

THE BAHAMAS

Regulations in force on 31 December 2013	
1: Notification procedures in the case of individual dismissal of a worker with a regular contract	<p>Individual termination: Notice of dismissal may be given orally or in writing to the employee or sent to his usual or last-known residence or sent by prepaid registered post addressed to him at that place (Section 30 of the Employment Act –hereinafter EA)</p> <p>Redundancy: According to Section 32 of the Code of the Industrial relations Practice in the Industrial Relations Act Chapter 321 (hereinafter IRA), if redundancy becomes necessary, consultation with the Labour Ministry and trade union should take place.</p> <p>Calculations (for EPL indicators): Average: 0 for individual termination, 2 for redundancy</p>
2: Delay involved before notice can start	<p>Individual termination: No delays involved. The notice must be communicated to the employee orally or in written.</p> <p>Redundancy: warning procedure (Section 32 IRA, Collective agreements)</p> <p>Calculation for (EPL indicators): Average: 1 day for individual termination, 6 days warning procedure for redundancy.</p>
3: Length of notice period at different tenure durations (a)	<p>Length of notice varies:</p> <p>Dismissal due to redundancy: When an employee -of at least 1 year tenure- is dismissed because of redundancy, the following notice periods must be observed (section26 EA):</p> <ol style="list-style-type: none"> a) 2 w or 2 w basic pay in lieu of notice > 12 m b) 1 m or 1 m basic pay in lieu of notice for supervisory or managerial position. <p>Dismissal due to other causes When an employment agreement is terminated by the employer, the following minimum notice periods must be observed (section29 EA):</p> <ol style="list-style-type: none"> a) 1 w or 1 w pay in lieu of notice > 6 m < 12 m b) 2 w or 2 w pay in lieu of notice > 12 m c) 1 m or 1 m pay in lieu of notice for supervisory or managerial position. <p>Calculation (for EPL indicators): Average of supervisors and other employees (averaging redundancy and other causes for each of them): 9 months tenure (0 + 0 + 1 w + 1 m)/4: 0.3 months; 4 years tenure (2 w + 1 m + 2 w + 1 m)/4: 0.7 months; 20 years tenure (2 w + 1 m + 2 w + 1 m)/4: 0.7 months</p>
4: Severance pay at different tenure durations (a)	<p>No severance pay in case of dismissal with justified reason, which occurs when the employee has committed a fundamental breach of his contract or has acted in a manner repugnant to the fundamental interests of the employer – gross misconduct- (section31 EA: summary dismissal).</p> <p>Redundancy: Employer who dismisses an employee, of at least 1 year tenure, must pay (Section26 EA):</p> <ol style="list-style-type: none"> a) 2 w (or a part thereof on a pro rata basis) for each year up to 24 weeks. c) 1 m (or a part thereof on a pro rata basis) for each year up to 48 weeks for supervisory or managerial positions. <p>Personal grounds and others: Employer must pay the following severance payments (section29 EA):</p> <ol style="list-style-type: none"> a) 1 w (or a part thereof on a pro rata basis > 6 m < 12 m. b) 2 w (or a part thereof on a pro rata basis) for each year up to 24w > 12 months. c) 1 m (or a part thereof on a pro rata basis) for each year up 48 w for supervisory or managerial positions. <p>Calculation (for EPL indicators): Average of supervisors and other employees (averaging redundancy and personal grounds): 9 months (0 + 0 + 1 w + 1 m)/4: 0.3 months; 4 years tenure (8w + 4m + 8w + 4 m)/4: 2.92 months; 20 years tenure: (24w+48w+24w+48w)/4: 8.30 months.</p>

