

## JAMAICA

Items	Regulations in force on 31 December 2013
1: Notification procedures in the case of individual dismissal of a worker with a regular contract	The notice of dismissal may be given in writing, unless it is given in the presence of a credible witness (Section 3, subsection 1 of the Employment Termination and Redundancy Payment Act (hereinafter ETRPA). If the employee is dismissed due to redundancy, a written statement indicating how the redundancy payment has been calculated must be given to the employee.
2: Delay involved before notice can start	No delays involved. The notice must be communicated to the employee Calculation (for EPL indicators): 1 day when the notice can be directly handled to the employee.
3: Length of notice period at different tenure durations (a)	The notice period to be given to an employee who has been continuously employed for 4 weeks or more is of: a) Not less than 2 w < 5 y b) Not less than 4 w > 5 y < 10 y c) Not less than 6 w > 10 y < 15 y d) Not less than 8 w > 15 y < 20 y e) Not less than 12 w for 20 years or more Pay in lieu of notice is acceptable. (Section 3, subsection 1 ETRPA)
4: Severance pay at different tenure durations (a)	All workers: none Severance pay is legally required for redundancy cases for employees with 104 weeks tenure (2 years). For the purposes of the ETRPA, dismissal is considered by reason of redundancy if it is attributable wholly or partly to: a) Employer having ceased to carry on the business for the purposes of which the employee was employed b) Employee's particular work having ceased or diminished c) Employee having suffered personal injury caused by an accident arising in the course of his employment, or having developed a professional disease. A seasonal employee who has worked for an employer for two or more consecutive seasons is considered to be dismissed by reason of redundancy if circumstances mentioned in letters a), b) or c) occur or if he is not employed in future seasons. Redundancy payment amounts to: 2 weeks' pay per year, for the first ten years; 3 weeks' pay per year, from the tenth year onwards. Calculation (for EPL indicators): average of redundancy and other cases: 9 months tenure:0; 4 years tenure: 4 weeks, 20 years tenure: 25 weeks
5: Definition of unfair dismissal (b)	<b>Fair:</b> Redundancy (when notice period is respected and severance indemnity is paid (Section 3 ETRPA). For personal reasons (loss of trust and confidence) the Court of Appeal (Resident Magistrate's Civil Appeal N° 17/2011. Rosmond Johnson and Restaurants of Jamaica Limited) states that as the Company made a reasonable payment in lieu of notice, it was not obliged to justify its assertion that it had lost confidence in the employee. <b>Unfair:</b> No statutory definition of unfair dismissal. However, when addressing this item, a key aspect to consider is that in Jamaica, two Institutions can rule on dismissals: 1) Judicial Power (Resident Magistrate, Court of Appeal, Supreme Court) have jurisdiction to hear claims and grant relief (damages) in respect of wrongful dismissal (breach of contract, employer not following its own termination procedure, employer not respecting limited grounds for dismissal when included in employment contract—based on common law); 2) The Industrial Disputes Tribunal (hereinafter IDT) has jurisdiction to attend claims in respect of unfair dismissal -the 2010 amendment of LRIDA clarifies that plaintiffs do not need to belong to a trade-union to seek relief before IDT. As from the amendment, IDT is the only Tribunal who has jurisdiction to hear claims related to unfair/ unjustified dismissals and issue reinstatement orders (The Court attends cases of wrongful or unlawful dismissals and orders the payment of damages). LRIDA, Section 12, Subsection 5 provides remedies for unjustified dismissal, which according to case law and legal provisions include dismissal on grounds of race, place of origin, political opinion, colour or creed (article 24, Jamaican (Constitution) Order in Council; dismissal in violation of a collective agreement; disciplinary breach of employment contract which are not proved by the employer (Supreme Court of Justice. Civil Appeal N° 71&72/2010), whistleblowing (Protected Disclosures Act, 2011 Section 16) and in general when dismissal action is not based on reasonable grounds. A 1985 judgment of the Supreme Court (West Indies Yeasts Company Limited case) stipulates that the Tribunal must order remedies if "the dismissal action is not justified under fair, just and reasonable grounds" (cited in Grand Lido Negril vs Grand Lido Negril Staff Association, IDT 10/95), which excludes arbitrary dismissal.
6: Length of trial period (c)	No statutory regulation on the length of the trial period, it depends on the agreement between employer and employee. According to section 3, subsection 4 ETRPA, when the employment contract contains a probationary period, either party may terminate the contract without notice during the probationary period or, where the probationary period is more than 90 days, during the first 90 days thereof. Collective agreements generally stipulate probationary periods from 3 months to 6 months. Calculation (for EPL indicators): average of min and max usual values in collective agreements: (3+6)/2=4.5 months.

