

## BELGIUM

Items	Regulations in force on 1 January 2019
<p><b>1:</b> Notification procedures in the case of individual dismissal of a worker with a regular contract</p>	<p>Notification of employee by registered letter or written notification by bailiff's writ (= Huissier de justice – NB : extremely rare). Oral notification possible if the employer chooses severance pay in lieu of notice but only if the worker does not challenge the dismissal. (37 and 39 of the Act of 3 July 1978 regarding employment contracts). Reason dismissal needs to be provided under request of the employee (very frequent in practice) since 1 April 2014 (CCT n°109 du 12 février 2014 conclue au sein du Conseil national du travail, concernant la motivation du licenciement.(article 3)). It is not foreseen that the reasons can be modified once they have been communicated.</p> <p>As of a certain number of dismissals (see Item 18): see item 19.</p>
<p><b>2:</b> Delay involved before notice can start</p>	<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 for all workers ( blue-collar and white-collar workers) starts on the 1st Monday following the week during which the notification by registered letter takes effect.</li> </ul> <p>(Articles 37 and 37/1 of the Act of 3 July 1978 regarding employment contracts)Calculation (for EPL indicators): average of blue collar and white collar workers: 3+3.5=6.5 days</p> <p>As of a certain number of dismissals (see Item 18): At least five 10 days for consultation between the 1st and the 2nd notification plus (30+60)/2 days on average following the 2nd notification (see Item 20).</p>
<p><b>3:</b> Length of notice period at different tenure durations (a)</p>	<p>For both blue collars and white collars (Articles 67, 68 et 69 de la loi du 26 décembre 2013 concernant l'introduction d'un statut unique entre ouvriers et employés en ce qui concerne les délais de préavis et le jour de carence ainsi que de mesures d'accompagnement):</p> <p>Severance 9 months : 1.62 months (= 7 weeks)  Severance 4 years : 3.46 months (= 15 weeks)  Severance 20 years: 14.31 months (= 62 weeks)</p> <p>Values: average of cases with and without (=0) notice:  Value 9 months: 0.81months  Value 4 years: 1.73 months  Value 20 years: 7.16 months</p>

<p><b>4: Severance pay at different tenure durations (a)</b></p>	<p>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.          Values: average of cases with (=0) and without (=equivalent of notice) notice (Article 39 of the Act of 3 July 1978 regarding employment contracts)          Value 9 months: 0.81          Value 4 years: 1.73          Value 20 years: 7.16</p> <p>As of a certain number of dismissals (see Item 18): The workers covered by this agreement receive, in addition to the unemployment benefits to which they are entitled, an "indemnity due in the event of collective dismissal" payable by their employer. The amount of this indemnity is equal to half the difference between the net reference pay and the unemployment benefits to which these workers are entitled. The net reference remuneration is equal to the gross monthly remuneration capped at EUR 3,406.00 (as at 1 September 2018) and reduced by the personal social security contribution and tax withholding. Concerning the calculation of the gross monthly remuneration (Article 10 of the C.C.T. No. 10), the indemnity is due for a period of 4 months starting on the day following the termination of the employment contract or, possibly, on the day following the end of the period covered by a termination indemnity. However, when the notice period from which the employee benefits is longer than three months or when the termination indemnity corresponds to a notice period of more than three months, the four-month period is reduced by the length of the notice period beyond the third month.          For a replacement rate = 65%,          9 months: 1.51 (=0.5*0.35*4 + 0.81 (individual case))          4 years: 2.43 (=0.5*0.35*4 + 1.73)          20 years: 7.76 (=0 + 7.16)</p>
<p><b>5: Definition of unfair dismissal (b)</b></p>	<p>Since 1 April 2014, "patently unreasonable dismissals" include dismissals based on grounds that :</p> <ul style="list-style-type: none"> <li>- have no connection with the worker's ability or conduct,</li> <li>- are not based on the operational requirements of the enterprise, establishment or service,</li> <li>- would never have been decided by a reasonable employer.</li> </ul> <p>The judges can only question whether the dismissal for economic reasons is patently reasonable, they cannot question management practices. (CCT n°109 du 12 février 2014 conclue au sein du Conseil national du travail, concernant la motivation du licenciement.(chapitre IV)). A general outplacement regime has been introduced for workers made redundant as of 1 January 2014 (articles 11/1 à 18/2 de la loi du 5 septembre 2001 visant à améliorer le taux d'emploi des travailleurs (insérés par la loi du 23 décembre 2013)).          Since 1 December 2016, the legislator has introduced a special procedure applicable to workers who are unable to work as a result of a long-term illness (adapted workstation - medical half-time). (Chapitre VI (articles 1.4-72 à 1.4-82) du Code sur le bien-être au travail, livre I, titre 4: Mesures relatives à la surveillance de la santé de travailleurs)</p> <p>As of a certain number of dismissals (see Item 18): Unfair collective dismissals do not exist, but civil sanctions have been established to neutralise the effects of dismissal if the information and consultation procedure has not been respected. The Labour Court is competent to judge whether the consultation and information procedures have been properly carried out. In order to challenge the dismissals, the judge may not rely on any other argument (Articles 66 à 69 de la loi du 13 février 1998 portant des dispositions en faveur de l'emploi). Criteria for the selection of workers to be dismissed based on the principle of equal distribution of redundancies among age groups (Law of 29 March 2012, Titre 9, chapitre 4, art. 63).</p>
<p><b>6: Length of trial period (c)</b></p>	<p>The trial period clause has been suppressed for open-ended employment contracts by the law of 26 December 2013 (see Articles 28, 41, 49, 55 and 58)</p>

