

DETAILED DESCRIPTION OF EMPLOYMENT PROTECTION LEGISLATION, 2019**TABLE OF CONTENTS**

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Argentina

ARGENTINA

| Items | Regulations in force on 1 January 2019 |
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| 1: Notification procedures in the case of individual dismissal of a worker with a regular contract | <p>A written dismissal letter is always mandatory. This letter must state the legal cause of termination and the facts supporting such cause (article 231 and 235 Labour Contract Law – LCT).</p> <p>The termination letter plays a key role in determining whether a dismissal is for just cause. The employer is strictly bound by the statements made in the termination letter since, in the case the employee challenges the termination before a court, the employer has the burden of proof of the veracity of the facts stated in the termination letter, not being allowed to claim any different facts supporting his dismissal decision. Just cause is a serious breach of the labour contract (gross misconduct or offence).</p> <p>Written notification applies both to dismissals for personal reasons and for economic reasons (article 231, 243 and 247).</p> <p>Value (for EPL indicators): average of dismissal without just cause (0) and redundancy (1).</p> <p>As of a certain number of dismissals (see Item 18): see item 19</p> |
| 2: Delay involved before notice can start | <p>Notice starts the day after the notification its receipt by the employee (Article 233 of the LCT). Decree 1043 of November 12, 2018: until March 31 of 2019, in the event of dismissal without just cause, employers must communicate the decision to the Ministry of Production and Work at least 10 days before making it effective.</p> <p>Calculation (for EPL indicators): average of dismissal without just cause (10 days) and redundancy (1 day)</p> <p>As of a certain number of dismissals (see Item 18): see item 20</p> |
| 3: Length of notice period at different tenure durations (a) | <p>Length of notice period depends on tenure duration:</p> <ul style="list-style-type: none"> a) 15 d: Probationary period. b) 1 m < 5 y. c) 2 m > 5 y. <p>Payment in lieu of notice is permitted (article 232 LCT).</p> <p>Calculation (for EPL indicators): average of cases with and without payment in lieu of notice: 9 months: 0.5 month, 4 years: 0.5 month, 20 years: 1 months</p> |
| 4: Severance pay at different tenure durations (a) | <p>Severance payment for employees dismissed without just cause is equivalent to one monthly salary per each year of service, or fraction of year exceeding 3 months (article 245 LCT).</p> <p>No severance payment applies for dismissal with just cause (article 242 LCT).</p> <p>Severance payment for employees dismissed for redundancy is equivalent to half of compensation for dismissal without just cause (articles 245, 247 LCT). This also applies in case of force majeure, death of the employer or the employee or bankruptcy (without fault of the employer).</p> <p>Severance payment is exempted from income tax (Law N° 20.628 “Impuesto a las Ganancias”)</p> <p>Calculation (for EPL indicators): average of redundancy and dismissal without cause, and average of cases with/without payment in lieu of notice: 9 months: 1.25 months, 4 years: 3.5 months, 20 years: 16 months.</p> |
| 5: Definition of unfair dismissal (b) | <p>Dismissal can be for redundancy (<i>por falta o disminución de trabajo</i>), with justified reason (<i>por justa causa</i>) or with no justified reason (<i>sin justa causa</i>). In the case of redundancy, the employer must prove that the reduction of activity is not his/her responsibility and must apply a last-in first-out rule.</p> <p>A justified reason for dismissal is not explicitly defined but typically corresponds to serious misconduct or offence (employee’s fault, not computed for EPL indicators).</p> <p>However, employers can always dismiss workers with no justified reason provided that advance notice is respected and severance payments are observed, except in cases of discrimination and of those categories of employees enjoying special protection (i.e. pregnant women, union representatives).</p> <p>As of a certain number of dismissals (see Item 18) in firms with 50 employees or more: A compensation plan must be proposed (Decree N° 2074/94).</p> |
| 6: Length of trial period (c) | <p>3 months (article 92 bis LCT). 15 days prior notice period is required or pay in lieu of notice (articles 231 and 232).</p> |

Argentina

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| 7: Compensation following unfair dismissal (d) | <p>In the event of unfair dismissal of regular workers, the current legal framework envisages two options in challenging such dismissal:</p> <p>1.- In case just cause for dismissal is not proved at Court when challenged by the employee, compensation is equal to severance payment for dismissal without cause (article 245).</p> <p>2.- If dismissal for economic reasons is not proved, compensation is equal to severance payment for dismissal without cause (article 245) instead of 50% (article 247).</p> <p>Higher compensation is possible if termination is in fact based on discriminatory grounds.</p> <p>Calculation (for EPL indicators): Typical compensation at 20 years tenure: 5 months (compensation 20 months minus average severance pay 15 months).</p> |
| 8: Reinstatement option for the employee following unfair dismissal (b) | <p>No right or practice of reinstatement except in case of discrimination on the grounds of race, religion, nationality, ideology, union affiliation, sex (Law N° 23.592).</p> <p>Value (for EPL indicators): 0</p> |
| 9: Maximum time period after dismissal up to which an unfair dismissal claim can be made (e) | <p>2 years (article 256 LCT).</p> |
| 10: Valid cases for use of standard fixed term contracts | <p>The use of fixed-term contracts is possible only if: a) duration is expressed in written (article 90 a LC), b) activity or task is of limited duration (article 90 b LC). The burden of proving the justification is on the employer (article 92 LCT).</p> |
| 11: Maximum number of successive standard FTCs (initial contract plus renewals and/or prolongations) | <p>No limitation within the maximum duration but if more than one renewal is made, it would most likely be considered as masking a long-term relationship.</p> <p>Calculation (for EPL indicators): estimated number of successive contracts: 2</p> |
| 12: Maximum cumulated duration of successive standard FTCs | <p>5 years (article 93 LCT).</p> |
| 13: Types of work for which temporary work agency (TWA) employment is legal | <p>TWA employment is allowed: to replace an absent or suspended employee, except when the suspension is the result of a strike or lack or reduction of work; in the case of temporary increase in activity requiring a greater number of workers; and to perform transitional tasks to be accomplished outside the usual and ordinary course of the business user.</p> <p>Value (for EPL indicators): 2 (only allowed for objective reasons)</p> |
| 14: Are there restrictions on the number of renewals and/or prolongations of TWA assignments? (f) | <p>No limitations for both assignments and contracts (same limitations as for standard FTCs if contracts are fixed-term).</p> |
| 15: Maximum cumulated duration of TWA assignments (f) | <p>No limitations for both assignments and contracts (same limitations as for standard FTCs if contracts are fixed-term).</p> |
| 16: Does the set-up of a TWA require authorisation or reporting obligations? | <p>The set-up of a TWA requires registration and authorisation. There is also an obligation to regularly report to public authorities on operational statistics.</p> |
| 17: Do regulations ensure equal treatment of regular workers and agency workers at the user firm? | <p>Yes.</p> |
| 18: Definition of collective dismissal (b) | <p>Collective dismissals due to economic or technological reasons when involving:</p> <ul style="list-style-type: none"> - more than 15% of workers in undertakings employing less than 400 employees. - more than 10% of workers in undertakings employing between 400 and 1000 workers. - more than 5% of workers in undertakings employing more than 1000 workers. <p>If this threshold is reached, a compulsory crisis prevention procedure must be followed (article 98 Law 24.013).</p> |
| 19: Additional notification requirements in cases of collective dismissal (g) | <p>A procedure before the Labour Ministry must be follow. This implies a) Consultation with trade union representatives, b) Notification to the public administration, c) Approval by the Labour Ministry (articles 98-105 Law 24.013).</p> |
| 20: Additional delays involved in cases of collective dismissal (h) | <p>Duration of the mandatory crisis prevention procedure. Employer or trade union must file a petition before the Labour Ministry. The Ministry will summon the parties to a hearing within 2 days. If no agreement is reached within 5 days, a new period of 10 days for negotiations will be tempted by the authority. If the employer and the union reach an agreement, the Labour Ministry, after analysing its content, may homologate or reject such agreement within 10 days. if the Administration does not decide within 10 days, the agreement will be considered authorised.</p> |

Argentina

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| 21: Other special costs to employers in case of collective dismissals (i) | Companies with more than 50 employees must propose a compensation plan (Decree N° 2074/94). |
| 22: The worker alone has the burden of proof when filing a complaint for unfair dismissal | No. |
| 23: Ex-ante validation of the dismissal limiting the scope of unfair dismissal complaints | As of a certain number of dismissals (see Item 18): crisis prevention procedure acts as a pre-dismissal validation. |
| 24: Pre-termination resolution mechanisms granting unemployment benefits | Unemployment benefits are granted only in case of dismissals (Law 24.013). |

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 Versions 1 to 3 (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.

CHILE

| Items | Regulations in force on 1 January 2019 |
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| 1: Notification procedures in the case of individual dismissal of a worker with a regular contract | <p>A written dismissal letter is always mandatory. This letter must state the legal cause of termination and the facts supporting such cause.</p> <p>This letter must be either handed directly to the employee or sent as registered letter to the employee's domicile.</p> <p>A copy of such letter must be sent to the competent Labour Inspection within 3 working days as of the date of termination.</p> <p>The termination letter plays a key role in determining whether a dismissal is or not wrongful. In this regard, the employer is strictly bound by the statements made in the termination letter since, in the case the employee challenges the termination before a court for wrongful dismissal, the employer has the burden of proof of the veracity of the facts stated in the termination letter, not being allowed to claim any different facts supporting his/her dismissal decision. Once the employer submits the dismissal letter, neither the employee nor the employer are allowed to unilaterally change the ground of termination nor the facts described therein. The foregoing can only be changed by mutual agreement of the parties or by resolution issued by a Labour Court.</p> <p>As of a certain number of dismissals (see Item 18): see item 19.</p> |
| 2: Delay involved before notice can start | <p>The notification letter must be either handed directly to the employee or sent as registered letter to the employee's domicile, within within 3 working days as of the date of termination.</p> <p>Calculation (for EPL indicators): average of 1 day for verbal notice and 3 days for registered letter.</p> |
| 3: Length of notice period at different tenure durations (a) | <p>The employee must be given a 30-day notice, or payment in lieu of notice of one month's salary. The last monthly salary on which the payment in lieu of prior notice is based has a statutory cap of 90 "monetary indexed units" (At the end of 2012, about US\$ 4,280 - this unit is adjusted daily to inflation by the Chilean government. At the end of 2012 1 monetary indexed unit is equivalent to approximately US\$48), except if modified by the parties by mutual agreement.</p> <p>Calculation (for EPL indicators): 0.5 months (average of cases with notice or severance payment).</p> |
| 4: Severance pay at different tenure durations (a) | <p>Employees with at least one year of continuous service shall receive severance pay equivalent to 30 days of employee's last monthly salary per year of service and fraction higher than six months (Articles 162 and 172 of the Labour Code).. Notwithstanding the latter, this severance is subject to two statutory limits:</p> <ul style="list-style-type: none"> a.- The last monthly salary on which the severance pay is based is capped at 90 "monetary indexed units" (currently US\$ 4,280 approx.). b.- The seniority is capped at 330 days (11 years). However, this limit is not applicable to employees hired before August 14th, 1981. <p>These caps may be modified by the parties by mutual agreement.</p> <p>However, the employer's contribution to the worker's individual unemployment insurance saving account, plus the yield of this account minus all applicable fees, may be deducted from the severance pay. In practice, this implies a deduction of 20% from severance payments due in the case of dismissal. Article 13 of Law N° 19.728 (which establishes the Unemployment Insurance) contains the provision which allows employers to make the aforementioned deduction, which is restricted only to terminations made on the grounds set out in article 161 of the Labour Code (i.e. economic reasons and dismissal at will).</p> |

