

BARBADOS

Regulations in force on 31 December 2013	
1: Notification procedures in the case of individual dismissal of a worker with a regular contract	Individual termination: Employees with 1 year's continuous service have the right to receive, upon request a written statement of the reasons of their dismissals (Section 22 and 23(2) of the Employment Rights Act –hereinafter ERA).
2: Delay involved before notice can start	Written or oral notification. Calculation (for EPL indicators): 1 day when dismissal can be notified orally or the notice can be directly handed to the employee.
3: Length of notice period at different tenure durations (a)	<p>All workers: Recent enactment of ERA (2012) established notice periods prior to dismissal for all workers. Length of notice varies depending on years of service and frequency wages are paid. They apply to employees with at least 1 year of continuous service (ERA Section 22):</p> <p>Hourly, daily or weekly paid (Section 22 (1)):</p> <p>a) 1w,< 2y b) 2w,>2y<5y c) 4w,>5y<10y d) 6w,>10y<15y e) 10w,>15y</p> <p>Fortnightly paid (Section 22 (2))</p> <p>a) 2 w,<5y b) 4w,>5y<10y c) 6w,>10y<15y d) 10w,>15y</p> <p>Monthly paid (Section 22 (3)):</p> <p>a) 1m,<10y b) 1 ½ m,>10<15y c) 2 ½ m,>15y</p> <p>Redundancy: Under Severance Payment Act (SPA), notice period varies according to length of service and applies to workers with at least 2 years tenure.</p> <p>a) Not less than 2w,>2y<5y b) Not less than 4w,>5y</p> <p>Before the enactment of ERA, applying case law, the statutory periods under SPA were enlarged by the importation of common law principles of reasonable notice applicable in cases of long service employees made redundant or wrongfully dismissed. From the decisions of the Supreme Court of Justice (June Clarke vs. American Life Insurance Company. Civil Appeal N° 33 of 1998; Sandra Agard vs. Caribbean Data Services LTD. Magisterial Appeal N° 12 of 2000), a notice period of approximately 3 months was considered reasonable. The Labour Ministry understands that for notice period the applicable legislation is that of ERA. However, in their opinion the court has the final decision on this matter. Certain doctrine's interpretation is that for severance payment, the applicable notice period is that of SPA (Sections 20) and court cases decisions. As there is no case law since the enactment of ERA, for the purposes of EPL indicators, a 3 month period of notice under SPA for employees with 20 years tenure, was considered for redundancy cases.</p> <p>Calculation (for EPL indicators): average of redundancy and personal reasons (monthly-paid workers): 9 months tenure: 0; 4 years tenure (1m + 0.46m)/2: 0.73 months. 20 years tenure (2 ½ m + 3m)/2: 2.75 months</p>
4: Severance pay at different tenure durations (a)	<p>Legally required for employees with 2 years tenure dismissed for: redundancy, lay off/ kept on short-time and natural disaster (Section 3 (1) Severance Payments Act –hereinafter SVA). The amount of severance payment is:</p> <ul style="list-style-type: none"> • 2.5 weeks' basic pay for each such year up to 10 years • 3 weeks' basic pay for each such year by which the employment exceeds 10 years but does not exceed 20 years, and • 3.5 weeks' basic pay for each such year by which the employment exceeds 20 years but does not exceed 33 years. <p>Other cases: no severance payment</p> <p>Calculation (for EPL indicators): (average of redundancy and other cases (no severance pay): 9 months tenure: 0; 4 years tenure: 5w; 20 years tenure: 27.5w</p>
5: Definition of unfair dismissal (b)	<p>Fair dismissal: Dismissal related to the capability or conduct of the employee, because of redundancy, because continued employment would be illegal or some other substantial reason of a kind (Section 29 ERA).</p> <p>Unfair dismissal: Dismissal related to a range of reasons including: absence as a result of occupational disease or work-related accident, filing a complaint against the employer, employee suffering AIDS or life-threatening disease, refusal to carry out an unlawful instruction, trade union representative or membership, pregnancy or maternity, race, colour, gender religion or political opinion, amongst other similar reasons (Section 30 ERA).</p>
6: Length of trial period (c)	No statutory regulation. Claims for unfair dismissal are not possible until 1 year's service has been completed (Section 27(3) ERA).

