the Labour Contract Law –hereinafter LCT). If the employee is dismissed for just cause, the reason has to be indicated in the notification letter. The employer is not allowed to change the reason for dismissal, if the case is summoned at Court (article 242 LCT). Just cause is a serious breach of the labour contract (gross misconduct or offence).  |
| 2: Delay involved before notice can start  | Notice starts the day after the notification its receipt by the employee (Article 233 of the LCT).<br>Calculation for EPL indicators: 1 day   |
| 3: Length of notice period at different tenure durations (a)   | a) 15 d: Probationary period.<br>b) 1 m < 5 y.<br>c) 2 m > 5 y.   |
| 4: Severance pay at different tenure durations (a)   | Severance payment for employees dismissed without just cause is equivalent to one monthly salary per each year of service, or fraction of year exceeding 3 months (Article 245 LCT).<br>Severance payment for employees dismissed for redundancy is equivalent to half of the payment of article 245 (Article 247 LCT). These reduced severance payment also applies in case of force majeure, death of the employer or the employee or bankruptcy of the company (without fault of the employer).<br>Calculation for EPL indicators: average of dismissal without just cause and redundancy.   |
| 5: Definition of unfair dismissal (b)  | Prohibited grounds for dismissal are discrimination (sex, race, religion, political affiliation, social condition) maternity, wedding, trade union representative, during an accident of professional disease. In these cases, an additional indemnity must be paid.<br>Employers can dismiss employees without justified cause (sin justa causa) provided the prior notice is respected and severance indemnity is paid (Article 245 LCT).<br>Therefore, dismissal is considered unfair when a just cause can't be alleged and proved by the employer.<br>Also employers can dismiss in case of redundancy and force majeure. In case of redundancy the rule first in first out must be observed.<br>Calculation for EPL indicators: average without reason (0) and redundancy (1).  |
| 6: Length of trial period (c)  | The first 3 months are of probationary period (Article 92 bis LCT). During this period, the employer can dismiss the employee without just cause, with 15 (fifteen) days prior notice, and without payment of any severance indemnity.  |
| 7: Compensation following unfair dismissal (d)   | Compensation is equivalent severance pay in case of dismissal without cause (article 245 of the LCT).<br>Additional compensations must be paid in case of maternity, wedding, union affiliation, accident or professional disease. In most cases, the additional compensation amounts to 1 year of remunerations (plus the general severance indemnity).<br>Calculation for EPL indicators: Compensation – average severance: 5 months.   |
| 8: Reinstatement option for the employee following unfair dismissal (b)                              | Reinstatement proceeds when: 1) a union representative or a worker on union leave is dismissed, if the employer did not claim the judicial procedure of exclusion of the union tuition, 2) a worker is dismissed on discriminatory grounds.<br>Calculation for EPL indicators: cases of discrimination and of dismissal on prohibited grounds are not taken into account for EPL indicators. Therefore, there is no scope for reinstatement.  |
| 9: Maximum time period after dismissal up to which an unfair dismissal claim can be made (e)         | 2 years after dismissal (Article 256 LCT).  |
| 10: Valid cases for use of standard fixed term contracts   | Fixed term contracts are permitted if the term of duration is agreed between the parties or if the task to be performed is of limited duration (Article 90 LCT). A written agreement stating the duration of the FTC is required.<br>Calculation for EPL indicators: average 1 and 2: 1.5   |
| 11: Maximum number of successive standard FTCs (initial contract plus renewals and/or prolongations) | No specific limitation within the maximum duration (5 years). However, according to article 90 LCT, if more than one renewal is made, it would most likely to be considered as a contract of indefinite duration.<br>Calculation for EPL indicators: initial contract plus one renewal. 2   |
| 12: Maximum cumulated duration of successive standard FTCs   | The maximum cumulated duration of standard FTC is of 5 (five) years (Article 93 LCT).   |
| 13: Types of work for which temporary work agency (TWA) employment is legal                          | TWA employment is allowed only for objective reasons. These circumstances are:<br>1) Absence of permanent employees of the user firm.<br>2) Suspensions or vacation leave of employees of the user firm.<br>3) Increase of the activity of the user firm, which requires, on an occasional and extraordinary period, of additional employees.<br>4) When the user firm needs to organize or participate in congresses, conferences, fairs, exhibitions.<br>5) When an immediate execution of activities is required in order to avoid accidents or to repair equipment, machines or buildings of the user firm, only if such activities can't be performed by dependent employees of the user firm.<br>6) When, due to extraordinary and temporary situations, the user firm needs to perform tasks that are not of its current and core business |

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| <b>14:</b> Are there restrictions on the number of renewals and/or prolongations of TWA assignments? (f) | No specific restrictions for assignments and contracts. However, in both cases, limited to the duration of the temporary and extraordinary situation (see item 13). They are ruled by provisions of collective agreements of each sector or economic activity.  |
| <b>15:</b> Maximum cumulated duration of TWA assignments (f)   | No specific restrictions. However in both cases, they are limited to the duration of the temporary and extraordinary situation.   |
| <b>16:</b> Does the set-up of a TWA require authorisation or reporting obligations?                      | Yes. The set-up of a TWA requires administrative authorisation from the Labour Ministry and reporting obligations.  |
| <b>17:</b> Do regulations ensure equal treatment of regular workers and agency workers at the user firm? | Yes. The principle of equal treatment applies by law.   |
| <b>18:</b> Definition of collective dismissal (b)  | For purposes of the law, a collective dismissal occurs when the employer plans to dismiss: 1) more than 15% of its workers in companies of less than 400 employees; 2) more than 10% in companies between 400 and 1000 workers; 3) more than 5% in companies of more than 1000 employees.   |
| <b>19:</b> Additional notification requirements in cases of collective dismissal (g)                     | Negotiations with unions before the Labour Ministry.  |
| <b>20:</b> Additional delays involved in cases of collective dismissal (h)                               | The delay depends on the duration of the mandatory administrative proceeding. A preventive administrative procedure has to be filed by the employer or the union before the Labour Ministry. The Ministry will summon the parties to a hearing to attempt an agreement, within 2 days. If no agreement is reached within 5 days, a new period of 10 days for negotiations will be tempted by the authority. If the employer and the union arrive to an agreement, the Labour Ministry, after analyzing its content, may homologate or reject such agreement within 10 days. If the parties do not agree, the procedure will come to an end. |
| <b>21:</b> Other special costs to employers in case of collective dismissals (i)                         | Companies with more than 50 employees must propose a compensation plan. Proposing a severance indemnity is advisable (although not mandatory). 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:**

- 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.

## THE BAHAMAS

|  | <b>Regulations in force on 31 December 2013</b>   |
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| 1: Notification procedures in the case of individual dismissal of a worker with a regular contract | <p>Individual termination: Notice of dismissal may be given orally or in writing to the employee or sent to his usual or last-known residence or sent by prepaid registered post addressed to him at that place (Section 30 of the Employment Act –hereinafter EA)</p> <p>Redundancy: According to Section 32 of the Code of the Industrial relations Practice in the Industrial Relations Act Chapter 321 (hereinafter IRA), if redundancy becomes necessary, consultation with the Labour Ministry and trade union should take place.</p> <p>Calculations (for EPL indicators): Average: 0 for individual termination, 2 for redundancy</p>   |
| 2: Delay involved before notice can start  | <p>Individual termination: No delays involved. The notice must be communicated to the employee orally or in written.</p> <p>Redundancy: warning procedure (Section 32 IRA, Collective agreements)</p> <p>Calculation for (EPL indicators): Average: 1 day for individual termination, 6 days warning procedure for redundancy.</p>  |
| 3: Length of notice period at different tenure durations (a)                                       | <p>Length of notice varies:</p> <p><b>Dismissal due to redundancy:</b></p> <p>When an employee -of at least 1 year tenure- is dismissed because of redundancy, the following notice periods must be observed (section26 EA):</p> <ul style="list-style-type: none"> <li>a) 2 w or 2 w basic pay in lieu of notice &gt; 12 m</li> <li>b) 1 m or 1 m basic pay in lieu of notice for supervisory or managerial position.</li> </ul> <p><b>Dismissal due to other causes</b></p> <p>When an employment agreement is terminated by the employer, the following minimum notice periods must be observed (section29 EA):</p> <ul style="list-style-type: none"> <li>a) 1 w or 1 w pay in lieu of notice &gt; 6 m &lt; 12 m</li> <li>b) 2 w or 2 w pay in lieu of notice &gt; 12 m</li> <li>c) 1 m or 1 m pay in lieu of notice for supervisory or managerial position.</li> </ul> <p>Calculation (for EPL indicators): Average of supervisors and other employees (averaging redundancy and other causes for each of them): 9 months tenure (0 + 0 + 1 w + 1 m)/4: 0.3 months; 4 years tenure (2 w + 1 m + 2 w + 1 m)/4: 0.7 months; 20 years tenure (2 w + 1 m + 2 w + 1 m)/4: 0.7 months</p>  |
| 4: Severance pay at different tenure durations (a)   | <p>No severance pay in case of dismissal with justified reason, which occurs when the employee has committed a fundamental breach of his contract or has acted in a manner repugnant to the fundamental interests of the employer – gross misconduct- (section31 EA: summary dismissal).</p> <p><b>Redundancy:</b></p> <p>Employer who dismisses an employee, of at least 1 year tenure, must pay (Section26 EA):</p> <ul style="list-style-type: none"> <li>a) 2 w (or a part thereof on a pro rata basis) for each year up to 24 weeks.</li> <li>c) 1 m (or a part thereof on a pro rata basis) for each year up to 48 weeks for supervisory or managerial positions.</li> </ul> <p><b>Personal grounds and others:</b></p> <p>Employer must pay the following severance payments (section29 EA):</p> <ul style="list-style-type: none"> <li>a) 1 w (or a part thereof on a pro rata basis &gt; 6 m &lt; 12 m.</li> <li>b) 2 w (or a part thereof on a pro rata basis) for each year up to 24w &gt; 12 months.</li> <li>c) 1 m (or a part thereof on a pro rata basis) for each year up 48 w for supervisory or managerial positions.</li> </ul> <p>Calculation (for EPL indicators): Average of supervisors and other employees (averaging redundancy and personal grounds): 9 months (0 + 0 + 1w + 1 m)/4: 0.3 months; 4 years tenure (8w + 4m + 8w + 4 m)/4: 2.92 months; 20 years tenure: (24w+48w+24w+48w)/4: 8.30 months.</p> |

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| <p>5: Definition of unfair dismissal (b)</p>  | <p><u>Fair dismissal</u> (called "Summary dismissal"): Section 31 and 32 EA provides a list of justified grounds for summary dismissals which relate mainly to the worker's gross misconduct (theft, fraudulent offenses, dishonesty, gross insubordination or insolence, gross indecency, breach of confidentiality, gross negligence, incompetence, gross misconduct). In these cases the employer may dismiss without pay or notice.</p> <p><u>Termination of employment with notice</u>: Section 29 EA allows the employer to terminate the employment agreement without cause provided prior notice is respected and severance indemnity is paid.</p> <p><u>Redundancy</u>: Section 26 EA allows the employer to dismiss the employee because of redundancy provided prior notice is respected and severance indemnity is paid. However re-training and transfer to other work must be attempted prior to dismissal (Section 31 IRA and collective agreements).</p> <p><u>Unfair dismissal</u>: Articles 36, 37, 38 and 40 EA provide a list of circumstances in which dismissal is regarded as unfair:</p> <p>a) <b>Dismissal related to trade union membership</b>: the dismissal of an employee is regarded as having been unfair if the reason for it or the principal reason was that the employee:</p> <ul style="list-style-type: none"> <li>Was, or proposed to become, a member of an independent trade union;</li> <li>Had taken, or proposed to take, part at any appropriate time in the activities of an independent trade union;</li> <li>Was not a member of any trade union, or of a particular trade union, or of a particular trade union, or of one of a number of a particular trade union, or had refused or proposed to refuse to become or remain a member.</li> </ul> <p>b) <b>Dismissal on ground of redundancy</b>: the dismissal is regarded as unfair if</p> <ul style="list-style-type: none"> <li>The reason for which the employee was selected in comparison to other employees who held the same position, was an inadmissible reason,</li> <li>The selection of the employee for dismissal was in contravention of a customary arrangement or agreed procedure relating to redundancy and there was no special reason justifying a breach of such arrangement or procedure.</li> </ul> <p>c) <b>Dismissal on ground of pregnancy</b>: dismissal is regarded as unfair if the reason or principal reason for dismissal is that the employee is pregnant or is for any other reason connected with pregnancy.</p> <p>d) <b>Dismissal in connection with a lockout, strike or other industrial action</b>: the dismissal is regarded as unfair where at the date of dismissal</p> <ul style="list-style-type: none"> <li>The employer was conducting or instituting a lockout; or</li> <li>The employee was taking part in a lawful industrial action.</li> </ul> <p>Calculation (for EPL indicators): 2: personal dismissal is possible without significant restrictions but transfer or training must be attempted before economic dismissal (Source: on how to value this cases: OECD).</p> |
| <p>6: Length of trial period (c)</p>  | <p>No statutory regulation in the EA. Certain collective agreements stipulate a 12 months probationary period (Industrial Agreement College of Bahamas &amp; Union of Tertiary Educators).</p>   |
| <p>7: Compensation following unfair dismissal (d)</p>   | <p><b>Compensation following unfair dismissal</b> (Section 42 EA): The Tribunal can order the <u>reinstatement or re-engagement</u>, should they find that the grounds for a claim for unfair dismissal are proved. If the terms of the order are not complied with, the Tribunal will order an <u>award of compensation for unfair dismissal</u> composed of:</p> <ol style="list-style-type: none"> <li>basic award: 3 w per year of work</li> <li>compensatory award: Determined by the Tribunal considering the loss of benefits and expenses incurred by the dismissed employee.</li> </ol> <p>The ceiling to compensation of 18 months in general; 24 months for supervisory or managerial positions (Section 48 EA).</p> <p>Calculation (for EPL indicators): Formula: average of workers with supervisory and non-supervisory positions (for each, average of min and max award – severance payment in Item 4): <math>(13.84m + 21m) / 2 - 8.30m = 9.12</math> months.</p>   |
| <p>8: Reinstatement option for the employee following unfair dismissal (b)</p>                              | <p>Under EA the Tribunal may order reinstatement option if the grounds for unfair dismissal are proved. This option applies to:</p> <ul style="list-style-type: none"> <li>Dismissal related to trade union membership</li> <li>Dismissal on ground of redundancy under the circumstances stated in Item 5</li> <li>Dismissal on ground of pregnancy</li> <li>Dismissal in connection with a lockout, strike or other industrial action</li> </ul>   |
| <p>9: Maximum time period after dismissal up to which an unfair dismissal claim can be made (e)</p>         | <p>12 months (Section 68 (2) IRA).</p>   |
| <p>10: Valid cases for use of standard fixed term contracts</p>   | <p>General. EA does not contain any restriction on the use of fixed-term contracts.</p>  |
| <p>11: Maximum number of successive standard FTCs (initial contract plus renewals and/or prolongations)</p> | <p>No limit.</p>   |
| <p>12: Maximum cumulated duration of successive standard FTCs</p>   | <p>No limit.</p>   |



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| <b>13:</b> Types of work for which temporary work agency (TWA) employment is legal                       | No statutory regulation.  |
| <b>14:</b> Are there restrictions on the number of renewals and/or prolongations of TWA assignments? (f) | No statutory regulation. No limit   |
| <b>15:</b> Maximum cumulated duration of TWA assignments (f)   | No statutory regulation. No limit   |
| <b>16:</b> Does the set-up of a TWA require authorisation or reporting obligations?                      | No statutory regulation.  |
| <b>17:</b> Do regulations ensure equal treatment of regular workers and agency workers at the user firm? | No statutory regulation.  |
| <b>18:</b> Definition of collective dismissal (b)  | No statutory definition of collective dismissal. Although certain collective agreements contain provisions regarding the number of employees involved and the procedures to be followed, they correspond to the public sector (which is actually not being considered for EPL purposes).<br>IRA establishes a procedure by which if redundancy becomes necessary, consultation with trade unions and Labour Ministry should take place to: a) give warning to employees, b) introduce schemes for voluntary redundancy and c) select the employees to be dismissed. However, IRA does not establish the number of employees involved.<br>Calculation (for EPL indicators): 0 (as collective agreements of the public sector do not count for EPL purposes). |
| <b>19:</b> Additional notification requirements in cases of collective dismissal (g)                     | IRA requires communications with Labour Ministry and trade unions if redundancy becomes necessary.<br>Calculation (for EPL indicators): 0 as redundancy was already considered in Item 1.   |
| <b>20:</b> Additional delays involved in cases of collective dismissal (h)                               | No statutory regulation.  |
| <b>21:</b> Other special costs to employers in case of collective dismissals (i)                         | No special costs involved.  |

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.

## BARBADOS

|  | Regulations in force on 31 December 2013   |
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| 1: Notification procedures in the case of individual dismissal of a worker with a regular contract | Individual termination: Employees with 1 year's continuous service have the right to receive, upon request a written statement of the reasons of their dismissals (Section 22 and 23(2) of the Employment Rights Act –hereinafter ERA).  |
| 2: Delay involved before notice can start  | Written or oral notification.<br>Calculation (for EPL indicators): 1 day when dismissal can be notified orally or the notice can be directly handed to the employee.   |
| 3: Length of notice period at different tenure durations (a)                                       | <p><b>All workers:</b> Recent enactment of ERA (2012) established notice periods prior to dismissal for all workers. Length of notice varies depending on years of service and frequency wages are paid. They apply to employees with at least 1 year of continuous service (ERA Section 22):</p> <p><b>Hourly, daily or weekly paid</b> (Section 22 (1)):</p> <ul style="list-style-type: none"> <li>a) 1w,&lt; 2y</li> <li>b) 2w,&gt;2y&lt;5y</li> <li>c) 4w,&gt;5y&lt;10y</li> <li>d) 6w,&gt;10y&lt;15y</li> <li>e) 10w,&gt;15y</li> </ul> <p><b>Fortnightly paid</b> (Section 22 (2))</p> <ul style="list-style-type: none"> <li>a) 2 w,&lt;5y</li> <li>b) 4w,&gt;5y&lt;10y</li> <li>c) 6w,&gt;10y&lt;15y</li> <li>d) 10w,&gt;15y</li> </ul> <p><b>Monthly paid</b> (Section 22 (3)):</p> <ul style="list-style-type: none"> <li>a) 1m,&lt;10y</li> <li>b) 1 ½ m,&gt;10&lt;15y</li> <li>c) 2 ½ m,&gt;15y</li> </ul> <p><b>Redundancy:</b> Under Severance Payment Act (SPA), notice period varies according to length of service and applies to workers with at least 2 years tenure.</p> <ul style="list-style-type: none"> <li>a) Not less than 2w,&gt;2y&lt;5y</li> <li>b) Not less than 4w,&gt;5y</li> </ul> <p>Before the enactment of ERA, applying case law, the statutory periods under SPA were enlarged by the importation of common law principles of <b>reasonable notice</b> applicable in cases of long service employees made redundant or wrongfully dismissed. From the decisions of the Supreme Court of Justice (June Clarke vs. American Life Insurance Company. Civil Appeal N° 33 of 1998; Sandra Agard vs. Caribbean Data Services LTD. Magisterial Appeal N° 12 of 2000), a notice period of approximately 3 months was considered reasonable. The Labour Ministry understands that for notice period the applicable legislation is that of ERA. However, in their opinion the court has the final decision on this matter. Certain doctrine's interpretation is that for severance payment, the applicable notice period is that of SPA (Sections 20) and court cases decisions. As there is no case law since the enactment of ERA, for the purposes of EPL indicators, a 3 month period of notice under SPA for employees with 20 years tenure, was considered for redundancy cases.</p> <p>Calculation (for EPL indicators): average of redundancy and personal reasons (monthly-paid workers): 9 months tenure: 0; 4 years tenure (1m + 0.46m)/2: 0.73 months. 20 years tenure ( 2 ½ m + 3m)/2: 2.75 months</p> |
| 4: Severance pay at different tenure durations (a)   | <p>Legally required for employees with 2 years tenure dismissed for: redundancy, lay off/ kept on short-time and natural disaster (Section 3 (1) Severance Payments Act –hereinafter SVA). The amount of severance payment is:</p> <ul style="list-style-type: none"> <li>• 2.5 weeks' basic pay for each such year up to 10 years</li> <li>• 3 weeks' basic pay for each such year by which the employment exceeds 10 years but does not exceed 20 years, and</li> <li>• 3.5 weeks' basic pay for each such year by which the employment exceeds 20 years but does not exceed 33 years.</li> </ul> <p>Other cases: no severance payment</p> <p>Calculation (for EPL indicators): (average of redundancy and other cases (no severance pay): 9 months tenure: 0; 4 years tenure: 5w; 20 years tenure: 27.5w</p>  |
| 5: Definition of unfair dismissal (b)  | <p><b>Fair dismissal:</b> Dismissal related to the capability or conduct of the employee, because of redundancy, because continued employment would be illegal or some other substantial reason of a kind (Section 29 ERA).</p> <p><b>Unfair dismissal:</b> Dismissal related to a range of reasons including: absence as a result of occupational disease or work-related accident, filing a complaint against the employer, employee suffering AIDS or life-threatening disease, refusal to carry out an unlawful instruction, trade union representative or membership, pregnancy or maternity, race, colour, gender religion or political opinion, amongst other similar reasons (Section 30 ERA).</p>   |
| 6: Length of trial period (c )   | No statutory regulation. Claims for unfair dismissal are not possible until 1 year's service has been completed (Section 27(3) ERA).   |

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| <p>7: Compensation following unfair dismissal (d)</p>   | <p><b>Compensation following unfair dismissal:</b> If the Tribunal finds that the grounds for a claim for unfair dismissal are well founded, the Tribunal can order the <u>reinstatement</u> or <u>re-engagement</u> of the employee (Section 33 (2) ERA). If the orders are unfeasible (because the employee does not wish to be reinstated or re-engaged or because it is not practicable for the employer to comply with the order) the Tribunal will order an <u>award of compensation for unfair dismissal</u> composed of:</p> <ol style="list-style-type: none"> <li>1) <b>Basic award:</b> <ul style="list-style-type: none"> <li>• 5 w &lt; 2y</li> <li>• 2 ½ w for each year from 2y to less than 10y</li> <li>• 3 w for each year from 10y to less than 20y</li> <li>• 3 ½ w for each year from 20y to less than 33y</li> </ul> <p>The amount of the basic award has to be reduced by the amount of any severance payment paid by the employer under the SPA or any payment made by the employer, whether in pursuance of the SPA or otherwise, on the ground that the dismissal was by reason of redundancy (Fifth Schedule. ERA)</p> </li> <li>2) <b>Additional amount</b> determined by Tribunal considering the benefits lost by the employee because of dismissal.</li> <li>3) <b>Extra amount</b> if dismissal was for reason specified in Section 30 (1) (c) ERA (mainly prohibited grounds) an amount up to 52 week's wages can be ordered.</li> </ol> <p>Calculation (for EPL indicators): Formula (maximum compensation + average compensation)/2 – average severance payment: 14,5m.</p> <p>Explanation: Typical compensation at 20 years tenure, worker 35 years of age at start of employment, court case takes 6 months: (maximum: basic award (52.5w); additional amount 6 month's salary (24w); extra amount (52w) plus average)/2 minus average severance payment (27,5w).</p> |
| <p>8: Reinstatement option for the employee following unfair dismissal (b)</p>                              | <p>Yes, if an employee makes a complaint to the Tribunal on the grounds of unfair dismissal, the Tribunal can make an order of reinstatement or re-engagement on a comparable position. If the order is not feasible (because employee does not wish to be reinstated or re-engaged or it is impracticable for the employer, the Tribunal may make an award of compensation for unfair dismissal. Since ERA was recently enacted, there is no case law available at present to check the frequency or percentage of cases where a reinstatement or re-engagement order is actually applied.</p>  |
| <p>9: Maximum time period after dismissal up to which an unfair dismissal claim can be made (e)</p>         | <p>Within 3 months of the employee's effective date of termination or within such further period as the Tribunal considers reasonable if they believe it was not reasonably practicable for the employee to make the complaint within such 3 months period (Section 32 (2) ERA).</p>   |
| <p>10: Valid cases for use of standard fixed term contracts</p>   | <p>No restrictions.</p>  |
| <p>11: Maximum number of successive standard FTCs (initial contract plus renewals and/or prolongations)</p> | <p>No limit. Section 26 (1) (b) states that an employee is considered to be dismissed if the FTC is not renewed at the end of the expiry term, implying that workers will then be entitled to protection against unfair termination and redundancy pay (but not advance notice) in the same way as permanent workers.</p>  |
| <p>12: Maximum cumulated duration of successive standard FTCs</p>   | <p>No limit.</p>   |
| <p>13: Types of work for which temporary work agency (TWA) employment is legal</p>                          | <p>General. No statutory regulation.</p>   |
| <p>14: Are there restrictions on the number of renewals and/or prolongations of TWA assignments? (f)</p>    | <p>No limit.</p>   |
| <p>15: Maximum cumulated duration of TWA assignments (f)</p>  | <p>No statutory regulation. No limit.</p>  |
| <p>16: Does the set-up of a TWA require authorisation or reporting obligations?</p>                         | <p>No statutory regulation.</p>  |
| <p>17: Do regulations ensure equal treatment of regular workers and agency workers at the user firm?</p>    | <p>No statutory regulation.</p>  |
| <p>18: Definition of collective dismissal (b)</p>   | <p>Redundancies affecting at least 10% of the workforce (Section 31 (4) ERA).</p>  |
| <p>19: Additional notification requirements in cases of collective dismissal (g)</p>                        | <p>Additional notification requirements are necessary: 1) <u>Consultations</u> with the affected employees or their representatives; b) <u>Written statement</u> to the employee or the trade union and the Chief Labour Officer.</p>  |

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| <b>20:</b> Additional delays involved in cases of collective dismissal (h)       | Consultations with the affected workers or their representatives shall commence no later than 6 weeks before any of the affected employees is dismissed and shall be completed within a reasonable time (Section 31 (6)). The written statement must be delivered before dismissals take place. Calculation (for EPL indicators): 42 days (minus item 2 and item 3 –assuming –for length of notice period- employee’s 4 years tenure): 12 days. |
| <b>21:</b> Other special costs to employers in case of collective dismissals (i) | Severance pay: no special regulations for collective dismissal. Section 40 ERA provides, within 6 months of the collective dismissal, for priority in recruitment of employees who were made redundant provided they met performance standards during their employment (However priority in re-hiring is not taken into account for calculating EPL indicators).  |

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.

## BOLIVIA

| Items  | Regulations in force on 31 December 2013   |
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| 1: Notification procedures in the case of individual dismissal of a worker with a regular contract | No specific notification procedure is required in case of dismissal with just cause or without just cause, but the reasons for dismissal must be communicated to the employee in all cases as its absence implies the acknowledgement of lack of just cause (article 12 and 16 General Labour Law –GLL).<br>Calculations (for EPL indicators): 1   |
| 2: Delay involved before notice can start  | Warning procedures are advisable in case of dismissal with just cause (Case Law. Sala Social y Administrativa Expediente: 10/2012-S).<br>Dismissal without just cause is unfair, thus it is considered in Items 5, 7 and 8.<br>Calculations (for EPL indicators): dismissal with cause 7 days  |
| 3: Length of notice period at different tenure durations (a)                                       | The GLL (article 12) mandates employers to provide workers an advance notice of their dismissal. The length of notice period varies for blue-collar workers (obreros) and white-collar (empleados).<br>1) Blue-collar<br>a) 7d > 1m<br>b) 15d > 6m<br>c) 1m > 1y<br>2) White-collar<br>90d > 3m<br><br>If an employer dismisses an employee without prior notice, termination is considered in Spanish “despido intempestivo” being the employee entitle to the payment of “desahucio”, which amounts to pay in lieu of notice. For white-collar: 3 months’ salary.<br>Calculation (for EPL indicators): average of blue collar and white collar: 9 months tenure: 52.5 days; 4 years tenure: 60 days; 20 years tenure: 60 days  |
| 4: Severance pay at different tenure durations (a)   | <u>Dismissal with just cause:</u> No severance pay (called Indemnity for length of service) in case of dismissal with justified cause (“justa causa”), which essentially corresponds to employee’s misconduct (article 16 GLL and article 10 Supreme Decree N° 28699).<br><u>Dismissal without just cause:</u> considered in Item 7: Compensation for unfair dismissal. Employee can opt between reinstatement or severance payment (equivalent to 1 monthly salary per each year of service and in proportion per fraction of year).  |
| 5: Definition of unfair dismissal (b)  | <u>Fair dismissal:</u> Article 16 GLL provides an exhaustive list of reasons for dismissal with justified cause, which are related to employee’s conduct: 1) intentional damage to firm’s machinery, products or merchandise; 2) disclosure of firm’s industrial secrets, 3) non-compliance with industrial hygiene and safety rules, 4) failure to comply, totally or partially with firm’s internal rules, 5) abuse of trust of theft. Employee’s capability is not a just cause for dismissal.<br><u>Unfair dismissal:</u> when no justified cause is alleged or when the employee challenges the just cause alleged by the employer. Employee can opt between reinstatement plus back pay or severance payment plus pay in lieu of notice.<br>Upon dismissal, the employer and employee must file a form called in Spanish “Finiquito” before the Labour Ministry. The employer is obliged to pay, within 15 days of dismissal, the amounts corresponding to severance payment (if applicable) plus other labour benefits owed to the employee. If the employer fails to comply with this obligation, a fine of 30% is imposed (article 9 Supreme Decree 28699). |
| 6: Length of trial period (c)  | 3 months (Article 13 GLL).   |
| 7: Compensation following unfair dismissal (d)   | In case of unfair dismissal (dismissal without just cause “sin justa causa”), which occurs when no just cause (article 16 GLL) is alleged by the employer or when the just cause is challenged by the employee before the Labour Ministry (or at Court), the latest can opt between reinstatement plus back pay or the payment of severance indemnity plus pay in lieu of notice (article 10 Supreme Decree N° 28699).<br>Severance pay for unjustified dismissal (“sin justa causa”) is equivalent to 1 monthly salary per each year of service and in proportion per fraction of year (article 13 GLL, articles 9 and 10 Supreme Decree 28699 of May, 1 <sup>st</sup> 2006 and articles 1 and 2 Supreme Decree N° 110 of May, 1 <sup>st</sup> 2009).<br>Calculation (for EPL indicators at 20 years tenure): (20 months’ salary plus pay in lieu of notice 3 months for white collar – notice period counted in Item 3): 20 months   |
| 8: Reinstatement option for the employee following unfair dismissal (b)                            | Under Bolivian Constitution (articles 48 and 49), employees enjoy job stability. Reinstatement option is always available (article 10 Supreme Decree 28699). Upon unfair dismissal, employees can opt between reinstatement (plus back pay) or severance indemnity (plus pay in lieu of notice), article 10 and 11 Supreme Decree 28699. If the employee opts for reinstatement, he can request the Labour Authority to issue a reinstatement order -provided unjustified dismissal is proved-. If the employer fails to comply with the order a fine will be imposed. In such case, the employee can claim the compliance with reinstatement order before the Labour Court (submitting the document issued by the Labour Ministry which proves that dismissal was unfair), article 10 III Supreme Decree N° 28699.<br>Reinstatement is also available for certain categories of workers which have special protection as pregnant women or on maternity leave, recent fathers (Supreme Decree N° 12 of 2009)  |
| 9: Maximum time period after dismissal up to which an unfair dismissal claim can be made (e)       | Labour claims do not prescribe (article 48 IV Constitution). The Constitution in force as of February, 2009 modified article 120 GLL. The latest stated a time limit of 2 years.   |



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| <b>10:</b> Valid cases for use of standard fixed term contracts   | FTCs are permitted when the nature of the service or the tasks is itself of limited duration (Ministerial Resolution N° 283/62 of June, 13 <sup>th</sup> 1962). FTCs are prohibited for permanent tasks (Decree Law N° 16.187, article 2).   |
| <b>11:</b> Maximum number of successive standard FTCs (initial contract plus renewals and/or prolongations) | Only initial contract plus one renewal is admitted (Ministerial Resolution N° 283/62 of June, 13 <sup>th</sup> 1962 and Decree Law N° 16.187, article 2).<br>Calculation (for EPL indicators): 2 (initial contract plus 1 renewal).  |
| <b>12:</b> Maximum cumulated duration of successive standard FTCs   | FTC must not exceed 1 year. Same time limit applies to renewal (Ministerial Resolution N° 283/62 of June, 13 <sup>th</sup> 1962).<br>Calculation (for EPL indicators): 24 months   |
| <b>13:</b> Types of work for which temporary work agency (TWA) employment is legal                          | Regulations refer to the broader category of outsourcing. Supreme Decree N° 521 of May 26 <sup>th</sup> 2010 prohibits the use of outsourcing, subcontracting, engagement, externalization of operations and other similar contractual agreements to develop the permanent and core activities of the counterparty (also Ministerial Resolution 108 of 2010). Failure to comply determines that both companies are jointly liable for the labour and social security benefits of the employees of the user firm.<br>Moreover, the law considers an infringement subject to penalties, the following activities:<br>1) The usage of these figures to simulate non labour relationships<br>2) The recruitment and provision of labour force using the above mentioned figures to avoid complying with labour and social security regulations (article 2 Supreme Decree N° 521)<br>These types of agreements are permitted for non core activities (article 3 Supreme Decree N° 521). |
| <b>14:</b> Are there restrictions on the number of renewals and/or prolongations of TWA assignments? (f)    | No specific regulation.<br>FTC rules apply to FTCs between the agency and the worker.<br>If assignments are of fixed-term, the duration of assignments and contracts typically coincide.   |
| <b>15:</b> Maximum cumulated duration of TWA assignments (f)  | No specific regulation. However FTC rules apply to agreements with user firms.<br>FTC rules apply to FTCs between the agency and the worker. Applying this rule, the assumption of a time limit of 24 months –for FTC- was considered. See Item 12   |
| <b>16:</b> Does the set-up of a TWA require authorisation or reporting obligations?                         | No specific authorisation or reporting requirements (other than those which correspond to every employer).   |
| <b>17:</b> Do regulations ensure equal treatment of regular workers and agency workers at the user firm?    | No specific regulation.<br>However Supreme Decree N° 521, article 5 states that employees, ex- employees, who developed permanent and core activities of the user firm using the figures referred to in Item 13 (outsourcing, subcontracting, etc), can request the Labour Ministry to enforce their labour and social security rights.  |
| <b>18:</b> Definition of collective dismissal (b)   | No statutory definition of collective dismissals. However there are certain situations that determine the termination of all the employment agreements such as: cessation of business due to bankruptcy, liquidation procedure, death of the employer (articles 14 and 15 GLL).  |
| <b>19:</b> Additional notification requirements in cases of collective dismissal (g)                        | No additional requirements.  |
| <b>20:</b> Additional delays involved in cases of collective dismissal (h)                                  | No additional requirements.  |
| <b>21:</b> Other special costs to employers in case of collective dismissals (i)                            | No additional costs involved.<br>Half of severance payment must be paid (articles 14 and 15 GLL).  |

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).
- 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.