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| 5: Definition of unfair dismissal (b) | <p>The Labour Code permits an employer to dismiss an employee without fault. According to the position held by the employee, the understanding of “termination without fault” could be tailored under two venues: (i) for business necessities or economic redundancy (“necesidades de la empresa”) and (ii) dismissal at will (“desahucio escrito del empleador”). Dismissal for personal reasons (i.e. insufficient performance, unsuitability for medical reasons, unsuitability for other reasons) is not allowed under Chilean labour legislation (Articles 159 to 161 of the Labour Code).</p> <p>Firstly, dismissal based on business necessities or economic redundancy is generally applicable to employees in general. It does not mean that the employer is entitled to determine them at his sole discretion, but means that the dismissal must be justified by financial or economic circumstances that make the termination of the employee’s contract unavoidable. Furthermore, court practice tends to be more restrictive since courts usually require that the economic justification be based on objective situations that cannot be attributed to the responsibility of the employer and meet a general situation of crisis for the whole company and not for a branch alone.</p> <p>Secondly, dismissal at will is only applicable to employees who bear at least general authority management, such as managers, assistant managers, attorneys and agents, as well as domestic workers. This reason requires the mere written notice of termination.</p> <p>Labour Courts (judges) must interpret evidence provided by the parties and rule according to healthy criticism rules (“sana crítica”). The latter criterion provides judges with a wide degree of freedom for determining whether a dismissal is justified/lawful or not. In this regard, judges can question the operational need of the dismissal (in fact, this is what they often do). In said case, employers will be obliged to prove the soundness of their decision (i.e. that the dismissal was necessary for the stability and continuity of the firm).</p> <p>Considering court practice, when assessing dismissals based on economic reasons (i.e. article 161 Labour Code) the following should be noted:</p> <ul style="list-style-type: none"> - Immediate employee replacement is often considered ‘unjustified’ by labour courts. - Collective dismissals may enhance the soundness of the employer’s decision, in so far as to provide context to the dismissal. - It is important to have objective information to support the employer’s decision. |
| 6: Length of trial period (c) | No trial period is admitted in legislation (except for domestic workers). |
| 7: Compensation following unfair dismissal (d) | <p>In the event of wrongful dismissal of permanent regular workers, the current legal framework envisages two options in challenging such dismissal:</p> <ol style="list-style-type: none"> 1.- If the dismissal was based by the employer on economic reasons and this was eventually wrongful, the additional compensation the Court can award is a 30%-surcharge over the employee’s severance pay. 2.- If the dismissal was not based on any cause, or was based by the employer on reasons other than economic reasons or redundancy (e.g., employee’s serious breach of the obligations) and this was eventually wrongful, the employee is entitled to a payment in lieu of notice of one monthly salary. Also, the employee is entitled to his/her severance pay, including an additional surcharge varying from 50% to 100% over the employee’s severance pay. <p>Higher compensation is possible if termination is in fact based on discriminatory grounds.</p> <p>Calculation (for EPL indicators): Typical compensation at 20 years of tenure: average of 65% x 11 months’ severance pay = 7.2 months.</p> |

Chile

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| 8: Reinstatement option for the employee following unfair dismissal (b) | <p>Reinstatement is available to permanent employees who were dismissed without fault while being under medical leave. It also applies to employees who have dismissal protection privilege (“fuero”). Dismissal protection privilege is granted by law to those employees in situations that may imply a vulnerable condition for keeping their employment (e.g. pregnancy, maternity leave, union representation). This privilege means that employer is prevented from dismissing permanent employees bearing such capacity without prior judicial authorization based on employee’s fault.</p> <p>Moreover, the Labour Protection Procedure sets forth the prohibition of termination based on discriminatory grounds (eg. union activity, social extraction, sex).</p> <p>In general, if dismissal is deemed as “seriously discriminatory” by the Court, the employee may choose between either compensation or reinstatement. Similarly, in case of wrongful dismissal based on anti-union practices of employees who do not have dismissal protection privilege in virtue of union activity (e.g. union representatives, employees involved in collective bargaining), the employee may choose between either compensation or his/her reinstatement.</p> <p>In case of wrongful dismissal based on anti-union practices of employees who have dismissal protection privilege in virtue of union activity (e.g. union representatives, employees involved in collective bargaining), reinstatement is the only available remedy.</p> <p>All these alternatives allow employees to claim the amounts the employee did not receive during the period of undue separation.</p> |
| 9: Maximum time period after dismissal up to which an unfair dismissal claim can be made (e) | <p>Employees may lodge a complaint for wrongful dismissal before Labour Courts within 60 working days as of the date of effective termination.</p> <p>If a complaint for wrongful dismissal has been filed before the Labour Inspection prior to the jurisdictional stage, the 60 working days will be increased by the time the complaint is pending before the Labour Inspection. However, this latter increase may not exceed 30 working days.</p> |
| 10: Valid cases for use of standard fixed term contracts | <p>No restrictions.</p> |
| 11: Maximum number of successive standard FTCs (initial contract plus renewals and/or prolongations) | <p>A second renewal of a fixed term contract will be taken to be a contract of indefinite length.</p> |
| 12: Maximum cumulated duration of successive standard FTCs | <p>The duration of a fixed term contract may not exceed one year (two years for managers or persons with a professional or technical degree bestowed upon by a University certified by the State.). A worker who has been employed intermittently under more than two fixed-term contracts for 12 out of a continuous period of 15 months is presumed to be hired under a contract of indefinite length.</p> <p>Exceptions apply for arts and show business employment contracts as well as professional football players and direct assistance staff.</p> <p>Calculation (for EPL indicators): average of the two situations mentioned above.</p> |
| 13: Types of work for which temporary work agency (TWA) employment is legal | <p>TWA workers can be employed in the following circumstances (article 183-N of the Labour Code): (i) to replace workers on leave; (ii) for extraordinary events e.g. exhibitions, conferences; (iii) for new projects or expansion into new markets; (iv) when starting a new business; (v) to cover occasional increases in workload; (vi) for urgent and precise work requiring immediate performance without delay (e.g. conducting repairs).</p> <p>TWA employment is illegal in certain circumstances (article 183-P of the Labour Code). This means the TWA may not place employees at the user firm in the following circumstances: (i) to perform positions entailing the representation of the user firm, such as managers, assistant managers; (ii) to substitute employees of a user firm who have gone legally strike within a collective bargaining process; and (iii) to place the employee at the disposal of a third TWA.</p> |
| 14: Are there restrictions on the number of renewals and/or prolongations of TWA assignments? (f) | <p>No restrictions within the maximum term of cumulated duration as specified in answer to Item 15 below.</p> <p>Additionally, numerous assignments at the user firm of the same TWA employee aimed at hiding a permanent labour relationship with the user firm are illegal. In this case, the user firm shall be considered the employer.</p> |
| 15: Maximum cumulated duration of TWA assignments (f) | <p>TWA assignments for extraordinary events or to cover occasional increases in workload have a maximum duration of 90 days. TWA assignments for new businesses or projects have a maximum duration of 180 days. TWA assignments to (i) replace employees on leave and (ii) for urgent and precise work requiring immediate performance at the user firm can last as long these situations truly exist.</p> <p>Calculation (for EPL indicators): average of 3 months and 6 months = 4.5 months.</p> |

Chile

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| 16: Does the set-up of a TWA require authorisation or reporting obligations? | No prior authorization is required. However, TWA can operate only if they are enrolled in a special registry run by the Labour Directorate and pay a money deposit guarantee. Hence, if no registration exists, no operation is allowed. This registration is conditional and exposed to cancellation by the labour authority upon the following situations: a.- When the TWA has an ownership relationship with the user firm; b.- When the TWA commits repeated and serious labour offences. This will be understood in the case of (i) 3 or more labour infringements within one year or (ii) infringements having significant impact against the protection of child labour, maternity and remunerations. The Labour Directorate may take the autonomous initiative to verify the existence of these offences. |
| 17: Do regulations ensure equal treatment of regular workers and agency workers at the user firm? | No requirement for equal treatment. |
| 18: Definition of collective dismissal (b) | No requirements in legislation. |
| 19: Additional notification requirements in cases of collective dismissal (g) | No requirements in legislation. |
| 20: Additional delays involved in cases of collective dismissal (h) | No requirements in legislation. |
| 21: Other special costs to employers in case of collective dismissals (i) | No requirements in legislation. |
| 22: The worker alone has the burden of proof when filing a complaint for unfair dismissal | No |
| 23: Ex-ante validation of the dismissal limiting the scope of unfair dismissal complaints | No |
| 24: Pre-termination resolution mechanisms granting unemployment benefits | Resignation grant access to unemployment benefits provided that the employee is affiliated to the unemployment insurance (mandatory for employees' hired after October, 2002). There is no sanction nor waiting period as compared to a dismissal. There is no additional statutory benefits following a resignation. |

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 Versions 1 to 3 (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.

