

INDIA

Items	Regulations in force on 1 January 2012
1: Notification procedures in the case of individual dismissal of a worker with a regular contract	<p>Firms are required to give workers written notice of dismissal. For retrenchments, the relevant government authority must also be notified (art. 25F, Industrial disputes act, 1947). For establishments with 100 or more workmen, the employer must also obtain permission from the relevant government authority before retrenchment can take place. Retrenchment is defined as termination for whatsoever reason, except in the case of disciplinary action (see e.g. State Bank of India v. N Sundara Money [1976] 3 SCR 160).</p> <p>Calculation (for EPL indicators): based on retrenchment; average of large and small establishments $((2+3)/2 = 2.5)$</p>
2: Delay involved before notice can start	<p>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. Where an employee is dismissed for disciplinary reasons, courts usually examine whether appropriate warning was given prior to dismissal. For large establishments, permission for retrenchment must be received from the relevant government authority. The government authority must decide within 60 days from the date of application by the employer. In case there is no decision in 60 days, it is deemed that permission is granted</p> <p>Calculation (for EPL indicators): based on retrenchment; average of large and small establishments (1 day for written notice + 6 days for warning and hearing+ 60/2 days for permission) = 37 days</p>
3: Length of notice period at different tenure durations (a)	<p>In case of retrenchment: workers with no less than one year's tenure are entitled to one month's notice or payment in lieu of notice. Establishments with 100 or more workmen are required to give workers three months' notice or payment in lieu to workers with more than one year's tenure.</p> <p>Calculation (for EPL indicators): based on retrenchment; average of large and small establishments</p>
4: Severance pay at different tenure durations (a)	<p>Workers with no less than one year's tenure who are dismissed for retrenchment are entitled to 15 days pay for each completed year of continuous service or any part thereof exceeding six months.</p> <p>Calculation (for EPL indicators): based on retrenchment</p>
5: Definition of unfair dismissal (b)	<p>Fair: an employee can be dismissed on the charge of theft, habitual negligence of duty, disorderly behavior, 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. However, company standing orders regulating dismissal must be approved by government authorities and typically severely restrict dismissal as result of disciplinary action. Retrenchment, defined in a very wide way, is also generally fair provided that procedures has been followed correctly (e.g. State Bank of India v. N Sundara Money [1976] 3 SCR 160; State of Bombay and others v. Hospital Mazdoor Sabha & others [1960] 2 SCR 866).</p> <p>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.</p> <p>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.</p>
6: Length of trial period (c)	<p>Employees appointed for a permanent post are usually kept on probation for a period of six months to a year, during which the employee's suitability for the job can be assessed. The law does not stipulate any maximum probation period.</p> <p>Calculation (for EPL indicators): average of typical minimum and maximum length</p>
7: Compensation following unfair dismissal (d)	<p>In the event that a dismissal is found to be unfair, the court may reinstate the worker with 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. The law stipulates that in case of illegal dismissal the workman dismissed is entitled to all the benefits under any law as if he/she had not been laid-off.</p>
8: Reinstatement option for the employee following unfair dismissal (b)	<p>In most cases of unfair dismissal, the court orders reinstatement.</p>
9: Maximum time period after dismissal up to which an unfair dismissal claim can be made (e)	<p>The application to the Labour court or Tribunal shall be made before the expiry of 3 years from the date of discharge, dismissal, retrenchment or otherwise termination of service, according to amended Industrial Dispute Act of 2010.</p>

10: Valid cases for use of standard 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.
11: Maximum number of successive standard FTCs (initial contract plus renewals and/or prolongations)	No limits.
12: Maximum cumulated duration of successive standard FTCs	No limits.
13: Types of work for which temporary work agency (TWA) employment is legal	According to central labour contract laws and rules, contract labour is generally allowed for non-core activities (although with some industries or firms prohibited from using contract labour). However, there is no consensus about what is the effective regulatory environment applying to the staffing industry and whether contract labour laws and rules apply to that industry. This creates a lot of regulatory uncertainty.
14: Are there restrictions on the number of renewals and/or prolongations of TWA assignments? (f)	No for both assignments and contracts between the worker and the agency.
15: Maximum cumulated duration of TWA assignments (f)	No limits for both assignments and contracts.
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.
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.
18: Definition of collective dismissal (b)	There are no additional regulations for collective dismissals but there are special regulations in the case of closure of an establishment with 50 or more workmen (art. 25FF, Industrial disputes act, 1947).
19: Additional notification requirements in cases of collective dismissal (g)	No additional requirements.
20: Additional delays involved in cases of collective dismissal (h)	In the case of closure of an establishment with at least 50 workmen, workers are entitled of two months advance notice. Calculation (for EPL indicators): average of large establishments (0 additional days) and small establishments (30/2 additional days).
21: Other special costs to employers in case of collective dismissals (i)	No additional requirements.

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:

- 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.
- Based also on case law, if court practice tends to be more (or less) restrictive than what specified in legislation.
- Initial period within which regular contracts are not fully covered by employment protection provisions and unfair dismissal claims cannot usually be made.
- 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.
- Maximum time period after dismissal up to which an unfair dismissal claim can be made.
- 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.
- 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).
- 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).



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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.