## BRAZIL

|  | Regulations in force on 1 January 2012   |
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| 1: Notification procedures in the case of individual dismissal of a worker with a regular contract   | Oral or written notification in the case of misconduct. In the case of dismissal for any other reason ( <i>sem justa causa</i> ), no prescribed procedure but notice must be certain and is generally written.   |
| 2: Delay involved before notice can start  | Once notice is given, termination becomes effective upon expiration of the respective period of notice. If the employer reconsiders the dismissal before the end of the notice period, the worker may accept or reject that decision. If the worker accepts reconsideration or continues to work after the notice period expires, the employment contract will remain valid as if no notice had been given.  |
| 3: Length of notice period at different tenure durations (a)   | Advanced notice of 8 days, if weekly paid and less than one year of job tenure in the case of dismissal without justified reason ( <i>sem justa causa</i> ). Advance notice of at least 30 days for workers either paid monthly or twice a month or with at least one year of job tenure in the case of dismissal without justified reason. This is increased by three days per year of service until a maximum of 90 days (Law 12.506 of October 13, 2011; art 487 of the Consolidation of Labour Laws). Calculations (for EPL indicators): 9 months tenure: 0.75 month; 4 years: 1.4 months 20 years: 3 months   |
| 4: Severance pay at different tenure durations (a)   | No severance pay in the case of dismissal with justified reason ( <i>com justa causa</i> ), which essentially corresponds to employee's misconduct. However, the employer deposits 8% of the worker's monthly earnings into a saving account in the worker's name in the Fundo de Garantia por Tempo de Serviço (FGTS), which can be accessed by the worker, <i>inter alia</i> , in the case of dismissal not due to misconduct ( <i>sem justa causa</i> ). Moreover, in this case, private-sector workers are also entitled to an indemnity ( <i>multa</i> ) of 40% of the total amount deposited in their name in the FGTS. The indemnity is paid over and above the deposits in the worker's FGTS account during the employment contract. In addition, employers must pay as social contributions 10% of the total amount deposited in the FGTS (Decree 3914, 11-09-2001). Note that this applies only as of the fourth month of the employment contract, the first three months being considered as a probationary period. Calculation (for EPL indicators): 40%*8%*number of months of employment   |
| 5: Definition of unfair dismissal (b)  | The following cases constitute ground for dismissal with justified reason ( <i>com justa causa</i> ): i) dishonest acts; ii) immoral conduct or misbehaviour; iii) regular conduct of business by the worker for his own or another person's account, without the employer's permission, in competition with or to the detriment of the employer; iv) criminal conviction, unless the sentence has been suspended; v) slothfulness or negligence; vi) habitual or on-the-job drunkenness; vii) breach of company secrecy; viii) breach of discipline or insubordination; ix) abandonment of the job; x) physical or verbal aggression in the workplace against any person, except in self-defence or in defence of third parties; xi) physical or verbal aggression against the employer or a superior, except in self-defence or in defence of third parties; xii) habitual gambling. Acts prejudicial to national security, if proven in administrative proceedings, also constitute grounds for fair dismissal. However, employers can always dismiss workers with no justified reason ( <i>sem justa causa</i> ) provided that advance notice is respected and severance payments are observed, except in cases of discrimination and of those categories of employees enjoying job stability (i.e. pregnant women, member of a trade union board and workers' representatives on the Internal Accident Prevention Commission (CIPA)). In the case of dismissal of workers hired before 1979 who have not opted for the FGTS system, courts might order full compensation or reinstatement |
| 6: Length of trial period (c)  | 3 months   |
| 7: Compensation following unfair dismissal (d)   | In the case of dismissal not due to misconduct ( <i>sem justa causa</i> ), only prescribed notice and indemnities are due. However in the case of dismissal of workers hired before 1979 who have not opted for the FGTS system, if no reinstatement is ordered, prescribed compensation is entirely paid by the employer  |
| 8: Reinstatement option for the employee following unfair dismissal (b)                              | The indemnity paid through the FGTS is usually the only remedy. However reinstatement is available in the case of dismissal of workers hired before 1979 who have not opted for the FGTS system. If a serious offence is not duly established, they shall be reinstated or be awarded compensation if the Court declares that reinstatement is not advisable. The same rules apply to those categories of employees enjoying job stability (i.e. pregnant women, member of a trade union board and workers' representatives on the Internal Accident Prevention Commission (CIPA)). If serious reasons for dismissal are not recognized by the Labour Court, they have the right to be reinstated. Calculation (for EPL indicators): 0.5 since reinstatement is still possible for workers hired before 1979 who have not opted for the FGTS system.   |
| 9: Maximum time period after dismissal up to which an unfair dismissal claim can be made (e)         | Maximum time period after dismissal notification up to which a claim concerning dismissal can be made is 24 months (Constitution, Art. 7 XXIX)   |
| 10: Valid cases for use of standard fixed term contracts   | A contract for a specified period is a contract in which duration is fixed in advance or which depends upon the performance of specified services or on the occurrence of a particular event, the approximate date of which can be foreseen. Contracts for a specified period are valid only if they govern services whose nature or transitional character justifies the fixing of their duration in advance, transitional activities carried out by the undertaking, and contracts of a probationary nature (Art. 443 Consolidated Labour Law)   |
| 11: Maximum number of successive standard FTCs (initial contract plus renewals and/or prolongations) | May be extended once.  |

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| <b>12:</b> Maximum cumulated duration of successive standard FTCs  | Not exceeding 2 years.  |
| <b>13:</b> Types of work for which temporary work agency (TWA) employment is legal                       | Work in urban areas to meet a temporary or seasonal need for regular and permanent employees, or to cope with an extraordinary workload increase.   |
| <b>14:</b> Are there restrictions on the number of renewals and/or prolongations of TWA assignments? (f) | No, within the 3 month limit unless authorised by the Ministry of Labour and Employment.  |
| <b>15:</b> Maximum cumulated duration of TWA assignments (f)   | 3 months unless authorised by the Ministry of Labour and Employment.  |
| <b>16:</b> Does the set-up of a TWA require authorisation or reporting obligations?                      | A temporary work agency must be registered with the Ministry of Labour and Employment. The agency must comply with any requests for information made by the Ministry.   |
| <b>17:</b> Do regulations ensure equal treatment of regular workers and agency workers at the user firm? | A TWA worker must receive the same pay as a worker doing the same work for the user firm. There is no explicit requirement for equal treatment on working conditions, but a number of minimum working conditions for TWA workers are set out in legislation. Case Law also goes beyond working conditions set in legislation in imposing equal treatment (e.g. in the case of pregnancy)  |
| <b>18:</b> Definition of collective dismissal (b)  | No legal provision is established in statutory law. However, in a recent decision, the Superior Labour Court established that negotiations among social partners must precede a mass dismissal (see Superior Labour Court decision TST-RODC-30900-12.2009.5.15.0000). This doctrine seems to have been retained in recent courts' rulings (see for example Superior Labour Court decision TST-RO-173-02.2011.5.15.0000). Calculation (for EPL indicators): since no definition of mass dismissal exists but court rulings concern only cases with many dismissal, the implied threshold is likely to be above 50. |
| <b>19:</b> Additional notification requirements in cases of collective dismissal (g)                     | No legal provision is established in statutory law. The matter may be covered by collective bargaining. However, in a recent decision, the Superior Labour Court established that negotiations among social partners must precede a mass dismissal (see Item 18).   |
| <b>20:</b> Additional delays involved in cases of collective dismissal (h)                               | No legal provision is established in statutory law. The matter may be covered by collective bargaining. However, in a recent decision, the Superior Labour Court established that negotiations among social partners must precede a mass dismissal (see Item 18). No available information on how long these consultations should last  |
| <b>21:</b> Other special costs to employers in case of collective dismissals (i)                         | No legal provisions exist. The matter may be covered by collective bargaining.  |

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.

# COLOMBIA

| Items  | Regulations in force on 31 December 2013   |
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| 1: Notification procedures in the case of individual dismissal of a worker with a regular contract | 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).<br>However a prior 15 day notice is required only in certain specific situations of dismissal with justified cause related to employee’ misconduct or low performance (Article 62 CST numerals 9 to 15).<br>Therefore a statement must be supplied to the employee in all cases as its absence implies the acknowledgement of lack of just cause.<br>Calculations (for EPL indicators): 1  |
| 2: Delay involved before notice can start  | All workers: No delays involved. The notice can be given the date of termination.<br>Prior notice in case of employee’s misconduct or low performance, are considered in Item 3.<br>Calculations (for EPL indicators): 1 day   |
| 3: Length of notice period at different tenure durations (a)                                       | 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) addition 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.<br>Calculation (for EPL indicators): (average of 0 days to 15 days regardless tenure duration) 7.5 days.  |
| 4: Severance pay at different tenure durations (a)   | 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).<br>Severance pay for unfair dismissal (“sin justa causa”) varies depending on the employee’s monthly salary (Article 64 CST):<br>a) Remuneration lower than 10 (ten) minimum legal monthly salaries (MLMS):<br>1) 30 d < 1 y<br>2) 20 d (in addition to the 30 d of numeral 1), for each subsequent year and in proportion per fraction of year.<br>b) Remuneration in excess of 10 (ten) MLMS:<br>1) 20 d < 1 y<br>2) 15 d (in addition to the 20 d of numeral 1), for each subsequent year and in proportion per fraction of year.<br>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  |
| 5: Definition of unfair dismissal (b)  | <u>Fair dismissal</u> : 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.<br>However, the employer can always dismiss employee’s without justified reason provided severance indemnity is paid.<br><u>Unfair dismissal</u> : 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). |
| 6: Length of trial period (c)  | 2 months (Article 78 CST). The trial period must be expressed in written.  |
| 7: Compensation following unfair dismissal (d)   | 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.<br>Calculation (for EPL indicators at 20 years tenure): average: 6.83 months  |
| 8: Reinstatement option for the employee following unfair dismissal (b)                            | There is no reinstatement option for the employee following unfair dismissal.  |
| 9: Maximum time period after dismissal up to which an unfair dismissal claim can be made (e)       | 3 years (Article 488 CST).   |
| 10: Valid cases for use of standard fixed term contracts   | 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).  |

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| <b>11:</b> Maximum number of successive standard FTCs (initial contract plus renewals and/or prolongations) | No limitation.<br>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.  |
| <b>12:</b> Maximum cumulated duration of successive standard FTCs   | No limitation.<br>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.  |
| <b>13:</b> Types of work for which temporary work agency (TWA) employment is legal                          | According to article 77 of Law 50 of 1990, TWA employment is legal:<br>1) For services required on occasional, accidental or transitory basis as stated in article 6 CST.<br>2) To replace workers of the user firm which are on vacation, maternity or sickness leave.<br>3) To attend an increase in production, transport, sales of goods, stationary periods of harvest and in the provision of services.<br>Law 50 of 1990 prohibits use of TWA to replace workers on strike at the User firm.  |
| <b>14:</b> Are there restrictions on the number of renewals and/or prolongations of TWA assignments? (f)    | Assignments: Yes.<br>1) For services required on occasional, accidental or transitory basis: 30 days (article 6 CST)<br>2) Replacements: limited to the period to cover the particular event<br>3) Production increases and services: for a term of 6 months renewable for another period of 6 months.<br>Calculation (for EPL indicators): Yes  |
| <b>15:</b> Maximum cumulated duration of TWA assignments (f)  | Assignments: Yes<br>1) For services required on occasional, accidental or transitory basis: 30 days<br>2) To cover replacements: the time is given to cover the particular event<br>3) Production increases and services: 6 (six) months renewable for another period of 6 (six) months.<br>Total 12 months<br>Calculation (for EPL indicators): (average of 1 month and 12 months): 6.5 months.   |
| <b>16:</b> Does the set-up of a TWA require authorisation or reporting obligations?                         | Authorization, registration and periodic statistics reporting obligations to the Labour Ministry (Articles 84 and 88 of Law 50 of 1990 and Decree 4369).   |
| <b>17:</b> Do regulations ensure equal treatment of regular workers and agency workers at the user firm?    | Yes. Article 79 of Law 50 of 1990 requires equal treatment of regular workers and agency workers at the user firm.   |
| <b>18:</b> Definition of collective dismissal (b)   | Labour Ministry considers that a collective dismissal occurs when it affects (Article 67 Law 50 of 1990):<br>a) In a company between 10 and 50 employees: 30% of its workers;<br>b) In a company of more than 50 employees and up to 100: 20% of its workers;<br>c) In a company of more than 100 employees and up to 200: 15% of its workers;<br>d) In a company of more than 200 employees and up to 500: 9% of its workers;<br>e) In a company of more than 500 employees and up to 1000: 7% of its workers;<br>f) In a company of more than 1000 employees: 5% of its workers. |
| <b>19:</b> Additional notification requirements in cases of collective dismissal (g)                        | 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.  |
| <b>20:</b> Additional delays involved in cases of collective dismissal (h)                                  | 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.<br>Calculation (for EPL indicators): 2 months minus notice period Item 3: 52.5 days.   |
| <b>21:</b> Other special costs to employers in case of collective dismissals (i)                            | No special costs involved.<br>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%.  |

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.

- 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.
- 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.



## COSTA RICA

| Items  | Regulations in force on 31 December 2013  |
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| 1: Notification procedures in the case of individual dismissal of a worker with a regular contract | Individual termination: Dismissal without cause a written notification must be given to the employee, article 28 Labour Code (hereinafter LC).<br>Dismissal with cause (essentially worker mis-conduct, see item 5): written notification indicating the cause for dismissal is advisable because if the employee challenges it at Court, the written notice is a key proof for the employer, article 82 LC.<br>According to article 35 LC, in all cases, the employee being terminated has the right to request a written document indicating the termination and the reasons for such.<br>Calculation (for EPL indicators):1  |
| 2: Delay involved before notice can start  | For dismissal with or without cause: written notification is required.<br>Calculation (for EPL indicators): 1 day   |
| 3: Length of notice period at different tenure durations (a)                                       | Dismissal with cause: written notification is advisable to prove just cause (article 82 LC). However there is no prior period established by LC.<br>Dismissal without cause: The following notice periods must be given (article 28 LC):<br>a) 7 d > 3 m up to 6 m<br>b) 15 d > 6 m up to 1y<br>c) 30 d > 1y<br>Calculation (for EPL indicators): dismissal with cause and without cause: 9 months tenure: 15 days, 4 years tenure: 30 days, 20 years tenure:30 days.   |
| 4: Severance pay at different tenure durations (a)   | Dismissal with cause: No severance pay (articles 81 and 82 LC).<br>Dismissal without cause: Severance payment ("auxilio de cesantía) varies according to different tenure durations (article 29 LC):<br>a) > 3m < 6m: 7 days' salary<br>b) 6m < 1y: 14 days' salary<br>c) From 1y onwards, the following table applies:<br><ul style="list-style-type: none"> <li>• Year 1: 19.5 d</li> <li>• Year 2: 20 d per year or fraction in excess of 6 months</li> <li>• Year 3: 20.5 d per year or fraction in excess of 6 months</li> <li>• Year 4: 21 d per year or fraction in excess of 6 months</li> <li>• Year 5: 21.24 d per year or fraction in excess of 6 months</li> <li>• Year 6: 21.5 d per year or fraction in excess of 6 months</li> <li>• Year 7: 22 d per year or fraction in excess of 6 months</li> <li>• Year 8: 22 d per year or fraction in excess of 6 months</li> <li>• Year 9: 22 d per year or fraction in excess of 6 months</li> <li>• Year 10: 21.5 d per year or fraction in excess of 6 months</li> <li>• Year 11: 21 d per year or fraction in excess of 6 months</li> <li>• Year 12: 20.5 d per year or fraction in excess of 6 months</li> <li>• Year 13 and onwards: 20 d per year or fraction in excess of 6 months</li> </ul> Ceiling: last 8 years of the labour relationship.<br>Calculation (for EPL indicators): dismissal without cause: 9 months tenure: 14 days; 4 years tenure: 84 days; 20 years tenure: 160 days. (For calculation purposes 7 days (1 week) is equivalent to 0,23 months).   |
| 5: Definition of unfair dismissal (b)  | Under Costa Rica's LC, <u>the employer can always dismiss an employee without cause</u> provided prior notice is respected (article 28 LC) and severance payment (auxilio de cesantía) is paid (article 29 LC). Thus dismissal on <b>personal grounds</b> and <b>redundancy</b> is always possible.<br><u>Fair dismissal ("Dismissal with just cause")</u> : Article 81 LC sets out just causes for dismissal which are related mainly to workers conduct and -in some cases- to workers capacity (letters h and j). Just causes are: a) If the employee commits immoral acts during the execution of tasks or has incurred in slander, insults and other mistreatments against the employer, b) If the employee commits any of the aforementioned acts against one of his fellow co-workers, causing an alteration of the discipline at the workplace that determines the suspension of the activities, c) If during non working hours the employee commits any of the aforementioned acts against the employer, representative of the company.d) If the employee willingly causes material losses to the machinery, constructions, equipment, raw materials, products and any other objects related to their works, e) If the employee reveals manufacturing secrets or exposes confidential matters to the detriment of the company. f) If the employee carelessly or recklessly jeopardizes the security of the workshop, workplace or of the people inside them. g) If the employee does not attend work during two consecutive days or two days in one same month without the due authorization from the employer, h) If the employee, manifestly and repeatedly, refuses to adopt preventive measures or follow the establish procedures to avoid accidents or illnesses; or if the employee fails to comply with the orders of the employer or his representatives in order to achieve the highest efficiency an performance of work, i) If the employee violates provisions of article 72 letters a, b, c, d and e LC, j) if, when the contract was concluded, the worker deceived the employer by means of false recommendation letters or certificates of qualifications that the employee does not poses and the employer acknowledges the incapacity during the execution of the contract, k) If the employee has been sentenced to prison by irrevocable judgment, l) if the employee commits serious breaches of his obligations under the labour agreement.<br><u>Unfair dismissal ("Dismissal without cause")</u> : according to articles 29, 81, 82 and 83 LC, unjustified dismissal occurs when no just cause is alleged or proved at court and when the employee terminates the employment agreement due to the employer's misconduct (constructive dismissal). |

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| <b>6: Length of trial period (c)</b>  | LC does not establish explicitly a trial period, except for domestic workers. However, it should be noted that an employee has no right to prior notice (or payment in lieu of notice) or severance payment (auxilio de cesantía) unless he has been employed for a period of at least 3 months (articles 28, 80 and 102 LC).  |
| <b>7: Compensation following unfair dismissal (d)</b>   | In case of unfair dismissal (article 29), the court will require the employer to pay the employee: 1) notice period, 2) severance payment (auxilio de cesantía), 3) back pay as from the date of the claim until court's decision (article 82 LC), (if the employee challenges the just cause for dismissal at court).<br>Calculation (for EPL indicators): 20 years' tenure employee: back pay (6 months' salary) plus pay in lieu of notice (30 days' salary).   |
| <b>8: Reinstatement option for the employee following unfair dismissal (b)</b>                              | No reinstatement option following unfair dismissal (for EPL purposes).<br>Reinstatement is only allowed in case discrimination (race, sex, religion, age) article 624 LC and on prohibited grounds such as pregnant employees (articles 94 and 94 bis LC) or members of a trade union (articles 367 and 368). These situations are not considered for EPL purposes.  |
| <b>9: Maximum time period after dismissal up to which an unfair dismissal claim can be made (e)</b>         | The maximum time period to claim for unfair dismissal is of 1 year (article 602 LC).   |
| <b>10: Valid cases for use of standard fixed term contracts</b>   | FTC are permitted only to provide a service or perform a work which in its nature is of limited duration (articles 26 and 31LC).   |
| <b>11: Maximum number of successive standard FTCs (initial contract plus renewals and/or prolongations)</b> | <u>General rule:</u> The total duration of FTC cannot exceed 1 year. When the employee continues to render services, of the same nature, beyond the date of termination, the contract shall be considered of indefinite duration (article 27 LC).<br><u>Special case:</u> For services that require special technical preparation, the duration can be up to 5 years (article 27 LC).<br>Article 27 LC states that FTC can be renewed. However the law does not specify the maximum number of renewals or prolongations.<br>According to doctrine renewals are permitted only if the service is of limited duration. Renewals (as initial contract) are not permitted to perform services of a permanent nature. Thus FTCs are the exception.<br>Calculation (for EPL indicators): Although LC allows renewals, as FTC are the exception, the assigned value is 2 (initial contract plus one renewal). |
| <b>12: Maximum cumulated duration of successive standard FTCs</b>   | Although limit is regulated for initial contract (1 year/5 years), renewals follow the same limit.<br>Calculation (for EPL indicators): average of general rule and special case: 72 months  |
| <b>13: Types of work for which temporary work agency (TWA) employment is legal</b>                          | No statutory provisions in LC, except for definition of "Intermediario" as the person who engages the services of others to execute a work on behalf of an employer- beneficiary of the services. In such case both companies are jointly liable of labour and social security obligations (article 3 LC). However Case Law (Sentencia Sala Segunda de la Corte N° 830. 1/10/2004/ Sentencia Sala Segunda de la Corte N° 863. 16/06/2010) defines TWA (citing doctrine) as the agencies which provide workers to satisfy temporary needs of the user firm (i.e meet short term requirements of the market, substitute a worker or cover a temporary vacancy during a selection process).   |
| <b>14: Are there restrictions on the number of renewals and/or prolongations of TWA assignments? (f)</b>    | No statutory regulation.<br>FTC rules apply to FTCs between the agency and the worker.<br>If assignments are of fixed-term, the duration of assignments and contracts typically coincide.  |
| <b>15: Maximum cumulated duration of TWA assignments (f)</b>  | No statutory regulation.<br>FTC rules apply to FTCs between the agency and the worker. Applying this rule and considering that case law defines TWA as those agencies which provide workers for temporary services, the assumption of a time limit of 24 months/10years –for FTC- was considered. See Item 12  |
| <b>16: Does the set-up of a TWA require authorisation or reporting obligations?</b>                         | No special statutory regulation.   |
| <b>17: Do regulations ensure equal treatment of regular workers and agency workers at the user firm?</b>    | No statutory regulation.   |
| <b>18: Definition of collective dismissal (b)</b>   | No statutory definition of collective dismissal. However there are certain situations that determine the termination of all the employment agreements (article 85 LC): Fortuity or force majeure, insolvency, bankruptcy, liquidation procedures, death of the employer which determine the total closure of the business or final cease of the operations.  |
| <b>19: Additional notification requirements in cases of collective dismissal (g)</b>                        | Since collective dismissals are not regulated as such by the Costa Rican labour law, the termination of the employment agreements must be addressed individually and employers must give prior notice (or pay in lieu of notice) and pay severance indemnity. Thus there are no additional requirements on top on those requirements applying to individual dismissals.<br>Calculation (for EPL indicators): 0   |

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| <b>20:</b> Additional delays involved in cases of collective dismissal (h)       | No additional delays involved.<br>Calculation (for EPL indicators): 0  |
| <b>21:</b> Other special costs to employers in case of collective dismissals (i) | No special costs involved other than those required for individual termination (article 85 LC).<br>Calculation (for EPL indicators): 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.

## DOMINICAN REPUBLIC

| Items  | Regulations in force on 31 December 2013  |
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| 1: Notification procedures in the case of individual dismissal of a worker with a regular contract | <p>Individual termination: The Labour Code (hereinafter LC) distinguishes between: Dismissal (article 87 LC) and 2) Desahucio (article 75 LC). 1) Dismissal: is defined as the unilateral termination of the labour agreement by the employer. It is justified when the employer proves the existence of a just cause (article 88 LC). On the contrary, it is unjustified (article 87 LC). 2) Desahucio is defined as the termination of the employment agreement -by either party- without alleging a cause. For purposes of this analysis also termed as dismissal without cause.</p> <p><u>Dismissal with cause:</u> employer has to notify the worker and within 48 hours of the dismissal, the former is required to give written notice to the Labour Department (or the local authority exercising such duties) and to the employee indicating the cause of dismissal (article 91 LC). Notification is a key issue: if the employer fails to comply with said procedure, dismissal is considered without cause (article 93 LC, Supreme Court of Justice N° 24 of 1999).</p> <p><u>Dismissal without cause or Desahucio:</u> written notice must be given to the employee and within 48 hours of such notice, a written communication to the Labour Department (or the local labor authority exercising such duties) must also be delivered (article 77 LC).</p> <p>Calculation (for EPL indicators): 2</p> |
| 2: Delay involved before notice can start  | <p>Dismissal with cause: employer must exercise the right to dismiss with cause within 15 days of the knowledge of the fault committed by the employee (article 90 LC). This is an expiry term for the employer to allege the just cause for dismissal. Supreme Court of Justice understands that if the term expires, dismissal is considered unjustified (Supreme Court of Justice N° 12 of 2000 and N° 2 of 2001) .</p> <p>For dismissal with or without cause: written notification to employee and Labour Department is required.</p> <p>Calculation (for EPL indicators): 2 days (written notification to employee and Labour Authority).</p>   |
| 3: Length of notice period at different tenure durations (a)                                       | <p>Dismissal with cause: There is no advance notice period required. However if the court understands that the just cause for dismissal is not proved, pay in lieu of notice (amongst other payments) will be ordered.</p> <p>Dismissal without cause: The following notice periods must be given (article 76 LC):</p> <ul style="list-style-type: none"> <li>a) 7 d &gt; 3 m up to 6 m</li> <li>b) 14 d &gt; 6 m up to 1y</li> <li>c) 28 d &gt; 1y</li> </ul> <p>Calculation (for EPL indicators): dismissal without cause: 9 months tenure: 14 days, 4 years tenure: 28 days, 20 years tenure: 28 days.</p>   |
| 4: Severance pay at different tenure durations (a)   | <p>Dismissal with cause: No severance pay (articles 87 and 88 LC).</p> <p>Dismissal without cause or Desahucio: Severance payment ("auxilio de cesantía) varies according to different tenure durations (article 80 LC):</p> <ul style="list-style-type: none"> <li>a) &gt; 3m &lt; 6m: 6 days' salary</li> <li>b) 6m &lt; 1y: 13 days' salary</li> <li>c) 1y &lt; 5 y: 21 days' salary per year of service</li> <li>d) &gt; 5y: 23 days' salary per year of service</li> </ul> <p>Calculation (for EPL indicators): dismissal without cause: 9 months tenure: 13 days; 4 years tenure: 84 days; 20 years tenure: 460 days</p>  |

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| 5: Definition of unfair dismissal (b)  | <p><b>Fair dismissal:</b> Article 88 LC sets out just causes for dismissal which are related mainly to workers misconduct. Inefficiency and lack of capacity (numeral 2) as a just cause for dismissal expires after 3 months' employment. Just causes: 1) if the worker deceived the employer by means of false letters of recommendation or certificates when the contract was concluded. 2) If the employee executes his tasks in a way that demonstrates his inability and inefficiency. This cause is no longer valid after the employee has been providing services for a period longer than three months. 3) If the employee has acted with lack of integrity and honor during the execution of tasks and has incurred in slander, acts of violence and mistreatment against the employer or the relatives of the latter who are under his watch. 4) If the employee commits any of the aforementioned acts against one of his fellow co-workers, causing an alteration to the workplace's order. 5) If during non working hours the employee commits any of the acts mentioned in numeral 3 against the employer, relatives or the top officials of the company. 6) If the employee willingly causes material losses during the execution of tasks or as a consequence of it to the buildings, machinery, constructions, equipment, raw materials, products and any other objects related to their works. 7) If the employee causes the serious damage mentioned in numeral 6 unwillingly, but with negligence or recklessness. 8) If the employee commits acts of dishonesty in the workplace. 9) If the employee reveals manufacturing secrets or exposes confidential matters to the detriment of the company. 10) If the employee carelessly or recklessly jeopardizes the security of the workshop, workplace or of the people inside them. 11) If the employee does not attend work during two consecutive days or two days in one same month without the due authorization from the employer or his representative, or without notifying the cause in the term established under article 58 (within the 24 hours). 12) If the employee is absent from work, does not notify the cause and is in charge of a task or machinery that if stalled, necessarily implies a disturbance to the company. 13) If the employee exits the workplace during working hours without an authorization from the employer or his representative and without previously notifying the employer or his representative the reasons for leaving the workplace. 14) If the employee disobeys the employer or his representatives, provided that the disobedience is related to the service provided. 15) If the employee refuses to adopt preventive measures or follow procedures established by law, the competent authorities or the employer, in order to avoid accidents or illnesses. 16) If the employee violates any of the provisions established under numerals 1, 2, 5 or 6 of article 45. 17) If the employee violates any of the provisions established under numeral 3 and 4 of article 45 after the Labour Department, at the requirement of the employer, has issued warnings for committing the same error. 18) If the employee has been sentenced to prison by irrevocable judgment. 19) If the employee lacks commitment in the execution of the tasks he has been hired for and/or fails to comply any other obligations established under the employment agreement.</p> <p><b>Unfair or Unjustified dismissal:</b> In accordance with Article 87 LC, unjustified dismissal occurs when no just cause can be proved. In this case the employer is obliged to pay: prior notice, severance indemnity (auxilio de cesantía) plus back pay until the date of court decision, with a ceiling of 6 months (article 95). However, under Dominican's LC, the employer can always dismiss an employee without cause (Desahucio) provided prior notice is respected and severance payment (auxilio de cesantía) is paid (article 75 and 76 LC). Thus dismissal on personal grounds and redundancy is always possible.</p> |
| 6: Length of trial period (c)  | <p>LC does not establish explicitly a trial period. However, it should be noted that an employee has no right to prior notice (or payment in lieu of notice) or severance unless he has been employed for a period of at least 3 months (articles 76 and 80 LC). Moreover, inefficiency and inability as a just cause for dismissal expires after (3) months' employment (article 88/2).</p>  |
| 7: Compensation following unfair dismissal (d)   | <p>In case of unfair dismissal (article 87), the court will require the employer to pay the employee: 1) notice period, 2) severance payment (auxilio de cesantía), 3) back pay as from the date of the claim until court's decision (with a ceiling of 6 months' salary).<br/>Calculation (for EPL indicators): 20 years' tenure employee: 6 months' salary as back pay.</p>   |
| 8: Reinstatement option for the employee following unfair dismissal (b)                              | <p>No reinstatement option following an unfair dismissal.<br/>Reinstatement has been allowed at the employee's request in very limited scenarios, such as pregnant employees or members of a trade union (fuero sindical). These situations are not considered for EPL purposes.</p>  |
| 9: Maximum time period after dismissal up to which an unfair dismissal claim can be made (e)         | <p>The maximum time period to claim for unfair dismissal is of 2 months (article 702 LC).</p>   |
| 10: Valid cases for use of standard fixed term contracts   | <p>FTC are permitted only in the following situations (articles 31 and 33 LC): a) to provide a service or perform a work which in its nature is of limited duration, b) to substitute an employee on leave, on vacation, or due to temporary impediment; and c) If a FTC furthers the interests of the employee.<br/>Calculation (for EPL indicators): 1 (as FTC can be used in situations of employee's needs).</p>  |
| 11: Maximum number of successive standard FTCs (initial contract plus renewals and/or prolongations) | <p>LC does not establish a maximum duration for FTCs. However, when an employee continues to render services for an employer beyond the date of termination, the contract shall be considered of indefinite duration as from the initial date (articles 31, 34, 35 and 73).<br/>Calculation (for EPL indicators): 1 for initial contract. (Renewal turns the contract into one of indefinite duration)</p>  |
| 12: Maximum cumulated duration of successive standard FTCs   | <p>No limit is established by law. However the duration of FTCs is that of the task to be performed, which is in itself of fixed duration.<br/>Calculation (for EPL indicators): 1</p>  |
| 13: Types of work for which temporary work agency (TWA) employment is legal                          | <p>No statutory provisions.</p>   |



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| <b>14:</b> Are there restrictions on the number of renewals and/or prolongations of TWA assignments? (f) | No statutory regulation.<br>FTC rules apply to FTCs between the agency and the worker.<br>If assignments are of fixed-term, the duration of assignments and contracts typically coincide.  |
| <b>15:</b> Maximum cumulated duration of TWA assignments (f)   | No statutory regulation.<br>FTC rules apply to FTCs between the agency and the worker.   |
| <b>16:</b> Does the set-up of a TWA require authorisation or reporting obligations?                      | No statutory regulation.   |
| <b>17:</b> Do regulations ensure equal treatment of regular workers and agency workers at the user firm? | No statutory regulation.   |
| <b>18:</b> Definition of collective dismissal (b)  | No statutory definition of collective dismissal for economic reasons. However there are certain situations that determine the termination of all the employment agreements (article 82 numerals 4 and 5: a) Exhaustion of the substance exploited by the extractive industry, b) bankruptcy that determines the total cease of the business, c) closure of the company or final reduction of its staff, d) uncosteability of the business and any other similar situations. Prior approval from the Labour Department is required (article 82 num LC remits to article 56 LC- procedure for suspension of the employment agreements-).<br><br>On the other hand, article 24 of the Rulings for the Application of the Labor Code states that in the event a company needs to reduce its personnel, the employer must give prior notice to the Labour Department, who will verify compliance with Articles 141 and 142 LC (priority rules for dismissal). |
| <b>19:</b> Additional notification requirements in cases of collective dismissal (g)                     | Article 82 numeral 5 LC requires the employer to follow the pocedure of article 56 LC (suspension of the employment agreements). The employer must communicate the cause of termination to the Labour Department for its approval.<br><br>Calculation (for EPL indicators): 0 (as there are no additional notification requirements on top of those requirements applying to individual dismissals).   |
| <b>20:</b> Additional delays involved in cases of collective dismissal (h)                               | According to article 56, the Labour Department must analyse the cause for termination and issue its resolution in a maximum period of 15 days.<br>Calculation (for EPL indicators): 15 days (minus item 2 and item 3): 0   |
| <b>21:</b> Other special costs to employers in case of collective dismissals (i)                         | Article 82 states that if the employer ends the employment agreements due to the causes referred to in Item 18, the following "economic assistance" must be paid: a) 5 days' salary if the employee worked more than 3 months but less than 6 months; b) 10 days' salary if the employee worked from 6 months to less than 1 year; c) 15 days' salary per each of service if the employee worked from 1 year onwards.<br>Calculation (for EPL indicators): 0 (as costs to employers are lower for collective dismissals in comparison to individual ones in the situations referred to in article 82 numerals 4 and 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:**

- 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.