COLOMBIA

| Items | Regulations in force on 31 December 2019 |
|---|---|
| 1: Notification procedures in the case of individual dismissal of a worker with a regular contract | <p>No specific notification procedure is required in case of dismissal with justified cause or without justified cause (Articles 62 and 64 of the Labour Code –hereinafter CST), but the reasons for dismissal must be communicated to the employee the termination date (article 66 CST). The employer must expressly and unequivocally state the specific reasons or the grounds (s) that he invokes to dispense with the services of a worker, whenever he is going to terminate the contract unilaterally in accordance with the provisions of article 7 A of the legislative decree 2351 of 1965. This statement must be made at the moment of termination of the contract to be valid. Subsequently the employer cannot be alleged validly different causes or reasons or under different conditions. The Law has established the need for employers to make a prior diligence with the worker before notified a decision, informing them of the justified cause, guaranteeing due process and right of defense of the employee.</p> <p>However a prior 15 day notice is required only in certain specific situations of dismissal with justified cause related to employee’s misconduct or low performance (Article 62 CST numerals 9 to 15).</p> <p>Therefore a statement must be supplied to the employee in all cases as its absence implies the acknowledgement of lack of just cause. Calculations (for EPL indicators): 1.25 (average of 0 without justified cause and 2.5 with justified cause)</p> <p>As of a certain number of dismissals (see Item 18): see Item 19.</p> |
| 2: Delay involved before notice can start | <p>All workers: No delays involved. The notice can be given the date of termination.</p> <p>Prior notice in case of employee’s misconduct or low performance, are considered in Item 3.</p> <p>Calculations (for EPL indicators): 3 days (average of 1 day without cause and 5 days with cause for consultation for consultation of the employee)</p> <p>As of a certain number of dismissals (see Item 18): 2 months (see Item 20)</p> |
| 3: Length of notice period at different tenure durations (a) | <p>General basis: No notice period. Notification of dismissal can be given the date of termination (Article 66 CST). However in the following cases, related to employee’ misconduct or low performance, a 15 days prior notice is required (Article 62 numerals 9 to 15). These cases are: a) poor performance; b) systematic failure to comply with the legal or conventional obligations; c) addiction of the worker that disturbs the discipline of the company; c) breach of the safety and health recommendations prescribed by the employer’s doctors or by the authorities to prevent illnesses or accidents; d) ineptitude to perform the given task; e) chronic or contagious disease, not of a professional nature.</p> <p>Calculation for EPL indicators for individual dismissals: (average of 0 days to 15 days regardless tenure duration) 7.5 days.</p> |
| 4: Severance pay at different tenure durations (a) | <p>No severance pay in the case of dismissal with justified reason (“justa causa”), which essentially corresponds to employee’s misconduct or poor performance, as stated in Item 5 (Article 62 CST).</p> <p>Severance pay for unfair dismissal (“sin justa causa”) varies depending on the employee’s monthly salary (Article 64 CST):</p> <p>a) Remuneration lower than 10 (ten) minimum legal monthly salaries (MLMS):</p> <ol style="list-style-type: none"> 1) 30 d < 1 y 2) 20 d (in addition to the 30 d of numeral 1), for each subsequent year and in proportion per fraction of year. <p>b) Remuneration in excess of 10 (ten) MLMS:</p> <ol style="list-style-type: none"> 1) 20 d < 1 y 2) 15 d (in addition to the 20 d of numeral 1), for each subsequent year and in proportion per fraction of year. <p>Calculation (for EPL indicators): (averages just cause and without just cause -in this case using higher values-): 9 months tenure: 0.5 months; 4 years tenure: 1.5 months; 20 years tenure: 6,83 months</p> <p>As of a certain number of dismissals (see Item 18): Severance pay for dismissal without justified cause</p> |

Colombia

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| 5: Definition of unfair dismissal (b) | <p>Fair dismissal: Article 62 CST provides an exhaustive list of reasons for dismissal with justified cause, which are related to employee's conduct or capacity: 1) dishonest acts related to the submission of false certificates to obtain a position in the company, 2) acts of violence, serious breaches of discipline, insults and disrespect addressed to the employer, member of his family, representatives, senior staff or other workers, whether they take place inside or outside the workplace; 3) deliberate damage to buildings, plant, works, machinery, instruments, documents, raw materials and other goods belonging to the enterprise, 4) disclosure of confidential information or trade secrets to third parties, 5) poor performance; 6) systematic failure to comply with the legal or conventional obligations; 7) criminal conviction, unless the sentence has been suspended, 8) addiction of the worker that disturbs the discipline of the company; 9) breach of the safety and health recommendations prescribed by the employer's doctors or by the authorities to prevent illnesses or accidents; 10) ineptitude to perform the given task; 11) chronic or contagious disease, not of a professional nature. In these cases, no severance payment is due.</p> <p>However, the employer can always dismiss employee's without justified reason provided severance indemnity is paid.</p> <p>Unfair dismissal: when no justified cause can be alleged and proved by the employer, or when the employee terminates the employment agreement due to the employer's misconduct – constructive dismissal (Articles 62 and 64 CST).</p> <p>As of a certain number of dismissals (see Item 18): (Article 67 of Law 50 of 1990)</p> <p>The judge who studies a collective dismissal has full freedom to study all aspects. Within the process it may question the dismissal decision and the operational necessity of the decision. The employer in the first instance, when requesting authorization from the Ministry of Labor, must provide financial, accounting, technical, commercial and administrative evidence, as the case may be, that justifies the measure of collective dismissal. These same means of proof may be requested by the Judge, in the event that it corresponds to him to study a labor demand for dismissal without just cause.</p> |
| 6: Length of trial period (c) | 2 months (Article 78 CST). The trial period must be expressed in written. |
| 7: Compensation following unfair dismissal (d) | <p>In case of unfair dismissal only prescribed severance payments are due. However, if the employer can't prove at Court a just cause for dismissal, he will be condemned to pay severance indemnity.</p> <p>Calculation (for EPL indicators at 20 years tenure) 13.66 months</p> |
| 8: Reinstatement option for the employee following unfair dismissal (b) | There is no reinstatement option for the employee following unfair dismissal. |
| 9: Maximum time period after dismissal up to which an unfair dismissal claim can be made (e) | 3 years (Article 488 CST). |
| 10: Valid cases for use of standard fixed term contracts | No restrictions on the use of standard fixed-term contracts, other than written version and maximum duration of 3 years (Articles 45 and 46 CST). |
| 11: Maximum number of successive standard FTCs (initial contract plus renewals and/or prolongations) | <p>No limitation.</p> <p>Standard FTC can be renewed indefinitely (Article 46 CST). In effect, there are no limitations on the number of successive standard FTCs. Although the maximum duration of a FTC is of 3 years, they can be renewed indefinitely.</p> |
| 12: Maximum cumulated duration of successive standard FTCs | <p>No limitation.</p> <p>As stated, although the maximum duration of a FTC is of 3 years, they can be renewed indefinitely. Therefore, there is no limit on the maximum cumulated duration of successive FTCs.</p> |
| 13: Types of work for which temporary work agency (TWA) employment is legal | <p>According to article 77 of Law 50 of 1990, TWA employment is legal:</p> <ol style="list-style-type: none"> 1) For services required on occasional, accidental or transitory basis as stated in article 6 CST. 2) To replace workers of the user firm which are on vacation, maternity or sickness leave. 3) To attend an increase in production, transport, sales of goods, stationary periods of harvest and in the provision of services. <p>Law 50 of 1990 prohibits use of TWA to replace workers on strike at the User firm.</p> |
| 14: Are there restrictions on the number of renewals and/or prolongations of TWA assignments? (f) | <p>Assignments: Yes.</p> <ol style="list-style-type: none"> 1) For services required on occasional, accidental or transitory basis: 30 days (article 6 CST) 2) Replacements: limited to the period to cover the particular event 3) Production increases and services: for a term of 6 months renewable for another period of 6 months. <p>Calculation (for EPL indicators): Yes</p> |

Colombia

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| <p>15: Maximum cumulated duration of TWA assignments (f)</p> | <p>Assignments: Yes</p> <ol style="list-style-type: none"> 1) For services required on occasional, accidental or transitory basis: 30 days 2) To cover replacements: the time is given to cover the particular event 3) Production increases and services: 6 (six) months renewable for another period of 6 (six) months. Total 12 months <p>Calculation (for EPL indicators): (average of 1 month and 12 months): 6.5 months.</p> |
| <p>16: Does the set-up of a TWA require authorisation or reporting obligations?</p> | <p>Authorization, registration and periodic statistics reporting obligations to the Labour Ministry (Articles 84 and 88 of Law 50 of 1990 and Decree 4369).</p> |
| <p>17: Do regulations ensure equal treatment of regular workers and agency workers at the user firm?</p> | <p>Yes. Article 79 of Law 50 of 1990 requires equal treatment of regular workers and agency workers at the user firm.</p> |
| <p>18: Definition of collective dismissal (b)</p> | <p>Labour Ministry considers that a collective dismissal occurs when it affects (Article 67 Law 50 of 1990):</p> <ol style="list-style-type: none"> a) In a company between 10 and 50 employees: 30% of its workers; b) In a company of more than 50 employees and up to 100: 20% of its workers; c) In a company of more than 100 employees and up to 200: 15% of its workers; d) In a company of more than 200 employees and up to 500: 9% of its workers; e) In a company of more than 500 employees and up to 1000: 7% of its workers; f) In a company of more than 1000 employees: 5% of its workers. |
| <p>19: Additional notification requirements in cases of collective dismissal (g)</p> | <p>Yes. In case of collective dismissals, the employer is obliged to obtain a prior authorization from the Labour Ministry. Simultaneously, the employer has to notify its workers in written.</p> |
| <p>20: Additional delays involved in cases of collective dismissal (h)</p> | <p>The additional days of delay are those of the duration of the administrative procedure required to obtain the authorization from the Labour Ministry. According to article 67 of Law N° 50 of 1990, the Labour Ministry is obliged to issue its decision in a period of 2 months.</p> <p>Calculation (for EPL indicators): 2 months minus notice period Item 3: 52.5 days.</p> |
| <p>21: Other special costs to employers in case of collective dismissals (i)</p> | <p>No special costs involved.</p> <p>According to article 67 of Law N° 50 of 1990, there are no other special costs than the payment of the severance indemnity (that applies for dismissal without justified cause). Notwithstanding, if the assets of the employer are below one thousand (1.000) MLMS, the severance payment can be reduced to 50%.</p> |
| <p>22: The worker alone has the burden of proof when filing a complaint for unfair dismissal</p> | <p>Yes</p> |
| <p>23: Ex-ante validation of the dismissal limiting the scope of unfair dismissal complaints</p> | <p>No</p> <p>As of a certain number of dismissals (see Item 18):</p> <p>Yes. In case of collective dismissals, the employer is obliged to obtain a prior authorization from the Labour Ministry.</p> |
| <p>24: Pre-termination resolution mechanisms granting unemployment benefits</p> | <p>Regardless of the way in which the termination of the employment relationship has been presented, if the worker is unemployed, he can access the benefits (Article 13 of Law 1636 of 2013).</p> |

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.