<p>7: Compensation following unfair dismissal (d)</p>	<p>Compensation following unfair dismissal: If the Tribunal finds that the grounds for a claim for unfair dismissal are well founded, the Tribunal can order the <u>reinstatement</u> or <u>re-engagement</u> of the employee (Section 33 (2) ERA). If the orders are unfeasible (because the employee does not wish to be reinstated or re-engaged or because it is not practicable for the employer to comply with the order) 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: <ul style="list-style-type: none"> • 5 w < 2y • 2 ½ w for each year from 2y to less than 10y • 3 w for each year from 10y to less than 20y • 3 ½ w for each year from 20y to less than 33y <p>The amount of the basic award has to be reduced by the amount of any severance payment paid by the employer under the SPA or any payment made by the employer, whether in pursuance of the SPA or otherwise, on the ground that the dismissal was by reason of redundancy (Fifth Schedule. ERA)</p> 2) Additional amount determined by Tribunal considering the benefits lost by the employee because of dismissal. 3) Extra amount if dismissal was for reason specified in Section 30 (1) (c) ERA (mainly prohibited grounds) an amount up to 52 week´s wages can be ordered. <p>Calculation (for EPL indicators): Formula (maximum compensation + average compensation)/2 – average severance payment: 14,5m. Explanation: Typical compensation at 20 years tenure, worker 35 years of age at start of employment, court case takes 6 months: (maximum: basic award (52.5w); additional amount 6 month´s salary (24w); extra amount (52w) plus average)/2 minus average severance payment (27,5w).</p>
<p>8: Reinstatement option for the employee following unfair dismissal (b)</p>	<p>Yes, if an employee makes a complaint to the Tribunal on the grounds of unfair dismissal, the Tribunal can make an order of reinstatement or re-engagement on a comparable position. If the order is not feasible (because employee does not wish to be reinstated or re-engaged or it is impracticable for the employer, the Tribunal may make an award of compensation for unfair dismissal. Since ERA was recently enacted, there is no case law available at present to check the frequency or percentage of cases where a reinstatement or re-engagement order is actually applied.</p>
<p>9: Maximum time period after dismissal up to which an unfair dismissal claim can be made (e)</p>	<p>Within 3 months of the employee´s effective date of termination or within such further period as the Tribunal considers reasonable if they believe it was not reasonably practicable for the employee to made the complaint within such 3 months period (Section 32 (2) ERA).</p>
<p>10: Valid cases for use of standard fixed term contracts</p>	<p>No restrictions.</p>
<p>11: Maximum number of successive standard FTCs (initial contract plus renewals and/or prolongations)</p>	<p>No limit. Section 26 (1) (b) states that an employee is considered to be dismissed if the FTC is not renewed at the end of the expiry term, implying that workers will then be entitled to protection against unfair termination and redundancy pay (but not advance notice) in the same way as permanent workers.</p>
<p>12: Maximum cumulated duration of successive standard FTCs</p>	<p>No limit.</p>
<p>13: Types of work for which temporary work agency (TWA) employment is legal</p>	<p>General. No statutory regulation.</p>
<p>14: Are there restrictions on the number of renewals and/or prolongations of TWA assignments? (f)</p>	<p>No limit.</p>
<p>15: Maximum cumulated duration of TWA assignments (f)</p>	<p>No statutory regulation. No limit.</p>
<p>16: Does the set-up of a TWA require authorisation or reporting obligations?</p>	<p>No statutory regulation.</p>
<p>17: Do regulations ensure equal treatment of regular workers and agency workers at the user firm?</p>	<p>No statutory regulation.</p>
<p>18: Definition of collective dismissal (b)</p>	<p>Redundancies affecting at least 10% of the workforce (Section 31 (4) ERA).</p>
<p>19: Additional notification requirements in cases of collective dismissal (g)</p>	<p>Additional notification requirements are necessary: 1) <u>Consultations</u> with the affected employees or their representatives; b) <u>Written statement</u> to the employee or the trade union and the Chief Labour Officer.</p>

20: Additional delays involved in cases of collective dismissal (h)	Consultations with the affected workers or their representatives shall commence no later than 6 weeks before any of the affected employees is dismissed and shall be completed within a reasonable time (Section 31 (6)). The written statement must be delivered before dismissals take place. Calculation (for EPL indicators): 42 days (minus item 2 and item 3 –assuming –for length of notice period- employee’s 4 years tenure): 12 days.
21: Other special costs to employers in case of collective dismissals (i)	Severance pay: no special regulations for collective dismissal. Section 40 ERA provides, within 6 months of the collective dismissal, for priority in recruitment of employees who were made redundant provided they met performance standards during their employment (However priority in re-hiring is not taken into account for calculating EPL indicators).

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.