## ECUADOR

| Items  | Regulations in force on 31 December 2013  |
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| 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> <p>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").</p> <p>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).</p> <p>3) <u>Unjustified dismissal</u> ("despido intempestivo"): when no cause is alleged by the employer and no prior notification is given (article 188 LC).</p> <p>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> <p><u>Economic reasons</u>: considered in Item 18 and 19.</p> <p>Calculation (for EPL indicators): Only dismissal without just cause ("despido intempestivo") was considered: 0.</p> <p>(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.</p> <p>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.</p> <p>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.</p> <p><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>:</p> <p>Severance (article 188 LC):</p> <ul style="list-style-type: none"> <li>&lt; 3 y: 3m</li> <li>&gt; 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.</li> </ul> <p>Bonus for "desahucio": amounts to 25% of last monthly remuneration per year of service (articles 188 and 185 LC).</p> <p>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.</p> <p><u>Redundancy</u>:</p> <p>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.</p> <p>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>  |

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| 5: Definition of unfair dismissal (b)  | <p><b>Fair dismissal:</b> 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><b>Unjustified dismissal</b> ("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> |
| 6: Length of trial period (c)  | Trial period is of a maximum of 90 days (Article 15 LC).  |
| 7: Compensation following unfair dismissal (d)   | <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.</p> <p>Calculation (for EPL indicators): 0 month</p>  |
| 8: Reinstatement option for the employee following unfair dismissal (b)                              | <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).</p> <p>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.</p> <p>Calculation (for EPL indicators): 0.</p>  |
| 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 3 years (Article 635 LC).   |
| 10: Valid cases for use of standard fixed term contracts   | <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).</p> <p>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, .</p> <p>Calculation (for EPL indicators): 3</p>  |
| 11: Maximum number of successive standard FTCs (initial contract plus renewals and/or prolongations) | <p>FTC cannot exceed 2 years. Renewals and prolongations are not permitted (article 184 LC).</p> <p>Calculation (for EPL indicators): 1 (initial contract)</p>  |
| 12: Maximum cumulated duration of successive standard FTCs   | 24 months (article 184 LC)  |
| 13: Types of work for which temporary work agency (TWA) employment is legal                          | <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.</p> <p>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.</p> <p>This type of work does not fall under the definition of TWA.</p>  |
| 14: Are there restrictions on the number of renewals and/or prolongations of TWA assignments? (f)    | TWA employment is illegal (article 327 Constitution, Legislative Decree N°8)  |

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| <b>15:</b> Maximum cumulated duration of TWA assignments (f)   | TWA employment is illegal (article 327 Constitution, Legislative Decree N°8)  |
| <b>16:</b> Does the set-up of a TWA require authorisation or reporting obligations?                      | TWA employment is illegal (article 327 Constitution, Legislative Decree N°8)  |
| <b>17:</b> 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)  |
| <b>18:</b> 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.<br>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 |
| <b>19:</b> Additional notification requirements in cases of collective dismissal (g)                     | No additional notification requirements.<br>Calculation (for EPL indicators): 0   |
| <b>20:</b> 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).<br>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.  |
| <b>21:</b> 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").<br>According to article 193, employer is obliged to re-hire workers if business opens within 1 year (not considered for EPL calculations).<br>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.

## EL SALVADOR

| Items  | Regulations in force on 31 December 2013   |
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| 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.<br>Economic reasons: considered in Item 18 and 19.<br>Calculation (for EPL indicators): 1   |
| 2: Delay involved before notice can start  | No delays involved. The notice must be communicated to the employee<br>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).<br><u>Redundancy:</u><br>No severance pay in case of dismissal due to:<br>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.<br>b) business closure caused by the exhaustion of the substance exploited by the extractive industry and authorized by the labour judge.<br>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. .<br><u>Unjustified dismissal:</u><br>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).<br>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) if 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.<br>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).<br>However, employers can always dismiss workers with no justified cause provided severance payments are observed (both for personal reasons and for redundancy).<br><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). |

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| <b>6: Length of trial period (c )</b>   | Trial period is of a maximum of 30 days (Article 28 LC).  |
| <b>7: Compensation following unfair dismissal (d)</b>   | 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).<br>Calculation (for EPL indicators): (20 months –17.5 months) plus 55 days= 4.5 months.   |
| <b>8: Reinstatement option for the employee following unfair dismissal (b)</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.  |
| <b>9: Maximum time period after dismissal up to which an unfair dismissal claim can be made (e)</b>         | The maximum time period to claim for unfair dismissal is of 60 days (Article 610 LC).   |
| <b>10: Valid cases for use of standard fixed term contracts</b>   | 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).  |
| <b>11: Maximum number of successive standard FTCs (initial contract plus renewals and/or prolongations)</b> | No statutory limitation. However, FTC are the exception, thus successive renewals can be construed as a unique contract of indefinite duration.<br>Calculation (for EPL indicators): estimated 2 (initial contract plus 1 renewal)  |
| <b>12: Maximum cumulated duration of successive standard FTCs</b>   | No limitation.  |
| <b>13: Types of work for which temporary work agency (TWA) employment is legal</b>                          | No statutory regulation.  |
| <b>14: Are there restrictions on the number of renewals and/or prolongations of TWA assignments? (f)</b>    | No statutory regulation.<br>FTC rules apply to FTCs between the agency and the worker.<br>If assignments are of fixed-term, the duration of assignments and contracts typically coincide.   |
| <b>15: Maximum cumulated duration of TWA assignments (f)</b>  | No statutory regulation.<br>FTC rules apply to FTCs between the agency and the worker   |
| <b>16: Does the set-up of a TWA require authorisation or reporting obligations?</b>                         | No statutory regulation.  |
| <b>17: Do regulations ensure equal treatment of regular workers and agency workers at the user firm?</b>    | No statutory regulation.  |
| <b>18: Definition of collective dismissal (b)</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).<br>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 unprofitability 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).<br>Calculation (for EPL indicators): as standard rules applying to individual redundancies can always be followed, there are no additional restrictions: 0 |
| <b>19: Additional notification requirements in cases of collective dismissal (g)</b>                        | 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).<br>Calculation (for EPL indicators): as standard rules applying to individual redundancies can always be followed, there are no additional restrictions: 0   |
| <b>20: Additional delays involved in cases of collective dismissal (h)</b>                                  | 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.<br>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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| <b>21: Other special costs to employers in case of collective dismissals (i)</b> | No additional costs involved but prior authorisation is required for cases described in Item 18.<br>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.



## GUATEMALA

| Items  | Regulations in force on 31 December 2013   |
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| 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 77 LC) and dismissal without cause (article 82 LC).<br><u>Dismissal with just cause</u> : written notification must be given to the employee, indicating the cause of dismissal (article 78 LC).<br><u>Dismissal without cause</u> : no specific notification procedure stated by the LC (article 82 LC).<br>Calculation (for EPL indicators): (only dismissal without cause is considered): 0  |
| 2: Delay involved before notice can start  | <u>Dismissal with cause</u> : written notification indicating cause of dismissal (article 78 LC).<br><u>Dismissal without cause</u> : no statutory provision for notification procedure nor delays involved.<br>Calculation (for EPL indicators): 1 day  |
| 3: Length of notice period at different tenure durations (a)                                       | There are no notice periods to be observed by the employer.<br>Calculation (for EPL indicators): 0   |
| 4: Severance pay at different tenure durations (a)   | Dismissal with just cause: No severance pay (article 77 LC).<br>Dismissal without cause: Severance pay equals to 1 monthly salary per year of service or fraction thereof (article 82 LC). Same indemnity applies to indirect dismissal (article 79 LC).<br>Calculation (for EPL indicators): dismissal without cause: 9 months tenure: 0.75 months; 4 years tenure: 4 months; 20 years tenure: 20 months  |
| 5: Definition of unfair dismissal (b)  | <u>Fair dismissal (dismissal with just cause)</u> : Article 77 LC sets out just causes for dismissal which are related mainly to workers misconduct: a) If the employee has acted with lack of integrity and honor during the execution of tasks and has incurred in slander against the employer or his representatives, b) If the employee commits any of the aforementioned acts against one of his fellow co-workers, causing alteration to the workplace's order or the interruption of the work, c) If during non working hours the employee commits any of the aforementioned acts against the employer or his representatives, d) If the employee commits any felony or fault against the property of the employer or fellow co-workers or a third party in the establishment, and if the employee causes serious damage, intentionally, with negligence or recklessness, to the machinery, equipment, raw materials, products and any other objects related to their works, e) If the employee reveals manufacturing secrets (article 63 letter g), f) If the employee does not attend work during two consecutive days or six half days in a period of one month, g) If the employee manifestly refuses to adopt preventive measures or follow procedures established by law, to avoid accidents or illnesses; or when the employee refuses to adopt the instructions given by the employer or his representatives to obtain better performance and efficiency in his tasks, h) if the employer infringes any of the prohibitions stated in article 64 LC or in the duly approved internal manual, after being warned in written by the employer. Prior warning is not required if the employee is under the effects of alcohol, and as a consequence endangers life and security of people or assets of the employer, i) if the worker deceived the employer pretending to have capacities or knowledge he does not poses or by means of false letters of recommendation or certificates, j) If the employee has been sentenced to prison by irrevocable judgment, k) If the employee violates any other obligation of the employment agreement.<br><u>Unjustified dismissal</u> : According to article 82 LC unjustified dismissal occurs when no just cause is alleged or when the employee terminates the employment agreement as a consequence of the employers misconduct (indirect dismissal, article 79 LC).<br>Under Guatemala's LC, the employer can always dismiss an employee without cause provided severance indemnity (indemnización por tiempo servido) is paid (article 82 LC). Thus dismissal on personal grounds and redundancy is always possible. |
| 6: Length of trial period (c)  | Trial period is of 2 months (article 81 LC).   |
| 7: Compensation following unfair dismissal (d)   | If the employee challenges just cause for dismissal before the Labour Court and the employer can not prove the cause alleged, the latter must pay, apart from severance indemnity, back pay as from the date of dismissal until actual payment of indemnity, with a ceiling of 12 months (article 78 LC).<br>Calculation (for EPL indicators): 20 years' tenure employee: back pay: 6 months   |
| 8: Reinstatement option for the employee following unfair dismissal (b)                            | The LC does not provide reinstatement option for the employee following unfair dismissal.<br>However, there are certain categories of workers which have special protection: pregnant women or recent mothers (article 151 LC), trade union members (article 209 LC), dismissals during a collective dispute (article 380 LC) or during an establishment shutdown which was declared illegal (article 251). These workers can't be dismissed during certain periods of time or without following a special procedure.<br>Calculation (for EPL indicators): 0.5   |
| 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 30 days (article 260 LC).  |
| 10: Valid cases for use of standard fixed term contracts   | Under article 25 LC labour agreements can be: a) Indefinite duration: when no term is specified; b) Fixed term: when the date of termination is specified or when the nature of the task is in itself of limited duration; c) For a specific task: when services are adjusted to the conclusion of said task. Article 26 LC presumes that the employee is employed by an indefinite contract, except otherwise expressed. FTC are not permitted for permanent activities. Thus FTC (both letters b) and c)) are the exception and are only permitted for services which are accidental or temporary.<br>Calculation (for EPL indicators): 0  |

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| <b>11:</b> Maximum number of successive standard FTCs (initial contract plus renewals and/or prolongations) | No statutory provision in the LC. However, article 26 stipulates that FTC are the exception. Therefore, subsequent renewals can be challenged in courts.<br>Calculation (for EPL indicators): 2 (initial contract plus 1 renewal).  |
| <b>12:</b> Maximum cumulated duration of successive standard FTCs   | No statutory limit in LC.   |
| <b>13:</b> Types of work for which temporary work agency (TWA) employment is legal                          | No general regulation of TWA, however article 5 LC defines the figure of "intermediary" as a person who hires one or more workers to perform activities for a third party (called "patrono"). The third party is jointly liable with the intermediary for the management of said employees, in reference to their labour rights and obligations granted under the Constitution, Labour Code, internal manuals and other applicable regulations. However if the intermediary owns its capital and equipment, it is considered an employer (patrono), despite the fact of providing workers to a third party and therefore the liability regime does not apply. Agencies of this type operate in Guatemala and its regime is ruled by the commercial agreements executed by the parties (TWA and user firm).<br>Calculation for EPL indicators: 4 |
| <b>14:</b> Are there restrictions on the number of renewals and/or prolongations of TWA assignments? (f)    | No statutory regulation. Restrictions and renewals depend on what was agreed privately by the parties (commercial agreements TWA-User Firm).<br>FTC rules applies to TWA and User Firm.   |
| <b>15:</b> Maximum cumulated duration of TWA assignments (f)  | No statutory regulation. Duration depends on the commercial agreement executed privately by the parties.  |
| <b>16:</b> Does the set-up of a TWA require authorisation or reporting obligations?                         | No statutory regulation.  |
| <b>17:</b> Do regulations ensure equal treatment of regular workers and agency workers at the user firm?    | No statutory regulation. Equal salary principle applies to employees working for the same employer (article 102 Constitution and 89 LC), which is not the case under study.   |
| <b>18:</b> Definition of collective dismissal (b)   | No statutory definition of collective dismissal for economic reasons and no threshold involved. However, there are certain situations which determine the termination of the employment agreements: 1) fortuity and force majeure, 2) bankruptcy or liquidation procedures, 3) incapacity or death of the employer (article 85 literal b LC). In these cases, the Labour Inspection or the Labour Tribunal (in case of conflict between the parties), must quantify, discretionally, the amount of severance indemnity that the employer must pay, which cannot be lower than 2 days salary nor higher than 4 months' salary per employee. Notwithstanding the above, the employer can dismiss employees without cause by paying the corresponding severance payment (article 82 LC).   |
| <b>19:</b> Additional notification requirements in cases of collective dismissal (g)                        | Although article 85 letter c) requires the participation of the Labour Inspection (or the Labour Tribunal –in case of conflict-), as standard procedures for dismissal without cause can be followed, there are no additional notification requirements.<br>Calculation (for EPL indicators): 0 (as standard procedures for individual dismissals can be followed).   |
| <b>20:</b> Additional delays involved in cases of collective dismissal (h)                                  | As standard procedures for individual dismissal can be followed, there are no additional delays involved.<br>Calculation (for EPL indicators): 0  |
| <b>21:</b> Other special costs to employers in case of collective dismissals (i)                            | As standards procedures for individual dismissals without cause can be followed, there are no other special costs involved.<br>Calculation (for EPL indicators): 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.

## HONDURAS

| Items  | Regulations in force on 31 December 2013   |
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| 1: Notification procedures in the case of individual dismissal of a worker with a regular contract | The employer must give a written notification to the worker indicating the cause of termination. The employer may not subsequently invoke grounds other than those referred to in the notification letter, article 117 of the Labour Code (hereinafter LC).  |
| 2: Delay involved before notice can start  | The notice must be communicated in written to the employee. The term of the prior notice starts as from the day after the notification (Article 119 LC).<br>Calculation (for EPL indicators): 1 day when the notice can be handled to the employee plus 1 day of delay before notice can start: 2 days   |
| 3: Length of notice period at different tenure durations (a)                                       | Notice period varies according to employee's length of service (article 116 LC):<br>a) 24 hours, if the employee worked for a period of 3 m.<br>b) 1 w > 3 m < 6 m.<br>c) 2 w > 6 m < 1 y.<br>d) 1 m > 1 y < 2 y.<br>e) 2 m > 2 y.   |
| 4: Severance pay at different tenure durations (a)   | <u>Fair dismissal</u> : No severance payment in case of dismissal with justified cause which are related to employee's conduct or capacity, article 112 LC.<br><u>Unfair dismissal</u> : when no justified cause can be alleged (or proved at Court if employee challenges it) and when the contract is terminated by the employee due to employer's gross misconduct – indirect dismissal- (articles 114 and 120 LC). In such case, employer is obliged to pay the following <u>severance payment</u> ("Auxilio de cesantía") if the worker does not ask to be reinstated:<br>a) 10 d wages > 3 m < 6 m.<br>b) 20 d wages > 6 m < 1 y.<br>c) From 1 year of service onwards, 1 monthly salary per year and in proportion for any fraction of year, with a ceiling of 25 monthly salaries.<br>Severance pay for unfair dismissal is considered in item 7.<br>Calculation (for EPL indicators): 0 as compensation is considered in Item 7.  |
| 5: Definition of unfair dismissal (b)  | <u>Fair dismissal</u> : Article 112 LC provides a list of just causes which allow the employer to dismiss an employee which are related to the employee's conduct or capacity: 1) deceit by means of false letters of recommendation or certificates, 2) acts of violence, insults, or serious indiscipline at work against the employer or his/her relatives, 3) deliberate material damages against the plant, machinery, tools, goods or merchandise and any serious negligence endangering the safety of the workers or the material, 4) acts of immorality, 5) revealing manufacturing secrets, 6) criminal conviction, 7) unjustified absence from work without any justification for two consecutive working days, or a total of three days within the same months, 8) repeated failure to adopt the preventive measures or to follow the proper procedure to avoid accidents at work and occupational diseases, 9) incapacity or manifest inefficiency to fulfil the obligations under the contract, 10) infectious disease or mental illness when the worker refuses treatment, 11) serious misconduct and serious breaches of the obligations under the contract of employment. In addition, article 111 LC provides a list of economic reasons treated as fair dismissal. However, these cover only force majeure bankruptcy, plant or firm-closure or authorised suspension of activity for more than 120 days for reasons of over-production, lack of funds or raw materials and/or unprofitability. No severance payment is due for fair dismissal.<br><u>Unfair dismissal</u> : According to article 120 LC unfair dismissal occurs when the employer can't allege a justified cause -or prove the just cause at Court, if employee challenges it- (article 113) and when the employee terminates the employment agreement due to the employer's gross misconduct – indirect dismissal- (article 114 LC).<br>The LC is very strict in the definition of dismissal related to incapacity as it requires inefficiency to be manifest. In addition individual redundancy is not a just cause for dismissal.<br>Calculation (for EPL indicators): 2.5 |
| 6: Length of trial period (c)  | The trial period is of a maximum of 60 days (Article 49 LC). It must be expressed in written (Article 50 LC).  |
| 7: Compensation following unfair dismissal (d)   | Article 112 LC establishes justified causes for the dismissal of employees. However, if the employer fails to prove at Court the just cause alleged, the employee will be entitled to receive compensation for unfair dismissal of an amount equivalent to severance payment (see Item 4) plus back pay as from the date of dismissal until court's final decision.<br>Calculation (for EPL indicators): severance pay (20 months) plus back pay: 26 months.   |
| 8: Reinstatement option for the employee following unfair dismissal (b)                            | The LC, article 113 provides reinstatement option for the employees if the just cause for dismissal alleged by the employer (article 112) can't be proved at court. In such case, the employee may decide whether to claim the severance payment for unfair dismissal or the reinstatement option. If the judge orders reinstatement, although the employee is not entitled to receive severance payment, back pay is mandatory.   |
| 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 864 LC).  |

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| <b>10:</b> Valid cases for use of standard fixed term contracts   | <p>According to articles 46: FTC are permitted:</p> <ul style="list-style-type: none"> <li>a) For a fixed term, when the termination date is specified in the employment agreement or when the occurrence of any fact or circumstance as the construction of a work, necessarily determines the termination of the contract.</li> <li>b) For specific work or services, when the price of the worker's services is set globally or in a lump. In this case, the term depends upon the termination of a work.</li> </ul> <p>Article 47 states that contracts for a fixed term or for a specific work or service are exceptional and thus are only valid when the nature of the service or work is of temporal and limited duration. FTC is not permitted for services of permanent and continuous duration. If a FTC is agreed for such type of work or services, it is construed by the law that the contract is of indefinite duration.</p> |
| <b>11:</b> Maximum number of successive standard FTCs (initial contract plus renewals and/or prolongations) | <p>Article 48 LC states that the maximum duration of a single FTC is in general of 1 year; or 5 years for work requiring a special technical preparation. However, they can be renewed.</p> <p>No maximum authorized of renewals is specified. As FTC is exceptional, it can be construed from article 48 LC, that renewals are only admitted if the objective or material reason for the use of FTC maintains.</p>  |
| <b>12:</b> Maximum cumulated duration of successive standard FTCs   | <p>No specific regulation. Notwithstanding as FTC is exceptional, the reasonable limit would be of 1 renewal: 2 years in general, 10 years for specialized workers.</p> <p>Calculation (for EPL indicators) average: 6 years</p>   |
| <b>13:</b> Types of work for which temporary work agency (TWA) employment is legal                          | <p>No statutory regulation up to date.</p> <p>A prospect of regulation is being considered by the parties (State office of Labour and Social Security –STSS–, Employees, Agencies).</p> <p>However, article 7 LC defines the figures of Intermediaries, Contractors and Private Work Agencies (PWA). The definition of Private Work Agency, under article 7, differs from the concept of TWA for EPL purposes. In effect, while PWA simply provides services which consist in linking demand and supply of labour, TWA are professional employers which place their employees at the disposal of a third party. However the definitions of Intermediary and Contractor (article 7 LC) are similar to OECD's definition. In these cases, the LC states that the user firm (patrono) is jointly liable of the intermediary's or contractor's labour obligations towards their employees.</p>   |
| <b>14:</b> Are there restrictions on the number of renewals and/or prolongations of TWA assignments? (f)    | <p>No statutory regulation.</p> <p>FTC rules apply to FTCs between the agency and the worker.</p> <p>If assignments are of fixed-term, the duration of assignments and contracts typically coincide.</p>   |
| <b>15:</b> Maximum cumulated duration of TWA assignments (f)  | <p>No statutory regulation.</p>  |
| <b>16:</b> Does the set-up of a TWA require authorisation or reporting obligations?                         | <p>No statutory regulation.</p>  |
| <b>17:</b> Do regulations ensure equal treatment of regular workers and agency workers at the user firm?    | <p>No statutory regulation.</p>  |
| <b>18:</b> Definition of collective dismissal (b)   | <p>No statutory definition and no regulation as such of collective dismissals for economic reasons. However, the LC regulates the suspension of the employment contracts for economic reasons and allows the employer to terminate the employment contracts which have been suspended for more than 120 days following a special procedure (articles 111 letter h, 100 numerals 1, 3, 4, 5 and 6). This situation applies to lack of raw material, overproduction, unprofitable activity, lack of funds and impossibility to obtain them.</p>  |
| <b>19:</b> Additional notification requirements in cases of collective dismissal (g)                        | <p>Legal regulations apply to the suspension of activities. Article 102 LC requires the employer to notify in writing the workers affected by the suspension at least 30 days in advance and to send a copy of this notification to the Ministry of Labour and Social Welfare. The suspension of employment contracts for economic reasons must be authorized by the Ministry of Labour and Social Welfare (La Secretaría de Trabajo y Previsión Social): article 101 LC.</p> <p>Calculation (for EPL indicators): 1</p>   |
| <b>20:</b> Additional delays involved in cases of collective dismissal (h)                                  | <p>A 30 day prior notice to the workers affected by the suspension is required. A copy of this notification must be sent to the Ministry of Labour and Social Welfare. The suspension has to be authorized by the Ministry of Labour and Social Welfare art. 101 LC.</p> <p>Calculation for EPL indicators: 30 days</p>  |
| <b>21:</b> Other special costs to employers in case of collective dismissals (i)                            | <p>No special costs involved, however authorisation is not necessarily granted.</p> <p>Calculation (for EPL indicators): 0.5</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.



## JAMAICA

| Items  | Regulations in force on 31 December 2013  |
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| 1: Notification procedures in the case of individual dismissal of a worker with a regular contract | The notice of dismissal may be given in writing, unless it is given in the presence of a credible witness (Section 3, subsection 1 of the Employment Termination and Redundancy Payment Act (hereinafter ETRPA). If the employee is dismissed due to redundancy, a written statement indicating how the redundancy payment has been calculated must be given to the employee.   |
| 2: Delay involved before notice can start  | No delays involved. The notice must be communicated to the employee<br>Calculation (for EPL indicators): 1 day when the notice can be directly handled to the employee.   |
| 3: Length of notice period at different tenure durations (a)                                       | The notice period to be given to an employee who has been continuously employed for 4 weeks or more is of:<br>a) Not less than 2 w < 5 y<br>b) Not less than 4 w > 5 y < 10 y<br>c) Not less than 6 w > 10 y < 15 y<br>d) Not less than 8 w > 15 y < 20 y<br>e) Not less than 12 w for 20 years or more<br>Pay in lieu of notice is acceptable.<br>(Section 3, subsection 1 ETRPA)  |
| 4: Severance pay at different tenure durations (a)   | All workers: none<br>Severance pay is legally required for redundancy cases for employees with 104 weeks tenure (2 years). For the purposes of the ETRPA, dismissal is considered by reason of redundancy if it is attributable wholly or partly to:<br>a) Employer having ceased to carry on the business for the purposes of which the employee was employed<br>b) Employee's particular work having ceased or diminished<br>c) Employee having suffered personal injury caused by an accident arising in the course of his employment, or having developed a professional disease.<br>A seasonal employee who has worked for an employer for two or more consecutive seasons is considered to be dismissed by reason of redundancy if circumstances mentioned in letters a), b) or c) occur or if he is not employed in future seasons.<br>Redundancy payment amounts to:<br>2 weeks' pay per year, for the first ten years;<br>3 weeks' pay per year, from the tenth year onwards.<br>Calculation (for EPL indicators): average of redundancy and other cases: 9 months tenure:0; 4 years tenure: 4 weeks, 20 years tenure: 25 weeks  |
| 5: Definition of unfair dismissal (b)  | <u>Fair</u> : Redundancy (when notice period is respected and severance indemnity is paid (Section 3 ETRPA). For personal reasons (loss of trust and confidence) the Court of Appeal (Resident Magistrate's Civil Appeal N° 17/2011. Rosmond Johnson and Restaurants of Jamaica Limited) states that as the Company made a reasonable payment in lieu of notice, it was not obliged to justify its assertion that it had lost confidence in the employee.<br><u>Unfair</u> : No statutory definition of unfair dismissal. However, when addressing this item, a key aspect to consider is that in Jamaica, two Institutions can rule on dismissals: 1) Judicial Power (Resident Magistrate, Court of Appeal, Supreme Court) have jurisdiction to hear claims and grant relief (damages) in respect of wrongful dismissal (breach of contract, employer not following its own termination procedure, employer not respecting limited grounds for dismissal when included in employment contract-based on common law); 2) The Industrial Disputes Tribunal (hereinafter IDT) has jurisdiction to attend claims in respect of unfair dismissal -the 2010 amendment of LRIDA clarifies that plaintiffs do not need to belong to a trade-union to seek relief before IDT. As from the amendment, IDT is the only Tribunal who has jurisdiction to hear claims related to unfair/ unjustified dismissals and issue reinstatement orders (The Court attends cases of wrongful or unlawful dismissals and orders the payment of damages).<br>LRIDA, Section 12, Subsection 5 provides remedies for unjustified dismissal, which according to case law and legal provisions include dismissal on grounds of race, place of origin, political opinion, colour or creed (article 24, Jamaican (Constitution) Order in Council; dismissal in violation of a collective agreement; disciplinary breach of employment contract which are not proved by the employer (Supreme Court of Justice. Civil Appeal N° 71&72/2010), whistleblowing (Protected Disclosures Act, 2011 Section 16) and in general when dismissal action is not based on reasonable grounds. A 1985 judgment of the Supreme Court (West Indies Yeasts Company Limited case) stipulates that the Tribunal must order remedies if "the dismissal action is not justified under fair, just and reasonable grounds" (cited in Grand Lido Negril vs Grand Lido Negril Staff Association, IDT 10/95), which excludes arbitrary dismissal. |
| 6: Length of trial period (c )   | No statutory regulation on the length of the trial period, it depends on the agreement between employer and employee. According to section 3, subsection 4 ETRPA, when the employment contract contains a probationary period, either party may terminate the contract without notice during the probationary period or, where the probationary period is more than 90 days, during the first 90 days thereof.<br>Collective agreements generally stipulate probationary periods from 3 months to 6 months.<br>Calculation (for EPL indicators): average of min and max usual values in collective agreements: (3+6)/2=4.5 months.  |

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| <b>7:</b> Compensation following unfair dismissal (d)   | Under LRIDA, if IDT finds that the dismissal of the worker is unjustifiable, an order of reinstatement can be awarded. If the worker does not wish to be reinstated, the Tribunal will make an award of compensation. The normal measure of damages for unfair dismissal is the amount the employee would have earned had the employment continued.<br>Calculation (for EPL indicator): assumption that a Court case takes 6 months: 6 months  |
| <b>8:</b> Reinstatement option for the employee following unfair dismissal (b)                              | In case of unfair (unjustified) dismissal, IDT is the competent authority to order reinstatement. From case law it emerges that reinstatement is fairly often made available.<br>The Court (after 2010 Amendment of LRIDA) does not order reinstatement. Before the Amendment, applying the principle of not forcing the parties to remain together in a contract of service, injunction was not common.<br>Calculation (for EPL indicators): 2 (for IDT –Court is not considered)   |
| <b>9:</b> Maximum time period after dismissal up to which an unfair dismissal claim can be made (e)         | 6 months after dismissal.  |
| <b>10:</b> Valid cases for use of standard fixed term contracts   | No restrictions.   |
| <b>11:</b> Maximum number of successive standard FTCs (initial contract plus renewals and/or prolongations) | No limit.  |
| <b>12:</b> Maximum cumulated duration of successive standard FTCs   | No limit.  |
| <b>13:</b> Types of work for which temporary work agency (TWA) employment is legal                          | The Employment Agencies Regulation Act (hereinafter EARA) contains the rules and obligations of “Employment Agencies”. These Agencies are in charge of placing persons in employment in and outside Jamaica (section 2 and 3). Regulations set forth into the EARA refer in principle to agencies whose activity is connecting offer and demand of employment, while it is not obvious whether this refers to temporary staffing services as well. In all cases, there are no limitations on the business sectors in which they can operate. |
| <b>14:</b> Are there restrictions on the number of renewals and/or prolongations of TWA assignments? (f)    | No regulation. No limit  |
| <b>15:</b> Maximum cumulated duration of TWA assignments (f)  | No regulation. No limit  |
| <b>16:</b> Does the set-up of a TWA require authorisation or reporting obligations?                         | The set up of an Employment Agency requires authorisation and reporting obligations. However, it is not obvious whether this refers also to companies undertaking only general temporary staffing services.<br>Calculation for (EPL indicators): 1.5   |
| <b>17:</b> Do regulations ensure equal treatment of regular workers and agency workers at the user firm?    | No regulation.   |
| <b>18:</b> Definition of collective dismissal (b)   | The law does not define collective dismissals and does not prescribe any specific procedure. However, in the case of collective disputes, consultations with workers are advised, although not required: The IDT could take a more anti-employer stance if no agreement is sought through good-faith consultations or conciliation.<br>Calculation (for EPL indicators): Half-value for advised but not strictly required procedure: 2   |
| <b>19:</b> Additional notification requirements in cases of collective dismissal (g)                        | No special regulation. However certain collective agreements require consultation with trade unions when dealing with redundancies. In general, in the case of collective disputes, consultations with workers are advised, although not required.<br>Calculation (for EPL indicators): Half-value for advised but not strictly required procedure (firm-level agreements are not taking into account in EPL scores): 0.5  |
| <b>20:</b> Additional delays involved in cases of collective dismissal (h)                                  | No special regulation. In general, in the case of collective disputes, consultations with workers are advised, although not required. Good faith consultations must take at least a few hours.   |
| <b>21:</b> Other special costs to employers in case of collective dismissals (i)                            | No special regulation.   |

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.

## NICARAGUA

| Items   | Regulations in force on 31 December 2013   |
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| 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).<br><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).<br><u>Dismissal without cause</u> : no specific notification procedure stated by the LC (article 45 LC).<br>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.<br><u>Dismissal without cause</u> : no statutory provision for notification procedure nor delays involved.<br>Calculation (for EPL indicators): 0   |
| Item 3 Length of notice period at different tenure durations (a)  | There are no notice periods to be observed.<br>Calculation (for EPL indicators): 0   |
| Item 4 Severance pay at different tenure durations (a)  | Dismissal with just cause: No severance pay (article 48 LC).<br>Dismissal without cause: Severance pay varies according to different tenure durations (article 45 LC):<br>a) ≤ 3y: 1m salary for each year of service<br>b) 4y onwards: 20 days per year of service with a ceiling of 5 monthly salaries.<br>In no event, severance pay shall be lower than one monthly salary<br>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.<br><u>Unjustified dismissal</u> : According to article 45 LC unjustified dismissal occurs when no just cause is alleged.<br>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.<br>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.<br>Reinstatement does not apply to employee's in position of trust.<br>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).<br>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)<br>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).<br>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.<br>Calculation (for EPL indicators): 3 (initial contract plus 2 renewals).   |
| Item 12 Maximum cumulated duration of successive standard FTCs  | No statutory limit in LC.  |

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| 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 13<sup>th</sup> 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.<br>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<br>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.