Colombia

- 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 Versions 1 to 3 of 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.
- g) There can be notification requirements to works councils (or employee representatives), and to government authorities such as public employment offices. Countries are scored according to whether there are additional notification requirements on top of those requirements applying to individual redundancy dismissal.
- h) 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.

Costa Rica
COSTA RICA

| Items | Regulations in force on 1 January 2019 |
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| 1: Notification procedures in the case of individual dismissal of a worker with a regular contract | <p>According to article 35 Labour Code (hereinafter LC), in all cases, the employee being terminated has the right to request a written document indicating the termination and the reasons for such.</p> <p>Dismissal without cause: a written notification must be given to the employee (article 28 LC).</p> <p>Dismissal with cause (essentially worker mis-conduct, see item 5): written notification indicating the cause for dismissal must be given, since the employer may only allege the reasons set in the letter (article 82 LC, Law N° 9343 of January, 2016). If the employee refuses to receive the termination letter, the employer is obliged to deliver it to the Labour Ministry in a maximum period of 10 days (Law N° 9343/2016). Dismissal with fault not considered for EPL purposes.</p> <p>Value (for EPL indicators): 0 (dismissals without cause).</p> |
| 2: Delay involved before notice can start | <p>For dismissal with or without cause: written notification is required. Refusal to receive the letter by the employee (Law N° 9343/2016) not considered for EPL purposes.</p> <p>Calculation (for EPL indicators): 1 day.</p> |
| 3: Length of notice period at different tenure durations (a) | <p>Dismissal with cause (not considered for the indicator): written notification is required (article 82 LC, Law N° 9343/2016). However there is no prior period established by LC.</p> <p>Dismissal without cause: The following notice periods must be given (article 28 LC):</p> <ol style="list-style-type: none"> a) 7 d > 3 m up to 6 m b) 15 d > 6 m up to 1y c) 30 d > 1y <p>Calculation (for EPL indicators): 9 months tenure: 15 days, 4 years tenure: 30 days, 20 years tenure: 30 days.</p> |
| 4: Severance pay at different tenure durations (a) | <p>Dismissal with cause (not considered for the indicator): No severance pay (articles 81 and 82 LC).</p> <p>Dismissal without cause: Severance payment ("auxilio de cesantía) varies according to different tenure durations (article 29 LC):</p> <ol style="list-style-type: none"> a) > 3m < 6m: 7 days' salary b) 6m < 1y: 14 days' salary c) From 1y onwards, the following table applies: <ul style="list-style-type: none"> • Year 1: 19,5 d • Year 2: 20 d per year or fraction in excess of 6 months • Year 3: 20,5 d per year or fraction in excess of 6 months • Year 4: 21 d per year or fraction in excess of 6 months • Year 5: 21,24 d per year or fraction in excess of 6 months • Year 6: 21,5 d per year or fraction in excess of 6 months • Year 7: 22 d per year or fraction in excess of 6 months • Year 8: 22 d per year or fraction in excess of 6 months • Year 9: 22 d per year or fraction in excess of 6 months • Year 10: 21,5 d per year or fraction in excess of 6 months • Year 11: 21 d per year or fraction in excess of 6 months • Year 12: 20,5 d per year or fraction in excess of 6 months • Year 13 and onwards: 20 d per year or fraction in excess of 6 months <p>Ceiling: last 8 years of the labour relationship.</p> <p>For personal and economic reasons since the employer may dismiss without reason.</p> <p>Calculation (for EPL indicators): 9 months tenure: 14 days; 4 years tenure: 84 days; 20 years tenure: 160 days. (For calculation purposes 7 days (1 week) is equivalent to 0,23 months).</p> |

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| 5: Definition of unfair dismissal (b) | <p>Under Costa Rica's LC, the employer can always dismiss an employee without cause provided prior notice is respected (article 28 LC) and severance payment (auxilio de cesantía) is paid (article 29 LC). Thus <u>dismissal for personal and economic reasons is always possible</u>.</p> <p><u>Fair dismissal</u> ("Dismissal with just cause"): Article 81 LC sets out just causes for dismissal which are related mainly to workers conduct (in some cases to workers capacity, but with fault, letters h and j). Just causes are: a) If the employee commits immoral acts during the execution of tasks or has incurred in slander, insults and other mistreatments against the employer, b) If the employee commits any of the aforementioned acts against one of his fellow co-workers, causing an alteration of the discipline at the workplace that determines the suspension of the activities, c) If during non working hours the employee commits any of the aforementioned acts against the employer, representative of the company. d) If the employee willingly causes material losses to the machinery, constructions, equipment, raw materials, products and any other objects related to their works, e) If the employee reveals manufacturing secrets or exposes confidential matters to the detriment of the company. f) If the employee carelessly or recklessly jeopardizes the security of the workshop, workplace or of the people inside them. g) If the employee does not attend work during two consecutive days or two days in one same month without the due authorization from the employer, h) If the employee, manifestly and repeatedly, refuses to adopt preventive measures or follow the established procedures to avoid accidents or illnesses; or if the employee fails to comply with the orders of the employer or his representatives in order to achieve the highest efficiency and performance of work, i) If the employee violates provisions of article 72 letters a, b, c, d and e LC, j) if, when the contract was concluded, the worker deceived the employer by means of false recommendation letters or certificates of qualifications that the employee does not pose and the employer acknowledges the incapacity during the execution of the contract, k) If the employee has been sentenced to prison by irrevocable judgment, l) if the employee commits serious breaches of his obligations under the labour agreement.</p> <p><u>Unfair dismissal</u> ("Dismissal without cause"): according to articles 29, 81, 82 and 83 LC, unjustified dismissal occurs when no just cause is alleged or proved at court and when the employee terminates the employment agreement due to the employer's misconduct (constructive dismissal).</p> |
| 6: Length of trial period (c) | LC does not establish explicitly a trial period, except for domestic workers. However, it should be noted that an employee has no right to prior notice (or payment in lieu of notice) or severance payment (auxilio de cesantía) unless he has been employed for a period of at least 3 months (articles 28, 80 and 102 LC). |
| 7: Compensation following unfair dismissal (d) | In case of unfair dismissal (article 29), the court will require the employer to pay the employee: 1) notice period, 2) severance payment (auxilio de cesantía), 3) back pay as from the date of the claim until court's decision (article 82 LC). This applies if the employee challenges the just cause for dismissal at court. |
| 8: Reinstatement option for the employee following unfair dismissal (b) | Reinstatement of the employee only proceeds if dismissed for discriminatory reasons or for employees enjoying a special protection (and the employer did not obtain the corresponding judicial or administrative authorization prior to dismissal) (articles 94, 94 bis, 386, 410, 430, 573). These situations are not considered for EPL purposes. |
| 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 1 year (article 413 LC as amended by Law N° 9343 of January 15 th , 2016). |
| 10: Valid cases for use of standard fixed term contracts | Objective and material reasons. FTC are permitted only to provide a service or perform a work which in its nature is of limited duration (articles 26 and 31 LC). |
| 11: Maximum number of successive standard FTCs (initial contract plus renewals and/or prolongations) | <p>General rule: The total duration of FTC cannot exceed 1 year. When the employee continues to render services, of the same nature, beyond the date of termination, the contract shall be considered of indefinite duration (article 27 LC).</p> <p>Special case: For services that require special technical preparation, the duration can be up to 5 years (article 27 LC).</p> <p>Article 27 LC states that FTC can be renewed. However the law does not specify the maximum number of renewals or prolongations.</p> <p>According to doctrine renewals are permitted only if the service is of limited duration. Renewals (as initial contract) are not permitted to perform services of a permanent nature. Thus FTCs are the exception.</p> <p>Calculation (for EPL indicators): Although LC allows renewals, as FTC are the exception, the assigned value is 2 (initial contract plus one renewal).</p> |
| 12: Maximum cumulated duration of successive standard FTCs | <p>General rule: 1 year. Special case: 5 years. Plus 1 renewal</p> <p>Calculation (for EPL indicators): average of general rule and special case: 72 months</p> |

Costa Rica

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| 13: Types of work for which temporary work agency (TWA) employment is legal | No statutory provisions in LC, except for definition of "Intermediario" as the person who engages the services of others to execute a work on behalf of an employer- beneficiary of the services. In such case both companies are jointly liable of labour and social security obligations (article 3 LC) . However, Case Law defines TWA (citing doctrine) as the agencies which provide workers to satisfy temporary needs of the user firm (i.e meet short term requirements of the market, substitute a worker or cover a temporary vacancy during a selection process). |
| 14: Are there restrictions on the number of renewals and/or prolongations of TWA assignments? (f) | No statutory regulation. FTC rules apply to FTCs between the agency and the worker. If assignments are of fixed-term, the duration of assignments and contracts typically coincide. |
| 15: Maximum cumulated duration of TWA assignments (f) | No statutory regulation. FTC rules apply to FTCs between the agency and the worker. Applying this rule and considering that case law defines TWA as those agencies which provide workers for temporary services, the assumption of a time limit of 2years/10years –for FTC- was considered. See Item 12 |
| 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 or procedures for collective dismissal. However there are certain situations that determine the termination of all the employment agreements (article 85 LC): Fortuity or force majeure, insolvency, bankruptcy, liquidation procedures, death of the employer which determine the total closure of the business or final cease of the operations. |
| 19: Additional notification requirements in cases of collective dismissal (g) | Since collective dismissals are not regulated as such by the Costa Rican labour law, the termination of the employment agreements must be addressed individually and employers must give prior notice (or pay in lieu of notice) and pay severance indemnity. Thus there are no additional requirements on top on those requirements applying to individual dismissals. |
| 20: Additional delays involved in cases of collective dismissal (h) | No additional delays involved. |
| 21: Other special costs to employers in case of collective dismissals (i) | No special costs involved other than those required for individual termination (article 85 LC). |
| 22: The worker alone has the burden of proof when filing a complaint for unfair dismissal | No. |
| 23: Ex-ante validation of the dismissal limiting the scope of unfair dismissal complaints | No |
| 24: Pre-termination resolution mechanisms granting unemployment benefits | No unemployment benefits in Costa Rica |

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 Versions 1 to 3 (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).



