

Items	Regulations in force on 1 January 2019
<p>1: Notification procedures in the case of individual dismissal of a worker with a regular contract</p>	<p>A written dismissal letter is always mandatory. This letter must state the legal cause of termination and the facts supporting such cause (article 231 and 235 Labour Contract Law – LCT).</p> <p>The termination letter plays a key role in determining whether a dismissal is for just cause. 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, 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 dismissal decision. Just cause is a serious breach of the labour contract (gross misconduct or offence).</p> <p>Written notification applies both to dismissals for personal reasons and for economic reasons (article 231, 243 and 247).</p> <p>Value (for EPL indicators): average of dismissal without just cause (0) and redundancy (1).</p> <p>As of a certain number of dismissals (see Item 18): see item 19</p>
<p>2: Delay involved before notice can start</p>	<p>Notice starts the day after the notification its receipt by the employee (Article 233 of the LCT). Decree 1043 of November 12, 2018: until March 31 of 2019, in the event of dismissal without just cause, employers must communicate the decision to the Ministry of Production and Work at least 10 days before making it effective.</p> <p>Calculation (for EPL indicators): average of dismissal without just cause (10 days) and redundancy (1 day)</p> <p>As of a certain number of dismissals (see Item 18): see item 20</p>
<p>3: Length of notice period at different tenure durations (a)</p>	<p>Length of notice period depends on tenure duration:</p> <p>a) 15 d: Probationary period. b) 1 m < 5 y. c) 2 m > 5 y.</p> <p>Payment in lieu of notice is permitted (article 232 LCT).</p> <p>Calculation (for EPL indicators): average of cases with and without payment in lieu of notice: 9 months: 0.5 month, 4 years: 0.5 month, 20 years: 1 months</p>
<p>4: Severance pay at different tenure durations (a)</p>	<p>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).</p> <p>No severance payment applies for dismissal with just cause (article 242 LCT).</p> <p>Severance payment for employees dismissed for redundancy is equivalent to half of compensation for dismissal without just cause (articles 245, 247 LCT). This also applies in case of force majeure, death of the employer or the employee or bankruptcy (without fault of the employer).</p> <p>Severance payment is exempted from income tax (Law N° 20.628 "Impuesto a las Ganancias")</p> <p>Calculation (for EPL indicators): average of redundancy and dismissal without cause, and average of cases with/without payment in lieu of notice: 9 months: 1.25 months, 4 years: 3.5 months, 20 years: 16 months.</p>
<p>5: Definition of unfair dismissal (b)</p>	<p>Dismissal can be for redundancy (<i>por falta o disminución de trabajo</i>), with justified reason (<i>por justa causa</i>) or with no justified reason (<i>sin justa causa</i>). In the case of redundancy, the employer must prove that the reduction of activity is not his/her responsibility and must apply a last-in first-out rule.</p> <p>A justified reason for dismissal is not explicitly defined but typically corresponds to serious misconduct or offence (employee's fault, not computed for EPL indicators).</p> <p>However, employers can always dismiss workers with no justified reason provided that advance notice is respected and severance payments are observed, except in cases of discrimination and of those categories of employees enjoying special protection (i.e. pregnant women, union representatives).</p> <p>As of a certain number of dismissals (see Item 18) in firms with 50 employees or more: A compensation plan must be proposed (Decree N° 2074/94).</p>
<p>6: Length of trial period (c)</p>	<p>3 months (article 92 bis LCT). 15 days prior notice period is required or pay in lieu of notice (articles 231 and 232).</p>