## PANAMA

| Items  | Regulations in force on 31 December 2013   |
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| 1: Notification procedures in the case of individual dismissal of a worker with a regular contract | <p>Written notification indicating the date and reasons for dismissals must be given to the employee. Any additional reason subsequently alleged and differing from the one set out in the notification letter is invalid (article 214 Labour Code – hereinafter LC).</p> <p>Prior authorization from the Labour Authority is required for dismissal (individual or collective) based on economic reasons (articles 213 Letter C, 215 and 216 LC). The employer must prove before the authority the just cause for dismissal due to economic reasons. Dismissals carried out without the fulfilment of said procedure is considered unjustified. However if after 60 calendar days, the Labour Authority has not issue its decision, the employer may proceed to dismiss.</p> <p>For dismissals based on other reasons – mainly related to employee’s conduct or capacity- (article 213 Letters A and B), the employer has the option to request prior authorization from the Labour Tribunal (article 217). However, in this case, authorization is not mandatory.</p> <p>Calculation (for EPL indicators): (average 1 for personal reasons and 3 for economic reasons): 2</p>  |
| 2: Delay involved before notice can start  | <p>The notice must be communicated in written to the employee, indicating the date and reasons for dismissal (article 214 LC). For dismissal based on economic reasons a (individual or collective) a procedure must be followed: the employer is obliged to request prior authorization from the Labour Authority, proving the just cause alleged. The Labour Authority has to inform the workers of said request, giving them a maximum of 3 days to present their case. The authority must examine the evidence within a reasonable period of time and issue an immediate decision granting or refusing the authorization. After being notified, the parties may appeal the decision before the competent authority (article 216 LC). It is worth noting that, according to article 215 LC, if Labour Authority does not issue its decision before a 60 day calendar period, the employer may proceed to dismiss.</p> <p>For dismissals based on personal reasons (article 213 Letters A and B) the employer has the option to obtain prior authorization, however, this authorization is not mandatory.</p> <p>Calculation (for EPL indicators): (average of 1 day for personal reasons and 60 days for economic reasons –maximum time period given to Labour Authority): 30.5 days</p>  |
| 3: Length of notice period at different tenure durations (a)                                       | <p>General rule: no statutory notice periods to be observed.</p> <p>Exception: 30 days prior notice is required to dismiss certain categories of workers, excluded from “just cause” rule (articles 211 and 212 LC) see Item 5. These workers can be dismissed without just cause provided prior notice is given and severance indemnity for unfair dismissal is paid: 1) Employees not exceeding 2 years tenure, 2) Domestic workers, 3) Permanent workers of small agricultural, fishing or manufacturing undertakings, 4) Seafarers serving on board vessels operating on international routes, 5) Apprentices, 6) Employees in retail sales establishments and in undertakings with five or fewer workers, except in the case of insurance establishments or real estate.</p> <p>Calculation (for EPL indicators): (average of general rule and exception in the case of workers with less than 2 years of tenure, 0 for other cases): 9 months tenure: 0.5; 4 years tenure: 0 month; 20 years tenure: 0 month.</p>  |
| 4: Severance pay at different tenure durations (a)   | <p>Dismissal with just cause related to personal reasons: no severance payment (articles 212, 213 A-B).</p> <p>Dismissal with just cause related to economic reasons: compensation equivalent to severance payment for unfair dismissal (articles 213 C, 215 and 225).</p> <p>According to article 225 LC severance payment for unjustified dismissal amounts:</p> <p>3.4 w per year of service up to 10y</p> <p>1 w per year of service &gt; 10y</p> <p><b>Economic reason</b> always determines severance payment for unjustified dismissal (be it with just cause or unjustified -when prior authorization is not requested-).</p> <p><b>Personal reason</b> depends on whether just cause can be proved. If just cause is proved no severance payment. Otherwise, severance payment for unjustified dismissal</p> <p>A key aspect to consider regarding Panama’s legislation is that severance payment for unjustified dismissal is paid by the Severance Fund, article 229 LC (Fondo de Cesantía). The Severance Fund is a pool of capital that the employer is obliged to constitute through a trust. The employer must deposit or record on a quarterly basis, the amount of money corresponding to i) the seniority premium (“prima de antigüedad”) and ii) 5% of the monthly share of the compensation that each worker could be eligible in case of unjustified dismissal.</p> <p>Calculation (for EPL indicators): 0 months</p> |

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| <b>5: Definition of unfair dismissal (b)</b>  | <p><b>Justified dismissal:</b> To terminate an employment relationship of indefinite duration, employers must allege a just cause for dismissal (article 211 LC). Just causes for dismissal (article 213 LC) are related to:</p> <ol style="list-style-type: none"> <li>1) Worker's conduct (letter A "Naturaleza disciplinaria")</li> <li>2) Worker's capacity &amp; others (Letter B "Naturaleza no imputable"). Numerals 1 and 4 relate to worker's capacity (inability or manifest inefficiency, mental or physical incapacity or professional inaptitude). The LC is very strict in the definition of dismissal related to incapacity as it requires inefficiency to be manifest.</li> <li>3) Economic reasons (Letter C "Naturaleza económica") related to proven reduction of activity (see Item 18).</li> </ol> <p><b>Exclusion from the just cause requirement:</b> Certain categories of workers are excluded from the just cause rule. In those situations, employers can dismiss without alleging a just cause, provided notice period is respected and severance indemnity for unjustified dismissal is paid. This situation applies to: 1) Employees not exceeding 2 years tenure, 2) Domestic workers, 3) Permanent workers of small agricultural, fishing or manufacturing undertakings, 4) Seafarers serving on board vessels operating on international routes, 5) Apprentices, 6) Employees in retail sales establishments and in undertakings with five or fewer workers, except in the case of insurance establishments or real estate.</p> <p><b>Unjustified dismissal:</b> occurs when: 1) Just cause for dismissal cannot be proved by the employer -before the Labour Tribunal or the Board of Conciliation-, when challenged by the employee (article 218). 2) Employer's failure to request prior approval for dismissal based on economic reasons (articles 215 and 225), 3) Termination of employment contract by the employee due to employers misconduct (article 223 LC).</p> <p>Calculation (for EPL indicators): 2 since poor performance per se is not a just cause for dismissal (incapacity should be manifest)</p> |
| <b>6: Length of trial period (c)</b>  | <p>Probationary period can only be stipulated when the worker requires certain aptitudes or special skills. The maximum period is of 3 months (article 78 LC).</p> <p>For other workers, no probationary period is admitted under LC.</p> <p>Calculation (for EPL indicators): (average of 3 months for jobs requiring certain aptitudes or skills, 0 for others): 1.5 months.</p>   |
| <b>7: Compensation following unfair dismissal (d)</b>   | <p>Under article 218 LC, if the Conciliation Board or the Labour Tribunal, finds that the just cause for dismissal is not proved by the employer, an order of reinstatement or the payment of severance indemnity for unfair dismissal will be awarded, depending on the employee's request: 1) If the employee requests compensation, then severance payment for unjustified dismissal (article 225) and back pay will be ordered by the Tribunal. 2) If the employee requests reinstatement, the employer, however, may avoid such order by paying the employee: for workers hired after the enforcement of Act 44 of 12.08.1995, severance indemnity for unjustified dismissal, surcharges of 25% of said amount (only if the employer is currently not paying the Severance Fund ("Fondo de Cesantía") and back pay. For those workers that were with the employer when Act 44 of 12.08.1995 entered into force, severance indemnity for unjustified dismissal, 50% surcharge plus backpay (cf. art. 34 of the act).</p> <p>Calculation (for EPL indicator): Average with and without a reinstatement order (assuming that a Court case takes 6 months and the workers has 20 years of tenure (hired on April 30, 1994): 6 months + (1/2)*50% of severance indemnity (44 weeks).</p>   |
| <b>8: Reinstatement option for the employee following unfair dismissal (b)</b>                      | <p>If just cause for dismissal is not proved at court, the employee can request for reinstatement or compensation for unfair (unjustified) dismissal (article 218 LC). However, if reinstatement is ordered by the court, the employer nonetheless can terminate the labour relationship by paying compensation for unfair dismissal, a surcharge of 25% or 50% (as applicable) and back pay (article 219 LC).</p> <p>According to EPL methodology, when employer can avoid reinstatement by paying compensation, value is 0.</p> <p>Calculation (for EPL indicators): 0</p>   |
| <b>9: Maximum time period after dismissal up to which an unfair dismissal claim can be made (e)</b> | <p>There are two statutory limits (article 221 LC)</p> <ol style="list-style-type: none"> <li>1) 60 days if the claim relates to reinstatement or the payment of severance pay for unfair dismissal</li> <li>2) 1 year if the claims relates only to the payment of severance pay for unfair dismissal</li> </ol> <p>Calculation (for EPL indicators) average: 7 months</p>  |
| <b>10: Valid cases for use of standard fixed term contracts</b>                                     | <p>FTC are permitted only in the following situations (article 75 LC): a) to provide a service or perform a work which in its nature is of limited duration, b) to substitute an employee on leave, on vacation, or due to temporary impediment; and c) in other cases provided for in the LC.</p>   |

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| 11: Maximum number of successive standard FTCs (initial contract plus renewals and/or prolongations) | <p>FTC must be expressed in written.</p> <p><u>General rule:</u> The total duration of FTC cannot exceed 1 year (article 74). When the employee continues to render services beyond the date of termination, the contract shall be considered of indefinite duration (article 77). Succession of contracts are not allowed.</p> <p><u>Services requiring special technical preparation:</u> A maximum duration of 3 years can be stipulated. In this case, if vocational training is provided by the employer, up to 2 renewals are permitted (article 74).</p> <p><u>New companies or new activities:</u> successive FTC for a total of no more than 2 years are permitted only if the work is for a new company or activity (articles 74 and 77 A). In 2009 the Government of Panama issued two Executive Decrees to improve enforcement of LC protections for temporary workers. Executive Decree N° 19 of 2009 regulates article 77 A LC which exempts for 2 years "new companies" and "new activities" from article 77 limitation on the use of successive FTC. The Decree requires the employer to submit objective proof that they qualify for the article 77 A exemption when registering a contract with the Ministry of Labour and Workforce Development (MITRADEL). For a new activity employers must include a clause in each FTC describing the new activity. Employers must also acknowledge in each contract that if their justification for temporary status is not confirmed, the worker will be deemed permanent from the time he was first hired. In addition Executive Decree N° 24 of 2009 requires the MITRADEL to take specific steps to improve oversight of employer's use of FTC, including targeted inspections of companies that use temporary workers to ensure compliance with article 77 and to conduct a random sampling of registered FTC.</p> <p>Calculation (for EPL indicators): average of general rule (1) and average of special situations, assuming 2 for new activities): <math>(1 + (3+2)/2)/2 = 1.75</math></p> |
| 12: Maximum cumulated duration of successive standard FTCs   | <p><u>General rule:</u> 1 year.</p> <p><u>Services requiring special technical preparation:</u> 3 years.</p> <p><u>New companies or new activities:</u> 2 years.</p> <p>Calculation (for EPL indicators): (average of general rule and average of special situations): <math>(1 + (3+2)/2)/2 = 1.75</math> years</p>  |
| 13: Types of work for which temporary work agency (TWA) employment is legal                          | <p>LC prohibits agreements, combinations or arrangements by which an employer provides workers to a third party for the performance of the latter's core business activities (article 94 LC). However, prior approval of the Ministry of Labour and Workforce Development, the provision of workers by an employer to a third party is admitted only for the development of temporary services not exceeding 2 months and subject to prescribed rules: 1) Employees must receive the highest minimum wage of the district they are working at. 2) Both companies are jointly liable of the payment of the employee's labour benefits, 3) Detrimental acts to the worker made by the third party are construed as being acts of the employer. Executive Decree N° 17 of 2009 establishes mechanisms to enforce the protection of workers against the improper use of this type of relationship and of subcontracting in general, including targeted inspections to determine the compliance of articles 94 and 95 LC.</p> <p>Calculation for EPL indicators: 2.</p>  |
| 14: Are there restrictions on the number of renewals and/or prolongations of TWA assignments? (f)    | <p>No statutory regulation regarding the number of renewals or prolongations. Article 95 LC establishes maximum periods of 2 months.</p>  |
| 15: Maximum cumulated duration of TWA assignments (f)  | <p>2 months.</p>  |
| 16: Does the set-up of a TWA require authorisation or reporting obligations?                         | <p>Prior authorization is required (article 95 LC, Executive Decree N° 17 of 2009).</p>   |
| 17: Do regulations ensure equal treatment of regular workers and agency workers at the user firm?    | <p>Although the equal treatment principle is not explicitly expressed, it emerges from the rules established in article 95 LC.</p>  |
| 18: Definition of collective dismissal (b)   | <p>No statutory definition of collective dismissal. However, article 213 LC provides a definition of dismissal for economic reasons, applicable to individual or collective dismissals. The following are valid economic reasons for the termination of employment agreements: 1) bankruptcy or liquidation, 2) Closure of the company or final reduction of the activities due to the notorious and manifest uncosteability of the business or exhaustion of the substance exploited by the extractive industry, 3) Final suspension of the activities of the employer due to serious economic crisis or partial uncosteability of the business due to decline in production or as a consequence of innovations in the procedures or machinery or due to a revocation of an administrative concession or cancellaiton of sales or purchasing orders or any similar reason duly proven by the competent authority.</p> <p>Calculation (for EPL indicators): no additional regulation for collective dismissal. Same rules for individual redundancies apply.</p>  |
| 19: Additional notification requirements in cases of collective dismissal (g)                        | <p>No additional notification requirement. The same procedure applies for individual and collective dismissals for economic reasons (articles 213 and 215 LC).</p> <p>Calculation (for EPL indicators): no additional notification requirement: 0.</p>  |

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| <b>20:</b> Additional delays involved in cases of collective dismissal (h)       | No additional delays involved. Same rules for individual dismissals apply to collective termination. |
| <b>21:</b> Other special costs to employers in case of collective dismissals (i) | Costs are those of individual dismissals due to economic reasons. No other special cost involved.    |

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.

## PARAGUAY

| Items  | Regulations in force on 31 December 2013   |
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| 1: Notification procedures in the case of individual dismissal of a worker with a regular contract | Dismissal must be notified to the employee in written (Articles 87 and 88 of the Labour Code – hereinafter LC-).   |
| 2: Delay involved before notice can start  | The notification must be communicated in written to the employee.<br>Calculation (for EPL indicators): 1 day for written notice.   |
| 3: Length of notice period at different tenure durations (a)                                       | The length of the prior notice varies according to different tenure durations (Article 87 LC).<br>a) 30 d < 1 y<br>b) 45 d > 1 y < 5 y<br>c) 60 d > 5 y < 10 y<br>d) 90 d > 10 y   |
| 4: Severance pay at different tenure durations (a)   | No severance pay applies to dismissal with justified cause (causa justificada) which essentially corresponds to employee's misconduct or poor performance (Articles 81 and 82 LC). However, if the just cause alleged by the employer cannot be proved at court, the employee is entitled to severance payment plus back pay until the date of court decision. This situation only applies when the employer alleges a just cause for dismissal which cannot be proved at court.<br>If the employer dismisses without alleging a just cause, only severance payment is due.<br>Severance pay for unjustified dismissal is equal to 15 daily wages for each year or fraction of year in excess of six months. Unjustified dismissal occurs when the employer dismisses without alleging a just cause or when the employee terminates the agreement due to the employer's misconduct – constructive dismissal- (Articles 91 and 84 LC).<br>Job stability: A special situation applies to employees with at least 10 years tenure. In this case, the employer is only permitted to dismiss with justified cause. If the employer is unable to prove just cause at court, the employee may choose between reinstatement or compensation equivalent to double dismissal indemnity (Articles 94 and 97 LC).<br>Calculation (for EPL indicators): (averages just cause and without just cause): 9 months tenure: 0.25 month; 4 years tenure: 1 month; 20 years tenure: 0 month (as compensation is considered in Item 7). . |

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| <p><b>5: Definition of unfair dismissal (b)</b></p>  | <p><b>Fair dismissal:</b> Article 81 LC provides an exhaustive list of reasons for dismissal with justified cause, which are related to the employee's misconduct or poor performance. Amongst others: a) dishonest acts related to the submission of false certificates to obtain a position in the company, b) theft, robbery or crimes against property of persons committed by the employee at the workplace, c) acts of violence, serious breaches of discipline, insults and disrespect addressed to the employer, members of his family, representatives, senior staff of the company, committed at the workplace, d) the commission of the same acts against co-workers, e) the commission of said acts (literal c), outside the workplace against c) and d) members, f) deliberate damage to buildings, plant, works, machinery, instruments, documents, raw materials and other goods belonging to the enterprise, g) immoral acts committed by the employee at the workplace, h) disclosure of confidential information or trade secrets to third parties, i) imprudent or inexcusable acts that compromise safety of the enterprise or of the persons thereof, j) ) concurrence to the workplace under the effect of alcohol or drugs or carrying dangerous weapons , k) criminal conviction, l) breach of the safety and health rules prescribed by legislation or by the employer to prevent professional illnesses or work related accidents, ll) systematic failure to comply with the indications made by the employer or its delegates to improve employee's efficiency and productivity , m) work slowdowns or intentional reduction in work performance, inciting other workers for the same purpose, n) if the employer lost confidence in an employee exercising managerial supervision, surveillance, audit or other similar functions , ñ) negotiation by the worker, without express permission of the employer, if it constitutes an act of competition to the latter, o) participation in a strike declared illegal by the competent authority, p) repeated lateness, q) work stoppage , r) repeated lateness, s) interruption of the tasks without justified cause, t) disobedience to the orders given by the employer or its representatives, u) chronic or contagious disease, mental disorders that inhibit the development of the employee's current tasks, v) gross violation of the fundamental terms of the employment contract or of the internal regulations of the company.</p> <p>No severance payment in these cases of dismissal with justified cause.</p> <p>However, the employer can always dismiss employees without justifying a reason (despido sin justa causa) provided notice periods are respected and severance indemnity is paid (except in the case of employees of at least 10 years tenure).</p> <p><b>Redundancy:</b> In case of closure of the company, if the employer re-initiates activities within 1 year, he is obliged to re-employ the workers. Failure to comply, determines the payment of severance indemnity for unfair dismissal. In case of suspension of the employment agreement due to: 1) exhaustion of raw material, 2) excess of production in relation to the needs of the market, 3) un profitability of the company, after a 90 days period of suspension, the employee can choose to wait for the reactivation of the company or claim the indemnity for unfair dismissal.</p> <p><b>Unfair dismissal:</b> when the employer alleges a just cause for dismissal that cannot be proved at Court or when the employee terminates the employment agreement due to the employer's misconduct – constructive dismissal (Articles 91 and 84 LC).</p> <p>Calculation (for EPL indicators): average of cases of less than 10 years of service - 0 (as employer can always dismiss without just cause by paying the corresponding indemnity) – and more than 10 years of service 2.</p> |
| <p><b>6: Length of trial period (c )</b></p>   | <p>According to article 58 LC, the trial period is of:</p> <ul style="list-style-type: none"> <li>a) 30 days for unqualified employees or domestic workers.</li> <li>b) 60 days for qualified workers or apprentices.</li> <li>c) Not legally specified: for highly qualified employees the trial period is agreed by the parties. Not a common practice in Paraguay.</li> </ul> <p>Calculation (for EPL indicators). Assumption of 6 months trial period for highly qualified workers. Average of 3 situations: 3 months.</p>   |
| <p><b>7: Compensation following unfair dismissal (d)</b></p>   | <p>20 years tenure employee (enjoying job stability) can only be dismissed with justified cause proved at court (Article 94 LC). If the employer is unable to prove the just cause alleged, the employee (who chooses not to be reinstated) is entitle to receive double severance payment plus 3 months pay in lieu of notice (Article 96 LC).</p> <p>Calculation (for EPL indicators): 3 month's payment in lieu of notice plus double severance pay, in the case the worker chooses of not being reinstated (20 months): 23 months</p>  |
| <p><b>8: Reinstatement option for the employee following unfair dismissal (b)</b></p>                      | <p>Yes for employees of at least 10 years tenure. The employee, who worked continuously for the same employer, acquires job stability at 10 year tenure (Article 94 LC). In such case, the employer is only allowed to dismiss for just cause following a judicial procedure. If the employer is unable to prove at court the just cause alleged, the employee can decide between reinstatement plus back pay or the payment of double severance indemnity for unfair dismissal plus pay in lieu of notice.(articles 96 and 97).</p> <p>Reinstatement option also applies to certain union representatives defined in article 318 LC which acquire the status of job stability. In such case, these employees can only be dismissed if the employer proves at court a just cause for dismissal.</p> <p>Calculation (for EPL indicators): Less than 10 years tenure: no reinstatement option, 10 years tenure or more: reinstatement option: Average of 0 and 3: 1.5</p>  |
| <p><b>9: Maximum time period after dismissal up to which an unfair dismissal claim can be made (e)</b></p> | <p>60 days (Article 400 LC).</p>   |



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| <b>10:</b> Valid cases for use of standard fixed term contracts   | FTC is only permitted for objective and material reasons (Article 49 LC). The LC authorizes FTC for a limited term, to perform a specific service or to conclude a specific task. Contracts to develop services of a permanent nature are considered of indefinite duration, despite the fact of being agreed as FTC (Article 50 LC). Thus FTC is the exception.   |
| <b>11:</b> Maximum number of successive standard FTCs (initial contract plus renewals and/or prolongations) | FTC can't exceed 1 year for labourers (obrero) or 5 years for employees (empleados). However, they can be renewed (article 49 LC).   |
| <b>12:</b> Maximum cumulated duration of successive standard FTCs   | No limitation.   |
| <b>13:</b> Types of work for which temporary work agency (TWA) employment is legal                          | No statutory regulation.   |
| <b>14:</b> Are there restrictions on the number of renewals and/or prolongations of TWA assignments? (f)    | No statutory regulation. FTC rules apply to FTC between agency and the worker.   |
| <b>15:</b> Maximum cumulated duration of TWA assignments (f)  | No statutory regulation. FTC rules apply to FTC between agency and the worker.   |
| <b>16:</b> Does the set-up of a TWA require authorisation or reporting obligations?                         | No statutory regulation.   |
| <b>17:</b> Do regulations ensure equal treatment of regular workers and agency workers at the user firm?    | No statutory regulation.   |
| <b>18:</b> Definition of collective dismissal (b)   | There is no statutory definition of collective dismissal for economic reasons nor a specific number of employees involved . However, there are certain situations that determine the termination of all the employment agreements (Articles 78 to 80 LC):<br>a) Closure of the company or final reduction of the activities. A prior administrative procedure is required which involves a communication to the Labour Authority and the participation of the employees, before the corresponding administrative decision.<br>b) Exhaustion of the substance exploited by the extractive industry.<br>c) Fortuity or force majeure that permanently inhibits the continuation of the employment agreements (unless there is an insurance to cover this risk) See Item 21.<br>d) Bankruptcy or liquidation proceedings.<br>Calculation (for EPL indicators): (average of 4 for closure/final reduction, 0 for other cases): 2   |
| <b>19:</b> Additional notification requirements in cases of collective dismissal (g)                        | For closure of the company or final reduction of the activities, a procedures is needed which involves: a written communication to the Labour Authority and a brief participation of the workers, before the Authority issues the final resolution (Article 78 Literal h). If the employer fails to comply with this procedure, severance indemnity must be paid to the workers. (Article 80 final LC).<br>Calculation (for EPL indicators): (average 1 for closure of the company or final reduction of the activities, 0 for other cases): 0.5   |
| <b>20:</b> Additional delays involved in cases of collective dismissal (h)                                  | In case of closure of the company or final reduction of the activities, the required communication to the Labour Authority, the summary participation of the workers and the final decision will determine certain days of delay.<br>Law 4986/2013 states, on a general basis, that, the duration of the procedures for closure of a company cannot exceed 30 days, after the required documents are presented.<br>Calculation for (EPL indicators): (average of 30 days for closure of the company/final reduction and 0 for the other cases) = 15 days.  |
| <b>21:</b> Other special costs to employers in case of collective dismissals (i)                            | In case of closure of the company or final reduction of the activities, no severance indemnity must be paid, (except for workers enjoying job stability who must receive double severance indemnity -article 99 LC-). However, if the employer fails to comply with the procedure stated in Items 18 and 19, ordinary severance indemnity must be paid (as stated in item 19). Re-employment is mandatory if the employer re-initiates activities within one year (failure determines the payment of severance indemnity (Article 80 LC).<br>In case of fortuity or force majeure, if the insurance covers the risk, the company should re-initiate activities. If the employer decides not to do, indemnities to the employees should be paid: a) After trial period up to 5 y tenure: 1 monthly salary; b) >5y to 10y tenure: 2 monthly salaries; c) >10y tenure: 3 monthly. This indemnity also applies to bankruptcy-liquidation proceeding and exhaustion of the substance exploited by the extractive industry (Articles 79 and 80 LC).<br>Calculation (for EPL indicators): 0 (as fortuity/force majeure and re-hiring are not counted for EPL) |

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.

## PERU

| Items  | Regulations in force on 31 December 2013  |
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| 1: Notification procedures in the case of individual dismissal of a worker with a regular contract | In case of dismissal for justified cause related to the employee's conduct or capacity, a prior written notification procedure is required (Articles 31 and 32 Law on Productivity and Labour Competitiveness - hereinafter LPCL). The notification letter has to specify the cause of dismissal and the date of the effective termination. The employee has the right to present a written defense of the charges alleged by the employer. Once the letter is delivered, the employer may not invoke a different reason than the one referred to in the notification letter. Dismissal can also be without justification (despido arbitrario), article 34 LPCL. However, despite the letter of the law, the Constitutional Tribunal has construed that dismissal without just cause (article 34 LPCL) entitles the employee to claim reinstatement following a special procedure (see Item 5).   |
| 2: Delay involved before notice can start  | The written notification letter must be sent directly to the employee. If the employee refuses to receive said letter, it can be handled by a notary public or by a Judge (Article 32 LPCL). The employee has a minimum of: a) 6 days in case of misconduct to present a written defense of the charges alleged by the employer; b) 30 days if the reason is related to the employee's capacity, so that the worker can demonstrate its capacity. The 6 day period applies to the case of fault, therefore it is not considered for EPL indicators. Calculation (for EPL indicators): average of dismissal with justified cause related to capacity or low performance ( 30 days plus 1 day for the notification letter) and arbitrary dismissal (1 day for the notification letter): 16 days   |
| 3: Length of notice period at different tenure durations (a)                                       | Warning procedures prior to dismissal due to employee's conduct or capacity were mentioned in Item 2 (6 days in case of misconduct, 30 days in case of capacity). In case of dismissal without justified cause, there is no statutory provision regarding notice period.  |
| 4: Severance pay at different tenure durations (a)   | No severance pay in case of dismissal for justified reason (causa justa) related to the employee's conduct or capacity (article 34 LPCL).<br><b>Severance pay</b> for arbitrary dismissal is equivalent to <u>1.5 monthly salaries per each full year of service up to a maximum of 12 monthly wages</u> . Fractions of years are paid in proportion to the months (1/12) and days (1/30) worked for the employer (articles 34 and 38 LPCL).<br>A special regime applies to dismissals in Peru (see Item 5). Following this regime, the option between severance payment or reinstatement will depend on the way the employer dismisses an employee, on the remedy chosen by the latter and on the procedure followed by the worker (Labour Court or Acción de amparo). Given the system described in Item 5, for EPL purposes severance payment is reflected under Item 7 (compensation following unfair dismissal) and Item 8 (reinstatement).<br>Therefore, values corresponding to severance payment were set to 0, despite the fact that dismissals may end by paying severance indemnity.<br><br><u>Additional compensation:</u> According to article 21 of the Compensation for the Length of Service Law (hereinafter CTSL), a special compensation is paid to the employee, upon termination of the employment contract, irrespective of the reason or cause of termination. This payment -called " <u>Compensación por Tiempo de Servicio</u> "- is equivalent to one monthly average salary per year of service. This amount is deposited to a bank chosen by the employee each semester. As it can be assimilated to an additional social security contribution and do not represent a specific burden to employers at the time of dismissal, this additional compensation is not considered for EPL purposes.<br><br>Calculation (for EPL indicators): 0 (as severance payment is reflected in Items 7 and 8). |

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| <p>5: Definition of unfair dismissal<br/>(b)</p> | <p><b>Fair dismissal:</b> Justified reasons for dismissal are defined in articles 22 to 28 LPCL. These reasons are related to employee's conduct and capacity. In those cases, no severance indemnity is due. <u>Reasons connected to the capacity of the worker</u> (art. 23 LPCL): deterioration of the physical or mental faculties or an acquired incapacity having a major effect on his or her performance on the job; inadequate output in relation to the worker's capacity or in comparison to the average output for similar work under similar conditions; or unreasonable refusal on the part of the worker to undergo a previously agreed or legally required medical examination in the context of the employment relationship, or to follow medical treatment or preventive measures prescribed by a doctor in order to avoid illness or accident. <u>Reasons related to the worker's conduct</u> (art. 24 LPCL): conviction for a crime involving fraud (by a decision not subject to appeal); disqualification of the worker imposed by judicial or administrative authorities to carry out his or her job at the workplace for three months or more; and any serious misconduct as defined in 25 LPCL: a violation of the fundamental terms of the contract which makes the continuation of the employment relationship unreasonable, as follows: a) failure to comply with employment obligations in such a way that the breakdown of good faith in the employment relationship may be presumed; the repeated opposition to orders relating to the work; repeated and untimely stoppage of work when this has been found to be the case by the competent authority; or the failure to observe work regulations or occupational safety or health regulations; b) deliberate and repeated deterioration in output, or in the volume or quality of production; c) appropriation or attempted appropriation of goods or services belonging to the employer or for which the worker is responsible, or unjustified retention or utilization of the same; d) the use or transfer to a third party of information reserved for the employer; the unauthorized removal or use of documents belonging to the enterprise; providing false information to the employer with the intention of causing harm or obtaining an advantage; or unfair competition; e) repeated attendance at work in a state of drunkenness or under the influence of drugs or narcotics, and even if it is not repeated, where because of the nature of the work, such condition is exceptionally serious; f) acts of violence, serious breaches of discipline, insults and disrespect in oral or written statements addressed to the employer, his or her representatives, senior staff or other workers, whether they take place inside or outside the workplace; g) deliberate damage to buildings, plant, works, machinery, instruments, documents, raw materials and other goods belonging to the enterprise, or in its possession; h) failure to appear at the workplace for more than three consecutive days; unjustified absence for more than five days over a period of 30 calendar days, or more than 15 days over a period of 180 days, irrespective of whether any disciplinary action is taken in either case; repeated lateness where attention has been drawn to this by the employer, and where disciplinary sanctions such as written warnings and suspensions have already been applied.</p> <p><b>Regime applicable to unfair and other types of dismissals:</b> in Peru, two different regimes co-exist regarding dismissals:</p> <p>1) <b>Dismissals ruled by the Law:</b> LPCL and Supreme Decree N° 001-96 TR which define the figures of:</p> <ul style="list-style-type: none"> <li>a) <u>Dismissal with just cause</u> (articles 22 to 28, 31 to 34 LPCL) related to employee's conduct or capacity as stated above.</li> <li>b) <u>Arbitrary dismissal</u> (article 34 and 38 LPCL): occurs when: 1) no just cause is alleged: in this case the employer is obliged to pay severance indemnity within 48 hours of dismissal. 2) just cause alleged cannot be proved at court. In this case, according to the law, the employee has to file a lawsuit before the Labour Court claiming the payment of severance indemnity for arbitrary dismissal.</li> <li>c) <u>Null dismissal</u> (articles 29, 34, 40 to 42 LPCL, Law N° 26626 and Law N° 27050): when dismissal is based on the following grounds: a) affiliation to a union or participation of union activities, b) status or former status of employee's representative, c) filing a complaint against the employer, d) discrimination based on sex, race, religion, political opinion or language, e) Pregnancy or recent mother, f) dismissal due to worker suffering from HIV, g) dismissal due to worker suffering from an incapacity. In this case, according to the law, the employee can claim reinstatement plus back pay before the Labour Court.</li> <li>d) <u>Indirect or constructive dismissal</u> (articles 30, 35 and 38 LPCL): occurs when the employee terminates the employment agreement due to employer's misconduct. In this case the employee has to claim before the Labour Court either the cease of the employer's hostility or the payment of severance indemnity for arbitrary dismissal.</li> </ul> <p>2) <b>Dismissals ruled by Constitutional Tribunal</b> (Leading Cases: Expediente N° 1124-2001-AA/TC, Telefónica del Perú, Expediente N° 976-2001-AA/TC Eusebio Llanos Huasco and Expediente N° 206-2005-PA/TC Cesar Antonio Baylón). The Constitutional Tribunal (hereinafter TC) has played an important role in incorporating new cases of dismissals, in addition to the ones defined by the law. The key issue of this types of dismissals is the fact that the employee must claim the remedy following a special procedure called "acción de amparo" before the TC and not before the Labour Court, being the remedy the reinstatement of the worker. If the employee claims before a Labour Court (except in the case of null dismissal where reinstatement is available), the remedy would be the payment of severance indemnity (not reinstatement).</p> <ul style="list-style-type: none"> <li>a) <u>Dismissal without cause:</u> no cause is alleged by the employer when dismissing an employee.</li> <li>b) <u>Fraudulent dismissal:</u> when the employer alleges a cause that is false or dismisses a worker in a disloyal, hostile or perverse manner.</li> <li>c) <u>Dismissal in breach of fundamental constitutional rights:</u> when the employer dismisses an employee breaching a fundamental constitutional right, different from the ones listed in article 29 LPCL, including generic breaches of the right to work. However, the reason of redundancy is unlikely to be considered a breach to the right to work.</li> </ul> <p>Calculation (for EPL indicators): 2</p> |
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| 6: Length of trial period (c )   | According to article 10 LPCL, on a general basis, probationary period is of three months, at the end of which the employee is entitled to the severance payment in case of unfair dismissal. However, the parties may agree in writing to extend the probationary period when the work to be undertaken requires a period of training and adaptation or when the nature of the work or responsibility entailing such extension may be justified. This extension may not exceed:<br>- six months in total in the case of skilled workers and employees in positions of trust,<br>- one year in total for managerial personnel.<br>Calculation for EPL indicators (average between the first situation and the average of the last two situations):<br>$(3 + (6+12)/2) / 2 = 6$ months.   |
| 7: Compensation following unfair dismissal (d)   | See Items 4 and 5. Following unfair dismissal (arbitrary and others), the employee can choose severance payment as compensation. Severance payment amounts to 1.5 monthly salaries per each full year of service up to a maximum of 12 monthly wages. Fractions of years are paid in proportion to the months (1/12) and days (1/30) worked for the employer (articles 34 and 38 LPCL).<br>Calculation for EPL indicators (employee 20 years tenure): 12 months.  |
| 8: Reinstatement option for the employee following unfair dismissal (b)                              | See Item 5. Reinstatement option is available in case of: 1) null dismissal (before the Labour Court), 2) dismissal without cause, 3) fraudulent dismissal and 4) dismissal in breach of constitutional rights. In these last 3 cases if claimed by the employee before the TC.<br>Reinstated employees are entitled to back pay (article 40 LPCL for null dismissal). For other types of dismissals, although reinstatement is claimed before TC, the latest has no jurisdiction to grant back pay. Up to date, employees have been claiming back pay before a Civil Court. A project of law is being considered by Parliament (Proyecto de Ley N° 2581-2013) to include these types of dismissals in article 40 LPCL, allowing back pay.<br>Calculation (for EPL indicators): 2   |
| 9: Maximum time period after dismissal up to which an unfair dismissal claim can be made (e)         | 30 calendar days after its occurrence. This provision is applicable only to claims for arbitrary dismissal, null dismissal and indirect dismissal (article 36 LPCL).<br>Under Law N° 27.321, labour claims related to employment issues (different from the ones stated above) have an expiry term of 4 years.  |
| 10: Valid cases for use of standard fixed term contracts   | According to articles 53 and 57 LPCL, valid reasons for the use of standard FTC are: a) objective and material reasons, b) launch of a new activity. In effect, articles 53 to 71 LPCL contain a list of the valid reasons for the use of FTC, which fall within 3 categories:<br>1) <u>Temporary reasons</u> (article 54 LPCL):<br>*commencement or launching of a new activity (maximum duration: 3 years)<br>*Increase in market demand (maximum duration: 5 years)<br>* restructuring of the enterprise in response to the replacement, modification, extension or, in general, any technological change (maximum duration: 2 years)<br>2) <u>Incidental reasons</u> (article 55 LPCL):<br>* transitory needs different from the normal activity (maximum duration: 6 months in one year),<br>* replacement of a worker (maximum 5 years)<br>*emergency contract to cover needs arising from an unforeseen event or force majeure (duration of emergency and maximum: 5 years)<br>3) <u>Specific piece of work or service</u> (article 56 LPCL):<br>*performance of a specific piece of work or service (maximum 5 years)<br>*intermittent service contract (maximum 5 years)<br>* seasonal contracts (maximum 5 years) |
| 11: Maximum number of successive standard FTCs (initial contract plus renewals and/or prolongations) | No limitation.<br>Renewals are allowed within the maximum duration specified in item 10 for each contract (Article 74 LPCL). A combination of different contracts subject to special conditions is possible provided however that the total cumulative duration does not exceed 5 years.  |
| 12: Maximum cumulated duration of successive standard FTCs   | 5 years.<br>As stated in item 10 FTC fall under 3 categories. For each category, a different maximum period is specified within each category.<br>Calculation (for EPL indicators): average of within category averages of maximum periods:<br>$((3+5+2)/3) + ((0.5+5+5)/3) + 5 / 3 = 3.94$ years or 47.33 months   |
| 13: Types of work for which temporary work agency (TWA) employment is legal                          | According to article 3 of Law 27.626, TWA employment is only legal to provide services that are of temporal, complementary or of specialized nature. TWA employee's are not allowed by law to perform the permanent tasks related to the core activities of the User firm.<br>TWA contracts are not permitted to replace striking workers at the User firm or after a collective layoff.  |
| 14: Are there restrictions on the number of renewals and/or prolongations of TWA assignments? (f)    | No statutory limitation.<br>In effect, restrictions on renewals are not specifically ruled by the law. Notwithstanding, as TWA contracts are only permitted to perform temporal, complementary or highly specialized services, it can be construed that renewals are admitted on these extraordinary cases.   |
| 15: Maximum cumulated duration of TWA assignments (f)  | The duration depends on the extraordinary cases where this TWA contracts are permitted.<br>The maximum cumulated duration of seasonal, temporal and emergency contracts under LPCL is of 5 years. Assignments fall under these exceptional situations, thus the 5 year period is applicable.  |



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| <b>16:</b> Does the set-up of a TWA require authorisation or reporting obligations?                      | According to articles 14 and 18 Law 27.626 and Supreme Decree N° 003-2002-TR (articles 7 to 10); the set-up of a TWA requires authorization and registration. Reporting requirements, on a 3 months period, are required by the Ministry of Labour and Employment Promotion<br><a href="http://www.mintra.gob.pe/mostrarResultado.php?id=826&amp;tip=9#">http://www.mintra.gob.pe/mostrarResultado.php?id=826&amp;tip=9#</a>  |
| <b>17:</b> Do regulations ensure equal treatment of regular workers and agency workers at the user firm? | Equal treatment of regular workers and agency workers (Article 7 of Law 27.626).  |
| <b>18:</b> Definition of collective dismissal (b)  | Under LPCL, provisions of collective dismissal grounded on economic, technological and structural reasons apply when it involves at least 10% of the employees.   |
| <b>19:</b> Additional notification requirements in cases of collective dismissal (g)                     | Under LPCL, in case of collective dismissal grounded on economic, technological and structural reasons, when it involves at least 10% of the employees, the employer is obliged to file the following proceedings:<br>a) Notify the union or workers' representatives and provide them with the relevant information regarding the reasons of the retrenchment and the names of the affected workers. A communication must be sent to the Labour Administrative Authority to open the corresponding file.<br>b) The union or workers' representatives and the employer must undertake a negotiation in order to determine the conditions in which the employment contracts will be terminated or on the possible alternatives to avoid dismissals (suspension, reduction of working hours).<br>c) After consultations with the trade unions, the employer is obliged to file an application before the Labour Administrative Authority based on an expert report justifying the need for the dismissal grounded on economic, technological or structural reasons. Once the employees or their representatives have reviewed the report sent by the Labour Administrative Authority (within 48 hours), they have 15 days to present their own expert report.<br>d) A meeting between the employer and the unions or workers' representatives under the auspices of the Labour Administrative Authority must be held in order to find agreement on the retrenchment's modalities. The parties must try to reach to an agreement within 3 days.<br>e) In the absence of agreement on the modalities of the retrenchment, the Labour Administrative Authority must issue a binding decision within 5 days.<br>f) However, the parties can appeal the decision within 3 days. The Labour Administrative Authority must issue the final decision within 5 days.<br><br>Employment Promotion Law and Supreme Decree N° 001-96-TR, articles 62 to 74, rule the procedures regarding collective dismissals due to cause fortuity and force majeure. This procedure is very similar to the one required in case of collective dismissal grounded on economic, technological and structural reason. A procedure before the Labour Administrative Authority is mandatory, together with a communication to the union or worker's representatives. The employer is also required to present before the Labour Administrative Authority an expert opinion of the reasons of the closure. This opinion will be delivered to the union or workers representative. A meeting to reach an agreement between the employer and the union will be convoked by the Labour Administrative Authority. If there is no agreement, the parties may decide to submit the dispute to arbitration. Otherwise, the Labour Administrative Authority will submit its final decision, which can be appealed by the parties. |
| <b>20:</b> Additional delays involved in cases of collective dismissal (h)                               | The additional days of delay are those of the duration of the administrative procedure required to proceed to collective dismissals.<br><br>Calculation (for EPL indicators): approximately 44 days (60 days minus 16 days –item 2)   |
| <b>21:</b> Other special costs to employers in case of collective dismissals (i)                         | No special costs involved. According to article 52 LPCL, no severance payment applies for collective termination due to economic, technological and structural reasons, cause fortuity or force majeure. However, the workers have preferential rights to be reinstated if the employer decides to hire, directly or through third persons, new staff to fill similar posts, within a year of the collective dismissal. In the event of non-compliance, the worker is entitled to request, through legal channels, corresponding severance payment in accordance with the law. Re-hiring is not considered for EPL purposes.<br><br>Calculation (for EPL indicators): 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.