Costa Rica

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.

Mexico
MEXICO

| Items | Regulations in force on 1 January 2019 |
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| 1: Notification procedures in the case of individual dismissal of a worker with a regular contract | <p>The employer who dismisses a worker shall give written notice to the employee clearly indicating the conduct or conducts that motivate his/her dismissal and the date or dates on which they were committed. The notice shall be delivered personally to the employee at the moment of the dismissal or the employer shall notify to the Conciliation and Arbitration Board competent within five business days. The Board will notify the employee (Art. 47 Federal Labour Law, FLL hereafter). The behaviours established in the written notice cannot be modified through a trial.</p> <p>As of a certain number of dismissals (see Item 18): see item 19.</p> |
| 2: Delay involved before notice can start | <p>The notice must be communicated to the employee.</p> <p>As of a certain number of dismissals (see Item 18): see item 20.</p> |
| 3: Length of notice period at different tenure durations (a) | <p>All workers: No minimum notice period.</p> |
| 4: Severance pay at different tenure durations (a) | <p>Dismissals are justified only if the worker in the course of his employment is guilty of a dishonest or dishonourable act. Dismissed workers shall be entitled to a service bonus of 12 days per year of service. In the case of physical or mental disability or manifest unfitness of the worker that makes impossible continued employment, severance pay is 1 month plus 12 days per year of service (Art. 54 FFL). However, permanent workers shall be entitled to a length-of- service bonus, consisting in twelve days' wages for each year of service even if they resign voluntarily, on condition that they have completed at least fifteen years of service. (Art. 162 FLL).</p> <p>Calculation for EPL indicators for individual dismissals: severance pay minus entitlements upon quitting.</p> <p>In case of approval of a certain number of dismissals, workers will be entitled to compensation of three months of salary, and to receive the seniority premium consisting of the payment of 12 days for each year of services rendered (Article 162 and 436 of the FLL).</p> |
| 5: Definition of unfair dismissal (b) | <p>Justified: Dismissals are justified only when the employer can demonstrate the worker's lack of integrity or actions prejudicial to the company's interests (such as negligence, imprudence, or disobedience). Dismissal for physical or mental disability or manifest unfitness of the worker that makes impossible employment continuation is also justified.</p> <p>Unfair: In all other cases, including where relevant notification procedures have not been followed, the dismissal will usually be ruled unfair.</p> <p>A certain number of dismissals can be justified following the closure of establishments or undertakings or by the permanent reduction of their production, mainly for economic reasons (Chapter VIII, FLL). When it comes to reducing jobs in a company or establishment, the workers' ladder will be taken into consideration, so that those of lesser age are readjusted (Article 437 of the FLL). If the employer resumes the activities of his company or creates a similar one, he/she will be obliged to prefer, in equal circumstances, Mexican workers over those who are not; to those who have served them satisfactorily for longer; to those who, having no other source of economic income, are in charge of a family; to those who have finished their compulsory basic education; to those trained in those who are not, to those who have greater aptitude and knowledge to do a job and to those who are unionized in relation to those who are not (Articles 438).</p> |
| 6: Length of trial period (c) | <p>The FLL regulates the trial period as follows:</p> <p>Article 39A: In an employment relation of unspecified duration or when exceeding 180 days, the trial period, may not exceed 30 days, with the only purpose to verify that the employee meets the requirements and skills needed to develop the work requested.</p> <p>The trial period may be extended up to 180 days, only in the case of workers in management positions, managerial and other involved in the management or administrative functions in the company or establishment or the performance of specialized, professional, or technical work. At the end of the trial period, if the worker cannot prove to satisfy the qualifications and skills needed to develop the work, the employer, taking into account the opinion of the Joint Commission on Productivity, Development and Training, will terminate the employment relationship without liability.</p> <p>Calculation (for EPL indicators): average of the 2 situations: 3.5 months</p> |

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| 7: Compensation following unfair dismissal (d) | <p>In the case of dismissal without “just cause”, compensation of 3 months plus 20 days per year of service. Back pay accrues from the date of dismissal.</p> <p>Calculation (for EPL indicators): Typical compensation at 20 years tenure (all workers): 15 months (compensation plus back pay minus seniority bonus minus severance pay mentioned in Item 4).</p> <p>As of a certain number of dismissals (see Item 18): there is no such definition in the labour legislation, since the termination of collective labour relations requires approval or authorization from the Labour Court, as established in the articles 434 and 435 of the FLL.</p> |
| 8: Reinstatement option for the employee following unfair dismissal (b) | <p>The employee may request reinstatement, but the employer can be exempted from reinstating the employee by paying compensation to the employee in cases where the employee had tenure of less than one year, was employed on a casual basis or where an ongoing employment relationship is not possible the worker, because of the position he/she holds or the nature of his/her work, is in direct and permanent contact with the employer.</p> <p>Calculation (for EPL indicators): average of the two cases</p> <p>As of a certain number of dismissals (see Item 18): there is no such definition in the labour legislation, since the termination of collective labour relations requires approval or authorization from the Labour Court, as established in the articles 434 and 435 of the FLL.</p> |
| 9: Maximum time period after dismissal up to which an unfair dismissal claim can be made (e) | <p>In accordance with the provisions of Art. 518 FLL, the legal prescription for unfair dismissal claims is two months. The prescription runs from the day following the date of termination of the employment relationship.</p> <p>As of a certain number of dismissals (see Item 18): there is no such definition in the labour legislation, since the termination of collective labour relations requires approval or authorization from the Labour Court, as established in the articles 434 and 435 of the FLL.</p> |
| 10: Valid cases for use of standard fixed term contracts | <p>Restricted to objective situations (replacement, temporary increase in workload, work on a project that is itself of a fixed-term nature, etc.), with the exception of a few occupations. Extent of use determined in consultation with union delegates (Articles 35, 37, 39-A and 39-B of the FLL).</p> |
| 11: Maximum number of successive standard FTCs (initial contract plus renewals and/or prolongations) | <p>No limit specified, negotiable by both parties.</p> |
| 12: Maximum cumulated duration of successive standard FTCs | <p>No limit specified, negotiable by both parties. If the fixed term contract is to perform work of a fixed-term nature, the contract will extend as long as the work extends (Articles 42, 43, 76, 78, 170, 478, 486 and 491 of the FLL).</p> |
| 13: Types of work for which temporary work agency (TWA) employment is legal | <p>The FLL regulates TWA employment in Articles 15-A, 15-B, 15-C and 15-D.</p> <p>The use of TWA employment should not cover the same activities that are normally performed in the user establishment. Moreover, jobs of regular and TWA workers at the user establishment must be different. Moreover, TWA employment must be justified by its specialized nature.</p> <p>The use of TWA employment is not permitted when worker’s contract are transferred from the user firm to the agency, with the clear aim of reducing labour rights.</p> |
| 14: Are there restrictions on the number of renewals and/or prolongations of TWA assignments? (f) | <p>No limit for both contracts and assignments</p> |
| 15: Maximum cumulated duration of TWA assignments (f) | <p>No limit for both contracts and assignments</p> |
| 16: Does the set-up of a TWA require authorisation or reporting obligations? | <p>No requirements</p> |
| 17: Do regulations ensure equal treatment of regular workers and agency workers at the user firm? | <p>Article 14 of the FLL establishes responsibilities for companies that use intermediaries for hiring workers. Workers shall have the right to provide their services under the same conditions and have the same rights that apply to other workers who perform work in the company or similar establishment.</p> |
| 18: Definition of collective dismissal (b) | <p>The Federal Labour Law does not contain a definition of collective dismissal, but it contemplates the collective termination of employment relationships, following the closure of establishments or undertakings or by the permanent reduction of their production, mainly for economic reasons (Chapter VIII, FLL).</p> |
| 19: Additional notification requirements in cases of collective dismissal (g) | <p>Notification of employee representatives: Duty to inform and consult with trade union/employee representatives. Notification of public authorities: Notification to Conciliation and Arbitration Board if no agreement with union can be found.</p> <p>A certain number of dismissals need to be approved by the Labor Court (Articles 434 and 435 of the FFL).</p> |

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| 20: Additional delays involved in cases of collective dismissal (h) | Type of negotiation required: Negotiation with employee representatives on conditions and procedures of dismissal. If no agreement is reached, agreement by Conciliation and Arbitration Board on terms of dismissal is required. For the related procedure, a hearing must be performed within the fifteen working days following the date in which the complaint was presented or at the conclusion of the investigations (Art. 893 FLL). |
| 21: Other special costs to employers in case of collective dismissals (i) | Type of negotiation required: Negotiation with employee representatives on conditions and procedures of dismissal. If no agreement is reached, agreement by Conciliation and Arbitration Board on terms of dismissal required. Selection criteria: Usually seniority-based. Severance pay: 3 months in addition to seniority bonus (Art. 436 FLL) |
| 22: The worker alone has the burden of proof when filing a complaint for unfair dismissal | No |
| 23: Ex-ante validation of the dismissal limiting the scope of unfair dismissal complaints | No A certain number of dismissals need to be approved by the Labour Court (Articles 434 and 435 of the FFL). |
| 24: Pre-termination resolution mechanisms granting unemployment benefits | No unemployment benefits in Mexico. |

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 Versions 1 to 3 of 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.

