

LUXEMBOURG

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>Employees must be notified of dismissal by registered mail. If the firm employs at least 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), and the worker must be invited, through registered letter, to an interview before being notified of the dismissal (art L124-2 CT).</p> <p>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)</p> <p>Value (for EPL indicators): $2.33 = (1/3)*2(\text{at } 35 \text{ employees}) + (2/3)*2.5 (2+0.5 \text{ for interview at } 150 \text{ and } 350 \text{ employees})$</p> <p>As of a certain number of dismissals (see Item 18): see 19.</p>
<p>2: Delay involved before notice can start</p>	<p>The employer must notify the employee of the dismissal by registered mail. The notice period starts either on the 1st or 15th day of the month following notice being received by the employee, whichever is the earliest.</p> <p>Firms with at least 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).</p> <p>Calculation (for EPL indicators): 150 and 350 employees: 13 days=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. 35 employees: 10 days. Average across the three firm sizes: 12</p> <p>As of a certain number of dismissals (see Item 18): average with and without agreement: 22.8 days (see Item 20)</p>
<p>3: Length of notice period at different tenure durations (a)</p>	<p>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.</p> <p>As of a certain number of dismissals (see Item 18): Dismissals cannot effectively take place before 75 days from notification (art. L166-2, L166-5, L166-6 CT).</p>
<p>4: Severance pay at different tenure durations (a)</p>	<p>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.</p>
<p>5: Definition of unfair dismissal (b)</p>	<p>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. An employee dismissed for economic reason has a priority for rehiring during one year from her/his dismissal.</p> <p>As of a certain number of dismissals (see Item 18): A social plan should be set up, which typically contains internal and external reclassification measures and the amount of additional compensation payable.</p>
<p>6: Length of trial period (c)</p>	<p>The maximum length of the trial period for a contract of unlimited duration is 6 months.</p> <p>But the following exceptions apply:</p> <p>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). Calculation (for EPL indicators): average of the three situations.</p> <p>No reasons of termination have to be provided and there is no severance pay. No dismissal for economic reasons is possible during the first 2 weeks, after these two weeks the notice period is either 1 day per week, if the trial period is less than 1 month, and 4 days per month for the trial periods of at least 1 month, without being less than 15 days or more than 1 month.</p>

<p>7: Compensation following unfair dismissal (d)</p>	<p>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. 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.</p>
<p>8: Reinstatement option for the employee following unfair dismissal (b)</p>	<p>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 month's salary as additional compensation.</p>
<p>9: Maximum time period after dismissal up to which an unfair dismissal claim can be made (e)</p>	<p>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.</p>
<p>10: Valid cases for use of standard fixed term contracts</p>	<p>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 Agence pour le Développement de l'Emploi (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.</p>
<p>11: Maximum number of successive standard FTCs (initial contract plus renewals and/or prolongations)</p>	<p>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.</p>
<p>12: Maximum cumulated duration of successive standard FTCs</p>	<p>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.</p>
<p>13: Types of work for which temporary work agency (TWA) employment is legal</p>	<p>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.</p>
<p>14: Are there restrictions on the number of renewals and/or prolongations of TWA assignments? (f)</p>	<p>The contract can be renewed twice without exceeding the 12 month limit.</p>
<p>15: Maximum cumulated duration of TWA assignments (f)</p>	<p>Except for seasonal jobs, the contract should not exceed 12 months in duration for the same employee in the same job, including renewals.</p>
<p>16: Does the set-up of a TWA require authorisation or reporting obligations?</p>	<p>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.</p>
<p>17: Do regulations ensure equal treatment of regular workers and agency workers at the user firm?</p>	<p>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.</p>
<p>18: Definition of collective dismissal (b)</p>	<p>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.</p>
<p>19: Additional notification requirements in cases of collective dismissal (g)</p>	<p>The works council and the Employment Agency must be notified of the dismissal. After that negotiations have to start with the works council in order to conclude if possible a social plan. Negotiations are compulsory but not the result (see Item 20).</p>
<p>20: Additional delays involved in cases of collective dismissal (h)</p>	<p>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 have to resort to the Office national de conciliation, 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, or if non-agreement is pronounced by the Office national de conciliation, 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). 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</p>

21: 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.
22: The worker alone has the burden of proof when filing a complaint for unfair dismissal	No
23: Ex-ante validation of the dismissal limiting the scope of unfair dismissal complaints	No
24: Pre-termination resolution mechanisms granting unemployment benefits	Neither resignation nor termination via mutual consent grant unemployment benefits.

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 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.