## URUGUAY

|  | Regulations in force on 31 December 2013   |
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| 1: Notification procedures in the case of individual dismissal of a worker with a regular contract   | No legal requirement. However, although not mandatory, consultation with worker's representative is recommended and a common practice in Uruguay.<br>Calculation (for EPL indicators): 1.5   |
| 2: Delay involved before notice can start  | No delays involved. Oral notification.<br>Calculation (for EPL indicators): 1 day for verbal notice.   |
| 3: Length of notice period at different tenure durations (a)   | No legal requirements.   |
| 4: Severance pay at different tenure durations (a)   | <b>Dismissal on personal grounds and redundancy</b><br>Employers can always dismiss employee's without specifying a reason provided severance indemnity is paid. This payment amounts to one monthly remuneration per each year or fraction of year of work, with a ceiling of 6 monthly instalments.<br>No severance payment in case of dismissal due to the employee's gross misconduct (Law N° 10.489, Law N° 12.597). If the case is challenged at Court, the employer has the burden to prove gross misconduct. Failure to prove, determines the payment of ordinary severance indemnity.<br>Calculation (for EPL indicators): 9 months: 1; 4 years: 4 months; 20 years: 6 months   |
| 5: Definition of unfair dismissal (b)  | <b>Fair dismissal:</b> on a general basis, dismissal is allowed without justifying any cause, provided that severance indemnity is paid. Inclusively there is no obligation of a notice prior to dismissal.<br><b>Unfair dismissal:</b> In Uruguay there is no legal definition of unfair dismissal. Doctrine and jurisprudence (although not a source of law in Uruguay) have created the figure of "abusive dismissal" for those cases of notorious abuse by the employer when dismissing (for example dismissal offending worker's dignity - shouting or insults-, dismissal as a consequence of testifying against the employer at a labour court). In these cases, apart from the regular severance indemnity, if the employee proves the case at Court, the employer is obliged to pay pain and damages (which amount from 1 to 3 times the ordinary severance pay, plus regular severance indemnity). This additional compensation is considered in Item 7.<br><b>Special dismissals for certain categories of workers which can be considered as unfair dismissal:</b> Certain categories of workers have a special protection against dismissal (maternity, sickness, professional disease or labour accident, sexual harassment). This protection entails for the employer the payment of a special severance indemnity which is higher than the regular severance pay. However dismissal is always allowed provided this special indemnity is paid. <ul style="list-style-type: none"> <li>Sickness: Double severance indemnity for an employer who dismisses an employee during sick leave or after 30 days of his return to work.</li> <li>Professional illness or labour accident: Triple severance indemnity for an employer who dismisses an employee during a professional illness leave or labour accident or after 180 days of his return to work.</li> <li>Pregnancy or maternity leave: severance indemnity plus 6 months' salary for an employer who dismissed an employee due to pregnancy or after a period of 6 months of her reincorporation to work.</li> <li>Sexual harassment: an employee, who suffered from sexual harassment, can terminate the employment agreement and claim the general severance indemnity plus 6 monthly salaries.</li> </ul> |
| 6: Length of trial period (c)  | No statutory regulation in Uruguay. Common practice is to stipulate a 3 months trial period as a clause of the employment agreement. The jurisprudence has accepted the validity of this clause.   |
| 7: Compensation following unfair dismissal (d)   | <b>Compensation following unfair (abusive) dismissal:</b> If the Tribunal finds that the grounds for a claim for abusive dismissal are proved, the Tribunal can order the payment of damages which amount from 1 to 3 times the ordinary severance indemnity.<br>Calculation (for EPL indicators): worker of 20 years tenure, generally Tribunals order the payment of 2 times the severance indemnity: 12 months (in addition to the ordinary severance indemnity). In effect, this employee will receive in Uruguay 18 months indemnity (6 corresponding to ordinary severance payment, 12 corresponding to unfair dismissal).   |
| 8: Reinstatement option for the employee following unfair dismissal (b)                              | Reinstatement option only applies to dismissals related to trade union membership or participation in union activities (Law 17.940). It is not possible to avoid enforcement of reinstatement orders by paying compensation. According to court case, reinstatement has been ordered in very few cases.<br>Calculation for EPL indicators: 0.5   |
| 9: Maximum time period after dismissal up to which an unfair dismissal claim can be made (e)         | 1 year (Law 18.091).   |
| 10: Valid cases for use of standard fixed term contracts   | There is no legal regulation. However our doctrine and jurisprudence understand that FTC is only permitted for objective or material reasons, when the task to be performed is of limited duration.  |
| 11: Maximum number of successive standard FTCs (initial contract plus renewals and/or prolongations) | There is no legal regulation. However our jurisprudence understands that successive FTC is construed as a unique contract of indefinite duration.  |

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| <b>12:</b> Maximum cumulated duration of successive standard FTCs  | There is no legal regulation. However, common practice is that the maximum duration of 1 FTC is of 6 months, thus if only 1 renewal is allowed by jurisprudence, the maximum cumulated duration would be of 12 months.  |
| <b>13:</b> Types of work for which temporary work agency (TWA) employment is legal                       | TWA are only allowed to perform services on a temporal and exceptional basis.   |
| <b>14:</b> Are there restrictions on the number of renewals and/or prolongations of TWA assignments? (f) | The law is silent. However labour doctrine and jurisprudence understand that as TWA are only allowed to perform temporary or occasional services, renewals should be the exception.   |
| <b>15:</b> Maximum cumulated duration of TWA assignments (f)   | No statutory regulation. No limit but services should be on a temporal basis (cf. Item 13)  |
| <b>16:</b> Does the set-up of a TWA require authorisation or reporting obligations?                      | Yes. Both authorization and reporting obligations are required.   |
| <b>17:</b> Do regulations ensure equal treatment of regular workers and agency workers at the user firm? | The principal of equal treatment regarding labour benefits (remunerations and other payments in cash or kind) applies (article 5 Law N° 18.099).  |
| <b>18:</b> Definition of collective dismissal (b)  | The law does not provide any definition of collective dismissal. However, it is advisable to take additional notification steps and several pay and social plans are common practice.<br>Calculation for EPL indicators: average of 0 and 4 = 2   |
| <b>19:</b> Additional notification requirements in cases of collective dismissal (g)                     | No statutory regulation. However a communication to the trade union and the Labour Ministry (DINATRA) is advisable and a common practice.<br>Calculation (for EPL indicators): 0.5 (as it is advisable to make a communication to the Labour Ministry-not mandatory. Communication to the trade union was already considered in Item 1).            |
| <b>20:</b> Additional delays involved in cases of collective dismissal (h)                               | There is no statutory procedure for collective dismissal. However, as it is advisable and common practice to communicate the decision to the trade union and the Labour Ministry (DINATRA), certain days of delay should be considered.<br>Calculation (for EPL indicators): 15 days minus 1 day for verbal notice (item 2): 14                     |
| <b>21:</b> Other special costs to employers in case of collective dismissals (i)                         | No legal provision regarding costs or social compensations. However, additional severance indemnities are generally offered to employees or outplacement or retraining courses.<br>Calculation for (EPL indicators): 1 as these practices are used on a general basis to avoid trade union measures (such as strikes, occupation of the workplace). |

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.

## VENEZUELA

| Items  | Regulations in force on 31 December 2013  |
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| 1: Notification procedures in the case of individual dismissal of a worker with a regular contract | <p>Articles 85 and 86 of the Venezuelan Organic Labor Law for Workers – Decree 8938 of April, 30<sup>th</sup> 2012 (OLLW), grant job stability. Only dismissal for just cause is admitted. Article 89 OLLW states that when the employer dismisses one or more employees a written notification must be sent to the Substantiation, Mediation and Execution Judge of the corresponding jurisdiction, explaining the causes which justify the dismissal, within the next following 5 days as of when the dismissal takes place. In case the employer does not notify the Judge, it should be considered that the dismissal was unfairly executed.</p> <p>However, the dismissal regime in Venezuela has been amended by several Presidential Decrees enacted at regular intervals since 2002, with one year validity. For year 2013, Presidential Decree N° 9.322 of December, 27<sup>th</sup> 2012, grants job stability (In Spanish “Inamovilidad Laboral”), during the period January 1<sup>st</sup> 2013 – December 31<sup>st</sup> 2013, for employees of the private and public sector, excluding workers with less than one month tenure, employees in management position, seasonal and occasional workers. As a result of this immunity decree, employees may not be dismissed or transferred, nor may their employment conditions be worsened, without a just cause (article 79 OLLW) previously approved by the Labour Inspector following the procedure established in article 422 OLLW (see Item 2)..</p> <p>Dismissal without case is not possible due to the immunity decree, except for workers with less than 1 month tenure, employees in managerial position, seasonal and occasional workers.</p> <p>Calculation (for EPL indicators): 3 for all workers, except the limited categories excluded from the immunity decree. For the latest an oral statement is enough.</p> |
| 2: Delay involved before notice can start  | <p>Delays are those of the procedure of prior approval by the Labour Inspector (Presidential Decree N° 9.233 and article 422 OLLW). The procedure is as follows: the employer must request prior approval from the Labour Inspector within 30 days of the occurrence of a just cause for dismissal. Within 3 days, the Labour Inspector must notify the employee compelling him to appear at a hearing that must be held within the following 2 days. During the hearing, the Labour Inspector will attempt conciliation: If it fails, the Inspector must order an 8 day evidentiary period, where the parties must present the corresponding proof. Within 2 days of the conclusion of the evidentiary stage, the parties must prepare and submit their allegations. Finally, within a maximum period of 10 days, the Labour Inspector must issue its decision. Therefore, if the employer plans to dismiss an employee protected by the immunity decree, he must follow the procedure stated above requesting the Labour Inspector to authorize the dismissal because a justified cause exists, and during the time while this procedure lasts, the employee must continue to work for the employer and may not be separated from his job, until de Labour Inspector authorizes the dismissal.</p> <p>Dismissal without just cause is not possible due to the immunity decree (except for workers with less than one month tenure, employees in managerial position, seasonal and occasional workers).</p> <p>Calculation (for EPL indicators): 25 days</p>   |
| 3: Length of notice period at different tenure durations (a)                                       | <p>The OLLW does not establish a notice period when the employer dismisses the employee with just cause, other than the procedure and delays mentioned in Items 1 and 2.</p> <p>Calculation (for EPL indicators): 0 days</p>  |

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| <p><b>4: Severance pay at different tenure durations (a)</b></p>                      | <p><u>Dismissal with just cause:</u> No severance pay in case of dismissal with just cause ("justa causa"), which corresponds to employee's misconduct (article 79 OLLW). Employee's capacity is not a just cause for dismissal.</p> <p><u>Dismissal without just cause:</u> is not possible under immunity decree, except for workers with less than one month tenure, employees in managerial position and seasonal and occasional workers).</p> <p><u>Termination benefits, regardless the reason:</u> Under article 142 of the OLLW, employees are entitled to the following termination benefits, regardless the reason:</p> <ul style="list-style-type: none"> <li>a) Each quarter, the employer must deposit the equivalent to 15 days of salary in favour of each employee, calculated on the basis of the last salary earned, as a guarantee of the termination benefits. The right to this deposit is acquired at the time when the quarter begins.</li> <li>b) In addition, after the first year of service, the employer will deposit in favour of each employee 2 days of salary per year, accumulative up to thirty days of salary.</li> <li>c) When the employment relationship terminates for any reason whatsoever, the termination benefits will be calculated on the basis of 30 days per year of service or fraction of six months, calculated with the last salary.</li> <li>d) The worker will receive, on account of termination benefits, the higher of the total of the guarantee deposited according to letters a) and b) and the calculation made upon termination according to letter c).</li> <li>e) If the employment relationship terminates before the first three months, the payment will amount to 5 days of salary per month of work or fraction thereof.</li> </ul> <p><u>Termination due to dismissal:</u> Under article 92 of the OLLW in the case of termination of the employment relationship for reasons beyond the worker's control or in case of dismissal without any reasons justifying the same, if the employee states his will not to bring a proceeding to obtain reinstatement, the employer must pay him an indemnity equivalent to the amount corresponding to termination benefits. Likewise, if after bringing the proceeding, the employee voluntarily receives double payment, the proceeding must be concluded with the additional payment of salaries accrued and not paid.</p> <p><u>For employees not covered by the immunity decree,</u> severance payment would amount to: 9 months tenure: higher of letter a or 30 days (letter c); 4 years tenure: higher of letters a and b or 120 days (letter c); 20 years tenure: higher of letters a and b or 600 days (letter c).</p> <p><u>However,</u> the above mentioned rule does not apply to workers covered by the immunity decree (all workers except employees with less than one month tenure, employees in managerial position and seasonal and occasional workers). Under said decree, employees can only be dismissed for a just cause previously approved by the Labour Inspector. Failure to comply entails mandatory reinstatement.</p> <p>Calculation (for EPL indicators): 0 days</p> |
| <p><b>5: Definition of unfair dismissal (b)</b></p>                                   | <p>Fair dismissal: Article 79 OLLW provides a limited list of reasons for dismissal with justified cause, which are related to employee's misconduct: Capacity is not a just cause for dismissal.</p> <p>1) Dishonesty; 2) Physical violence, unless exercised in self-defence; 3) Any immoral act in offense to the employer, his representatives, or to members of his family who live with him; 4) Intentional acts or with gross negligence which seriously affect the security or hygiene of the workplace; 5) Omissions or imprudence which seriously affect the security or hygiene of the workplace; 6) Unjustified absences during 3 working days in a one month period; 7) Material damages, intentionally inflicted or with grave negligence, on the work machinery, tools or instruments, work equipment, raw material or manufactured products; 8) Disclosure of trade secrets or procedures; 9) Any act which constitutes a serious violation to the obligations imposed by the labour relationship; 10) Abandonment of work, 11) Sexual or labour harassment;</p> <p><u>Unfair dismissal:</u> when dismissal occurs without a just cause (article 77 OLLW) or when the employer breaches its obligations (constructive dismissal, article 80 OLLW).</p> <p>Therefore, as a result of the immunity decree, it is not possible for an employer to dismiss an employee (except for the excluded workers) for a reason other than a conduct related just cause (article 79 OLLW). Redundancy is not a just cause for dismissal.</p>  |
| <p><b>6: Length of trial period (c )</b></p>  | <p>OLLW does not establish a trial period (except for employees who have been upgraded to a higher category, article 80 OLLW).</p> <p>Although immunity decree does not apply to employees during the first month of service (article 5 Presidential Decree N° 9.322), termination benefits are applicable as from the first month (article 142 OLLW).</p> <p>Calculation (for EPL indicators): 1 month</p>   |
| <p><b>7: Compensation following unfair dismissal (d)</b></p>                          | <p>Under article 92 of the OLLW in the case of termination of the employment relationship for reasons beyond the worker's control or in case of <u>dismissal without any reasons</u> justifying the same, if the employee states he/she will not to bring a proceeding to obtain reinstatement, the employer must pay him/her an indemnity equivalent to the amount corresponding to termination benefits. Likewise, if after bringing the proceeding, the employee voluntarily receives double payment, the proceeding must be concluded with the additional payment of salaries accrued and not paid.</p> <p><u>However,</u> under immunity decree N° 9.322, article 3, in case of unfair dismissal of a worker protected by job stability, the employee can request before the Labour Inspector, within 30 days, reinstatement, back pay plus the benefits he should have received, had the relationship not ended.</p> <p>Calculation (for EPL indicators): 20 year tenure employee: 40 months plus 6 months of back pay</p>  |
| <p><b>8: Reinstatement option for the employee following unfair dismissal (b)</b></p> | <p>Under Presidential Decree N° 9.322, employees of the private and public sector are protected by job stability (except workers with less than one month tenure, employees in managerial position and seasonal and occasional workers). Reinstatement option is always available.</p>  |

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| <b>9:</b> Maximum time period after dismissal up to which an unfair dismissal claim can be made (e)         | 10 years (article 51 OLLW).   |
| <b>10:</b> Valid cases for use of standard fixed term contracts   | According to article 64 OLLW, FTCs are only permitted: a) if so required by the nature of the service, b) for a temporary and lawful replacement of an employee, c) for contracts concluded with Venezuelan nationals to perform services abroad.   |
| <b>11:</b> Maximum number of successive standard FTCs (initial contract plus renewals and/or prolongations) | Only initial contract plus one renewal is admitted (article 62 OLLW).<br>Calculation (for EPL indicators): 2 (initial contract plus 1 renewal).   |
| <b>12:</b> Maximum cumulated duration of successive standard FTCs   | FTC must not exceed 1 year. Same time limit applies to renewal (article 62 OLLW).<br>Calculation (for EPL indicators): 24 months  |
| <b>13:</b> Types of work for which temporary work agency (TWA) employment is legal                          | <p>According to article 47 OLLW, outsourcing ("Tercerización") is understood as the simulation or fraud committed by employers with the purpose of distorting, failing to acknowledge, or hindering the application of the labour legislation. The administrative or judicial entities with competence over labour matters will establish the liability of the employers in the event of simulation or labour fraud under the law. Article 48 OLLW states that outsourcing is prohibited. Therefore, the following will not be permitted:</p> <ol style="list-style-type: none"> <li>1. Agreements with entities to execute permanent works or services within the facilities of the contractor, related to its productive process.</li> <li>2. Hiring of workers through intermediaries to evade the obligations derived from the labour relationship of the hiring entity.</li> <li>3. Work entities created by the employer to evade the obligations to the workers.</li> <li>4. Fraudulent contracts or agreements intended to simulate a labour relationship, through the use of juridical forms of civil or mercantile law.</li> <li>5. Any other form of labour simulation or fraud.</li> </ol> <p>In the above mentioned cases, the employers will comply with all their obligations derived from the labour relationship according to the law and will include the outsourced employees in the payroll of the hiring entity. Said outsourced workers will be covered by job stability up to the time when they are actually incorporated into the hiring entity.</p> <p>Thus, provision of workers for the development of non-core activities at the user firm is prohibited, since that may be considered hiring of workers through intermediaries in order to evade the obligations derived from the labour relationship of the hiring entity.</p> |
| <b>14:</b> Are there restrictions on the number of renewals and/or prolongations of TWA assignments? (f)    | TWA contracts are prohibited by law.  |
| <b>15:</b> Maximum cumulated duration of TWA assignments (f)  | TWA contracts are prohibited by law.  |
| <b>16:</b> Does the set-up of a TWA require authorisation or reporting obligations?                         | TWA employment is illegal   |
| <b>17:</b> Do regulations ensure equal treatment of regular workers and agency workers at the user firm?    | TWA employment is illegal   |
| <b>18:</b> Definition of collective dismissal (b)   | <p>Article 95 OLLW defines mass dismissal when it affects: a) 10% of employees of an entity of more than 100 workers; b) 20% of employees of an entity of more than 50 workers; c) 10 employees of an entity of less than 50 workers within a period of 3 months or more if the circumstances make dismissals critical. However, Ministry of Labour may stop dismissals issuing a special resolution.</p> <p>Article 148 OLLW states that if technological or economic reasons might determine job loss, workforce reduction or changes in working conditions, the Ministry of Labour might intervene in the process to avoid job loss. During the procedure, with the participation of workers, unions and the employer, the Ministry of Labour will grant job stability to employees.</p> <p>The above mentioned rules do not apply to workers covered by the immunity decree, who can only be dismissed for a just cause previously approved by the Labour Inspector. However, article 3 of the immunity decree 9.233 reserves the right of employers and employees to conclude agreements to carry out redundancies or modify working conditions, through collective bargaining.</p>  |



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| <b>19:</b> Additional notification requirements in cases of collective dismissal (g) | <p>OLLW was enacted on April, 30<sup>th</sup> 2012, repealing the previous Organic Labour Law (OLL) amended on June, 18<sup>th</sup> 1997. Although a partial regulation of OLLW was enacted on April, 30<sup>th</sup> 2013, it refers to working conditions. No regulation up to date referring to mass dismissal or reduction of workforce. Therefore, there is no information available on procedures and notification requirements.</p> <p>However, under immunity decree mass dismissal is illegal as it grants job stability to workers covered by its provisions. Yet, article 3 of the immunity decree 9.233 reserves the right of employers and employees to conclude agreements to carry out redundancies or modify working conditions, through collective bargaining.</p> <p>Calculation (for EPL indicators): 1</p> |
| <b>20:</b> Additional delays involved in cases of collective dismissal (h)           | <p>No information available. However, under immunity decree mass dismissal is illegal as it grants job stability to workers covered by its provisions. Yet, article 3 of the immunity decree 9.233 reserves the right of employers and employees to conclude agreements to carry out redundancies or modify working conditions, through collective bargaining.</p>  |
| <b>21:</b> Other special costs to employers in case of collective dismissals (i)     | <p>No information available. However, under immunity decree mass dismissal is illegal as it grants job stability to workers covered by its provisions. Yet, article 3 of the immunity decree 9.233 reserves the right of employers and employees to conclude agreements to carry out redundancies or modify working conditions, through collective bargaining. These agreements are likely to include some advantages for the workers (e.g. termination payments). As the outside option is no dismissal, employees are in a strong bargaining position.</p> <p>Calculation (for EPL indicators): 1</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.

## ALBANIA

| Items  | Regulations in force on 1 January 2015  |
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| 1: Notification procedures in the case of individual dismissal of a worker with a regular contract | <p>Notice must be served in writing (Art. 144, Law No. 7961, Labour LC, (LC hereafter).</p> <p>Art. 144, LC: When the employer aims to terminate the contract of employment, he must offer to employee the opportunity to express himself/herself. The employee must be informed in writing at least 72 hours before the meeting, and during the meeting, the employer shall present to the employee the reasons concerning the decision. The outcome of the meeting needs to be submitted to the employee within a period of 48 hours or up to one week after the meeting.</p> <p>Art. 181(4), LC: In cases where employee is a representative of the trade union, the consent of this organisation is needed.</p>   |
| 2: Delay involved before notice can start  | <p>Art. 143(3), LC: The deadline notice to terminate the contract shall be extended, depending on the case, until the end of the week or of the month.</p> <p>Calculation: 1 day for written notice + 3 days before the meeting (it is not a real warning) + 2 days after the meeting + average delay until the end of the month (assuming that most workers are paid by the month) 15 days = 21 days</p>   |
| 3: Length of notice period at different tenure durations (a)                                       | <p>Art. 143 (1), LC: The notice deadline must be one month during the first year of work; two months for two up to five years of work; and three months for more than five years of work.</p> <p>Art. 143 (2), LC: These time limits may be changed by virtue of a written agreement or of a collective agreement. The deadline notice may not be shorter than 2 weeks, when the employee has been working for a period of up to 6 months. The deadline notice is not shorter than one month, when the employee has been working for a period longer six months.</p>  |
| 4: Severance pay at different tenure durations (a)   | <p>Art. 145 (2), LC: The seniority-related compensation equals at least to the salary of 15 days of work for each complete working year, which is calculated on the bases of the wage existing at the end of the termination of labour relations. If the wage is changeable, the reward will be calculated on the average wage of the preceding year, and it will be indexed.</p>   |
| 5: Definition of unfair dismissal (b)  | <p><b>Fair:</b> Art. 153, LC: Cancellation is legitimate if there is a justified reason for cancellation which prevents continued work under the conditions from the employment contract.</p> <p><b>Unfair:</b><br/>Art 146/1, LC: Termination of contract is considered unfair when:</p> <ul style="list-style-type: none"> <li>a. The employee has claims that result from the contract of employment;</li> <li>b. The employee has fulfilled a legal obligation;</li> <li>c. It is done for motives that are connected with the personality of the employee, but without legitimate ties with labour relations. Such motives can be race, colour, sex, age, marital status, family obligations, pregnancy, religion, political beliefs, nationality, and social status.</li> <li>d. It is done for reasons that are related to the employee's exercise of a constitutional right, which however does not lead to the violation of the obligations resulting from the contract of employment;</li> <li>e. It is done for motives that are related to the employee's being or not a member of Trade Unions created as defined by law, or because of his/her participation in Trade Union activities on the basis of law;</li> </ul> <p>Art.147, LC: Termination of contract is considered unfair when:</p> <ul style="list-style-type: none"> <li>- the employee is completing his/her military service</li> <li>- the employee receives benefits payment related to temporary disability or social insurance for a period not longer than one year,</li> <li>- the employee is on vacation given to him/her by the employer.</li> </ul> |
| 6: Length of trial period (c )   | <p>Art. 142 and 150 of the LC: Probation can last a maximum of three months The probation period me be reduced or removed by means of a written agreement or a collective contract. During the probation period, each of the parties may terminate the contract by informing the other party about its decision at least 5 days in advance.</p>   |

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| <b>7:</b> Compensation following unfair dismissal (d)   | Art 146 (3) and 155 (3) of the LC: The employer who has terminated the contract for unreasonable causes is obliged to pay the employee a damage that may amount up to the wage of one year, which is added to the wage he/she must receive during the notice deadline.   |
| <b>8:</b> Reinstatement option for the employee following unfair dismissal (b)                              | Art. 146 (3) and 155 (3) of the LC: As concerns the employers of the Public Administration, where there is an irrevocable court decision on returning to the same workplace, the employer is obliged to execute this decision.   |
| <b>9:</b> Maximum time period after dismissal up to which an unfair dismissal claim can be made (e)         | Art. 146 (2), LC: If the contract is terminated for no reasonable cause, the employee will have the right to sue the employer at the court within 180 days, starting from the day on which the notice deadline has expired. In the case where the abusive motive has been discovered after the expiration of this deadline, the employee should start legal actions within 30 days, starting from the day on which this motive has been discovered.                    |
| <b>10:</b> Valid cases for use of standard fixed term contracts   | Art. 140 (2), LC: Entering into a contract of employment for a defined duration must be justified through objective reasons, which are connected with the temporary nature of the assignment that the employee will be charged with.   |
| <b>11:</b> Maximum number of successive standard FTCs (initial contract plus renewals and/or prolongations) | When the parties have been bound on one or more successive contracts of defined duration for not less than three years, these are called "long duration contract", but there are no precise limits set.  |
| <b>12:</b> Maximum cumulated duration of successive standard FTCs   | Art. 151 (1), LC: 3 years, except for the first contract which can be longer.  |
| <b>13:</b> Types of work for which temporary work agency (TWA) employment is legal                          | There are no provisions about TWA in the Albanian labour law.  |
| <b>14:</b> Are there restrictions on the number of renewals and/or prolongations of TWA assignments? (f)    | not available  |
| <b>15:</b> Maximum cumulated duration of TWA assignments (f)  | not available  |
| <b>16:</b> Does the set-up of a TWA require authorisation or reporting obligations?                         | not available  |
| <b>17:</b> Do regulations ensure equal treatment of regular workers and agency workers at the user firm?    | not available  |
| <b>18:</b> Definition of collective dismissal (b)   | Art. 148, LC: The collective dismissal from work will be considered to be the termination of labour relations by the employer for reasons that have not to do with the employees, when the number of dismissals within 90 days is at least 10 for the enterprises employing up to 100 employees; 15 for the enterprises employing 100-200 employees; 20 for the enterprises employing 200-300 employees; and 30 for the enterprises employing more than 300 employees. |
| <b>19:</b> Additional notification requirements in cases of collective dismissal (g)                        | There is an obligation to inform and consult with the employee organization recognized as the representative of the employees. In absence of this, the employer informs his/her employee through advertisements provided at the workplace, which can be easily seen. The employer must send a copy of notification at the Ministry of Labour.  |

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| <p><b>20:</b> Additional delays involved in cases of collective dismissal (h)</p>       | <p>Art. 148 (1-5), LC: When the employer plans to execute collective dismissals, he/she is obliged to inform the employees organization recognized as the representative of the employees in writing. In absence of this, the employer informs his/her employee through advertisements provided at the workplace.</p> <p>The notification of the plan to execute collective dismissals must contain the reasons of dismissal from work, the number of the employees to be dismissed, the number of the employees normally employed, as well as the time during which it is planned to execute these dismissals. The employer submits a copy of this notification to the Ministry of Labour and Social Affairs. The employer makes consultations with the employees' organization, recognized as the representative of the employees, for the purpose of reaching an agreement. In absence of this, the employer gives the opportunity to the employees to participate in the consultations. They are made in order to take measures to avoid or reduce the collective dismissals from work and to soften their consequences. The consultations are made within 20 days, starting on the day of notification. The employer informs in writing the Ministry of Labour concerning the completion of the consultations. He/she sends a copy of this notification to the concerned party. If the parties have failed to agree, the Ministry of Labour helps them to reach an agreement within 20 days, starting from the day of notice. After the termination of the twenty-day deadline, the employer informs the employees to be dismissed about the termination of the contract, respecting the notice deadlines as defined by Article 143</p> <p><u>Calculation:</u> Average with and without agreement <math>(40+20)/2=30</math> days, +1 day for informing workers and 15 days on average to reach the end of the month minus delays mentioned in item 2 (21 days) = 25 days</p> |
| <p><b>21:</b> Other special costs to employers in case of collective dismissals (i)</p> | <p>Art. 148 (6), LC: The employer failing to respect the procedure of the collective dismissals from work as defined by LC is obliged to pay the employee indemnity which equals up to six months of salary compensation, and is added to the wage during the notice period, or to the damage compensation, which is received in the case where this deadline fails to be respected as defined in Article 143.</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.