Paraguay

PARAGUAY

| Items | Regulations in force on 1 January 2019 |
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| 1: Notification procedures in the case of individual dismissal of a worker with a regular contract | <p>Written notification to the employee (articles 87, 88 and 93 of the Labour Code – hereinafter LC-).</p> <p>As of certain number of dismissals: see item 19. Value (for EPL indicators): 0</p> |
| 2: Delay involved before notice can start | <p>The notification must be communicated in written to the employee. Value (for EPL indicators): 1 day</p> <p>As of a certain number of dismissals: see item 20</p> |
| 3: Length of notice period at different tenure durations (a) | <p>The length of the prior notice varies according to different tenure durations (article 87 LC).</p> <p>a) 30 d < 1 y b) 45 d > 1 y < 5 y c) 60 d > 5 y < 10 y d) 90 d > 10 y</p> <p>Calculation (for EPL indicators): 9 months: 1 month, 4 years: 1.5 months; 20 years: 3 months.</p> |
| 4: Severance pay at different tenure durations (a) | <p><u>Just cause:</u> no severance pay applies to dismissal with justified cause which essentially corresponds to employee's misconduct or poor performance (articles 81 and 82 LC). However, if the just cause alleged by the employer cannot be proved at Court, the employee is entitled to severance payment plus back pay until the date of Court decision.</p> <p><u>Without just cause:</u> if the employer dismisses without alleging a just cause, only severance payment is due. Severance pay for unjustified dismissal is equal to 15 daily wages for each year or fraction of year in excess of six months. Unjustified dismissal occurs when the employer dismisses without alleging a just cause or when the employee terminates the agreement due to the employer's misconduct – constructive dismissal- (articles 91 and 84 LC). Economic dismissal falls under this category of dismissal without cause.</p> <p><u>Job stability:</u> A special situation applies to employees with at least 10 years tenure. In this case, the employer is only permitted to dismiss with justified cause. If the employer is unable to prove just cause at Court, the employee may choose between reinstatement or compensation equivalent to double dismissal indemnity (articles 94 and 97 LC).</p> <p>Calculation (for EPL indicators): (averages just cause and without just cause): 9 months tenure: 0.25 month; 4 years tenure: 1 month; 20 years tenure: 0 month (as compensation is considered in Item 7).</p> <p>As of a certain number of dismissals: In case of closure of the company or final reduction of the activities, no severance indemnity must be paid, (except for workers enjoying job stability who must receive double severance indemnity -article 99 LC Value (for EPL indicators): average between closure of the company or final reduction of the activities, and other economic dismissals.</p> |

Paraguay

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| <p>5: Definition of unfair dismissal (b)</p> | <p><u>Fair dismissal:</u> Article 81 LC provides an exhaustive list of reasons for dismissal with justified cause, which are related to the employee's misconduct or poor performance. Amongst others: a) dishonest acts related to the submission of false certificates to obtain a position in the company, b) theft, robbery or crimes against property of persons committed by the employee at the workplace, c) acts of violence, serious breaches of discipline, insults and disrespect addressed to the employer, members of his family, representatives, senior staff of the company, committed at the workplace, d) the commission of the same acts against co-workers, e) the commission of said acts (literal c), outside the workplace against c) and d) members, f) deliberate damage to buildings, plant, works, machinery, instruments, documents, raw materials and other goods belonging to the enterprise, g) immoral acts committed by the employee at the workplace, h) disclosure of confidential information or trade secrets to third parties, i) imprudent or inexcusable acts that compromise safety of the enterprise or of the persons thereof, j)) concurrence to the workplace under the effect of alcohol or drugs or carrying dangerous weapons , k) criminal conviction, l) breach of the safety and health rules prescribed by legislation or by the employer to prevent professional illnesses or work related accidents, ll) systematic failure to comply with the indications made by the employer or its delegates to improve employee's efficiency and productivity, m) work slowdowns or intentional reduction in work performance, inciting other workers for the same purpose, n) if the employer lost confidence in an employee exercising managerial supervision, surveillance, audit or other similar functions, ñ) negotiation by the worker, without express permission of the employer, if it constitutes an act of competition to the latter, o) participation in a strike declared illegal by the competent authority, p) repeated lateness, q) work stoppage , r) interruption of the tasks without justified cause, t) disobedience to the orders given by the employer or its representatives, u) chronic or contagious disease, mental disorders that inhibit the development of the employee's current tasks, v) gross violation of the fundamental terms of the employment contract or of the internal regulations of the company.</p> <p>No severance payment in these cases of dismissal with just cause. However, the employer can always dismiss employees without justifying a reason (despido sin justa causa) provided notice periods are respected and severance indemnity is paid (except in the case of employees of at least 10 years tenure).</p> <p><u>Redundancy:</u> In case of closure of the company, if the employer re-initiates activities within 1 year, he is obliged to re-employ the workers. Failure to comply, determines the payment of severance indemnity for unfair dismissal. In case of suspension of the employment agreement due to: 1) exhaustion of raw material, 2) excess of production in relation to the needs of the market, 3) unprofitability of the company, after a 90 days period of suspension, the employee can choose to wait for the reactivation of the company or claim the indemnity for unfair dismissal.</p> <p><u>Unfair dismissal:</u> when the employer alleges a just cause for dismissal that cannot be proved at Court or when the employee terminates the employment agreement due to the employer's misconduct – constructive dismissal (articles 91 and 84 LC).</p> <p>Values for (EPL indicators): average between employees with less than 10 years of tenure and employees with 10 or more years of tenure.</p> <p>As of a certain number of dismissals: In case of closure of the company or final reduction of the activities, <u>re-employment</u> is mandatory if the employer re-initiates activities within one year (failure determines the payment of severance indemnity (article 80 LC).</p> <p>Value (for EPL indicators): average between closure of the company or final reduction of the activities, and other economic dismissals.</p> |
| <p>6: Length of trial period (c)</p> | <p>According to article 58 LC, the trial period is of:</p> <ol style="list-style-type: none"> 30 days for unqualified employees or domestic workers. 60 days for qualified workers or apprentices. Not legally specified: for highly qualified employees the trial period is agreed by the parties. Not a common practice in Paraguay. <p>Calculation (for EPL indicators). Assumption of 6 months trial period for highly qualified workers. Average of 3 situations: 3 months.</p> |
| <p>7: Compensation following unfair dismissal (d)</p> | <p>20 years tenure employee (enjoying job stability – see item 4) can only be dismissed with justified cause proved at Court (article 94 LC). If just cause is not proved, the employee (who chooses not to be reinstated) is entitled to double severance payment plus 3 months' pay in lieu of notice (article 96 LC).</p> <p>Calculation (for EPL indicators): 3 months' payment in lieu of notice plus double severance pay, in the case the worker chooses of not being reinstated (20 months): 23 months</p> <p>As of a certain number of dismissals: In case of closure of the company or final reduction of the activities, if the employer fails to comply with the procedure stated in Items 18 and 19, ordinary severance indemnity must be paid (as stated in item 19)</p> |

Paraguay

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| 8: Reinstatement option for the employee following unfair dismissal (b) | <p>Yes, for employees of at least 10 years tenure. The employee, who worked continuously for the same employer, acquires job stability at 10 years tenure (article 94 LC). In such case, the employer is only allowed to dismiss for just cause following a judicial procedure. If the employer is unable to prove at court the just cause alleged, the employee can decide between reinstatement plus back pay or the payment of double severance indemnity for unfair dismissal plus pay in lieu of notice (articles 96 and 97 LC).</p> <p>Reinstatement option also applies to certain union representatives defined in article 318 LC which acquire the status of job stability. In such case, these employees can only be dismissed if the employer proves at Court a just cause for dismissal.</p> <p>Calculation for (EPL indicators): Less than 10 years tenure: no reinstatement option, 10 years tenure or more: reinstatement option: Average of 0 and 3: 1.5</p> |
| 9: Maximum time period after dismissal up to which an unfair dismissal claim can be made (e) | 60 days (article 400 -letter e) LC). |
| 10: Valid cases for use of standard fixed term contracts | Objective and material reasons (article 49 LC). The LC authorizes FTC for a limited term, to perform a specific service or to conclude a specific task. Contracts to develop services of a permanent nature are considered of indefinite duration, despite the fact of being agreed as FTC (Article 50 LC). FTC is the exception. |
| 11: Maximum number of successive standard FTCs (initial contract plus renewals and/or prolongations) | 1 year for labourers (obrero) 5 years for employees (empleados). However, they can be renewed (article 49 LC). |
| 12: Maximum cumulated duration of successive standard FTCs | No limitation. |
| 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. FTC rules apply to FTC between agency and the worker. |
| 15: Maximum cumulated duration of TWA assignments (f) | No statutory regulation. FTC rules apply to FTC between agency and the worker. |
| 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) | <p>No statutory definition for collective dismissal nor a specific number of employees involved . However, there are certain situations that determine the termination of the employment agreements for economic reasons and others (articles 78 to 80 LC):</p> <ul style="list-style-type: none"> a) Closure of the company or final reduction of the activities. A prior administrative procedure is required which involves a communication to the Labour Authority and the participation of the employees, before the corresponding administrative decision. b) Exhaustion of the substance exploited by the extractive industry. c) Fortuity or force majeure that permanently inhibits the continuation of the employment agreements (unless there is an insurance to cover this risk) See Item 21. d) Bankruptcy or liquidation proceedings. <p>Value (for EPL indicators): average between cases of closure/final reduction of activities (4), and other cases (0)</p> |
| 19: Additional notification requirements in cases of collective dismissal (g) | <p>For closure of the company or final reduction of the activities, a procedures must be followed which involves: a <u>written communication to the Labour Authority</u> and a brief participation of the workers, before the Authority issues the final resolution (article 78 Literal h). Although this article mentions a final resolution of the authority, there is no indication that an approval is necessary, but only the communication.</p> <p>If the employer fails to comply with this procedure, severance indemnity must be paid to the workers (article 80 final LC).</p> <p>Value (for EPL indicators): average between closure of the company or final reduction of the activities, and other cases.</p> |