<p>5: Definition of unfair dismissal (b)</p>	<p><u>Fair dismissal</u> (called "Summary dismissal"): Section 31 and 32 EA provides a list of justified grounds for summary dismissals which relate mainly to the worker's gross misconduct (theft, fraudulent offenses, dishonesty, gross insubordination or insolence, gross indecency, breach of confidentiality, gross negligence, incompetence, gross misconduct). In these cases the employer may dismiss without pay or notice.</p> <p><u>Termination of employment with notice</u>: Section 29 EA allows the employer to terminate the employment agreement without cause provided prior notice is respected and severance indemnity is paid.</p> <p><u>Redundancy</u>: Section 26 EA allows the employer to dismiss the employee because of redundancy provided prior notice is respected and severance indemnity is paid. However re-training and transfer to other work must be attempted prior to dismissal (Section 31 IRA and collective agreements).</p> <p><u>Unfair dismissal</u>: Articles 36, 37, 38 and 40 EA provide a list of circumstances in which dismissal is regarded as unfair:</p> <p>a) Dismissal related to trade union membership: the dismissal of an employee is regarded as having been unfair if the reason for it or the principal reason was that the employee:</p> <ul style="list-style-type: none"> • Was, or proposed to become, a member of an independent trade union; • Had taken, or proposed to take, part at any appropriate time in the activities of an independent trade union; • Was not a member of any trade union, or of a particular trade union, or of a particular trade union, or of one of a number of a particular trade union, or had refused or proposed to refuse to become or remain a member. <p>b) Dismissal on ground of redundancy: the dismissal is regarded as unfair if</p> <ul style="list-style-type: none"> • The reason for which the employee was selected in comparison to other employees who held the same position, was an inadmissible reason, • The selection of the employee for dismissal was in contravention of a customary arrangement or agreed procedure relating to redundancy and there was no special reason justifying a breach of such arrangement or procedure. <p>c) Dismissal on ground of pregnancy: dismissal is regarded as unfair if the reason or principal reason for dismissal is that the employee is pregnant or is for any other reason connected with pregnancy.</p> <p>d) Dismissal in connection with a lockout, strike or other industrial action: the dismissal is regarded as unfair where at the date of dismissal</p> <ul style="list-style-type: none"> • The employer was conducting or instituting a lockout; or • The employee was taking part in a lawful industrial action. <p>Calculation (for EPL indicators): 2: personal dismissal is possible without significant restrictions but transfer or training must be attempted before economic dismissal (Source: on how to value this cases: OECD).</p>
<p>6: Length of trial period (c)</p>	<p>No statutory regulation in the EA. Certain collective agreements stipulate a 12 months probationary period (Industrial Agreement College of Bahamas & Union of Tertiary Educators).</p>
<p>7: Compensation following unfair dismissal (d)</p>	<p>Compensation following unfair dismissal (Section 42 EA): The Tribunal can order the <u>reinstatement or re-engagement</u>, should they find that the grounds for a claim for unfair dismissal are proved. If the terms of the order are not complied with, the Tribunal will order an <u>award of compensation for unfair dismissal</u> composed of:</p> <ol style="list-style-type: none"> 1) basic award: 3 w per year of work 2) compensatory award: Determined by the Tribunal considering the loss of benefits and expenses incurred by the dismissed employee. <p>The ceiling to compensation of 18 months in general; 24 months for supervisory or managerial positions (Section 48 EA).</p> <p>Calculation (for EPL indicators): Formula: average of workers with supervisory and non-supervisory positions (for each, average of min and max award – severance payment in Item 4): $(13.84m+21m)/2 - 8.30m = 9.12$ months.</p>
<p>8: Reinstatement option for the employee following unfair dismissal (b)</p>	<p>Under EA the Tribunal may order reinstatement option if the grounds for unfair dismissal are proved. This option applies to:</p> <ul style="list-style-type: none"> • Dismissal related to trade union membership • Dismissal on ground of redundancy under the circumstances stated in Item 5 • Dismissal on ground of pregnancy • Dismissal in connection with a lockout, strike or other industrial action
<p>9: Maximum time period after dismissal up to which an unfair dismissal claim can be made (e)</p>	<p>12 months (Section 68 (2) IRA).</p>
<p>10: Valid cases for use of standard fixed term contracts</p>	<p>General. EA does not contain any restriction on the use of fixed-term contracts.</p>
<p>11: Maximum number of successive standard FTCs (initial contract plus renewals and/or prolongations)</p>	<p>No limit.</p>
<p>12: Maximum cumulated duration of successive standard FTCs</p>	<p>No limit.</p>

13: Types of work for which temporary work agency (TWA) employment is legal	No statutory regulation.
14: Are there restrictions on the number of renewals and/or prolongations of TWA assignments? (f)	No statutory regulation. No limit
15: Maximum cumulated duration of TWA assignments (f)	No statutory regulation. No limit
16: Does the set-up of a TWA require authorisation or reporting obligations?	No statutory regulation.
17: Do regulations ensure equal treatment of regular workers and agency workers at the user firm?	No statutory regulation.
18: Definition of collective dismissal (b)	No statutory definition of collective dismissal. Although certain collective agreements contain provisions regarding the number of employees involved and the procedures to be followed, they correspond to the public sector (which is actually no being considered for EPL purposes). IRA establishes a procedure by which if redundancy becomes necessary, consultation with trade unions and Labour Ministry should take place to: a) give warning to employees, b) introduce schemes for voluntary redundancy and c) select the employees to be dismissed. However, IRA does not establish the number of employees involved. Calculation (for EPL indicators): 0 (as collective agreements of the public sector do not count for EPL purposes).
19: Additional notification requirements in cases of collective dismissal (g)	IRA requires communications with Labour Ministry and trade unions if redundancy becomes necessary. Calculation (for EPL indicators): 0 as redundancy was already considered in Item 1.
20: Additional delays involved in cases of collective dismissal (h)	No statutory regulation.
21: Other special costs to employers in case of collective dismissals (i)	No special costs involved.

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 (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.