7: Compensation following unfair dismissal (d)	Under LRIDA, if IDT finds that the dismissal of the worker is unjustifiable, an order of reinstatement can be awarded. If the worker does not wish to be reinstated, the Tribunal will make an award of compensation. The normal measure of damages for unfair dismissal is the amount the employee would have earned had the employment continued. Calculation (for EPL indicator): assumption that a Court case takes 6 months: 6 months
8: Reinstatement option for the employee following unfair dismissal (b)	In case of unfair (unjustified) dismissal, IDT is the competent authority to order reinstatement. From case law it emerges that reinstatement is fairly often made available. The Court (after 2010 Amendment of LRIDA) does not order reinstatement. Before the Amendment, applying the principle of not forcing the parties to remain together in a contract of service, injunction was not common. Calculation (for EPL indicators): 2 (for IDT –Court is not considered)
9: Maximum time period after dismissal up to which an unfair dismissal claim can be made (e)	6 months after dismissal.
10: Valid cases for use of standard fixed term contracts	No restrictions.
11: Maximum number of successive standard FTCs (initial contract plus renewals and/or prolongations)	No limit.
12: Maximum cumulated duration of successive standard FTCs	No limit.
13: Types of work for which temporary work agency (TWA) employment is legal	The Employment Agencies Regulation Act (hereinafter EARA) contains the rules and obligations of “Employment Agencies”. These Agencies are in charge of placing persons in employment in and outside Jamaica (section 2 and 3). Regulations set forth into the EARA refer in principle to agencies whose activity is connecting offer and demand of employment, while it is not obvious whether this refers to temporary staffing services as well. In all cases, there are no limitations on the business sectors in which they can operate.
14: Are there restrictions on the number of renewals and/or prolongations of TWA assignments? (f)	No regulation. No limit
15: Maximum cumulated duration of TWA assignments (f)	No regulation. No limit
16: Does the set-up of a TWA require authorisation or reporting obligations?	The set up of an Employment Agency requires authorisation and reporting obligations. However, it is not obvious whether this refers also to companies undertaking only general temporary staffing services. Calculation for (EPL indicators): 1.5
17: Do regulations ensure equal treatment of regular workers and agency workers at the user firm?	No regulation.
18: Definition of collective dismissal (b)	The law does not define collective dismissals and does not prescribe any specific procedure. However, in the case of collective disputes, consultations with workers are advised, although not required: The IDT could take a more anti-employer stance if no agreement is sought through good-faith consultations or conciliation. Calculation (for EPL indicators): Half-value for advised but not strictly required procedure: 2
19: Additional notification requirements in cases of collective dismissal (g)	No special regulation. However certain collective agreements require consultation with trade unions when dealing with redundancies. In general, in the case of collective disputes, consultations with workers are advised, although not required. Calculation (for EPL indicators): Half-value for advised but not strictly required procedure (firm-level agreements are not taking into account in EPL scores): 0.5
20: Additional delays involved in cases of collective dismissal (h)	No special regulation. In general, in the case of collective disputes, consultations with workers are advised, although not required. Good faith consultations must take at least a few hours.
21: Other special costs to employers in case of collective dismissals (i)	No special regulation.

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.