

Employment protection in India – 2008

Item 1 Notification procedures in the case of individual dismissal of a workers with a regular contract	Firms are required to give workers written notice of dismissal and employees must be given sufficient warning and opportunity to respond. For firms with 100 or more workers, the employer must also inform the relevant government authority before retrenchments can take place and the authority must give permission before the dismissal can take place.
Item 2 Delay involved before notice can start	Written notice of dismissal can be handed to the employee. Courts may require that an employee be given warning prior to dismissal and a fair hearing. For large firms, authorisation must be received from the relevant government authority. Typically, the firm is required to give the government authority 60 days notice of dismissal in which to make a decision. Where an employee is dismissed for disciplinary reasons, courts usually examine whether appropriate warning was given prior to dismissal.
Item 3 Length of notice period at different tenure durations	Workers with more than one year's tenure are entitled to one month's notice or payment in lieu of notice. Firms with 100 or more workers are required to give workers three months' notice or payment in lieu.
Item 4 Severance pay at different tenure durations	Workers with more than one year's tenure who are dismissed for economic reasons or employee incapacity are entitled to 15 days pay for each completed year of continuous service or any part thereof exceeding six months.
Item 5 Definition of unfair dismissal	Fair: an employee can be dismissed on the charge of theft, habitual negligence of duty, disorderly behaviour, bribery, lack of capability, financial irregularities or subordination. However, in most cases the employee is entitled to warning prior to dismissal and a fair hearing. Unfair: dismissal is unfair if provisions for retrenchment or dismissal have not been properly followed, where the employee has not had an adequate opportunity to defend him/herself, during sickness, maternity leave, in retribution for filing a complaint, for taking part in peaceful trade union activities or as a result of discrimination. For economic redundancies, in the absence of any agreement between the employer and dismissed worker, the employer should dismiss the worker who was the last person to be employed in the category.
Item 6 Length of trial period	Employees appointed for a permanent post are usually kept on probation for a period of six months to a year, during which time the employee's suitability for the job can be assessed. The law does not stipulate any maximum probation period.
Item 7 Compensation following unfair dismissal	In the event that a dismissal is found to be unfair, the court may reinstate the worker with or without back pay. In extreme cases where the employer argues strongly against reinstatement, the court may award compensation instead of reinstatement. Labour courts typically take 3-4 years to settle disputes and make an award.
Item 8 Reinstatement option for the employee following unfair dismissal	In most cases of unfair dismissal, the court orders reinstatement.
Item 9 Maximum time period after dismissal notification up to which an unfair dismissal claim can be made	There is no time limit for lodging a complaint about dismissal, although excessive delay may prejudice a worker's case.
Item 10 Valid cases for use of fixed term contracts	Temporary workers may be engaged for work which is essentially of a temporary nature likely to be finished within a limited time. Exemptions exist for some industries (information technology and business processing outsourcing) and export processing and special economic zones in some states.
Item 11 Maximum number of successive FTCs (initial contract plus renewals and/or prolongations)	No limits.
Item 12 Maximum cumulated duration of successive FTCs	No limits.
Item 13 Types of work for which temporary work agency (TWA) employment is legal	Generally allowed for non-core activities, with some industries or firms prohibited from using TWA workers.
Item 14 Are there restrictions on the number of renewals and/or prolongations of TWA contracts?	No.
Item 15 Maximum cumulated duration of TWA contracts	No limits.
Item 16 Does the set-up of a TWA require authorisation or reporting obligations?	Contractors and user firms with more than 20 employees are required to obtain a license (and pay a fee and security deposit) before engaging contract workers. The license is valid for 12 months, after which it can be renewed by following the same procedure. The contractor is required to report any changes in the number of workers employed or their conditions of work to the licensing authority.

Item 17 Do regulations ensure equal treatment of regular workers and agency workers at the user firm?	The wage rates and working conditions of the contracted worker must be the same as those of a worker employed directly by the user firm to do the same type of work.
Item 18 Definition of collective dismissal	There are no additional regulations for collective dismissals.
Item 19 Additional notification requirements (compared to Item 1) in cases of collective dismissal	There are no additional regulations for collective dismissals.
Item 20 Additional delays involved (compared to Item 2)	There are no additional regulations for collective dismissals.
Item 21 Other special costs to employers in case of collective dismissals	There are no additional regulations for collective dismissals.

This summary was produced by the OECD using national labour legislation, secondary legal sources and advice from legal experts at the ILO. It describes the situation current as at 1 January 2008 and is the basis for calculating the OECD employment protection indicators. To find out more about the methodology used to calculate the OECD employment protection indicators, see www.oecd.org/employment/protection.