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Items	Regulations in force on 1 January 2019
1: Notification procedures in the case of individual dismissal of a worker with a regular contract	<p>Notification first to Works Council (if one exists), then to employee. (Works councils covered 70% of employees in 2002 – source: EIRO). 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. There is no need to specify the reasons for a dismissal without fault. (§ 105 Arbeitsverfassungsgesetz (ArbVG) Industrial Relations Act) Value (for EPL indicators): 1 (0.5 for the reason due to warning for personal reason + 0.5 for the warning procedure itself)</p> <p>As of a certain number of dismissals (see Item 18): see item 19.</p>
2: Delay involved before notice can start	<p>Maximum one week for Works Council to react. Notice can then be served, usually orally. (§ 105 Arbeitsverfassungsgesetz (ArbVG) Industrial Relations Act) Calculation (for EPL indicators): 1 day to notify Works Council + 7 days for response + 1 days for oral notification.</p> <p>As of a certain number of dismissals (see Item 18): 30 days waiting period (see Item 20)</p>
3: Length of notice period at different tenure durations (a)	<p>Blue collar: Usually 2 weeks (but ranging from 1 day in construction industry to 5 months in some collective agreements). White-collar: 6w<2y, 2m<5y, 3m<15y, 4m<25y, 5m>25y. Calculation (for EPL indicators): average of usual blue and white collar notice periods. (General Civil Code (Allgemeines Bürgerliches Gesetzbuch, ABGB) – blue-collar workers § 1159 ABGB; Salaried Employees' Act (Angestelltengesetz, AngG) - white-collar workers § 20 AngG).</p>
4: Severance pay at different tenure durations (a)	<p>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 chose 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. (Company Staff and Self-Employment Pension Provision Act (BMSVG))</p>

<p>5: Definition of unfair dismissal (b)</p>	<p>Fair: 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.</p> <p>Unfair: “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.</p> <p>(Trade Code 1859 (Gewerbeordnung) – blue-collar workers § 82; Salaried Employees’ Act (Angestelltengesetz, AngG) - white-collar workers § 27 AngG; Industrial Relations Act (Arbeitsverfassungsgesetz) § 105-107; § 45a Arbeitsmarktförderungsgesetz (AMFG))</p> <p>In the event of dismissal for operational reasons, only if there is a claim that the dismissal is socially unjust the court might take into account the operational need (economic reasons). This is the case when the employer is claiming operational needs as contra argument against the employees claim that the dismissal is socially unjustified. According to jurisprudence operational need justifies a dismissal if the employee cannot be employed in any other position in the company. A worse or changed economic situation can be used as a reason if this situation or/and restructuring has actually consequences for the concrete job position and the employee cannot be employed in a different position within the company (§ 105 ArbVG).</p> <p>In the event of a certain number of dismissals (see item 18) in firms with more than 20 employees, a social plan should be established.</p>
<p>6: Length of trial period (c)</p>	<p>Usually 1 month</p> <p>General Civil Code (Allgemeines Bürgerliches Gesetzbuch, ABGB) – blue-collar workers § 1158 par. 2 ABGB Salaried Employees’ Act (Angestelltengesetz, AngG) - white-collar workers § 19 par. 2 AngG Vocational training (Apprenticeship) Act (Berufsausbildungsgesetz, BAG) § 15 par. 1 BAG</p> <p>The termination may be challenged in court if the dismissal is socially unjustified and the dismissed employee has already been employed for six months in the establishment or enterprise to which the establishment belongs (§ 105 ArbVG par. 3).</p>
<p>7: Compensation following unfair dismissal (d)</p>	<p>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.</p> <p>Calculation (for EPL indicators): Typical compensation at 20 years tenure: 6 months.</p> <p>§ 105 ArbVG</p>
<p>8: Reinstatement option for the employee following unfair dismissal (b)</p>	<p>The employee has the right to choose between reinstatement and compensation, although this option is rarely taken up by the employee concerned.</p> <p>§ 105 ArbVG</p>
<p>9: Maximum time period after dismissal up to which an unfair dismissal claim can be made (e)</p>	<p>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.</p> <p>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.</p> <p>Calculation (for EPL indicators): 2/4 weeks minus average notice period (cf. item 3)</p> <p>§ 105 ArbVG</p>
<p>10: Valid cases for use of standard fixed term contracts</p>	<p>No restrictions for first contract.</p> <p>General Civil Code (Allgemeines Bürgerliches Gesetzbuch, ABGB) – blue-collar workers § 1158 ABGB Salaried Employees’ Act (Angestelltengesetz, AngG) - white-collar workers § 19 AngG</p>
<p>11: Maximum number of successive standard FTCs (initial contract plus renewals and/or prolongations)</p>	<p>Estimated 1.5. 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.</p>
<p>12: Maximum cumulated duration of successive standard FTCs</p>	<p>No limit specified.</p>