Paraguay

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| 20: Additional delays involved in cases of collective dismissal (h) | <p>In case of closure of the company or final reduction of the activities, the required communication to the Labour Authority, the summary participation of the workers and the final decision will determine certain days of delay.</p> <p>Law 4986/2013 states, on a general basis, that, the duration of the procedures for closure of a company cannot exceed 30 days, after the required documents are presented.</p> <p>Calculation for (EPL indicators): (average of 30 days for closure of the company/final reduction and 0 for the other cases) = 15 days.</p> |
| 21: Other special costs to employers in case of collective dismissals (i) | <p>In case of closure of the company or final reduction of the activities, no severance indemnity must be paid, (except for workers enjoying job stability who must receive double severance indemnity -article 99 LC-). However, if the employer fails to comply with the procedure stated in Items 18 and 19, ordinary severance indemnity must be paid (as stated in item 19). <u>Re-employment</u> is mandatory if the employer re-initiates activities within one year (failure determines the payment of severance indemnity (article 80 LC).</p> <p>In case of fortuity or force majeure, if the insurance covers the risk, the company should re-initiate activities. If the employer decides not to do, indemnities to the employees should be paid: a) After trial period up to 5 y tenure: 1 monthly salary; b) >5y to 10y tenure: 2 monthly salaries; c) >10y tenure: 3 monthly. This indemnity also applies to bankruptcy-liquidation proceeding and exhaustion of the substance exploited by the extractive industry (Articles 79 and 80 LC).</p> <p>Value (for EPL indicators): 0 (fortuity/force majeure not considered).</p> |
| 22: The worker alone has the burden of proof when filing a complaint for unfair dismissal | No |
| 23: Ex-ante validation of the dismissal limiting the scope of unfair dismissal complaints | No |
| 24: Pre-termination resolution mechanisms granting unemployment benefits | No unemployment benefits in Paraguay. |

Peru
PERU

| Items | Regulations in force on 1 January 2019 |
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| <p>1: Notification procedures in the case of individual dismissal of a worker with a regular contract</p> | <p>In case of dismissal for justified cause related to the employee's conduct or capacity, a prior written notification procedure is required (articles 31 and 32 Law on Productivity and Labour Competitiveness -hereinafter LPCL). The notification letter has to specify the reason for dismissal and the date of the effective termination. The employee has the right to present a written defense of the charges alleged by the employer. Once the letter is delivered, the employer may not invoke a different reason than the one referred to in the notification letter. Dismissal can also be without justification (despido arbitrario), article 34 LPCL. However, despite the letter of the law, the Constitutional Tribunal has construed that dismissal without just cause (article 34 LPCL) entitles the employee to claim reinstatement (see Item 5). Value (for EPL indicators): average between dismissal for personal reasons (3) and dismissal for economic reasons (2)</p> <p>As of a certain number of dismissals (see Item 18): see item 19.</p> |
| <p>2: Delay involved before notice can start</p> | <p>The written notification letter must be sent directly to the employee. If the employee refuses to receive said letter, it can be handled by a notary public or by a Judge (Article 32 LPCL). The employee has a minimum of: a) 6 days in case of misconduct to present a written defense of the charges alleged by the employer (not considered for EPL indicators as it is a case of fault); b) 30 days if the reason is related to the employee's capacity, so that the worker can demonstrate its capacity. Calculation (for EPL indicators): average between personal reasons (30 days + 1 day for written notification), and economic reasons (1 day).</p> <p>As of a certain number of dismissals (see Item 18): see item 20.</p> |
| <p>3: Length of notice period at different tenure durations (a)</p> | <p>Warning procedures prior to dismissal due to employee's conduct or capacity were mentioned in Item 2. Values (for EPL indicators): 0</p> |
| <p>4: Severance pay at different tenure durations (a)</p> | <p>No severance payment in case of dismissal for justified reason related to the employee's conduct or capacity (article 34 LPCL) or for economic reason (article 52 LPCL). Severance pay for arbitrary dismissal is equivalent to <u>1.5 monthly salaries per each full year of service up to a maximum of 12 monthly wages</u>. Fractions of years are paid in proportion to the months (1/12) and days (1/30) worked for the employer (articles 34 and 38 LPCL). A special regime applies to dismissals in Peru. Given the system described in Item 5, for EPL purposes severance payment is reflected under Item 7 and Item 8. Therefore, values corresponding to severance payment were set to 0, despite that dismissals may end by paying severance indemnity.</p> <p><u>Additional compensation:</u> According to article 21 of the Compensation for the Length of Service Law (hereinafter CTSL), a special compensation is paid to the employee, upon termination of the employment contract, irrespective of the reason or cause of termination. This payment -called "<u>Compensación por Tiempo de Servicio</u>"- is equivalent to one monthly average salary per year of service. This amount is deposited to a bank chosen by the employee each semester. As it can be assimilated to an additional social security contribution and do not represent a specific burden to employers at the time of dismissal, this additional compensation is not considered for EPL purposes.</p> <p>Values (for EPL indicators): 0 (as severance payment is reflected in Items 7 and 8).</p> |

5: Definition of unfair dismissal (b)

Fair dismissal: Justified reasons for dismissal are defined in articles 22 to 28 LPCL. These reasons are related to employee's conduct and capacity. In those cases, no severance indemnity is due.

Reasons connected to employee's capacity (art. 23 LPCL): a) deterioration of the physical or mental faculties or an acquired incapacity having a major effect on his or her performance on the job; b) poor performance in relation to the worker's capacity or in comparison to the average output for similar work under similar conditions; c) unreasonable refusal to undergo a previously agreed or legally required medical examination in the context of the employment relationship, or to follow medical treatment or preventive measures prescribed by a doctor in order to avoid illness or accident.

Reasons related to the worker's conduct (art. 24-28 LPCL): conviction for a crime involving fraud (by a decision not subject to appeal); disqualification of the worker imposed by judicial or administrative authorities to carry out his or her job at the workplace for three months or more; and any serious misconduct as defined in 25 LPCL: a violation of the fundamental terms of the contract which makes the continuation of the employment relationship unreasonable, as follows: a) failure to comply with employment obligations in such a way that the breakdown of good faith in the employment relationship may be presumed; the repeated opposition to orders relating to the work; repeated and untimely stoppage of work when this has been found to be the case by the competent authority; or the failure to observe work regulations or occupational safety or health regulations; b) deliberate and repeated deterioration in output, or in the volume or quality of production; c) appropriation or attempted appropriation of goods or services belonging to the employer or for which the worker is responsible, or unjustified retention or utilization of the same; d) the use or transfer to a third party of information reserved for the employer; the unauthorized removal or use of documents belonging to the enterprise; providing false information to the employer with the intention of causing harm or obtaining an advantage; or unfair competition; e) repeated attendance at work in a state of drunkenness or under the influence of drugs or narcotics, and even if it is not repeated, where because of the nature of the work, such condition is exceptionally serious; f) acts of violence, serious breaches of discipline, insults and disrespect in oral or written statements addressed to the employer, his or her representatives, senior staff or other workers, whether they take place inside or outside the workplace; g) deliberate damage to buildings, plant, works, machinery, instruments, documents, raw materials and other goods belonging to the enterprise, or in its possession; h) failure to appear at the workplace for more than three consecutive days; unjustified absence for more than five days over a period of 30 calendar days, or more than 15 days over a period of 180 days, irrespective of whether any disciplinary action is taken in either case; repeated lateness where attention has been drawn to this by the employer, and where disciplinary sanctions such as written warnings and suspensions have already been applied.

Economic reasons: In addition, the LPCL provides for termination for economic, technological or similar reasons, or because of restructuring of the enterprise (Title I, Ch. VII, sec. 7).

Unfair dismissal

Two different regimes co-exist regarding unfair dismissals:

1) Dismissals ruled by the Law:

- a) **Arbitrary dismissal** (article 34 and 38 LPCL): occurs when: 1) no just cause is alleged: in this case the employer is obliged to pay severance indemnity within 48 hours of dismissal. 2) just cause alleged cannot be proved at court. In this case, the employee has to file a lawsuit before the Labour Court claiming the payment of severance indemnity. Although the law does not grant reinstatement option for employees arbitrarily dismissed, case law grants this possibility.
- b) **Null dismissal** (articles 29, 34, 40 to 42 LPCL, Law N° 26626 and Law N° 27050): when dismissal is based on prohibited grounds: a) affiliation to a union or participation of union activities, b) status or former status of employee's representative, c) filing a complaint against the employer, d) discrimination based on sex, race, religion, political opinion or language, e) Pregnancy or recent mother, f) dismissal due to worker suffering from HIV, g) dismissal due to worker suffering from an incapacity. In this case, the employee can claim reinstatement plus back pay before the Labour Court or opt for compensation instead (art. 34 LPCL)
- c) **Indirect or constructive dismissal** (articles 30, 35 and 38 LPCL): occurs when the employee terminates the employment agreement due to employer's misconduct. In this case the employee has to claim before the Labour Court either the cease of the employer's hostility or the payment of severance indemnity for arbitrary dismissal.

2) Dismissals ruled by Constitutional Tribunal

(Leading Cases: Expediente N° 1124-2001-AA/TC, Telefónica del Perú, Expediente N° 976-2001-AA/TC Eusebio Llanos Huasco and Expediente N° 206-2005-PA/TC Cesar Antonio Baylón). The Constitutional Tribunal (hereinafter TC) has played an important role in incorporating new cases of unfair dismissals, in addition to the ones defined by the law. The key issue of these types of dismissals is that its grants reinstatement to employees following a special procedure called "acción de amparo" before the TC.

- a) **Dismissal without cause:** no cause is alleged by the employer when dismissing an employee.
- b) **Fraudulent dismissal:** when the employer alleges a cause that is false or dismisses a worker in a disloyal, hostile or perverse manner.
- c) **Dismissal in breach of fundamental constitutional rights:** when the employer dismisses an employee breaching a fundamental constitutional right, different from the ones listed in article 29 LPCL, including generic breaches of the right to work. Redundancy is unlikely to be considered a breach to the right to work.

However, as of May 2015: Labour Courts are competent to grant reinstatement (Case Law: Expediente N° 02383-2013- PA/TC Elgo Ríos Nuñez), Supreme Court of Justice (Ruling May 2012) and New Labour Procedure Law N° 29.497.