## BOSNIA-HERZEGOVINA

| Items  | Regulations in force on 1 January 2015   |
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| 1: Notification procedures in the case of individual dismissal of a worker with a regular contract | <p><i>Republic of Srpska (RS):</i><br/>In accordance with Article 127 of the Labor Law (hereinafter: ZOR) termination of employment shall be given by the employer in writing, including the reasons for canceling the contract (compulsory). A copy of the notification of termination has to be delivered to the worker.</p> <p><i>Federation of Bosnia and Herzegovina (FBiH):</i><br/>Termination of employment, including the appropriate explanation, shall be given in writing (Article 94 of the Labour Act).</p> <p>Only with prior approval of the Employee Council, an employer may decide on:</p> <ul style="list-style-type: none"> <li>• termination of the contract for an employee who is member of the Employee Council;</li> <li>• termination of the contract for an employee with altered working ability or who is in immediate danger of disability;</li> <li>• dismissal of a male employee older than 55 years and a woman employee aged 50 or more.</li> </ul> <p>If the Employee Council doesn't respond within 10 days after receiving notice, it is considered that it is giving its consent. If the employee council withholds approval for the decision referred to in paragraph 1 of this Article, the dispute resolution is entrusted to arbitration (Article 26 of the Act on the council of employees).</p> <p>Calculation: average of less and more than 50/55 <math>(1+3)/2=2</math></p> |
| 2: Delay involved before notice can start  | <p><i>RS:</i><br/>No special reasons are required for delay.</p> <p><i>FBiH:</i><br/>In the case of employees covered by additional protection according to Article 26 of the Act on the council of employees, the Council shall, within 10 days, provide or refuse the approval in writing.</p>   |
| 3: Length of notice period at different tenure durations (a)                                       | <p><i>RS:</i><br/>Article 128 (Labour Law): The notice period may not be shorter than 30 calendar days if the employer is the one terminating the employment contract.</p> <p><i>FBiH:</i><br/>Article 95 (Labour Law): The notice period shall not be less than 15 days nor more than six months, and the specific length of the notice period shall be regulated by the collective agreement and the rulebook. The notice period begins to run from the date of the delivery of notice to the employee or the employer.</p>  |
| 4: Severance pay at different tenure durations (a)   | <p><i>RS:</i><br/>A worker who has concluded a contract of indefinite duration, and where employment was terminated by the employer, after at least two years of continuous employment with the employer, the employer is obliged to pay a severance. The amount of severance pay shall be determined by the collective agreement, rule book and employment contract, but cannot be less than one third of the average monthly wages of the last three months for each full year of service with the employer (Art. 141 ZOR), and depends on the length of service of the employee with the employer.</p> <p><i>FBiH:</i><br/>The right to severance pay in the event of termination of employment with employees who have a contract for an indefinite period, provided that the contract is terminated after at least two years of work, and the reasons for dismissal are not breaches of obligation or non-fulfillment of obligations under the employment contract. Severance pay is determined by the collective agreement, rule book and employment contract but can not be set at an amount less than one-third of the monthly salary paid to the employee in the last three months before retirement, for each year of work with the employer (Article 100 of the Labour Act). The law permits the employee and the employer agree on another form of compensation.</p>   |

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| <p><b>5: Definition of unfair dismissal (b)</b></p>  | <p><i>RS:</i><br/>The employer may terminate the employment contract (justified reasons Art. 126 ZOR):</p> <ol style="list-style-type: none"> <li>1. If the employee has committed a serious breach of obligations,</li> <li>2. For economic, organizational and technological reasons necessary,</li> <li>3. If the worker, given its expertise and ability to work, is not performing the obligations of the contract,</li> <li>4. If a worker, within five working days from the date of expiry of unpaid leave or mode of labor rights, do not return to work.</li> </ol> <p>Any other reasons considered inadequate reasons.</p> <p>Termination of contract for economic reasons is possible only if, given the size, capacity and economic situation of the employer, the latter cannot be reasonably expected to assign the employee to other work or to train the employee in order to qualify him/her for other work.</p> <p><i>FBiH:</i><br/>Cancellation of employment contracts is permitted if the reasons for this are of economic, organizational or technical nature, or if the employee is unable to perform its obligations arising from employment. The Labour Act does not clearly define unjustified (unfair) reasons for termination of employment contract, but they arise from other legal norms, such as provisions on non-discrimination, trade union membership, participation in a strike organized in accordance with the law and the like. Termination of contract for economic reasons is possible only if, given the size, capacity and economic situation of the employer, the latter cannot be reasonably expected to assign the employee to other work or to train the employee in order to qualify him/her for other work.</p> |
| <p><b>6: Length of trial period (c )</b></p>   | <p><i>RS:</i><br/>The employment contract may provide for a trial period for workers, which can be up to three months (contract for a trial period). Exceptionally, this period may be extended by mutual agreement for up to three months (Art. 21 ZOR).</p> <p><i>FBiH:</i><br/>The Labour Code provides the possibility of contracting the probation period may not exceed six months (Art. 18 Labour Law).</p>   |
| <p><b>7: Compensation following unfair dismissal (d)</b></p>   | <p><i>RS:</i><br/>Article 130 ZOR states that if the competent court determines that the termination of the employment contract is unlawful, the employer will be obliged to reinstate the employee. The employee shall perform the same tasks as before the contract termination, or similar task corresponding to the employee's expertise and experience. The employer shall pay him a compensation for lost wages and other benefits to which the employee is entitled under the collective agreement, rulebook and employment contract.</p> <p><i>FBiH:</i><br/>In the event of unfair dismissal, the court may order the employer to pay the employee a compensation in the amount he would pay an employee if he were working; compensation for the damage suffered, the severance pay to which the employee is entitled in accordance with the law, collective agreement and labor and other benefits to which the employee is entitled in accordance with the law, collective agreement and the rulebook. (Article 96 paragraph 2 of the Labour Act).</p>   |
| <p><b>8: Reinstatement option for the employee following unfair dismissal (b)</b></p>                      | <p><i>RS:</i><br/>See item 7.</p> <p><i>FBiH:</i><br/>In the event of unfair dismissal, the court may oblige the employer to reinstate the employee in his previous job, or other appropriate job, or pay him compensation in the amount he would pay an employee if he were working and compensate him for damages caused (Article 96 paragraph 2 of the Labour Act).</p>   |
| <p><b>9: Maximum time period after dismissal up to which an unfair dismissal claim can be made (e)</b></p> | <p><i>RS:</i><br/>Article 118 of the Labour Act: An employee who believes that his employer has violated the right of employment, may file a complaint with the competent court. Lawsuit to protect the rights of the worker may be filed within one year from the date of "knowledge of such violation" (<i>dismissal notification</i>), and not later than three years from the date of the violation.</p> <p><i>FBiH:</i><br/>Article 103 of the Labour Act: An employee may file a complaint before the competent court for violation of employment within one year from the date of receipt of the decision about the violation of labor rights.</p>  |
| <p><b>10: Valid cases for use of standard fixed term contracts</b></p>                                     | <p><i>RS:</i><br/>In accordance with Article 16 ZOR, an employment contract for a definite period may be concluded in the following cases:</p> <ul style="list-style-type: none"> <li>- Execution job for up to six months;</li> <li>- Temporary increase of the workload;</li> <li>- Replacing the absent worker up to a year;</li> <li>- Perform work whose duration is predetermined by nature and type of job.</li> </ul> <p><i>FBiH:</i><br/>An employment contract is concluded for an indefinite or definite time.<br/>An employment contract for a definite period may not last more than two years (Art. 19 Labour Law)</p>   |



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| <b>11:</b> Maximum number of successive standard FTCs (initial contract plus renewals and/or prolongations) | <p><i>RS:</i> No limit.</p> <p><i>FBiH:</i> There is no limit to the number of fixed term contracts in the framework of the two-year limitation period of the contract.</p>  |
| <b>12:</b> Maximum cumulated duration of successive standard FTCs   | <p><i>RS:</i> 24 months</p> <p><i>FBiH:</i><br/>Employers may conclude successive fixed-term contracts, but their cumulative time without interruption, can not be longer than two years</p>   |
| <b>13:</b> Types of work for which temporary work agency (TWA) employment is legal                          | <p><i>RS:</i> In RS there are no temporary employment agencies, and this kind of work engagement is not foreseen in regulations that cover labor and employment.</p> <p><i>FBiH:</i> Labor regulations, labor relations and employment do not contain provisions on the agency for temporary employment.</p>   |
| <b>14:</b> Are there restrictions on the number of renewals and/or prolongations of TWA assignments? (f)    | <p><i>RS:</i> not applicable.</p> <p><i>FBiH:</i> not applicable.</p>  |
| <b>15:</b> Maximum cumulated duration of TWA assignments (f)  | <p><i>RS:</i> not applicable.</p> <p><i>FBiH:</i> not applicable.</p>  |
| <b>16:</b> Does the set-up of a TWA require authorisation or reporting obligations?                         | <p><i>RS:</i> not applicable.</p> <p><i>FBiH:</i> not applicable.</p>  |
| <b>17:</b> Do regulations ensure equal treatment of regular workers and agency workers at the user firm?    | <p><i>RS:</i> not applicable.</p> <p><i>FBiH:</i> not applicable.</p>  |
| <b>18:</b> Definition of collective dismissal (b)   | <p><i>RS:</i> In accordance with Article 138 ZOR any employer employing more than 15 workers, and who in the period of next three months intends to, due to the reduction in volume and other economic, technological and organizational reasons, dismiss at least 10% of total employees, but no less than five workers, shall consult with work councils, or, if in the employer has not established advice workers, with unions representing at least 10% of employees.</p> <p><i>FBiH:</i> An employer who employs more than 15 employees and who in the period of the next three months intend to, due to economic, technical or organizational reasons, terminate contracts of employment for more than 10% of the employees and at least five, has an obligation to consult with the works council or union if the employee council has not been established.</p>   |
| <b>19:</b> Additional notification requirements in cases of collective dismissal (g)                        | <p><i>RS:</i><br/>In order to undertake the consultations under Article 138 of this Code, the employer shall, in writing, no later than 30 days prior to termination of employment contract workers, inform the worker's council (or union), about the following:</p> <ul style="list-style-type: none"> <li>- The reasons for the termination of the workers,</li> <li>- Number and qualifications of workers who need to stop working relationship,</li> <li>- Measures which might avoid termination of employment to all or a specific number of workers (through the deployment of a number of workers to other jobs, retraining, working time reduction, etc.),</li> <li>- Measures to facilitate the employment of workers with other employers.</li> </ul> <p><i>FBiH:</i><br/>Any employer who plans to terminate the contracts of employment for economic, technical or organizational reasons of more than 10% of employees or a minimum of five has the obligation to consult with the council of employees or the union if council of employees has not been established (Article 23 of the Act on the council of employees). Consultations are based on a written document prepared by the employer and start at least 30 days prior to making a final decision. The council shall within seven days submit suggestions and comments on the intended decision of the employer. The decision rendered by the employer without the aforementioned consultation is null and void (Article 25 of the Act on the council of employees).</p> |

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| <b>20:</b> Additional delays involved in cases of collective dismissal (h)       | <p><i>RS:</i><br/>30 days (see Item 19)</p> <p><i>FBiH:</i><br/>30 days (see Item 19)</p>   |
| <b>21:</b> Other special costs to employers in case of collective dismissals (i) | <p><i>RS:</i><br/>Not prescribed fees in these cases.</p> <p><i>FBiH:</i><br/>The employer is obliged to deliver to the council of employees for consultation a plan of the measures which it considers could be used to avoid some or all the anticipated dismissals, such as the redeployment of employees to job retraining, temporary reduction of working time, etc.</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.

## CROATIA

| Items  | Regulations in force on 1 January 2015  |
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| <p><b>1:</b> Notification procedures in the case of individual dismissal of a worker with a regular contract</p> | <p>Pursuant to Art. 120. Par. 1 of the Labour Act the notice of dismissal must be served <b>in writing</b>. The employer shall explain in writing the reasons for dismissal. The notice of dismissal shall be handed over to the worker it pertains to.</p> <p>According to Art. 119. Par. 1. of the Labour Act prior to giving regular notice of dismissal due to the worker's misconduct, the employer shall be obliged to alert the worker in writing to his obligations arising from the employment contract indicating possible dismissal should the breach of obligations persists, unless circumstances exist due to which the employer cannot be reasonably expected to do so. Par. 2 of the Art. 119 states that prior to giving a regular notice of dismissal due to the worker's misconduct or extraordinary notice of termination (without notice, which can be motivated only by the worker's serious breach of obligations), the employer shall be obliged to give the worker an opportunity to present his defence, unless circumstances exist due to which the employer cannot be reasonably expected to do so.</p> <p>Prior to dismissal the employer must <b>consult the works council</b> about the proposed decision (Art 150. Par. 3. Item 2.).</p> <p>However, in some situations the employer will have to receive prior consent of the works council. That includes following decisions:</p> <ol style="list-style-type: none"> <li>1) dismissing a member of the works council,</li> <li>2) dismissing a candidate for the works council who was not elected, for a period of three months following the establishment of the election results,</li> <li>3) dismissing a worker with reduced capacity for work due to an injury at work or professional illness,</li> <li>4) dismissing a worker over 60 years of age,</li> <li>5) dismissing a workers' representative in an employer's body,</li> <li>6) including persons in parental leave or reduced working time due to childcare (Article 34 (1), Labour Act) in collective redundancy, except in cases when the employer has initiated or is conducting liquidation proceedings in accordance with specific provisions,</li> <li>7) collecting, processing, using and disclosing the information about a worker to third parties,</li> <li>8) appointing a person authorized to supervise whether personal information about workers is collected, processed, used or disclosed to third parties in accordance with the provisions of this Act. (Art 151. Par. 1, Labour Act)</li> </ol> <p>If the worker is trade union commissioner's during the performance of his duty and six months after the termination of this duty it is not allowed without prior consent of the trade union:</p> <ol style="list-style-type: none"> <li>1) to terminate an employment contract, or</li> <li>2) to place him in a less favourable position than his previous working conditions or than other workers. (Art 188. Par. 1, Labour Act)</li> </ol> |

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| <p><b>2: Delay involved before notice can start</b></p>                    | <p>Prior to dismissal the employer must consult the works council about the proposed decision (Art 150. Par. 3. Item 2.) Unless otherwise specified by an agreement between the employer and the works council, the works council shall provide the employer with a feedback concerning the proposed decision within <b>eight days</b>. In case of an extraordinary dismissal, the deadline shall be <b>five days</b>. (Art. 150. Par. 5. Labour Act)</p> <p>If the works council is not established the employer will not have obligation to consult.</p> <p>If the worker is union commissioner it is necessary to receive a prior consent from trade union to terminate his employment contract. According to Art. 188. Par. 2. of the Labour Act if the trade union fails to grant or denies its consent within <b>eight days</b>, it shall be presumed to have consented to the employer's decision.</p> <p>The notice of dismissal must be served to worker in writing. It can be directly handed or sent by post.</p> <p>In case of extraordinary notice of termination or dismissal due to the worker's misconduct the employer needs to give opportunity to the worker to present his defence. The deadline for workers respond is not proscribed but the employer should give the reasonable time for respond. If worker commits serious violation of employment obligation, it represents circumstances due to which the employer cannot be reasonably expected to ensure worker opportunity for respond.</p> <p>Calculation (for EPL indicators): 1 day for notification of trade union + 8 days (for feedback or consent of trade union depending on employee's status) + 1 day for notification of employee: 10 days</p> |
| <p><b>3: Length of notice period at different tenure durations (a)</b></p> | <p>Notice period depends on duration of employment relationship. In case of regular notice of dismissal, the notice period shall be a minimum of:</p> <ol style="list-style-type: none"> <li>1) two weeks, for less than one year of tenure with the same employer,</li> <li>2) one month, for one year of tenure with the same employer,</li> <li>3) one month and two weeks, for two years of tenure with the same employer,</li> <li>4) two months, for five years of tenure with the same employer,</li> <li>5) two months and two weeks, for ten years of tenure with the same employer,</li> <li>6) three months, for twenty years of tenure with the same employer. (Art. 122, Par. 1 Labour Act)</li> </ol> <p>For the worker with twenty years of tenure with the same employer, the period of notice shall be increased by two weeks if the worker has reached the age of 50 or by one month if the worker has reached the age of 55. (Art. 122, Par. 2 Labour Act)</p> <p>In case of termination of the employment contract due to the breach of obligations arising from the employment relationship (dismissal due to the worker's misconduct) the period of notice shall be two times shorter than the notice periods established in paragraphs 1 and 2 of this Article. (Art. 122, Par. 3 Labour Act)</p> <p>In case of extraordinary notice of termination there isn't any notice period, so the employment relationship expires on the day when the notice of dismissal is handed over to the worker. (Art. 116, Par. 1, Labour Act)</p> <p>In case of failure of requirements during the probationary period, notice period is minimum seven days. (Art. 53, Par. 5, Labour Act)</p>                                 |
| <p><b>4: Severance pay at different tenure durations (a)</b></p>           | <p>The worker is entitled to severance pay when the employer dismisses him following a two-year tenure, unless dismissal is given due to the worker's misconduct</p> <p>Severance pay for <b>each year of tenure</b> with the same employer must not be agreed upon or determined in an amount lower than <b>one-third</b> of the average monthly salary earned by the worker in a period of three months prior to the termination of the employment contract. (Art. 126, Par. 2, Labour Act)</p> <p>Unless otherwise provided for by the law, collective agreement, working regulations or employment contract, the aggregate amount of severance pay referred to in paragraph 2 of this Article <b>may not exceed six</b> average monthly salaries earned by the worker in a period of three months preceding the termination of the employment contract. (Art. 126, Par. 3, Labour Act)</p>   |

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| <p><b>5: Definition of unfair dismissal (b)</b></p> | <p><b>Fair:</b><br/>According to Art. 115, Par 1 of the Labour Act the employer is allowed to terminate the employment contract by giving either the statutory notice or the notice stated in the contract of employment (regular notice of dismissal), in the following cases:<br/>1) where there is no need to perform certain work due to economic, technological or organisational reasons (dismissal on economic grounds),<br/>2) where the worker is not able to fulfil his obligations from the employment relationship due to his specific characteristics or capacities (dismissal on personal grounds), or<br/>3) the worker violates his obligations from the employment relationship (dismissal due to the worker's misconduct), or<br/>4) the workers did not satisfy during probationary period (dismissal due to incompetence during probationary period).<br/>When making a decision about a dismissal on economic grounds, the employer shall take into account the worker's tenure, age and his family responsibilities. That provision shall not apply to employers employing less than 20 workers.</p> <p><b>Unfair:</b><br/>During pregnancy, maternity, paternity or adoption leave, periods of part-time work, periods of short-time work due to intensified childcare, the leave of pregnant women or a breastfeeding mother, and the periods of leave or short-time work due to the care for a child with serious development disabilities, that is within fifteen days after the end of pregnancy or the end of use of such entitlements, the employer may not terminate the employment contract of the pregnant woman and a person exercising any of these rights. (Art. 34, Par. 1, Labour Act)<br/>During the temporary incapacity for work due to medical treatment or recovery from an injury at work or a professional illness the employer may not terminate the employment contract of the worker who has suffered from an injury at work or a professional illness. (Art. 38, Labour Act)</p> <p>Art. 117, Labour Act:<br/>(1) Temporary absence from work due to illness or injury shall not constitute a just cause for terminating the employment contract.<br/>(2) An appeal or civil action, or participation in a proceeding against the employer due to violation of laws, regulations or administrative provisions, collective agreement or working regulations, or the worker's approach to the competent state authorities shall not constitute a just cause for terminating the employment contract.<br/>(3) The worker's approach to the competent state authorities on the grounds on reasonable suspicion of corruption or his report in good faith on the said suspicion to the competent persons or state authorities shall not constitute a just cause for terminating the employment contract.</p> <p>The worker's resistance to the behaviour constituting harassment or sexual harassment shall not be regarded as the breach of obligations arising from employment and must not be grounds for discrimination against the worker. (Art. 134, Par. 10, Labour Act)<br/>A worker must not be placed in a less favourable position than other workers on the ground of his membership in a trade union. It is, in particular, prohibited to:<br/>1) conclude an employment contract with a worker, under the condition that he does not join a trade union or that he leaves a trade union,<br/>2) terminate an employment contract or place a worker in a less favourable position than other workers in some other way because of his membership in a trade union or participation in trade union activities after working hours, or during working hours subject to the consent of the employer.<br/>(2) The employer must not take into consideration membership in a trade union and participation in trade union activities when rendering a decision whether or not to conclude an employment contract, on the assignment of a worker to a particular job or to a particular workplace, on training, advance in employment, pay, social benefits and termination of an employment contract. (Art. 186, Par. 1 and 2, Labour Act)</p> <p>Organization of a strike or participation in a strike, which is organized in compliance with the law, collective agreement and trade union rules, do not constitute a violation of an employment contract. (Art. 215, Par. 1, Labour Act)</p> <p>Performing defence-related services shall not constitute a just cause for dismissal, and during that period, the employer shall not be allowed to terminate the employment contract by regular notice of termination. If the employer terminates the employment contract contrary to the provisions of this Article, the worker shall be entitled to all the rights provided for by this Act for cases of unfair dismissal. (Art. 224, Par. 8, Labour Act)</p> |
| <p><b>6: Length of trial period (c)</b></p>         | <p>Probation may not exceed six months. The failure of the worker to fulfil the position requirements during the probationary period shall constitute a just cause for terminating the employment contract. (Art. 53, Labour Act)</p>  |

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| <p><b>7: Compensation following unfair dismissal (d)</b></p>   | <p>When the court establishes unlawfulness of the dismissal effected by the employer, and the worker finds it unacceptable to resume the employment relationship, the court shall, upon the worker's request, <b>determine the date of termination of employment</b> and award him an indemnity in an amount <b>not less than three and not more than eight average monthly salaries</b> that were paid to the worker over the preceding three months, depending on the tenure, age and family responsibilities of the worker. (Art. 125, Par. 1, Labour Act)</p> <p><u>Calculation for EPL indicators:</u> in the absence of reinstatement (average of minimum and maximum values : 3 and 8 months), that is 5.5 months, and 6 months in the case of reinstatement.</p>  |
| <p><b>8: Reinstatement option for the employee following unfair dismissal (b)</b></p>                              | <p>Where the court establishes that a dismissal was not permissible and that employment was not terminated, it shall <b>order the employer to reinstate the worker</b>. (Art. 124, Par. 1, Labour Act)</p> <p>When the court establishes unlawfulness of the dismissal effected by the employer, and the worker finds it unacceptable to resume the employment relationship, the court shall, upon the worker's request, determine the date of termination of employment and award him an indemnity in an amount not less than three and not more than eight average monthly salaries that were paid to the worker over the preceding three months, depending on the tenure, age and family responsibilities of the worker.</p> <p>The court may also render the decision referred to in paragraph 1 of this Article at the request of the employer, if there are circumstances that reasonably demonstrate that, in view of all the circumstances and interests of both contracting parties, the continuation of employment relationship is not possible.</p> <p>Both the employer and the worker may file a request for the cancellation of employment contract in the manner referred to in paragraphs 1 and 2 of this Article, until the conclusion of the hearing before the court of first instance. (Art. 125, Labour Act)</p> |
| <p><b>9: Maximum time period after dismissal up to which an unfair dismissal claim can be made (e)</b></p>         | <p>The worker who considers that his employer has violated any of his rights arising from employment may require from the employer the exercise of this right within fifteen days following the receipt of a decision violating this right, or following the day when he gained knowledge of such violation. (Art. 133, Par. 1, Labour Act)</p>   |
| <p><b>10: Valid cases for use of standard fixed term contracts</b></p>   | <p>Employment contracts may be concluded for fixed terms for the purpose of taking up an employment where the end of the employment is determined by objective conditions such as reaching a specific date, completing a specific task, or the occurrence of a specific event. (Art. 12, Par. 1, Labour Act)</p> <p>The employer may enter into a successive fixed-term employment contract with the same worker solely on objective grounds, which must be clarified in the same contract or in a letter of engagement. (Art. 12, Par. 2, Labour Act)</p> <p>The cumulative duration of all successive fixed-term employment contracts, including the first employment contract, may not exceed three consecutive years, unless where it is necessary for the purpose of replacing a temporarily absent worker or where it is on objective grounds allowed by law or a collective agreement. (Art. 12, Par. 3, Labour Act)</p> <p>Member of board or executive director and those executive workers who manage the operations of an employer may as an employed worker perform certain works for the employer. In that case provisions on fixed-term employment contract do not apply. (Art. 4, Par. 4, Labour Act)</p>  |
| <p><b>11: Maximum number of successive standard FTCs (initial contract plus renewals and/or prolongations)</b></p> | <p>No limit within the 3 years.</p>   |
| <p><b>12: Maximum cumulated duration of successive standard FTCs</b></p>   | <p>The cumulative duration of all successive fixed-term employment contracts, including the first employment contract, may not exceed three consecutive years, unless where it is necessary for the purpose of replacing a temporarily absent worker or where it is on objective grounds allowed by law or a collective agreement. (Art. 12, Par. 3, Labour Act)</p>  |



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| <p><b>13:</b> Types of work for which temporary work agency (TWA) employment is legal</p>                       | <p>Temporary work agency employment is <b>generally allowed</b> except for:</p> <ol style="list-style-type: none"> <li>1) replacing the workers in strike at the user undertaking,</li> <li>2) performing works that were performed by workers subject to the collective redundancy procedure referred to in Article 127 of the Labour Act effected by the user undertaking in a previous period of six months,</li> <li>3) works that were performed by the workers whose employment contracts were terminated by the user undertaking on economic reasons in a previous period of six months,</li> <li>4) works that are, under the regulations on safety protection at work, regarded as works under special working conditions, and the assigned worker does not meet the particular requirements,</li> <li>5) assigning workers to another agency. (Art. 45, Par. 4, Labour Act)</li> </ol>  |
| <p><b>14:</b> Are there restrictions on the number of renewals and/or prolongations of TWA assignments? (f)</p> | <p>No restrictions within the 3 years (Art. 48 Labour Act)</p>  |
| <p><b>15:</b> Maximum cumulated duration of TWA assignments (f)</p>   | <p>The user undertaking may not use the work of the assigned worker for the performance of the same works for an uninterrupted period exceeding three years unless it is necessary for the purpose of replacing a temporarily absent worker or where it is allowed by collective agreement on the grounds of some other objective reasons.</p> <p>An interruption of less than two months shall not be regarded as the interruption of the three-year period referred to in paragraph 1 of this Article. (Art. 48, Labour Act)</p>  |
| <p><b>16:</b> Does the set-up of a TWA require authorisation or reporting obligations?</p>                      | <p>The agency may perform the activity of assigning workers to the user undertaking provided that it is established in accordance with specific provisions and registered with the Ministry of Labour and Pension System. (Art. 44, Par. 3, Labour Act)</p> <p>Furthermore, agencies are obliged to deliver statistical data on assignments of workers to another employer once a year. (Art. 44, Par. 7, Labour Act)</p>   |
| <p><b>17:</b> Do regulations ensure equal treatment of regular workers and agency workers at the user firm?</p> | <p>According to Art. 46, Par. 5 of the Labour Act agreed salary and other working conditions applicable to the assigned workers may not be lower or less favourable when compared to the salary or working conditions applicable to the worker employed with the user undertaking for the performance of the same tasks, which would be applicable to the assigned worker should he have concluded an employment contract with the user undertaking. As for other working conditions applicable to the assigned worker, they include working time, breaks and rest periods, safety at work protection measures, protection of pregnant workers, parents, adoptive parents and youth, and non-discrimination, in accordance with specific anti-discrimination regulations.</p> <p>Exceptionally, the less favourable working conditions applicable to the worker assigned to the user undertaking when compared to those applicable to the worker employed at the user undertaking may be agreed upon by collective agreement concluded between the agency or an association of agencies and trade unions. (Art. 46, Par. 7, Labour Act)</p> |
| <p><b>18:</b> Definition of collective dismissal (b)</p>  | <p>The employer who in the period of 90 days might have at least 20 redundancies, out of which at least 5 employment contracts were terminated on economic grounds, shall be obliged to begin consultations with the works council in good time and in the manner laid down by Labour Act, with a view to reaching an agreement aimed at avoiding redundancies or reducing the number of workers affected. (Art. 127, Par. 1, Labour Act)</p>   |
| <p><b>19:</b> Additional notification requirements in cases of collective dismissal (g)</p>                     | <p>The employer is obliged to consult the works council. (Art. 127, Par. 1, Labour Act). If no works council has been established with an employer, all the rights and obligations pertaining to works councils shall be exercised by a trade union's representative. (Art. 153, Par. 3)</p> <p>After consultation with the works council employer must notify Croatian employment service. (Art. 127, Par. 5, Labour Act)</p>  |
| <p><b>20:</b> Additional delays involved in cases of collective dismissal (h)</p>                               | <p>The employer is obliged to notify Croatian employment service, and the notification shall contain the information on the duration of consultations with the works council, outcomes and conclusions resulting therefrom, with a statement of the works council attached thereto, should he receive it. (Art. 127, Par. 5, Labour Act)</p> <p>Projected collective redundancies notified to the competent public authority responsible for employment <b>shall take effect not earlier than 30 days after the notification</b>. (Art. 128, Par. 1, Labour Act)</p> <p>The competent public authority responsible for employment may, until the last day of the time limit, request the employer to postpone either collective or individual redundancies for maximum <b>30 days</b>, if he is able to ensure the continuation of employment for the workers during this extended period. (Art. 128, Par. 2, Labour Act)</p>   |

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| 21: Other special costs to employers in case of collective dismissals (i) | There are no additional requirements |
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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.

## FORMER YUGOSLAV REPUBLIC OF MACEDONIA

| Items   | Regulations in force on 1 January 2015   |
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| <b>1:</b> Notification procedures in the case of individual dismissal of a worker with a regular contract | The employer is obliged to communicate the end of the employment contract to the employee in writing (Art. 74, Labour Law)   |
| <b>2:</b> Delay involved before notice can start  | 3 days   |
| <b>3:</b> Length of notice period at different tenure durations (a)                                       | If the employer terminates the employment contract of the individual worker or of few workers, the notice period is one month. The notice period is two months in the case of termination of the employment contract of more than 150 workers, or 5% of the total number workers (art. 88(2) Labour Law).  |
| <b>4:</b> Severance pay at different tenure durations (a)   | In case of cancellation of the employment agreement for business reasons, the employer will need to compensate the employee as follows (Art. 97 Labour Law):<br>1) up to five years in employment – 1 month net salary<br>2) 5-10 years in employment: 2 months net salary<br>3) 10-15 years in employment: 3 months net salary<br>4) 15-20 years they spend to employment – 4 months net salary<br>5) 20-25 year they spend to employment – 5 months net salary<br>6) 25 years+ - 6 months net salary<br><br>Calculation: average of personal reasons and redundancy  |
| <b>5:</b> Definition of unfair dismissal (b)  | The employer may terminate the employment contract only if there is a founded reasons for dismissal linked to 1) personal reasons (when the employee is not able to carry out tasks etc.); 2) when the employee has violated some obligations; 3) business reasons (Art. 71 Labour Law).<br><br>Before dismissing for business reasons, the employer must offer either a new job or suitable vocational training to the worker (Art. 96 Labour Law)  |
| <b>6:</b> Length of trial period (c)  | 6 months (Art. 60 Labour Law)  |
| <b>7:</b> Compensation following unfair dismissal (d)   | According to Article 102 (2), if the court establishes that the dismissal was unlawful, the employer is obliged to pay the worker the amount (gross salary) which he would have had if he/she was at work (minus the income he/she earned in other employment). Reinstatement is always made available if the worker requests so and the court establishes that the dismissal was unlawful. If it is unacceptable for the employee to be reinstated, the court, at the employee's request, specifies the date of termination of employment and order that the employer pays wages in accordance with Art. 102(2) (Art. 102(4) Labour Law). |
| <b>8:</b> Reinstatement option for the employee following unfair dismissal (b)                            | Article 102(1) says that if the Court rules that the employment contract was unlawfully terminated, the employee must be reinstated if he/she requests so.   |
| <b>9:</b> Maximum time period after dismissal up to which an unfair dismissal claim can be made (e)       | Article 93 Labour Law states that the employee has 8 days to file the appeal (after receiving the decision of termination of the employment contract).   |
| <b>10:</b> Valid cases for use of standard fixed term contracts   | Article 46 Labour Law states that:<br>(1) The employment contract may be concluded for a definite duration to perform the same work, with or without breaks, for a maximum of five years.<br>(2) A contract of employment for a definite time to replace a temporarily absent worker may be concluded for the whole period of absence of that worker.<br>(3) The employment contract of definite duration, except for performing seasonal work, is transformed into a permanent contract if the employee continues to work after the expiration of the time limit indicated above  |

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| <b>11:</b> Maximum number of successive standard FTCs (initial contract plus renewals and/or prolongations) | The Labour Law does not foresee any limitation to the number of successive fixed term contracts.   |
| <b>12:</b> Maximum cumulated duration of successive standard FTCs   | 5 year (Art. 46(1) Labour Law)   |
| <b>13:</b> Types of work for which temporary work agency (TWA) employment is legal                          | Allowed but only for the following reasons (Art. 4 Law on the agencies for temporary employment):<br>1) replacement of temporary absent employee<br>2) temporary increase of activity<br>3) seasonal or project work<br>4) specific non-continuous work outside the scope of the main activity of the firm<br>5) unpredictable short-term tasks within the main activity of the firm.  |
| <b>14:</b> Are there restrictions on the number of renewals and/or prolongations of TWA assignments? (f)    | There are no restrictions on the number of renewals of TWA contracts.  |
| <b>15:</b> Maximum cumulated duration of TWA assignments (f)  | One year for assignments, with or without interruptions (Art. 4, 3 <sup>rd</sup> and 4 <sup>th</sup> paragraphs, Law on the agencies for temporary employment).  |
| <b>16:</b> Does the set-up of a TWA require authorisation or reporting obligations?                         | Both authorization and reporting requirements (Art. 5 and Art. 13 Law on the agencies for temporary employment)  |
| <b>17:</b> Do regulations ensure equal treatment of regular workers and agency workers at the user firm?    | Equal treatment regarding pay and working conditions (Art. 14 and Art. 15 Law on the agencies for temporary employment)  |
| <b>18:</b> Definition of collective dismissal (b)   | If the employer intends to terminate employment contracts for a large number of workers for business reasons (for at least 20 workers in a period of 90 days) regardless of the total number of workers, this is considered collective dismissal for business reasons. (Art. 95(1) Labour Law)   |
| <b>19:</b> Additional notification requirements in cases of collective dismissal (g)                        | In the case of collective dismissal, the Employment Mediation Agency as well as the worker's representatives need to be notified. (Art. 95 Labour Law)   |
| <b>20:</b> Additional delays involved in cases of collective dismissal (h)                                  | When an employer intends to carry out collective dismissals, he/she is obliged to begin the process of consultation with workers' representatives, at least one month before the collective dismissal and to provide them with all relevant information before the start of consultations in order to achieve an agreement. The employer shall (after consultation with representatives) send written notice to the office in charge of employment mediation. The employer is obliged to submit the collective dismissal notice to the employment mediation agency, no later than 30 days before the final decision of the termination of workers. The office in charge of mediation can extend the last deadline to 60 days (Art. 95 Labour Law).<br><br>If the dismissal concerns at least 150 workers (or 5% of the workforce) the individual notice period is also extended to 2 months (Art. 88(2) Labour Law).<br><br><u>Calculation:</u> average of large and small collective dismissals and with or without agreement with representatives (in the latter case an extension of the deadline is assumed), minus values reported in Item 2:<br>$30/2+60/2+30/2-3=58$ days |
| <b>21:</b> Other special costs to employers in case of collective dismissals (i)                            | No additional requirements.  |

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.