<p>7: Compensation following unfair dismissal (d)</p>	<p>In the event of unfair dismissal of regular workers, the current legal framework envisages two options in challenging such dismissal:</p> <p>1.- In case just cause for dismissal is not proved at Court when challenged by the employee, compensation is equal to severance payment for dismissal without cause (article 245).</p> <p>2.- If dismissal for economic reasons is not proved, compensation is equal to severance payment for dismissal without cause (article 245) instead of 50% (article 247).</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 tenure: 5 months (compensation 20 months minus average severance pay 15 months).</p>
<p>8: Reinstatement option for the employee following unfair dismissal (b)</p>	<p>No right or practice of reinstatement except in case of discrimination on the grounds of race, religion, nationality, ideology, union affiliation, sex (Law N° 23.592).</p> <p>Value (for EPL indicators): 0</p>
<p>9: Maximum time period after dismissal up to which an unfair dismissal claim can be made (e)</p>	<p>2 years (article 256 LCT).</p>
<p>10: Valid cases for use of standard fixed term contracts</p>	<p>The use of fixed-term contracts is possible only if: a) duration is expressed in written (article 90 a LC), b) activity or task is of limited duration (article 90 b LC). The burden of proving the justification is on the employer (article 92 LCT).</p>
<p>11: Maximum number of successive standard FTCs (initial contract plus renewals and/or prolongations)</p>	<p>No limitation within the maximum duration but if more than one renewal is made, it would most likely be considered as masking a long-term relationship.</p> <p>Calculation (for EPL indicators): estimated number of successive contracts: 2</p>
<p>12: Maximum cumulated duration of successive standard FTCs</p>	<p>5 years (article 93 LCT).</p>
<p>13: Types of work for which temporary work agency (TWA) employment is legal</p>	<p>TWA employment is allowed: to replace an absent or suspended employee, except when the suspension is the result of a strike or lack or reduction of work; in the case of temporary increase in activity requiring a greater number of workers; and to perform transitional tasks to be accomplished outside the usual and ordinary course of the business user.</p> <p>Value (for EPL indicators): 2 (only allowed for objective reasons)</p>
<p>14: Are there restrictions on the number of renewals and/or prolongations of TWA assignments? (f)</p>	<p>No limitations for both assignments and contracts (same limitations as for standard FTCs if contracts are fixed-term).</p>
<p>15: Maximum cumulated duration of TWA assignments (f)</p>	<p>No limitations for both assignments and contracts (same limitations as for standard FTCs if contracts are fixed-term).</p>
<p>16: Does the set-up of a TWA require authorisation or reporting obligations?</p>	<p>The set-up of a TWA requires registration and authorisation. There is also an obligation to regularly report to public authorities on operational statistics.</p>
<p>17: Do regulations ensure equal treatment of regular workers and agency workers at the user firm?</p>	<p>Yes.</p>
<p>18: Definition of collective dismissal (b)</p>	<p>Collective dismissals due to economic or technological reasons when involving:</p> <ul style="list-style-type: none"> - more than 15% of workers in undertakings employing less than 400 employees. - more than 10% of workers in undertakings employing between 400 and 1000 workers. - more than 5% of workers in undertakings employing more than 1000 workers. <p>If this threshold is reached, a compulsory crisis prevention procedure must be followed (article 98 Law 24.013).</p>
<p>19: Additional notification requirements in cases of collective dismissal (g)</p>	<p>A procedure before the Labour Ministry must be follow. This implies a) Consultation with trade union representatives, b) Notification to the public administration, c) Approval by the Labour Ministry (articles 98-105 Law 24.013).</p>

<p>20: Additional delays involved in cases of collective dismissal (h)</p>	<p>Duration of the mandatory crisis prevention procedure. Employer or trade union must file a petition before the Labour Ministry. The Ministry will summon the parties to a hearing 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 reach an agreement, the Labour Ministry, after analysing its content, may homologate or reject such agreement within 10 days. If the Administration does not decide within 10 days, the agreement will be considered authorised.</p>
<p>21: Other special costs to employers in case of collective dismissals (i)</p>	<p>Companies with more than 50 employees must propose a compensation plan (Decree N° 2074/94).</p>
<p>22: The worker alone has the burden of proof when filing a complaint for unfair dismissal</p>	<p>No.</p>
<p>23: Ex-ante validation of the dismissal limiting the scope of unfair dismissal complaints</p>	<p>As of a certain number of dismissals (see Item 18): crisis prevention procedure acts as a pre-dismissal validation.</p>
<p>24: Pre-termination resolution mechanisms granting unemployment benefits</p>	<p>Unemployment benefits are granted only in case of dismissals (Law 24.013).</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 Versions 1 to 3 (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.