<p><b>7: Compensation following unfair dismissal (d)</b></p>	<p>If the dismissal is found to be manifestly unreasonable, the employer may be ordered to pay compensation equivalent to a minimum of three weeks' and a maximum of 17 weeks' pay. The amount of compensation depends on the gradation of the manifest unreasonableness. Seniority is not taken into account. This compensation may be cumulated with the fine for failure to comply with the statement of reasons. On the other hand, it cannot be combined with an indemnity that would be due by the employer in the event of termination of the employment contract, with the exception of the following indemnities: compensation in lieu of notice, non-competition indemnity, eviction indemnity or indemnity in addition to social benefits. There is also no cumulation possible with the indemnity for protection against dismissal.</p> <p>(CCT n°109 du 12 février 2014 conclue au sein du Conseil national du travail, concernant la motivation du licenciement)</p> <p>Calculation: 3.12 months (=average of mean (average of minimum – 3 weeks – and maximum – 17 weeks) and maximum compensation (17 weeks))</p> <p>As of a certain number of dismissals (see Item 18): 0.25 = average of:</p> <ul style="list-style-type: none"> <li>- Dismissal with notice: 0 (the employment relationship continues)</li> <li>- Dismissal with severance pay: 15 days (assuming the employer never choses reinstatement) = 60 days minus the delay between notification to the administration and dismissal = 60-45 (on average, see Item 20)</li> </ul>
<p><b>8: Reinstatement option for the employee following unfair dismissal (b)</b></p>	<p>There is no right to reinstatement.</p> <p>As of a certain number of dismissals (see Item 18)(Articles 68 et 69 de la loi du 13 février 1998):</p> <ul style="list-style-type: none"> <li>- Dismissal with notice: no reinstatement, as the employment relationship continues in case of complaints</li> <li>- Dismissal with severance pay: the employer can chose to pay the compensation instead of reinstatement</li> </ul>
<p><b>9: Maximum time period after dismissal up to which an unfair dismissal claim can be made (e)</b></p>	<p>The time limit for making a claim of unfair dismissal is 1 year from the date at which the contract is terminated. (Article 15 of the Act of 3 July 1978 regarding employment contracts)</p> <p>As of a certain number of dismissals (see Item 18): Within 30 days from the date of dismissal or from the date on which the dismissals became a collective dismissal, the employee may individually contest compliance with the information and consultation procedure.</p>
<p><b>10: Valid cases for use of standard fixed term contracts</b></p>	<p>Fixed-term contracts (FTCs) are permitted without specifying an objective reason. (Article 7 of the Act of 3 July 1978 regarding employment contracts)</p>
<p><b>11: Maximum number of successive standard FTCs (initial contract plus renewals and/or prolongations)</b></p>	<p>No maximum number if these successive FTCs can be justified by the nature of the work or other legitimate reasons.</p> <p>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 (Inspection des lois sociales), for a maximum total duration of 3 years with contracts of a minimum of 6 months.</p> <p>With legitimate reasons: no maximum number, but assessed by employment tribunals.</p> <p>(Articles 10 and 10 bis of the Act of 3 July 1978 regarding employment contracts)</p> <p>Calculation: 4 (average with/without authorisation of the Labour Inspectorate)</p>
<p><b>12: Maximum cumulated duration of successive standard FTCs</b></p>	<p>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).</p> <p>If these successive FTCs are justified by the nature of the work or other legitimate reasons: no maximum cumulated duration.</p> <p>(Articles 10 and 10 bis of the Act of 3 July 1978 regarding employment contracts)</p>
<p><b>13: Types of work for which temporary work agency (TWA) employment is legal</b></p>	<p>Use of services of temporary work agencies (TWA): temporary replacement of a permanent employee; temporary increase in workload; work of an exceptional nature; hiring out of a temporary agency worker to a user for permanent employment (=insertion); provision of artistic services and/or the production of artistic works on behalf of an employer or an occasional user; employment as part of a work placement plan ("trajet de mise au travail") approved by the region for long-term unemployed people and beneficiaries of financial social assistance (Article 1 of the Act of 24 July 1987 on temporary work, temporary agency work and hiring out of workers for the benefit of users)</p>
<p><b>14: Are there restrictions on the number of renewals and/or prolongations of TWA assignments? (f)</b></p>	<p>Authorisation procedures and time limits on the use of temporary employment (assignments).</p> <p>No particular restrictions with regard to the contract between the TWA and the worker.</p>

