

GUATEMALA

Items	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: The Labour Code (hereinafter LC) distinguishes between: dismissal with just cause (article 77 LC) and dismissal without cause (article 82 LC). <u>Dismissal with just cause</u> : written notification must be given to the employee, indicating the cause of dismissal (article 78 LC). <u>Dismissal without cause</u> : no specific notification procedure stated by the LC (article 82 LC). Calculation (for EPL indicators): (only dismissal without cause is considered): 0
2: Delay involved before notice can start	<u>Dismissal with cause</u> : written notification indicating cause of dismissal (article 78 LC). <u>Dismissal without cause</u> : no statutory provision for notification procedure nor delays involved. Calculation (for EPL indicators): 1 day
3: Length of notice period at different tenure durations (a)	There are no notice periods to be observed by the employer. Calculation (for EPL indicators): 0
4: Severance pay at different tenure durations (a)	Dismissal with just cause: No severance pay (article 77 LC). Dismissal without cause: Severance pay equals to 1 monthly salary per year of service or fraction thereof (article 82 LC). Same indemnity applies to indirect dismissal (article 79 LC). Calculation (for EPL indicators): dismissal without cause: 9 months tenure: 0.75 months; 4 years tenure: 4 months; 20 years tenure: 20 months
5: Definition of unfair dismissal (b)	<u>Fair dismissal (dismissal with just cause)</u> : Article 77 LC sets out just causes for dismissal which are related mainly to workers misconduct: a) If the employee has acted with lack of integrity and honor during the execution of tasks and has incurred in slander against the employer or his representatives, b) If the employee commits any of the aforementioned acts against one of his fellow co-workers, causing alteration to the workplace's order or the interruption of the work, c) If during non working hours the employee commits any of the aforementioned acts against the employer or his representatives, d) If the employee commits any of the aforementioned acts against the property of the employer or fellow co-workers or a third party in the establishment, and if the employee causes serious damage, intentionally, with negligence or recklessness, to the machinery, equipment, raw materials, products and any other objects related to their works, e) If the employee reveals manufacturing secrets (article 63 letter g), f) If the employee does not attend work during two consecutive days or six half days in a period of one month, g) If the employee manifestly refuses to adopt preventive measures or follow procedures established by law, to avoid accidents or illnesses; or when the employee refuses to adopt the instructions given by the employer or his representatives to obtain better performance and efficiency in his tasks, h) if the employer infringes any of the prohibitions stated in article 64 LC or in the duly approved internal manual, after being warned in written by the employer. Prior warning is not required if the employee is under the effects of alcohol, and as a consequence endangers life and security of people or assets of the employer, i) if the worker deceived the employer pretending to have capacities or knowledge he does not possess or by means of false letters of recommendation or certificates, j) If the employee has been sentenced to prison by irrevocable judgment, k) If the employee violates any other obligation of the employment agreement. <u>Unjustified dismissal</u> : According to article 82 LC unjustified dismissal occurs when no just cause is alleged or when the employee terminates the employment agreement as a consequence of the employer's misconduct (indirect dismissal, article 79 LC). Under Guatemala's LC, the employer can always dismiss an employee without cause provided severance indemnity (indemnización por tiempo servido) is paid (article 82 LC). Thus dismissal on personal grounds and redundancy is always possible.
6: Length of trial period (c)	Trial period is of 2 months (article 81 LC).
7: Compensation following unfair dismissal (d)	If the employee challenges just cause for dismissal before the Labour Court and the employer can not prove the cause alleged, the latter must pay, apart from severance indemnity, back pay as from the date of dismissal until actual payment of indemnity, with a ceiling of 12 months (article 78 LC). Calculation (for EPL indicators): 20 years' tenure employee: back pay: 6 months
8: Reinstatement option for the employee following unfair dismissal (b)	The LC does not provide reinstatement option for the employee following unfair dismissal. However, there are certain categories of workers which have special protection: pregnant women or recent mothers (article 151 LC), trade union members (article 209 LC), dismissals during a collective dispute (article 380 LC) or during an establishment shutdown which was declared illegal (article 251). These workers can't be dismissed during certain periods of time or without following a special procedure. Calculation (for EPL indicators): 0.5
9: Maximum time period after dismissal up to which an unfair dismissal claim can be made (e)	The maximum time period to claim for unfair dismissal is of 30 days (article 260 LC).
10: Valid cases for use of standard fixed term contracts	Under article 25 LC labour agreements can be: a) Indefinite duration: when no term is specified; b) Fixed term: when the date of termination is specified or when the nature of the task is in itself of limited duration; c) For a specific task: when services are adjusted to the conclusion of said task. Article 26 LC presumes that the employee is employed by an indefinite contract, except otherwise expressed. FTC are not permitted for permanent activities. Thus FTC (both letters b) and c)) are the exception and are only permitted for services which are accidental or temporary. Calculation (for EPL indicators): 0