**KAZAKHSTAN**

| Items  | Regulations in force on 1 January 2015   |
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| 1: Notification procedures in the case of individual dismissal of a worker with a regular contract | <p><b>Personal reasons:</b> the employer must give the employee a written notice. Dismissal of employees who are members of a trade union is possible only with consideration of the opinion of the elected trade union authorities.</p> <p><b>Redundancy:</b> The employer must give the employee a written notice. Dismissal of employees who are members of a trade union is possible only with consideration of the opinion of the elected trade union authorities. The employer has also to inform the labour administration about any expected staff reductions at least 2 months in advance – art. 9, Law on Employment, 2001.</p> <p>Dismissal for personal reasons and redundancy of workers aged 55 years or more must be authorised by an ad-hoc joint employer-employee commission, created on purpose (Art. 56 Labour Code – LC hereafter).</p> <p>Calculation for EPL indicators: Average of workers above (2.5) and below (2) the threshold age</p>   |
| 2: Delay involved before notice can start  | There is no indication in the labour code of the time required for consultations with unions and to form the joint commission to dismiss older workers   |
| 3: Length of notice period at different tenure durations (a)                                       | <p>1 month regardless on length of service (Art. 56 LC)</p> <p>However, the administration must be informed at least 2 months in advance in the case of redundancy.</p>  |
| 4: Severance pay at different tenure durations (a)   | <p>In the case of dismissal in connection with liquidation of the organisation or reducing the number of permanent staff, the employee to be dismissed is entitled to severance payment equal to one average monthly wage (Art. 157 LC).</p> <p>No severance pay for personal reasons</p> <p>Calculation for EPL indicators: average of personal reasons and redundancy <math>(0+1)/2 = 0.5</math> months</p>  |
| 5: Definition of unfair dismissal (b)  | <p><b>Fair</b> (art. 54 and 56, LC):</p> <p><b>Redundancy:</b> dismissal in the case of redundancy is possible provided that the employer takes measures to transfer the employee to another job with his (her) consent.</p> <p><b>Personal reasons:</b> Termination of the labour contract by the employer for reasons of unsuitability of the employee for the held position or work due to the insufficient qualifications shall be based on the decision of the certification committee, in which a representative of the employees should participate, unless otherwise provided by the laws of the Republic of Kazakhstan. Procedures, conditions and periodicity of certification of employees are determined by the collective contract and in the case of its absence by the act of the employer, issued in consultation with the employees' representatives. An employee can also be fired for permanent, health-related inability to work if it is medically attested. The employer, before dismissal, shall also take measures to transfer the employee to another job with his (her) consent.</p> |
| 6: Length of trial period (c )   | <p>Article 36 LC</p> <p>No more than 3 month</p>   |
| 7: Compensation following unfair dismissal (d)   | <p>Article 177 LC</p> <p>The employee shall be paid all wages between the date of dismissal and the date of reinstatement (or resolution of the contract at the demand of the employee), with a ceiling of six monthly wages.</p>  |
| 8: Reinstatement option for the employee following unfair dismissal (b)                            | <p>Article 177 LC</p> <p>Reinstatement is always made available to the employee in the case of unfair dismissal</p>  |
| 9: Maximum time period after dismissal up to which an unfair dismissal claim can be made (e)       | <p>Article 172 LC</p> <p>The period of time set to appeal the authorities to consider individual labour disputes for reinstatement is three months from the date of delivery of a copy of the act with which the employer terminate the employment contract.</p> <p>Calculation for EPL indicators: 3 months minus individual notice period</p>  |



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| <b>10:</b> Valid cases for use of standard fixed term contracts   | Article 29 LC<br>No limitation.  |
| <b>11:</b> Maximum number of successive standard FTCs (initial contract plus renewals and/or prolongations) | Article 29 LC<br>In the case of renewal or extension of a fixed-term labour contract, that labour contract is considered for an indefinite period.   |
| <b>12:</b> Maximum cumulated duration of successive standard FTCs   | Article 29 LC<br>There is no maximum duration. Minimum duration is one year.<br><br>Exclusion: for the time to fulfil definite work; for the replacement of absent employee; for the fulfilling seasonal work. |
| <b>13:</b> Types of work for which temporary work agency (TWA) employment is legal                          | No legislation regulating TWAs   |
| <b>14:</b> Are there restrictions on the number of renewals and/or prolongations of TWA assignments? (f)    | Not available  |
| <b>15:</b> Maximum cumulated duration of TWA assignments (f)  | Not available  |
| <b>16:</b> Does the set-up of a TWA require authorisation or reporting obligations?                         | Not available  |
| <b>17:</b> Do regulations ensure equal treatment of regular workers and agency workers at the user firm?    | Not available  |
| <b>18:</b> Definition of collective dismissal (b)   | No definition of (or procedure for) collective dismissal, except those required for any type of redundancy   |
| <b>19:</b> Additional notification requirements in cases of collective dismissal (g)                        | Not applicable   |
| <b>20:</b> Additional delays involved in cases of collective dismissal (h)                                  | Not applicable   |
| <b>21:</b> Other special costs to employers in case of collective dismissals (i)                            | Not applicable   |

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.

## KOSOVO

| Items   | Regulations in force on 1 January 2014  |
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| <b>1:</b> Notification procedures in the case of individual dismissal of a worker with a regular contract   | <p>Before terminating the contract, the employer must notify the employee in writing regarding the reason of termination (Art. 72 Labour Law (Ligjit te Punes nr.03/L-212, hereafter LP).</p> <p>In case of termination of the employment contract, the employer must hold a meeting with the employee, who may be accompanied by a trade union representative if need be. (Article 70, paragraph 3 LP)</p> <p>Calculation: 1.5 because the union will de facto be informed if the employee wishes its assistance.</p>  |
| <b>2:</b> Delay involved before notice can start  | <p>Art. 72 Labour Law (as for item 1)</p> <p>Calculation: 1 day for inviting to the meeting, one day for meeting and one day for letter = 3 days</p>  |
| <b>3:</b> Length of notice period at different tenure durations (a)   | <p>The employer may terminate the employment contract under Article 70 (law of labor) in these intervals of notification:</p> <p>1.1. of six (6) months to two (2) years of employment, thirty (30) calendar days;</p> <p>1.2. of two (2) to ten (10) years of employment, forty-five (45) days;</p> <p>1.3. ten (10) years of employment, sixty (60) calendar days.</p>  |
| <b>4:</b> Severance pay at different tenure durations (a)   | No severance pay for individual dismissals  |
| <b>5:</b> Definition of unfair dismissal (b)  | <p>(Art. 70 Labour law)</p> <p>An employer may terminate the employment contract of an employee with the prescribed period of notice of cancellation, when:</p> <p>1.1. Such termination is justified for economic, technical or organizational reasons;</p> <p>1.2. The employee is no longer able to perform the job.</p> <p>1.3. The employer may terminate the employment contract in the circumstances specified in sub-paragraph 1.1 and 1.2 of this paragraph, if, it is impracticable for the employer to transfer the employee to other employment or to train or qualify the employee to perform the job or other jobs.</p> <p>1.4. An employer may terminate the employment contract of an employee with providing the period of notice of termination required, in:</p> <p>1.4.1. serious cases of misconduct of the employee; and</p> <p>1.4.2. because of dissatisfactory performance</p> |
| <b>6:</b> Length of trial period (c )   | Probation can last no more than six (6) months. During the probationary period, the employer and the employee may terminate the employment contract with a prior notice of seven (7) days. (Article 15 LP).   |
| <b>7:</b> Compensation following unfair dismissal (d)   | If the court finds that the employer's termination of the employment contract is unlawful according to the provisions of Labour Law, the collective agreement or the employment contract, it shall order the employer to pay the employee compensation, in addition to any allowance and other amounts to which the employee may be entitled to, in such an amount that the court considers just and equitable, but which shall not be less than twice the value of any severance payment to which the employee was entitled at the time of dismissal.;   |
| <b>8:</b> Reinstatement option for the employee following unfair dismissal (b)                              | In cases where the dismissal is deemed unlawful under Article 5 (which establishes protection against discrimination), the court may reinstate the employee in his or her previous employment and orders compensation of all salaries and other benefits lost during the time of unlawful dismissal from work. (Article 80 of the LP)   |
| <b>9:</b> Maximum time period after dismissal up to which an unfair dismissal claim can be made (e)         | An employee considering that the employer has violated labour rights may submit a request to the employer or relevant bodies of the employer, if they exist, for the exercise of rights violated (Art. 78 para 1 Labour law). Any employee who is not satisfied with the decision which she believes are violated his rights, or fails to receive a reply within 15 days from the Labour Inspectorate (Article 78 paragraph 2 of the LP), within the next thirty (30) days, may initiate labor dispute in the competent court. (Article 79 of the LP).  |
| <b>10:</b> Valid cases for use of standard fixed term contracts   | <p>Work contracts under LP, may be of indefinite term, fixed term term, or specific tasks and duties.</p> <p>The Collective Contract and the Employer's Internal Act define the cases of establishment of employment relationship with the employee for definite task and period of time in accordance with Labour Law.</p> <p>(Article 10, LP)</p>   |
| <b>11:</b> Maximum number of successive standard FTCs (initial contract plus renewals and/or prolongations) | There is no information on the maximum number of successive FTC.  |

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| <b>12:</b> Maximum cumulated duration of successive standard FTCs  | A contract for a fixed period may not be concluded for a cumulative period of more than ten (10) years.<br>A contract for a fixed period of time that is expressly or tacitly renewed for a continued period of employment of more than ten (10) years shall be deemed to be a contract for an indefinite period of time.<br>A contract for a specified task may not be longer than one hundred and twenty (120) days within a year (Art. 10 LP).   |
| <b>13:</b> Types of work for which temporary work agency (TWA) employment is legal                       | Kosovo has not adjusted employment legislation concerning temporary employment agencies yet.  |
| <b>14:</b> Are there restrictions on the number of renewals and/or prolongations of TWA assignments? (f) | not applicable  |
| <b>15:</b> Maximum cumulated duration of TWA assignments (f)   | not applicable  |
| <b>16:</b> Does the set-up of a TWA require authorisation or reporting obligations?                      | not applicable  |
| <b>17:</b> Do regulations ensure equal treatment of regular workers and agency workers at the user firm? | not applicable  |
| <b>18:</b> Definition of collective dismissal (b)  | Cases where dismissals, include at least ten percent (10%) of the employees but no less than twenty (20) employees discharged within a six (6) month period, shall be considered as collective dismissal.<br>(Article 76 paragraph 1 of the LP)   |
| <b>19:</b> Additional notification requirements in cases of collective dismissal (g)                     | Prior to undertaking collective dismissals, an employer shall notify its employees and, where applicable, the employees' trade union(s) one month in advance in writing of the changes planned and their implications. The employer shall notify in writing the Employment Office about removing of employees from work, so EO be able to provide assistance to them to find other employment. (Article 76, LP).<br><br>The trade union (Article 76, 3) and the Employment Office (Article 76, 5) need to be notified.  |
| <b>20:</b> Additional delays involved in cases of collective dismissal (h)                               | Prior to undertaking collective dismissals, an employer shall notify its employees and, where applicable, the employees' trade union(s) one month in advance in writing of the changes planned and their implications. Once this requirement is completed, the employer may terminate the employment of employees by serving individual notice period as prescribed in Item 1.<br><br>Calculation 30 days minus delay in Item 2-1= 28 days  |
| <b>21:</b> Other special costs to employers in case of collective dismissals (i)                         | The severance payment shall be paid to the employees with indefinite period contract on the date of termination at the following scale:<br>7.1. from two (2) to four (4) years of service, one (1) monthly salary;<br>7.2. from five (5) to nine (9) years of service, two (2) monthly salary;<br>7.3. from ten (10) to nineteen (19) years of service, three (3) monthly salary;<br>7.4. from twenty (20) to twenty-nine (29) years of service, six (6) monthly salary; and<br>7.5. from thirty (30) years of service or more, seven (7) monthly salary;<br><br>8. If, within a period of one (1) year from the termination of the employment contract, the employer shall not hire other persons – with the same qualifications or training - before offering to hire the employees whose contracts have been terminated.<br><br>(Article 76, paragraph 7 and 8 of the LP). |

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.

## LITHUANIA

| Items  | Regulations in force on 1 January 2015   |
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| 1: Notification procedures in the case of individual dismissal of a worker with a regular contract | <p><b>Article 129 of Labour Code</b> provides that an employer may terminate an indefinite-term employment contract with an employee only for valid reasons by giving him notice thereof in accordance with the procedure established in Article 130 of this Code. The dismissal of an employee from work without any fault on the part of the employee concerned shall be allowed if the employee cannot, with his consent, be transferred to another work. Only the circumstances, which are related to the qualification, professional skills or conduct of an employee, shall be recognised as valid. An employment contract may also be terminated on economic, technological grounds or due to the restructuring of the workplace, as well as for other similar valid reasons also in the cases that are outlined by this Code and other laws.</p> <p><b>According to Article 130 of Labour Law: Notice of the Termination of an Employment Contract</b></p> <p>1. An employer shall be entitled to terminate an employment contract by giving written notice to the employee against signature.</p> |
| 2: Delay involved before notice can start  | <p><b>Article 130 of Labour Code</b>, paragraph 4 states the period of notice shall be extended to cover the period of the employee's sickness or leave or for the period from the institution of proceedings until the coming into effect of the court decision when the refusal to give a preliminary agreement to dismiss the employee from work is contested in accordance with the procedure established by law, in cases where the agreement is prescribed by the law (e.g. employees' representatives) .</p>  |
| 3: Length of notice period at different tenure durations (a)                                       | <p>Article 129 of Labour Code, part 4 indicates that "An employment contract with employees, who will be entitled to the full old age pension in not more than five years, persons under 18 years of age, disabled persons and employees raising children under 14 years of age may be terminated only in extraordinary cases where the retention of an employee would substantially violate the interests of the employer."</p> <p>Article 130 of Labour Code part 1 claims that "An employer shall be entitled to terminate an employment contract by giving the employer written notice two months in advance. Employees referred to in Article 129 (4) of this Code must be given notice of dismissal from work at least four months in advance."</p> <p>9 months' tenure: 2 months<br/>4 years' tenure: 2 months<br/>20 years' tenure: 2 months</p>   |
| 4: Severance pay at different tenure durations (a)   | <p><b>Article 140 of Labour Code:</b></p> <p>1. Upon the termination of the employment contract under Article 129 and paragraph 1(6) of Article 136 of this Code, the dismissed employee shall be paid a severance pay in the amount of his average monthly wage taking into account the continuous length of service of the employee concerned at that workplace:</p> <ol style="list-style-type: none"> <li>1) under 12 months – one monthly average wage;</li> <li>2) 12 to 36 months – two monthly average wages;</li> <li>3) 36 to 60 months – three monthly average wages;</li> <li>4) 60 to 120 months – four monthly average wages;</li> <li>5) 120 to 240 months – five monthly average wages;</li> <li>6) over 240 months – six monthly average monthly wages.</li> </ol>  |

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| <p><b>5: Definition of unfair dismissal (b)</b></p>                                   | <p>According to Article 129 (2) of the Labour Code only the circumstances, which are related to the qualification, professional skills or conduct of an employee, shall be recognized as valid. An employment contract may also be terminated on economic, technological grounds or due to the restructuring of the workplace, as well as for other similar valid reasons. The dismissal of an employee from work without any fault on the part of the employee concerned shall be allowed if the employee cannot, with his consent, be transferred to another work (art. 129(1) Labour Code).</p> <p>Para.3 of this Article states that a legitimate reason to terminate employment relationships <u>shall not be</u>:</p> <ol style="list-style-type: none"> <li>1) membership in a trade union or involvement in the activities of a trade union beyond the working time or, with the consent of the employer, also during working time;</li> <li>2) performance of the functions of an employees' representative at present or in the past;</li> <li>3) participation in the proceedings against the employer charged with violations of laws, other regulatory acts or the collective agreement, as well as application to administrative bodies;</li> <li>4) gender, sexual orientation, race, nationality, language, origin, citizenship and social status, belief, marital and family status, convictions or views, membership in political parties and public organisations;</li> <li>5) age;</li> <li>6) absence from work when an employee is performing military or other duties and obligations of the citizen of the Republic of Lithuania in the cases established by laws.</li> </ol> <p>An employment contract with employees who will be entitled to the full old-age pension in not more than five years, persons under eighteen years of age, disabled persons and employees raising children under fourteen years of age may be terminated only in exclusive cases where the retention of an employee would substantially violate the interests of the employer (Art. 129(4), Labour Code). Employment contracts with employees raising a child (children) under three years of age may not be terminated without any fault on the part of the employee concerned (art. 131 Labour Code). In the case of redundancy, there are social criteria for priority that are defined in the Labour Code (Art. 135).</p> |
| <p><b>6: Length of trial period (c )</b></p>  | <p>Article 106 paragraph one of Labour Code fixes the maximum term of probation period: "A trial period shall not be longer than three months".</p>  |
| <p><b>7: Compensation following unfair dismissal (d)</b></p>                          | <p><b>Article 300 of Labour Code states that:</b></p> <p>If an employee was dismissed without legal basis or breaking the law, the court reinstate the employee to the previous job position and the employer must pay wage arrears for the involuntary idle time.</p> <p>Where the court establishes that the employee may not be reinstated in his previous job due to economic, technological, organisational or similar reasons, or because he may be put in unfavourable conditions for work, it shall take a decision to recognise the termination of the employment contract as unlawful and award him a severance pay in the amount specified in paragraph 1 of Article 140 of this Code as well as the average wage for the period of involuntary idle time from the day of dismissal from work until the effective date of the court decision. In this case the employment contract shall be considered terminated from the effective date of the court decision.</p>  |
| <p><b>8: Reinstatement option for the employee following unfair dismissal (b)</b></p> | <p><b>Article 300 of Labour Code states that:</b></p> <p>If an employee was dismissed without legal basis or breaking the law, the court return the employee to the previous job position and the employer must pay the average salary for all the delayed time.</p> <p>Where the court establishes that the employee may not be reinstated in his previous job due to economic, technological, organisational or similar reasons, or because he may be put in unfavourable conditions for work, it shall take a decision to recognise the termination of the employment contract as unlawful and award him a severance pay in the amount specified in paragraph 1 of Article 140 of this Code as well as the average wage for the period of involuntary idle time from the day of dismissal from work until the effective date of the court decision. In this case the employment contract shall be considered terminated from the effective date of the court decision.</p> <p>Calculation: Value 2.5 in the case of personal reason (reinstatement not granted only in the case of a risk of unfavourable position for the worker) and 1.5 in the case of economic reasons. Average: 2</p>  |



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| <p><b>9:</b> Maximum time period after dismissal up to which an unfair dismissal claim can be made (e)</p>         | <p>According to the article 300 of Labour Code:<br/>         "1. If an employee does not agree with an employer-initiated dismissal, in <b>one month</b> period from the date of receipt of the notice of termination an employee may bring an action in court for the invalidation of the document."</p> <p>Calculation: before dismissal takes effect, given the notice periods reported in Item 3</p>   |
| <p><b>10:</b> Valid cases for use of standard fixed term contracts</p>   | <p><b>SECTION 12, ARTICLE 109 OF THE LABOUR CODE</b><br/>         1. A fixed-term employment contract may be concluded for a certain period of time or for the period of the performance of certain work, but not exceeding five years.<br/>         2. It shall be prohibited to conclude a fixed-term employment contract if work is of a permanent nature, except for the cases when this is provided by laws or collective agreements or when the employee is in a newly established workplace, or<br/>         3. A fixed-term employment contract with employees, who are elected to their posts, shall be concluded for the term they are elected for, while a fixed-term employment contract with employees, who are appointed to their posts in accordance with laws or regulations of an enterprise, establishment or organisation, shall be concluded for the term of office of these elective bodies.<br/>         Fixed-term contracts for newly established positions in new workplaces may no longer be in operation after 31 July 2015. Working relationships of that type that continue after this date become open-ended employment contracts.</p> |
| <p><b>11:</b> Maximum number of successive standard FTCs (initial contract plus renewals and/or prolongations)</p> | <p>Article 109 of the Labour Code:<br/>         1. If the term of an employment contract has expired, whereas employment relationships are actually continued and neither of the parties has, prior to the expiry of the term, requested to terminate the contract, it shall be considered extended for an indefinite period of time.<br/>         3. If an employment contract, upon the expiry of its term, is not extended or is terminated, but within one month from the day of its termination another fixed-term employment contract is concluded with the dismissed employee for the same work, then, at the request of the employee, such a contract shall be recognised as concluded for an indefinite period of time, except for specific cases.."</p>  |
| <p><b>12:</b> Maximum cumulated duration of successive standard FTCs</p>   | <p><b>Article 109. Fixed-term Employment Contract</b><br/>         „A fixed-term employment contract may be concluded for a certain period of time or for the period of the performance of certain work, but not exceeding five years.“</p> <p>Fixed-term contracts for newly established positions may no longer be in operation after 31 July 2015. Working relationships under a fixed-term contract that continue after this date become open-ended employment contracts.<br/>         Calculation: average of contract for new firms (8 months since 1/1/2015) and general case (60 months)= 34 months</p>  |
| <p><b>13:</b> Types of work for which temporary work agency (TWA) employment is legal</p>                          | <p>According to Article 3 (1) of the Law on Temporary Agency Work, temporary work contracts could be indefinite-term and fixed-term. There are no explicit limitations on assignments, if contracts are of indefinite duration. Otherwise the conditions specified in the Art. 109 of the Labour Code apply.</p> <p>Moreover, para. 2 of Article 8 of the Law on Temporary Agency Work provides that the use of TWA employment is forbidden:<br/>         1) to assign the temporary worker the activities of the workers that are on strike.<br/>         2) to make a new agreement which claims to change the previous working relationships with the user firm.<br/>         3) to discriminate the temporary workers against the workers that do the same job as the temporary workers (to make worse working conditions for the temporary workers)<br/>         4) to limit the vocational training and improvement of qualifications for the temporary employees;<br/>         5) to limit permanent job possibilities for temporary employees.</p>   |
| <p><b>14:</b> Are there restrictions on the number of renewals and/or prolongations of TWA assignments? (f)</p>    | <p>According to Article 3 (1) of the Law on Temporary Agency Work, temporary work contracts could be indefinite-term and fixed-term. If the contract is fixed-term, the provision concerning the maximum duration of five years shall be applied. The same applies to assignments</p>  |
| <p><b>15:</b> Maximum cumulated duration of TWA assignments (f)</p>  | <p>For fixed-term temporary work contract it will be five year. No limit if the contract is open-ended.</p>  |
| <p><b>16:</b> Does the set-up of a TWA require authorisation or reporting obligations?</p>                         | <p>Authorisation and reporting obligations (Article 11 of the Law on Temporary Agency Work)</p>  |
| <p><b>17:</b> Do regulations ensure equal treatment of regular workers and agency workers at the user firm?</p>    | <p>Same wage and working conditions (Art. 8, Law on Temporary Agency Work)</p>   |

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| <b>18: Definition of collective dismissal (b)</b>                                    | <p>According to Article 130-1 of Labour code, collective dismissal of employees is a termination of working agreement when within 30 calendar days due to the economic or technological, shake-up of the institution other reasons that are not related to the employee:</p> <ol style="list-style-type: none"> <li>1) ten and more employees where an enterprise employs up to 99 employees;</li> <li>2) over ten percent of employees where an enterprise employs 100 to 299 employees;</li> <li>3) 30 and more employees where an enterprise employs 300 and more employees.</li> </ol> <p>Cases when a group of employees working under fixed-term employment contracts and seasonal employment contracts are dismissed without violating the term set in those contracts shall not be treated as collective dismissal.</p> |
| <b>19: Additional notification requirements in cases of collective dismissal (g)</b> | <p>According to Article 130-1 of Labour code:</p> <p>An employer must notify a local labour exchange office in writing of any projected redundancies in accordance with the procedure established by the Government, after consultations with employees' representatives and no later than prior to giving notification of the termination of the employment contract to concerned workers.</p> <p>An employment contract may not be terminated in breach of the obligation to notify a local labour exchange office of any projected redundancies or the obligation to hold consultations with employees' representatives.</p>   |
| <b>20: Additional delays involved in cases of collective dismissal (h)</b>           | <p>Consultations with employees' representatives must be held before informing the local exchange office and serving notice to the concerned employees.</p>   |
| <b>21: Other special costs to employers in case of collective dismissals (i)</b>     | <p>No additional requirements</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.

## MALAYSIA

| Items  | Regulations in force on 1 January 2013   |
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| 1: Notification procedures in the case of individual dismissal of a worker with a regular contract | <p>Generally, a written notice is required to terminate an open-ended contract. The section 12 of the Employment Act (hereafter, "EA") provides that either party can terminate an open-ended contract by giving a prior notice, and that such notice shall be in writing. The parties may conclude an agreement on the notice period in advance in writing under the condition that such notice period should be the same to the both parties. If there is no such agreement, a statutory standard would apply (section 14).</p> <p>In case of dismissal because of redundancy, the employer is required to consult in advance with the employees' representative or the trade union (as appropriate) and the labour authority (the "Code of Conduct for Industrial Harmony 1975, hereafter, "Code of Conduct"). The Code of Conduct is not binding on its face, but recognised by the court with a legal foundation in the Industrial Relations Act (hereafter, "IRA"). Moreover, the employer must notify the labour authority the intention of making a retrenchment or temporary lay-off (as well as of putting in place a voluntary separation system or implementing a salary reduction), according to the EA (section 63).</p> <p>Although, there is no statutory requirement, in practice, the notice of dismissal includes the reason of termination.</p> <p>Calculation for EPL indicators: unweighted average of the ordinary individual dismissal case (1) and dismissal case due to redundancy (2)</p> |
| 2: Delay involved before notice can start  | <p>The EA (section 14) requires the employer to implement a due inquiry on the ground of misconduct inconsistent with the fulfilment of the express or implied conditions of his service before a disciplinary action such as dismissal, downgrade, or any other lesser punishment.</p> <p>In the case of a dismissal because of incapability or poor performance, the employer is required to give a warning of possibility of dismissal and opportunity for improvement (e.g. Ireka Construction Bhd v. Chantiravathan Subramaniam James [1995] 2 ILR 11; Amsteel Mills Sdn. Bhd. v. Koh Cheng Siew [1997] 1 ILR 216). In the case of retrenchment, the employer must give as early as practicable a warning to the workers concerned (cf. the Code of Conduct, clause 21 and 22(a)(l))</p> <p>Calculation for EPL indicators: average of retrenchment and incapability or poor performance: 6 days for warning/investigation and/or bona fide negotiation with unions (in the case of retrenchment), plus 1 day for notification.</p>   |
| 3: Length of notice period at different tenure durations (a)                                       | <p>Unless the parties concluded an agreement on the length of notice period, the statutory notice period applies, which is dependent on the length of service.</p> <p>1) four weeks, &lt; two years<br/>2) six weeks, ≥ two years and &lt; five years<br/>3) eight weeks, ≥ five years</p> <p>In the case of the constructive dismissals (termination by the employee because of reasons caused by the employer, e.g. cessation of business, relocation, or breach of contract), the notice period must not be less favourable to the employee than the statutory notice period, regardless of a prior written agreement on the notice period.</p> <p>Such a prior notice may be waived by paying the amount of wage corresponding to the notice period, which is equally applied to the both parties (section 13). The employer is also exempted to give a prior notice in the case where the employee commits misconduct, but a due inquiry should be preceded (section 14).</p>   |

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| <b>4: Severance pay at different tenure durations (a)</b> | <p>Severance pay is regulated by the "Employment (Termination and Lay-off Benefits) Regulation of 1980", which is based upon Section 60J of the EA. To be qualified for the payment, the employee must have 12 months or more length of service (Section 3(1)). The amount varies depending on length of service (Section 6(1)):</p> <p>(a) ten days' wages for every year of employment under a continuous contract of service with the employer if he has been employed by that employer for a period of less than two years; or</p> <p>(b) fifteen days' wages for every year of employment under a continuous contract of service with the employer if he has been employed by that employer for two years or more but less than five years; or</p> <p>(c) twenty days' wages for every year of employment under a continuous contract of service with the employer if he has been employed by that employer for five year or more, and</p> <p>(d) pro-rata as respect an incomplete year, calculated to the nearest month..</p> <p>The amount is the same in the cases of ordinary dismissal and dismissal because of redundancy. Termination due to expiration of the employment contract (i.e. fixed-term contracts) is also covered by the regulation. There are some exceptions that exempt the employer from the payment of severance pay such as termination due to mandatory retirement age, voluntary quit, or dismissal because of a misconduct, after due inquiry.</p>   |
| <b>5: Definition of unfair dismissal (b)</b>              | <p>The section 20 of the IRA stipulates on the remedy procedure for an unfair dismissal. However, it does not specify what constitutes an unfair dismissal, which is left to the case law. There are some prohibited grounds for a dismissal, which are regulated by the statute, e.g. pregnancy (section 41 of the EA) or union activities (section 5 of the IRA).</p> <p>Incapability or poor performance constitutes a valid ground for a dismissal if clearly evidenced. But in practice, a warning needs to be given in advance and other relevant measures to improve the situation need to be taken. Redundancy is also a valid cause for a fair dismissal. The Code of Conduct stipulates the selection criteria in the case of retrenchment. They include both a few related to the employer's interest (e.g. need for the efficient operation, ability, experience, skill and occupational qualifications of individual workers) and others related to the employee's interest (e.g. length of service, employment status, age, family situation). In addition, the EA (section 60N) mandates that a local employee (with Malaysian nationality) should not be dismissed in the case of retrenchment unless all foreign employees in a capacity similar to that of the local employee are made redundant. In addition, some effort should be given to retraining and/or transferring worker(s) to other branches of the company or at least to try find alternative employment for him/them (or to retain the services of some of them), as suggested by the Code of Conduct (e.g. Trident Malaysia Sdn. Bhd. Penang v. National Union of Commercial Workers [1987] 2 ILR 190; Kuldip Singh A/L Sarban Singh v. Ismeca Malaysia Sdn Bhd Award 553 of 2015, Industrial Court)</p> <p>Calculation: social considerations, age or job tenure must when possible influence the choice of which worker(s) to dismiss; in addition, attempting transfer is advisable as proof of that attempt might be required by the court: average of 1 and 2: 1.5</p> |
| <b>6: Length of trial period (c )</b>                     | <p>There is no regulation on the trial period or probation. Probationers are entitled of protection against unfair dismissal, although it is somewhat easier to dismiss a probationer at the end of the probation period, on the ground of lack of the required capabilities or unfitness (e.g. Radicare (M) Sdn Bhd v Fadzlina Tokiman [2006] 2 ILR 1327). The IRA (Second Schedule) restricts backpay to 12 months of wage for the probationers (24 months of wage for the ordinary employees). The Minimum Wages Order 2012 provides that the minimum wages rates may be reduced by at most 30% of the minimum wage rate for the first 6 months of the probationary contract.</p> <p>A survey implemented in 2007 by the Malaysian Employers Federation (MEF) found that the average length of probation period is six months for managerial workers and three months for other workers.</p>   |
| <b>7: Compensation following unfair dismissal (d)</b>     | <p>Back pay is usually awarded both in cases of reinstatement and compensation in lieu of reinstatement, with the statutory limitation as seen in the Second Schedule of the IRA (24 months but 12 months for probationers).</p> <p>The Second Schedule also stipulates that the loss of future earnings shall not be considered when deciding on compensation.</p> <p>Although the Industrial Court has plenary discretion in making an award of compensation, it is said that a practical rule is one month salary for one year of tenure (e.g. Lim Chu Chuan v. Volubill Malaysia Sdn Bhd, Award 978 of 2014).</p> <p>Calculation for EPL indicators: 6 months (backpay) + 20 months (compensation) = 26 months</p>  |

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| <b>8:</b> Reinstatement option for the employee following unfair dismissal (b)                              | Under the IRA, the Industrial Court may order an award which could be reinstatement or compensation in lieu of reinstatement. According to 2012 government statistics, reinstatements was awarded in about half of the cases adjudicated in favour of the employee (considering both those adjudicated by the Department of Industrial Relations (Director General) and those settled by Industrial Courts; cf. Ministry of Human Resources, <i>Labour and Human Resource Statistics</i> , 2012)                                 |
| <b>9:</b> Maximum time period after dismissal up to which an unfair dismissal claim can be made (e)         | The employee must file a complaint with the local office of the Director General within 60 days from the date of the dismissal (section 20 (1A) of the IRA). The Minister may refer unresolved disputes to the Industrial Court..  |
| <b>10:</b> Valid cases for use of standard fixed term contracts   | There is no regulation on the valid cases for use of a fixed-term contract in Malaysia. But the courts sometimes may invalidate a fixed-term contract, motivated by a mala fide intent. Where successive renewals without an objective basis for any temporary need have continued, and hence, such renewals may arise out of an abusive intention of circumventing employment protection, the court would determine a fixed-term contract as a disguised permanent contract. However, in practice, this case is extremely rare. |
| <b>11:</b> Maximum number of successive standard FTCs (initial contract plus renewals and/or prolongations) | There is no statutory regulation on the maximum number of successive fixed-term contracts in Malaysia. But where successive renewals without an objective basis for any temporary need have continued, and hence, such renewals may arise out of an abusive intention of circumventing employment protection, the court would determine a fixed-term contract as a disguised permanent contract. However, in practice, this case is extremely rare.  |
| <b>12:</b> Maximum cumulated duration of successive standard FTCs   | No limitation.   |
| <b>13:</b> Types of work for which temporary work agency (TWA) employment is legal                          | TWAs are recognised as “contractors for labour” in Section 2 EA (as modified by the 2012 Employment (Amendment) Act). Although this act does not specify whether the user firm or the contractor for labour should be considered the employer, Section 31 EA (on priority of wages over other debts) refers to workers of the contractor for labour as “his employees”.  |
| <b>14:</b> Are there restrictions on the number of renewals and/or prolongations of TWA assignments? (f)    | No restrictions (There is no regulation on the number of renewals and/or prolongations of the TWA assignments)   |
| <b>15:</b> Maximum cumulated duration of TWA assignments (f)  | No restrictions (There is no regulation on the maximum cumulated duration of the TWA assignments)  |
| <b>16:</b> Does the set-up of a TWA require authorisation or reporting obligations?                         | The EA requires the contractor for labour to register with the Director General within 14 days before supplying the employee and keep or maintain one or more registers containing information regarding each employee supplied. Non-compliance would result in sanctions. However, the Employment (Exemption) Order 2012 limits this provision to the agricultural sector.  |
| <b>17:</b> Do regulations ensure equal treatment of regular workers and agency workers at the user firm?    | There is no regulation on equal treatment of regular workers and TWA workers at the user firms, even though the employees of the contractors for labour are also protected by the EA or other labour law under the condition that the contractors for labour are the employers responsible for the duties imposed by the EA or other labour law for their employees.   |
| <b>18:</b> Definition of collective dismissal (b)   | There is no threshold triggering more restrictive procedures: although redundancy constitutes a reasonable cause for a dismissal, the same rule would apply regardless of the number of the dismissed.   |
| <b>19:</b> Additional notification requirements in cases of collective dismissal (g)                        | No regulations.  |
| <b>20:</b> Additional delays involved in cases of collective dismissal (h)                                  | No regulations.  |
| <b>21:</b> Other special costs to employers in case of collective dismissals (i)                            | No regulations.  |

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



## Malaysia

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.