<b>15:</b> Maximum cumulated duration of TWA assignments (f)	<p>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.</p> <p>Temporary increase in workload: 18 months or more (to be negotiated with trade union representatives)</p> <p>Work of an exceptional nature: 3 months (except for certain specific cases: 7 days or 12 months)</p> <p>Hiring out of a temporary agency worker to a user for permanent employment (=insertion): 6 months per worker; and 9 months per vacant post to be considered.</p> <p>There are no restrictions for the duration of successive contracts between the TWA and workers.</p> <p>Calculation: <math>10.5 = (12+18+3+9)/4</math></p>
<b>16:</b> Does the set-up of a TWA require authorisation or reporting obligations?	<p>Authorisation from regional authorities is required for the setting up of a TWA.</p>
<b>17:</b> Do regulations ensure equal treatment of regular workers and agency workers at the user firm?	<p>Yes (Articles 10, 10 bis and 19 of the Act of 24 July 1987 on temporary work, temporary agency work and hiring out of workers for the benefit of users)</p>
<b>18:</b> Definition of collective dismissal (b)	<p>Dismissal is collective when it affects:</p> <ol style="list-style-type: none"> <li>1. firms with more than 20 workers</li> <li>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.</li> </ol>
<b>19:</b> Additional notification requirements in cases of collective dismissal (g)	<p>Collective dismissal requires 2 notifications:</p> <p>1st notification: Notification to staff representatives: duty to notify and consult with the works council, trade union delegates and staff representatives.</p> <p>This notification must also be sent to the public authorities: to the Director of the Sub-Regional Employment Service (Directeur du service subrégional de l'emploi) and the Chairman of the Executive Committee of the Federal Public Service, Employment, Labour and Social Dialogue (Président du Comité de Direction du Service public fédéral Emploi, Travail et concertation sociale).</p> <p>Consultation with staff representatives on solutions other than redundancies and on how to mitigate the negative effects of dismissals.</p> <p>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.</p> <p>In the event of dismissal with notice, in case of comments from the workers' representatives and subsequent complaint by a dismissed worker, notice is interrupted, and the employment relationship continues.</p> <p>(C.C.T. n° 24).</p> <p>Value C1N: 3.25 (average of cases with severance pay (3) and notice (3.5))</p>
<b>20:</b> Additional delays involved in cases of collective dismissal (h)	<p>Redundancies are prohibited during the 30 days following the 2nd 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.</p> <p>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.</p> <p>(C.C.T. n° 24).</p> <p>Calculation (for EPL indicators): At least 10 days for consultation between the 1st and the 2nd notification plus <math>(30+60)/2</math> days on average following the 2nd notification. – 6.5 days for individual dismissals</p>
<b>21:</b> Other special costs to employers in case of collective dismissals (i)	<p>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.</p> <p>Compensation for collective dismissal: compensation will vary according to the duration of the notice period. The longer the notice period, the lower the compensation.</p>
<b>22:</b> The worker alone has the burden of proof when filing a complaint for unfair dismissal	<p>No</p>
<b>23:</b> Ex-ante validation of the dismissal limiting the scope of unfair dismissal complaints	<p>No</p> <p>As of a certain number of dismissals (see Item 18): In the absence of comments from workers' representatives (which should be made in the period prior to the dismissal), the employer can proceed with collective redundancies without the risk of being challenged (C.C.T. n° 24).</p>

<b>24: Pre-termination resolution mechanisms granting unemployment benefits</b>	<p>A worker who leaves a job without proper reason can be temporarily excluded from receiving benefits for a period of 4-52 weeks. The length of the sanction is decided on a case-by-case basis taking a number of factors into account (e.g. type of employment contract; relations with employer; personal circumstances). In place of a sanction, the unemployed can be issued with a warning in extenuating circumstances if in the two preceding years, no similar event giving rise to an exclusion occurred. The sanction can be a total loss of rights to benefits if it can be shown that the worker left the job with the deliberate intention of receiving unemployment benefits. According to sanction statistics, the typical sanction lasts between 5-13 weeks.</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 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.