11: Maximum number of successive standard FTCs (initial contract plus renewals and/or prolongations)	No statutory provision in the LC. However, article 26 stipulates that FTC are the exception. Therefore, subsequent renewals can be challenged in courts. Calculation (for EPL indicators): 2 (initial contract plus 1 renewal).
12: Maximum cumulated duration of successive standard FTCs	No statutory limit in LC.
13: Types of work for which temporary work agency (TWA) employment is legal	No general regulation of TWA, however article 5 LC defines the figure of “intermediary” as a person who hires one or more workers to perform activities for a third party (called “patrono”). The third party is jointly liable with the intermediary for the management of said employees, in reference to their labour rights and obligations granted under the Constitution, Labour Code, internal manuals and other applicable regulations. However if the intermediary owns its capital and equipment, it is considered an employer (patrono), despite the fact of providing workers to a third party and therefore the liability regime does not apply. Agencies of this type operate in Guatemala and its regime is ruled by the commercial agreements executed by the parties (TWA and user firm). Calculation for EPL indicators: 4
14: Are there restrictions on the number of renewals and/or prolongations of TWA assignments? (f)	No statutory regulation. Restrictions and renewals depend on what was agreed privately by the parties (commercial agreements TWA-User Firm). FTC rules applies to TWA and User Firm.
15: Maximum cumulated duration of TWA assignments (f)	No statutory regulation. Duration depends on the commercial agreement executed privately by the parties.
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. Equal salary principle applies to employees working for the same employer (article 102 Constitution and 89 LC), which is not the case under study.
18: Definition of collective dismissal (b)	No statutory definition of collective dismissal for economic reasons and no threshold involved. However, there are certain situations which determine the termination of the employment agreements: 1) fortuity and force majeure, 2) bankruptcy or liquidation procedures, 3) incapacity or death of the employer (article 85 literal b LC). In these cases, the Labour Inspection or the Labour Tribunal (in case of conflict between the parties), must quantify, discretionally, the amount of severance indemnity that the employer must pay, which cannot be lower than 2 days salary nor higher than 4 months’ salary per employee. Notwithstanding the above, the employer can dismiss employees without cause by paying the corresponding severance payment (article 82 LC).
19: Additional notification requirements in cases of collective dismissal (g)	Although article 85 letter c) requires the participation of the Labour Inspection (or the Labour Tribunal –in case of conflict-), as standard procedures for dismissal without cause can be followed, there are no additional notification requirements. Calculation (for EPL indicators): 0 (as standard procedures for individual dismissals can be followed).
20: Additional delays involved in cases of collective dismissal (h)	As standard procedures for individual dismissal can be followed, there are no additional delays involved. Calculation (for EPL indicators): 0
21: Other special costs to employers in case of collective dismissals (i)	As standards procedures for individual dismissals without cause can be followed, there are no other special costs involved. Calculation (for EPL indicators): 0

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.