13: Types of work for which temporary work agency (TWA) employment is legal	<p>General, if the contract between the agency and the worker is open-ended but limited to "objective reasons" if it is of fixed duration.</p> <p>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.</p> <p>Temporary Agency Work Act (Arbeitskräfteüberlassungsgesetz) §1 Industrial Relations Act (Arbeitsverfassungsgesetz) § 97 par. 1 no. 1a</p>
14: Are there restrictions on the number of renewals and/or prolongations of TWA assignments? (f)	<p>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.).</p> <p>Temporary Agency Work Act (Arbeitskräfteüberlassungsgesetz) § 11 par. 2 no. 4</p>
15: Maximum cumulated duration of TWA assignments (f)	<p>The personnel leasing act puts no constraint on the duration of employment contracts or the duration of the assignments/leases.</p>
16: Does the set-up of a TWA require authorisation or reporting obligations?	<p>Requires special administrative authorisation as well as periodic reporting obligations.</p> <p>Trade Code (Gewerbeordnung 1994), in particular § 94 no. 72 Temporary Agency Work Act (Arbeitskräfteüberlassungsgesetz) § 13</p>
17: Do regulations ensure equal treatment of regular workers and agency workers at the user firm?	<p>Regulations ensure equal treatment regarding pay as well as other working conditions.</p> <p>Temporary Agency Work Act (Arbeitskräfteüberlassungsgesetz) § 10</p>
18: Definition of collective dismissal (b)	<p>Within 30 days, 5+ workers in firms 20-99; 5%+ in firms 100-599; 30+ workers in firms>600; 5+ workers >50 years old.</p> <p>Firms with less than 20 employees are exempt from requirements for a certain number of dismissals.</p>
19: Additional notification requirements in cases of collective dismissal (g)	<p>Notification of employee representatives: General duty to inform the Works Council about changes affecting the business. Notification of public authorities: Notification of local employment office.</p> <p>Consultation on alternatives to redundancy and ways to mitigate the effects.</p>
20: Additional delays involved in cases of collective dismissal (h)	<p>30 days waiting period before first notice can become effective.</p> <p>Calculation (for EPL indicators): 30 days waiting period – 9 days for individual dismissal (item 2)</p>
21: Other special costs to employers in case of collective dismissals (i)	<p>Type of negotiation required: Consultation on alternatives to redundancy and ways to mitigate the effects: social plan to be established in firms with >20 employees. Selection criteria: No criteria laid down by law.</p> <p>Severance pay: No legal requirements, but often part of social compensation plans.</p>
22: The worker alone has the burden of proof when filing a complaint for unfair dismissal	<p>No.</p>
23: Ex-ante validation of the dismissal limiting the scope of unfair dismissal complaints	<p>If the works council has expressly agreed to the intended termination, the termination may not be challenged for the reason that the dismissal is socially unjustified (§ 105 par. 6).</p>
24: Pre-termination resolution mechanisms granting unemployment benefits	<p>There are largely no restrictions to termination by mutual consent. The former employee would be eligible for unemployment benefit (no difference compared to dismissal). In case of resignation there is a 4 weeks waiting period, without cutback of benefits. (§ 11 Arbeitslosenversicherungsgesetz (AIVG)).</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.



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- 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 Versions 1 to 3 of 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.