## MONTENEGRO

| Items   | Regulations in force on 1 January 2013  |
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| <b>1:</b> Notification procedures in the case of individual dismissal of a worker with a regular contract | <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>  |
| <b>2:</b> Delay involved before notice can start  | <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>  |
| <b>3:</b> Length of notice period at different tenure durations (a)                                       | <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>  |
| <b>4:</b> Severance pay at different tenure durations (a)   | <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>   |
| <b>5:</b> Definition of unfair dismissal (b)  | <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"> <li>1) temporary absence from work due to illness, accident at work or professional disease;</li> <li>2) maternity, or parental, leave, absence from work for child care and absence from work due to special child care;</li> <li>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);</li> <li>4) acting as a representative of employees, in accordance with the law;</li> <li>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;</li> <li>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.</li> <li>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.</li> </ol> |
| <b>6:</b> Length of trial period (c)  | <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>   |
| <b>7:</b> Compensation following unfair dismissal (d)   | <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>   |

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| <b>8:</b> Reinstatement option for the employee following unfair dismissal (b)                              | (Art 143d paragraph 3, Labour law)<br>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.  |
| <b>9:</b> Maximum time period after dismissal up to which an unfair dismissal claim can be made (e)         | (Art.143d paragraph 1, Labour law)<br>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.   |
| <b>10:</b> Valid cases for use of standard fixed term contracts   | (Art. 25 paragraph 1,2 and 4, Labour law)<br>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.<br>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.<br>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.<br><br>(Art.34 Labour law)<br>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.<br><br>(Art. 39 paragraph 1, Labour law)<br>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.<br><br>Other cases laid down by law and/or branch collective agreement. |
| <b>11:</b> Maximum number of successive standard FTCs (initial contract plus renewals and/or prolongations) | No limit, within 2-year time limit for fixed term contracts  |
| <b>12:</b> Maximum cumulated duration of successive standard FTCs   | (Art. 25 paragraph 2, Labour law)<br>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.  |
| <b>13:</b> Types of work for which temporary work agency (TWA) employment is legal                          | (Art. 43b paragraph 3, Labour law)<br>Generally allowed, except for the purpose of:<br>1) substitution of employees during strike, in accordance with the law, with the beneficiary where the strike is on;<br>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;<br>3) performance of jobs within the scope of the activity of the Agency, and<br>4) performance of jobs in other cases established by a collective agreement which is binding for the beneficiary.   |
| <b>14:</b> Are there restrictions on the number of renewals and/or prolongations of TWA assignments? (f)    | No restrictions.   |
| <b>15:</b> 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.  |
| <b>16:</b> Does the set-up of a TWA require authorisation or reporting obligations?                         | (Art. 43a paragraph 2 and 3, Labour law)<br>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).<br>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.  |

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| <b>17:</b> Do regulations ensure equal treatment of regular workers and agency workers at the user firm? | (Art.43c paragraph 4, Labour law)<br>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.  |
| <b>18:</b> Definition of collective dismissal (b)  | (Art. 92 paragraph 1, Labour law)<br><br>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: <ol style="list-style-type: none"> <li>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;</li> <li>2) 10% employees with an employer employing at least 100, and maximum 300 employees with a contract of employment for an indefinite time period;</li> <li>3) 30 employees with an employer employing more than 300 employees with a contract of employment for an indefinite time period.</li> </ol> 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. |
| <b>19:</b> Additional notification requirements in cases of collective dismissal (g)                     | The Employment Agency is notified only in the case of collective dismissals. There is no notification to unions in the case of individual redundancy   |
| <b>20:</b> Additional delays involved in cases of collective dismissal (h)                               | (Art. 144)<br>A 30-day notice must be given to all workers.<br><br>(Art. 92)<br>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).  |
| <b>21:</b> Other special costs to employers in case of collective dismissals (i)                         | (Art.93 paragraph 1, Labour law)<br>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.<br><br>However, the implementation of the social plan might exempt the employer from paying the standard redundancy pay (Art. 94 Labour Law).   |

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.

**SERBIA**

| Items   | Regulations in force on 1 January 2015   |
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| <b>1:</b> Notification procedures in the case of individual dismissal of a worker with a regular contract | <p>Article 185 Labour Law stipulates that an employment contract shall be terminated by serving a pertinent notice, in writing and always with substantiation and advice on legal remedy. The notice shall be served in person, in the premises of the employer, or to the address, or place of residence of the employee</p> <p>In the case of dismissal for personal reasons, the employer must deliver a written warning to the employee describing the reasons behind the cancellation of the employment contract. The employee is entitled to a 8 day-period to comment on the allegations. If the employee consults with his/her trade union, the employer is obliged to consider also the opinion of the union (Art. 180 and 181 Labour Law).</p> <p>Calculation: average of personal reasons (1.5) and economic reasons (1). In the case of personal reasons the union will de facto be informed if the employee wishes it</p>   |
| <b>2:</b> Delay involved before notice can start  | <p>In the case of dismissal for personal reasons, the employer must deliver a written warning to the employee describing the reasons behind the cancellation of the employment contract.</p> <p>Calculation: average of personal reasons (1+8 days) and redundancy (1) = 5 days</p>  |
| <b>3:</b> Length of notice period at different tenure durations (a)                                       | <p>In case of employment contract termination due to lack of sufficient performance or lack of skills, the employee has the right to a notice period that is determined by the general document or employment contract. The notice period depends on the duration of insurance period, but it cannot be less than 8 days or more than 30 days. The notice periods starts to run on the day following the delivery of the dismissal notice (Article 189 of the Labour Act).</p> <p>Accordingly, the law prescribes a minimum and maximum length of the notice period (at least 8 days and maximum 30 days), but the actual length is determined by the general act or the employment contract and depends on the duration of insurance period.</p> <p>In the case of dismissal for economic reasons, a notice period is not foreseen and instead a severance pay is mandatory. The amount of severance pay depends on the years spent in employment with the employer who will be paying the severance (Article 158 of the Labour Act).</p> <p><u>Calculation:</u> average of personal reasons and redundancy<br/>           9 months tenure: <math>\leq 0.4</math> months<br/>           4 years tenure: <math>\leq 0.5</math> months<br/>           20 years tenure: <math>\leq 0.5</math> months</p> |
| <b>4:</b> Severance pay at different tenure durations (a)   | <p>The employer shall in the case of redundancy, i.e. due to technological, economic or organisational changes, pay a severance to the employee. (Article 158, paragraph 1)</p> <p>The amount of the severance pay is determined by the general document or employment contract, which however may not be lower than 1/3 of the employee's salary for each full year of service with the employer (Article 158, Paragraph 2).</p> <p><u>Calculation:</u> average of personal reasons and redundancy:</p> <p>Personal reasons:<br/>           No severance pay.</p> <p>Redundancy:<br/>           9 months: 0 months<br/>           4 years: 1.33 months<br/>           20 years: 6 months</p> <p>Average:<br/>           9 months: 0 months<br/>           4 years: 0.67 months<br/>           20 years: 3 months</p>  |

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| <p><b>5: Definition of unfair dismissal (b)</b></p>  | <p>Art. 179 Labour Law envisages, among the reasons for fair dismissal, lack of working ability (including when “the employee does not perform the required job efficiently or does not have the needed knowledge and abilities to perform the job on which he/she is employed”) and employer’s needs (including when “due to technological, economic or organizational changes, a particular job becomes redundant or the volume of work be reduced”).</p> <p>According to Article 183 of the Labour Law, the following reasons for termination of the labour contract, in terms of Article 179 of Labour law, shall not be considered justified:</p> <ol style="list-style-type: none"> <li>1) Temporary inability to work due to illness, injury at work or occupational disease;</li> <li>2) maternity leave, absence for work for childcare or special care of the child;</li> <li>3) military service;</li> <li>4) membership in a political organization, trade union, gender, language, ethnicity, social origin, religion, political or other belief or any other personal feature of the employee;</li> <li>5) activity in the capacity of representative of employees, pursuant to this Law;</li> <li>6) filing a complaint to the trade union or competent bodies for protection of rights resulting from labour relationship pursuant to the law, general document and labour contract.</li> </ol>   |
| <p><b>6: Length of trial period (c )</b></p>   | <p>According to Article 36, para. 2 and 3, the probation period can last for 6 months at most.</p> <p>Prior to the expiration of the probation period, the employer or employee may terminate the employment contract with a notice period of five days. The employer is obliged to justify termination of employment.</p> <p>Should an employee fail to substantiate required work and professional competence during the probation period, the labour relations shall be deemed terminated with the expiry of the fixed term probation period.</p>  |
| <p><b>7: Compensation following unfair dismissal (d)</b></p>   | <p>According to Article 191 para. 1-4. of the Labour Law, if the court, during the proceedings, establishes that the termination of employment was without legal basis, it will decide (at the request of the employee) that the employee may return to work, and that the employee must be compensated for damages caused as well as that the employer must pay contributions for social insurance for the period in which the employee has not worked.</p> <p>The compensation referred to in paragraph 1 of this Article shall be in the amount of lost revenues, including deduction of the corresponding taxes and contributions in accordance with the law.</p> <p>If the court, during the proceedings, establishes that the termination of employment was without legal basis, and the employee is not willing to return to work, the court will, at the request of the employee, oblige the employer to pay a compensation for damages in the amount of a maximum of 18 monthly salaries, depending on the time spent in employment, years of age and number of dependent family members (Article 191, Labour Law, paragraph 5). If the court during the proceedings establishes that the employer terminated the employment contract without any legal basis, but in the course of the proceedings the employer can prove that circumstances exist which reasonably indicate that the continuation of the employment relationship is not possible (taking into account all circumstances and interests of both parties), the court will reject the employee’s request to return to work and determine a compensation of double the amount determined in paragraph 5 of Article 191 (Article 191, paragraph 6). However, if, during the proceedings, the court determines there was legal basis for termination of employment relationship but the employer acted contrary to the provisions of the law governing proceedings for termination of employment relationship, the court shall reject the request of the employee to return to work and order him\her to pay the compensation for damages in the amount of six monthly wages (Art. 191, paragraph 7).</p> <p><u>Calculation</u> (average of mean and maximum values): average of irregular procedure (6 months), indemnity in lieu of reinstatement (9 and 18 months) and indemnity in the case of impossible reinstatement (18 and 36 months): 15.5 months</p> |
| <p><b>8: Reinstatement option for the employee following unfair dismissal (b)</b></p>                              | <p>According to Article 191 para. 1-4. of the Labour Law, if the court, during the proceedings, establishes that the termination of employment was without legal basis, it will decide (at the request of the employee) that the employee may return to work, and that the employee must be compensated for damages caused as well as that the employee must pay contributions for social insurance for the period in which the employee has not worked.</p> <p>If the court during the proceedings establishes that the employer terminated the employment contract without any legal basis, but in the course of the proceedings the employer can prove that circumstances exist which reasonably indicate that the continuation of the employment relationship is not possible (taking into account all circumstances and interests of both parties), the court will reject the employee’s request to return to work and determine a compensation of double the amount determined in paragraph 5 of Article 191 (Article 191, paragraph 6).</p>  |
| <p><b>9: Maximum time period after dismissal up to which an unfair dismissal claim can be made (e)</b></p>         | <p>The deadline to file a case before a competent court is 60 days after the decision has been served to the employee (Article 195 of the Labour Act).</p> <p>Calculation: average of personal reasons and redundancy 60 days – (1/2)*30 days (maximum notice period in the case of individual dismissal in the case of personal reasons): 1.5 months</p>   |
| <p><b>10: Valid cases for use of standard fixed term contracts</b></p>   | <p>The employment contract may be concluded for a fixed term for employment whose duration is determined in advance by objective reasons due to a deadline or performance of a specific task or occurrence of a specified event (Art. 37 .para. 1 of the Labour Law).</p>   |
| <p><b>11: Maximum number of successive standard FTCs (initial contract plus renewals and/or prolongations)</b></p> | <p>Without limitation within two years (Article 37 paragraphs 1-3).</p> <p>There are no limits when it comes to the exceptions set for fixed-term work (replacing an absent employee, project work, employing a foreign national who renews his work permit).</p>   |

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| <b>12: Maximum cumulated duration of successive standard FTCs</b>  | <p>The employer may conclude one or more successive contracts for a specified time with the same employee with or without interruptions; the overall period cannot be longer than 24 months.</p> <p>The law provides exceptions when the fixed term contract may be concluded for a longer period (Article 37 paragraph 4, Labour Law):</p> <ol style="list-style-type: none"> <li>1) if it is necessary to substitute a temporarily absent employee (until his/her return);</li> <li>2) to work on a project where the timeline is predetermined (until the project is completed);</li> <li>3) in the case of a foreign citizen (no longer than the period for which the work permit was issued);</li> <li>4) to work for a newly established employer whose registration with the competent authority is not older than one year (at the time when the contract is signed) although the total time shall not exceed 36 months;</li> <li>5) in the case of unemployed for whom it takes less than 5 years to meet one of the conditions for entitlement to old-age pension in accordance with the regulations of pension and disability insurance (until one of the conditions is met).</li> </ol> <p><u>Calculation:</u> average of standard case (24 months) and new business (36 months)</p> |
| <b>13: Types of work for which temporary work agency (TWA) employment is legal</b>                       | It is not regulated by law.  |
| <b>14: Are there restrictions on the number of renewals and/or prolongations of TWA assignments? (f)</b> | It is not regulated by law.  |
| <b>15: Maximum cumulated duration of TWA assignments (f)</b>   | It is not regulated by law.  |
| <b>16: Does the set-up of a TWA require authorisation or reporting obligations?</b>                      | It is not regulated by law.  |
| <b>17: Do regulations ensure equal treatment of regular workers and agency workers at the user firm?</b> | It is not regulated by law.  |
| <b>18: Definition of collective dismissal (b)</b>  | <p>Special requirements apply in the case of redundancy of:</p> <ol style="list-style-type: none"> <li>1) 10 employees for employers who has more than 20 and less than 100 staff employed for an indefinite term;</li> <li>2) 10% employees for employers who has at least 100 and less than 300 staff employed for an indefinite term; or</li> <li>3) 30 employees for employers who has more than 300 staff employed for an indefinite term;</li> </ol> <p>The same applies if at least 20 employees become redundant within a 90-day period (Article 153, paragraph 2).</p>  |
| <b>19: Additional notification requirements in cases of collective dismissal (g)</b>                     | <p>The employer shall, before enacting the redundancy program, in collaboration with the representative trade union of such employer and national agency in charge of employment, undertake relevant measures for finding new employment for the redundant employees. (Article 154 of the Labour Act).</p> <p>The employer shall submit the proposal of redundancy program to the National Agency for Employment eight days after the program proposal has been set at the latest, inviting the advice of the agency. (Article 155, paragraph 2 of the Labour Act)</p>   |
| <b>20: Additional delays involved in cases of collective dismissal (h)</b>                               | <p>The trade union shall voice the opinion on the proposed program 15 days after the proposed program has been received at the latest. The national employment agency shall, submit to the employer a proposal on measures for prevention or minimizing the number of terminations of the labour contracts, i.e. provide for re-training, additional training, self-employment and other measures for new employment of redundant employees. The employer shall consider and take into account the proposals of the national employment agency and trade union and inform them about his/her position within an eight day term. (Article 156 of the Labour Act)</p> <p><u>Calculation:</u> 15 days (for the trade union to comment on the proposed programme) + 8 days (for the employer to react to the proposed changes) + 1 day (letter) – 5 days as reported in Item 5: 19 days</p>  |
| <b>21: Other special costs to employers in case of collective dismissals (i)</b>                         | In the case of collective dismissals, the employer has the obligation of establishing a social plan associated with the adoption of redundancy programmes; the plan has to involve compensatory salary or re-employment measures (including retraining or additional training) in co-operation with the National Employment Agency (Art. 154-156 Labour Law).  |





## Serbia

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.

## THAILAND

| Items   | Regulations in force on 1 January 2014  |
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| <b>1:</b> Notification procedures in the case of individual dismissal of a worker with a regular contract | <p>Generally, a written notice is required to terminate an open-ended contract. The Labour Protection Act (section 17) provides that either party can terminate an open-ended contract by giving a prior notice in writing of at least one month, with an exception of grave misconduct, as stipulated in section 119. The employer can immediately terminate with payment for the wage equivalent to the notice period in lieu of such notice.</p> <p>In case of dismissal because of redundancy, the employer must send a notification indicating the date, the reasons and name(s) of the employee(s) to the labour inspector and those to be dismissed at least 60 days prior to implementation of such dismissal. In the case of failure to notice, the employer must pay 60 day's wage to those to be dismissed (the Labour Protection Act section 121).</p> <p>To dismiss a member of the employees' committee, the employer must receive a permission from the labour court in advance (the Labour Relations Act section 52)</p> <p>Calculation: <b>1.5</b> = unweighted average of personal reasons (1) and redundancy (2)</p> |
| <b>2:</b> Delay involved before notice can start  | <p>The Labour Protection Act (section 119) provides that the employer should give a warning in writing for violation of work rules, regulations, or orders of the employer, except in the case of a serious violation or a grave misconduct (a warning is not necessary in this case), to dismiss an employee for a disciplinary cause. There is no requirement for mail or registered mail in delivery of the notice.</p> <p>Calculation: 1 day for notice plus 6/2 for warning (applies only to personal reasons)</p>   |
| <b>3:</b> Length of notice period at different tenure durations (a)                                       | <p>Ordinary individual dismissal: the notice should be given at least one wage payment period before effective termination (normally one month). There are exceptions (See item 1 above)</p> <p>Dismissal because of redundancy: the notice period is at least 60 days.</p> <p>There is no variation based upon length of tenure.</p> <p>An equivalent amount of wage corresponding to the notice period can be given in lieu of the notice (See item 1 above)</p> <p>Calculation: average of redundancy and personal reasons</p>   |

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| <b>4: Severance pay at different tenure durations (a)</b> | <p>Ordinary individual dismissal: a mandatory severance pay must be paid except the cases provided in the section 119 (See below) of the Labour Protection Act. The minimum requirement for the eligibility is at least 120 consecutive days tenure and the amount of the severance pay varies based on the length of tenure as below (section 118 of the Labour Protection Act).</p> <p> <math>\leq 120</math> days, &lt; one year: at least 30 days' basic pay<br/> <math>\leq</math> one year, &lt; three years: at least 90 days' basic pay<br/> <math>\leq</math> three years, &lt; six years: at least 180 days' basic pay<br/> <math>\leq</math> six years, &lt; ten years: at least 240 days' basic pay<br/> <math>\leq</math> ten or more years: at least 300 days' basic pay         </p> <p>Misconducts that exempt an employer of duty to severance pay are:</p> <p>(1) performing his/her duty dishonestly or intentionally committing a criminal offence against the Employer;</p> <p>(2) willfully causing damage to the Employer;</p> <p>(3) committing negligent acts causing serious damage to the Employer;</p> <p>(4) violating work rule, regulation or order of the Employer which is lawful and just, and after written warning having been given by the Employer, except for a serious case with no requirement for the Employer to give warning. The written warning shall be valid of not exceeding one year from the date when the employee commits the offence;</p> <p>(5) absenting himself/herself from duty without justifiable reason for three consecutive working days regardless of whether there is holiday in between;</p> <p>(6) being sentenced to imprisonment by a final court judgment. In item (6), if the imprisonment is for offences committed by negligence or a petty offense, it shall be the offense causing damage to the Employer.</p> <p>Dismissal because of redundancy: a special severance pay must be paid to the employees with six years or more tenure in addition to the ordinary severance pay. This special severance pay should be at least 15 days' basic pay per each year but with an overall severance-pay ceiling of 360 days' basic pay (section 122 of the Labour Protection Act).</p> <p>Calculation: average of redundancy and personal reasons<br/>           9 months tenure: 1 month<br/>           4 years tenure: 6 months<br/>           20 years tenure: <math>(10+12)/2 = 11</math> months</p> |
| <b>5: Definition of unfair dismissal (b)</b>              | <p>The Labour Protection Act provides that either of the employer and employee can terminate an open-ended contract with a due notice. But Thai courts may consider a dismissal as unfair on the ground of lack of a reasonable cause. But the scope of reasonable cause for a fair dismissal is relatively wide. For example, lack of capability is a sufficiently reasonable cause for a dismissal, if clear evidence is provided in its support. However, the employer is requested to take the relevant measures to improve the employee's capability or performance, although such a request does not have to mandatorily include transfer of job or provision of job training.</p> <p>The Act on the Establishment of and Procedure for Labour Court (section 48) requires the court to consider a vast range of social and economic factors in order to provide fairness to both parties in the trial of a labour case, including the unfair dismissal case.</p> <p>Thai law also have some prohibited grounds for a dismissal, e.g. a dismissal because of pregnancy or union activities.</p> <p>Redundancy also constitutes a reasonable cause for a dismissal. The Labour Protection Act allows a wide range of circumstances that could cause redundancy as reasonable causes for a dismissal, including "improvements to the working unit, production, distribution or service processes, arising from the utilization of machinery or a change of machinery or technology, and which is the cause of the reduction in the number of employees".</p> <p>Calculation: 1 because reasonable cause is needed and, more important, social and economic aspects should be taken into account</p>   |
| <b>6: Length of trial period (c )</b>                     | <p>There is no regulation on the trial period or probation, except that the Labour Protection Act provides that "a probationary contract shall also be deemed as an indefinite period contract of employment." But this does not mean that a probationary employee is given the same employment protection as a regular worker. However, he/she is eligible for the severance pay, and hence, the maximum period of a probation period is generally up to 119 days in practice.</p>   |

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| <b>7: Compensation following unfair dismissal (d)</b>   | <p>Under the Act on the Establishment of and Procedure for Labour Court (section 49), the labour court has power to order a reinstatement of the dismissed employee at the same level of wage at the time of dismissal or a payment of compensation if the court thinks that the dismissed employee and the employer cannot work together. The amount of such compensation is decided by the court in consideration of various factors including age of the employee, the working period, the employee's hardship, the cause of dismissal and the compensation the employee is entitled to receive.</p> <p>The compensation includes compensatory damage in the future. But other damages such as physical pains or emotional distress are rarely accepted by the court. A practical standard in calculation of such compensation is one month's wage per one year of tenure.</p>  |
| <b>8: Reinstatement option for the employee following unfair dismissal (b)</b>                              | <p>The Act on the Establishment of and Procedure for Labour Court (section 49) provides that "...if the labour court thinks the dismissal is unfair, it shall order the employer to reinstate the employee at the same level of wage at the time of dismissal. However, if the labour court thinks that such employee and employer cannot work together, it shall fix the amount of compensation to be paid by the employer...". Thus, an ordinary remedy for an unfair dismissal is reinstatement and compensation is a supplementary one, where a certain condition is met and hence reinstatement may not be awarded.</p>   |
| <b>9: Maximum time period after dismissal up to which an unfair dismissal claim can be made (e)</b>         | <p>There is no time restriction for filing a complaint of an unfair dismissal with the court in the Labour Protection Act or The Act on the Establishment of and Procedure for Labour Court. But the Civil and Commercial Code (section 448) provides that a complaint for damages arising out of a wrongful act should be brought within one year from the date when the injured person became to know about the wrongful act or ten years from the date when the wrongful act was committed.</p> <p>Calculation: based on the assumption that an unfair dismissal lack of a reasonable reason could be regarded as a wrongful act and the dismissed employee may know about the wrongful termination at the time of dismissal or notice.</p>   |
| <b>10: Valid cases for use of standard fixed term contracts</b>   | <p>A fixed-term contracts are permitted only for "objective" or "material situation", i.e. to perform a task which itself is of fixed duration and there is no exception for such requirement, such as the employer's need (e.g. launching a new activity) or the employee's need (e.g. searching first job)</p> <p>The Labour Protection Act (section 118) provides that "A fixed-term contract is allowed "in the case of employment on a special project, which is not in the normal way of business or trade of the employer, where there is a fixed schedule for commencement and completion of work; or for work of a temporary nature with a fixed schedule for its commencement or completion; or for seasonal work in respect of which employees are only engaged during that season; provided that the work must be completed within a period of two years and the employer and employee have entered into a written agreement at or prior to the commencement of employment."</p> |
| <b>11: Maximum number of successive standard FTCs (initial contract plus renewals and/or prolongations)</b> | <p>Although there is no regulation on the maximum number of successive standard of FTCs, Thai court is very strict on the matter of renewal or extension of a fixed-term contract. The Labour Protection Act (section 118) limits the time constraint for a fixed-term contract up to maximum two years.</p>   |
| <b>12: Maximum cumulated duration of successive standard FTCs</b>   | <p>See item 11.</p>  |
| <b>13: Types of work for which temporary work agency (TWA) employment is legal</b>                          | <p>Thai law does not clearly recognise the TWA relationship. The Labour Protection Act (section 11/1) provides that the user firm take up the employer's responsibility over the workers of a third party if they work in the genuine or essential part of the user firm's business, except for the case where the third party is a licenced employment service agency. In this sense, licenced employment service agencies may do the TWA service business and there is no restriction in terms of industry or occupation.</p>  |
| <b>14: Are there restrictions on the number of renewals and/or prolongations of TWA assignments? (f)</b>    | <p>No restrictions (There is no regulation on the number of renewals and/or prolongations of the TWA assignments)</p>  |
| <b>15: Maximum cumulated duration of TWA assignments (f)</b>  | <p>No restrictions (There is no regulation on the maximum cumulated duration of the TWA assignments)</p>   |
| <b>16: Does the set-up of a TWA require authorisation or reporting obligations?</b>                         | <p>Under the Employment and Job-Seeker Protection Act, an employment service agency must obtain a licence from the authority. It also has duty to report periodically (on a monthly basis) the record of its business implementation to the authority.</p>   |
| <b>17: Do regulations ensure equal treatment of regular workers and agency workers at the user firm?</b>    | <p>The Labour Protection Act (section 11/1 second paragraph) requires the user firm to ensure a fair and equal treatment for the workers who perform work in the same manner as employees of the user firm. This is to ensure fair benefits and welfare without discrimination for the workers of a third party who work in the user firm. Thus, the protection would include both wages and working conditions.</p>   |

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| <b>18: Definition of collective dismissal (b)</b>                                    | There is no threshold number for a dismissal to be a collective one, although redundancy constitutes a reasonable cause for a dismissal, where the same rule would apply regardless of the number of the dismissed. |
| <b>19: Additional notification requirements in cases of collective dismissal (g)</b> | No regulations.   |
| <b>20: Additional delays involved in cases of collective dismissal (h)</b>           | No regulations.   |
| <b>21: Other special costs to employers in case of collective dismissals (i)</b>     | No regulations.   |

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.

**TUNISIA**

| Items   | Regulations in force on 1 January 2014   |
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| <b>1:</b> Notification procedures in the case of individual dismissal of a worker with a regular contract | <p>In the case of individual dismissal of a worker with a regular contract, notification procedures vary according to the reason :</p> <ul style="list-style-type: none"> <li>-</li> </ul> <p>Dismissal on <b>personal grounds</b>:</p> <ul style="list-style-type: none"> <li>- This type of dismissal, related to disciplinary reasons, is subject to procedural requirements (questionnaires, defence in front of a disciplinary committee), and substantive requirements (previous disciplinary events, fault – real and serious cause).</li> <li>- Notify the employee by registered letter (or by letter delivered personally with acknowledgment of receipt), specifying the cause of dismissal.</li> <li>- comply with a notice period.</li> </ul> <p>Dismissal on <b>economic grounds</b>:</p> <ul style="list-style-type: none"> <li>- send a request for authorisation of the labour inspector (<i>inspecteur du travail</i>), specifying the economic causes.</li> <li>- the labour authority (<i>commission de contrôle des licenciements</i>) issues an opinion in favour or against the dismissal</li> <li>- the employer is not obliged to follow the opinion of the labour authority</li> </ul> <p>The dismissal of a worker representative or trade-union officer requires authorisation of the labour inspector and a hearing in front of the disciplinary committee.</p> |
| <b>2:</b> Delay involved before notice can start  | <p>Dismissal on <b>personal grounds</b>:</p> <ul style="list-style-type: none"> <li>- This type of dismissal, related to disciplinary reasons, is subject to procedural requirements (questionnaires, defence in front of a disciplinary committee), and substantive requirements (previous disciplinary events, fault – real and serious cause).</li> </ul> <p>Dismissal on <b>economic grounds</b>:</p> <p>Conciliation with mediation of the <i>Inspection du Travail</i> (15 days max). If no agreement, the labour authority (<i>commission de contrôle des licenciements</i>) issues an opinion within 15 days.</p> <p>In both cases :</p> <p>Notification to the employee by registered letter (or by letter delivered personally with acknowledgment of receipt), specifying the cause of dismissal.</p> <p>Calculation : average of personal reasons (6+3) and economic reasons (with and without agreement: 15 +15/2 +3) = 17.25 days</p>  |
| <b>3:</b> Length of notice period at different tenure durations (a)                                       | <p>1 month for all open-ended contracts whatever the job tenure of the worker. Collective agreements may set a different duration. In some cases the latter differs across occupations (blue collars, clerks, technicians, supervisors).</p>   |



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| <p>4: Severance pay at different tenure durations (a)</p> | <ul style="list-style-type: none"> <li>✓ Any worker dismissed after the expiration of the probationary period is entitled to severance pay, except in cases of dismissal for fault.</li> <li>✓ Severance pay is calculated as one day per month in the same firm, on the basis of the last wage and taking into account all bonuses and benefits.</li> <li>✓ Severance pay cannot exceed 3 months, except when collective agreements stipulate conditions more favourable to workers</li> </ul> <p>Many collective agreements (e.g. insurance, construction, hotels, restaurants, trade, and textile industries) entail higher severance pay (most frequently 1 month per year of tenure with an upper limit of 6-12 months or more)</p> <p>Calculation : average of most frequent minimum and maximum values :<br/>           9 months=<math>(0.3+0.75)/2=0.525</math><br/>           4 years=<math>(1.6+4)/2=2.8</math><br/>           20 years=<math>(3+9)/2=6</math></p>   |
| <p>5: Definition of unfair dismissal (b)</p>              | <p><b>Fair:</b> There must be real and serious grounds for a dismissal to be deemed fair. Grounds may be personal, economic or technical.</p> <p><u>Dismissal on personal grounds:</u> the employer must justify grounds that are valid and related to the individual in order to proceed with dismissal (professional misconduct, incompetence, inaptitude, etc.). The term "faute grave" employed by the labour code and the framework collective agreement (Art. 37) suggests that this type of dismissal relate essentially to disciplinary issues.</p> <p><u>Dismissal on economic or technological grounds:</u> possible for technological or economic reasons. Art. 21 of the labour code makes reference to the suppression of all or part of an establishment for economic or technical reasons. However the high court (<i>cour de cassation</i>) accepted that the art. 21 LC be applied to the case of one single employee due to its lack of capability to work on a new machine, replacing an older one (C. Cass., arrêt n° 4510 du 27/03/1980). The employer can claim the following reasons : business closing ; firm re-organisation ; temporary reduction of activities ; lack of demand ; downsizing ; restructuring ; preventive measures to adapt to technological change. Yet, the applications for economic dismissal that are more likely to be approved by the <i>commission de contrôle</i> must present serious reasons, notably linked to financial difficulties or important contraction of demand.</p> <p><b>Unfair:</b> An <u>unfair dismissal</u> is a dismissal that is not based on real and serious grounds or that is implemented without respecting the procedures set in the labour code or collective agreements.</p> <p>The judge will evaluate whether the grounds are real and serious and whether procedures have been respected. It can order any type of investigation.</p> <p>Dismissals made without asking for the opinion of the <i>commission de contrôle du licenciement</i> are unfair, except in cases of force majeure or in the presence of an agreement among the parties.</p> <p>Calculation: 2.5 (because personal reasons – without fault – are rarely real and serious grounds).</p> |
| <p>6: Length of trial period (c)</p>                      | <p>In open-ended contracts, the probationary period is regulated by collective agreements, individual contracts, customs and the law.</p> <p>In the framework collective agreement and in most other collective agreements the probationary period is:</p> <ul style="list-style-type: none"> <li>- 6 month for execution employees,</li> <li>- 9 month for technician,</li> <li>- 1 year for manager and supervisors.</li> </ul> <p>This period can be renewed once or reduced by mutual agreement.</p> <p>Calculation : average of execution employees and supervisors, assuming a 50% probability of renewal :<br/> <math>(9+18)/2=13.5</math></p>  |

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| <b>7: Compensation following unfair dismissal (d)</b>   | <p>In the case of fixed-term contracts, compensation for unfair termination is equal to the salaries due until the end date of the contract.</p> <ul style="list-style-type: none"> <li>✓ Beyond advance notice and severance pay, the compensation for unfair dismissal varies between one and two months of wage for each year of service, with a ceiling at three years of wage. The amount is fixed by the judge taking into account the worker's qualification, tenure, age, wage, family situation as well as the impact of dismissal on pension entitlements, the respect of procedures and other circumstances</li> <li>✓ If the dismissal is justified by a real and serious cause but procedures have not been respected, compensation varies between one and four months of wage. The amount is fixed taking into account the nature of the procedures and their effects on the worker's rights.</li> </ul> <p>The base of computation remains the wage of the worker at the time of dismissal</p> <p>Calculation : average of the two cases : <math>(30+2.5)/2=16.25</math></p> |
| <b>8: Reinstatement option for the employee following unfair dismissal (b)</b>                              | Tunisian legislation does not envisage the possibility of nullifying the dismissal decision. As a consequence, reinstatement is possible only in agreement with the employer.   |
| <b>9: Maximum time period after dismissal up to which an unfair dismissal claim can be made (e)</b>         | Any complaint for unlawful termination of labour contracts should be filed with the competent court ( <i>conseil de prud'hommes</i> ), within one year after termination.   |
| <b>10: Valid cases for use of standard fixed term contracts</b>   | <ul style="list-style-type: none"> <li>✓ A fixed-term contract is permitted in the following cases : <ul style="list-style-type: none"> <li>- To accomplish work in the first establishment or new tasks ;</li> <li>- To accomplish work arising from an extraordinary increase in demand;</li> <li>- The provisional replacement of an absent or suspended permanent worker;</li> <li>- Urgent repair and safety works ;</li> <li>- Seasonal work or work where it is not customary to resort to permanent contracts.</li> </ul> </li> <li>✓ By mutual agreement, a fixed-term contract can also be concluded in other cases, under the condition that overall duration, including renewals, does not exceed 4 years.</li> </ul> <p>Calculation: the possibility of derogating to the list of valid cases by mutual agreement is taken into account.</p>   |
| <b>11: Maximum number of successive standard FTCs (initial contract plus renewals and/or prolongations)</b> | No special provision in the labour code on the number of renewals.  |
| <b>12: Maximum cumulated duration of successive standard FTCs</b>   | The maximum cumulated duration of a fixed-term contract cannot exceed 4 years including renewals. After the expiration of this term, any recruitment of a worker would be considered on an open-ended contract without probationary period.   |
| <b>13: Types of work for which temporary work agency (TWA) employment is legal</b>                          | <p>No restriction</p> <p>However the jurisprudence has established some limits to the use of outsourcing workers previously employed by the user-firm. In the absence of serious need, resorting to outsourcing will have no effect on the previously-started employment relationship.</p>  |
| <b>14: Are there restrictions on the number of renewals and/or prolongations of TWA assignments? (f)</b>    | No limits   |
| <b>15: Maximum cumulated duration of TWA assignments (f)</b>  | <p>Assignments: No limits.</p> <p>Contracts : same rules as for fixed-term and open-ended contracts</p>   |
| <b>16: Does the set-up of a TWA require authorisation or reporting obligations?</b>                         | Same rules as for any other firm.   |
| <b>17: Do regulations ensure equal treatment of regular workers and agency workers at the user firm?</b>    | No specific provision.  |
| <b>18: Definition of collective dismissal (b)</b>   | No specific provision.  |
| <b>19: Additional notification requirements in cases of collective dismissal (g)</b>                        | Not applicable  |

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| <b>20:</b> Additional delays involved in cases of collective dismissal (h)       | Not applicable |
| <b>21:</b> Other special costs to employers in case of collective dismissals (i) | Not applicable |

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.