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| 6: Length of trial period (c) | According to article 10 LPCL, on a general basis, probationary period is of three months, at the end of which the employee is entitled to the severance payment in case of unfair dismissal. However, the parties may agree in writing to extend the probationary period when the work to be undertaken requires a period of training and adaptation or when the nature of the work or responsibility entailing such extension may be justified. This extension may not exceed: <ul style="list-style-type: none"> - six months in total in the case of skilled workers and employees in positions of trust, - one year in total for managerial personnel. Calculation for EPL indicators (average between the first situation and the average of the last two situations): $(3 + (6+12)/2) / 2 = 6$ months. |
| 7: Compensation following unfair dismissal (d) | Following unfair dismissal (arbitrary and others), the employee can choose severance payment as compensation. Severance payment amounts to 1.5 monthly salaries per each full year of service up to a maximum of 12 monthly wages. Fractions of years are paid in proportion to the months (1/12) and days (1/30) worked for the employer (articles 34 and 38 LPCL). See Items 4 and 5 Calculation for EPL indicators (employee 20 years tenure): 12 months |
| 8: Reinstatement option for the employee following unfair dismissal (b) | Reinstatement option is available for: 1) null dismissal, 2) arbitrary dismissal, and without cause 3) fraudulent dismissal and 4) dismissal in breach of constitutional rights. As from 2015, reinstatement can be claimed both before Labour Courts and Constitutional Court (Case Law Expediente N° 02383-2013- PA/TC Elgo Ríos Nuñez (2015) and Ruling of Supreme Court of Justice (2012)) In case of null dismissal, reinstated employees are entitled to back pay (article 40 LPCL). As from 2016, Supreme Court of Justice issued a ruling whereby, employees can claim compensation for total damages in case of dismissal without cause and fraudulent dismissal (V Pleno Jurisdiccional Supremo en materia laboral y previsional – published August 4 th , 2017). Calculation (for EPL indicators): 3 |
| 9: Maximum time period after dismissal up to which an unfair dismissal claim can be made (e) | 30 calendar days after its occurrence. This provision is applicable to claims for arbitrary, null and indirect dismissal (article 36 LPCL). |
| 10: Valid cases for use of standard fixed term contracts | According to articles 53 and 57 LPCL, valid reasons for the use of standard FTC are: a) objective and material reasons, b) launch of a new activity. In effect, articles 53 to 71 LPCL contain a list of the valid reasons for the use of FTC, which fall within 3 categories: <ol style="list-style-type: none"> 1) <u>Temporary reasons</u> (article 54 LPCL): <ul style="list-style-type: none"> * commencement or launching of a new activity (maximum duration: 3 years) * increase in market demand (maximum duration: 5 years) * restructuring of the enterprise in response to the replacement, modification, extension or, in general, any technological change (maximum duration: 2 years) 2) <u>Incidental reasons</u> (article 55 LPCL): <ul style="list-style-type: none"> * transitory needs different from the normal activity (maximum duration: 6 months in one year), * replacement of a worker (maximum 5 years) * emergency contract to cover needs arising from an unforeseen event or force majeure (duration of emergency and maximum: 5 years) 3) <u>Specific piece of work or service</u> (article 56 LPCL): <ul style="list-style-type: none"> * performance of a specific piece of work or service (maximum 5 years) * intermittent service contract (maximum 5 years) * seasonal contracts (maximum 5 years) |
| 11: Maximum number of successive standard FTCs (initial contract plus renewals and/or prolongations) | No limitation. Renewals are allowed within the maximum duration specified in item 10 for each contract (Article 74 LPCL). A combination of different contracts subject to special conditions is possible provided however that the total cumulative duration does not exceed 5 years (article 74 LPCL) |
| 12: Maximum cumulated duration of successive standard FTCs | 5 years. As stated in item 10 FTC fall under 3 categories. For each category, a different maximum period is specified within each category. Calculation (for EPL indicators): average of within category averages of maximum periods: $((3+5+2)/3) + ((0.5+5+5)/3) + 5 / 3 = 3.94$ years or 47.33 months |
| 13: Types of work for which temporary work agency (TWA) employment is legal | TWA employment is only legal for services that are of temporal, complementary or of specialized nature (article 3 Law 27.626). The performance of permanent activities at the User firm is illegal. TWA contracts are not permitted to replace striking workers at the User firm or after a collective layoff. Law N° 29.245 and Decree N° 1038 "Outsourcing" (Tercerización) do not follow under the definition of TWA for EPL, therefore are not considered in the analysis. |

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| 14: Are there restrictions on the number of renewals and/or prolongations of TWA assignments? (f) | <p>No statutory limitation.</p> <p>In effect, restrictions on renewals are not specifically ruled by the law. Notwithstanding, as TWA contracts are only permitted to perform temporal, complementary or highly specialized services, it can be construed that renewals are admitted on these extraordinary cases.</p> |
| 15: Maximum cumulated duration of TWA assignments (f) | <p>The duration depends on the extraordinary cases where this TWA contracts are permitted.</p> <p>The maximum cumulated duration of seasonal, temporal and emergency contracts under LPCL is of 5 years. Assignments fall under these exceptional situations, thus the 5 year period is applicable.</p> |
| 16: Does the set-up of a TWA require authorisation or reporting obligations? | <p>According to articles 14 and 18 Law 27.626 and Supreme Decree N° 003-2002-TR (articles 7 to 10); the set-up of a TWA requires authorization and registration. Reporting requirements, on a 3 months period, are required by the Ministry of Labour and Employment Promotion http://www.mintra.gob.pe/mostrarContenido.php?id=826&tip=9#</p> |
| 17: Do regulations ensure equal treatment of regular workers and agency workers at the user firm? | <p>Equal treatment (Article 7 of Law 27.626).</p> |
| 18: Definition of collective dismissal (b) | <p>Under LPCL, provisions of collective dismissal grounded on economic, technological and structural reasons apply when it involves at least 10% of the employees.</p> |
| 19: Additional notification requirements in cases of collective dismissal (g) | <p>Under LPCL, in case of collective dismissal grounded on economic, technological and structural reasons, when it involves at least 10% of the employees, the employer is obliged to file the following proceedings:</p> <p>Prior Notification to trade unions or workers' representatives</p> <p>Employer must provide relevant information regarding the reasons of the retrenchment and the names of the affected workers.</p> <p>Communication to the Labour Administrative Authority: to open the corresponding file.</p> <p>Procedure</p> <ol style="list-style-type: none"> The parties must undertake a negotiation in order to determine the conditions in which the employment contracts will be terminated or on the possible <u>alternatives to avoid dismissals</u> (suspension, reduction of working hours). After consultations with the trade unions, the employer is obliged to file an application before the Labour Administrative Authority based on an expert report justifying the need for the dismissal grounded on economic, technological or structural reasons. Once the employees or their representatives have reviewed the report sent by the Labour Administrative Authority (within 48 hours), they have 15 days to present their own expert report. A meeting between the parties under the auspices of the Labour Administrative Authority must be held to find an agreement on the retrenchment's modalities. The parties must try to reach an agreement within 3 days. In the absence of agreement on the modalities of the retrenchment, the Labour Administrative Authority must issue a binding decision within 5 days. However, the parties can appeal the decision within 3 days. The Labour Administrative Authority must issue the final decision within 5 days. <p>Employment Promotion Law and Supreme Decree N° 001-96-TR, articles 62 to 74, rule the procedures regarding collective dismissals due to cause fortuity and force majeure. This procedure is very similar to the one required in case of collective dismissal grounded on economic, technological and structural reasons.</p> |
| 20: Additional delays involved in cases of collective dismissal (h) | <p>The additional days of delay are those of the duration of the administrative procedure required to proceed to collective dismissals.</p> <p>Calculation (for EPL indicators): approximately 59 days (60 days minus 1 day for dismissal for economic reason—item 2)</p> |
| 21: Other special costs to employers in case of collective dismissals (i) | <p>No special costs involved. According to article 52 LPCL, no severance payment applies for collective termination due to economic, technological and structural reasons, cause fortuity or force majeure. However, the workers have preferential rights to be reinstated if the employer decides to hire, directly or through third persons, new staff to fill similar posts, within a year of the collective dismissal. In the event of non-compliance, the worker is entitled to request, through legal channels, corresponding severance payment in accordance with the law.</p> |
| 22: The worker alone has the burden of proof when filing a complaint for unfair dismissal | <p>No</p> |

Peru

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| 23: Ex-ante validation of the dismissal limiting the scope of unfair dismissal complaints | No As of a certain number of dismissals (see Item 18): Validation by the Labour Administrative Authority. |
| 24: Pre-termination resolution mechanisms granting unemployment benefits | No unemployment benefits in Peru. |

Uruguay
URUGUAY

| Items | Regulations in force on 1 January 2019 |
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| 1: Notification procedures in the case of individual dismissal of a worker with a regular contract | <p>No statutory provision. For redundancy, although not mandatory, consultation with worker´s representative is a common practice. Value (for EPL indicators): average between personal reasons (0) and economic reasons: (1).</p> <p>As of a certain number of dismissals: see item 19</p> |
| 2: Delay involved before notice can start | <p>Personal reasons: 1 day for oral notification. Economic reasons: 5 days for consultation (not mandatory) Calculation (for EPL indicators): average between personal reasons (1 day) and economic reasons (5 days)</p> <p>As of a certain number of dismissals: see item 20</p> |
| 3: Length of notice period at different tenure durations (a) | No legal requirements. |
| 4: Severance pay at different tenure durations (a) | <p>Dismissal on personal reasons and redundancy: employers can always dismiss employee´s without specifying a reason provided severance indemnity is paid. This payment amounts to one monthly remuneration per each year or fraction of year of work, with a ceiling of 6 monthly instalments. No severance payment in case of dismissal due to the employee´s gross misconduct (Law N° 10.489, Law N° 12.597). If the case is challenged at Court, the employer has the burden to proof gross misconduct. Failure to prove, determines the payment of ordinary severance indemnity. Dismissal with fault is not considered for EPL purposes. Calculation (for EPL indicators): 9 months: 1; 4 years: 4 months; 20 years: 6 months</p> |
| 5: Definition of unfair dismissal (b) | <ul style="list-style-type: none"> • Fair dismissal: on a general basis, dismissal is allowed without justifying any cause, if severance indemnity is paid. • Unfair dismissal: no legal definition of unfair dismissal. Doctrine and jurisprudence (although not a source of law) have created the figure of “abusive dismissal” for those cases of notorious abuse by the employer when dismissing (for example dismissal offending worker´s dignity -shouting or insults-, dismissal as a consequence of testifying against the employer). In these cases, apart from the regular severance indemnity, if the employee proves the case at Court, the employer is obliged to pay pain and damages (which amount from 1 to 3 times the ordinary severance pay, plus regular severance indemnity). This additional compensation is considered in Item 7. • Special dismissals for certain categories of workers which can be considered as unfair dismissal: Certain categories of workers have a special protection against dismissal (maternity, sickness, professional disease or labour accident, sexual harassment). This protection entails for the employer the payment of a special severance indemnity which is higher than the regular severance pay. However, dismissal is always allowed provided this special indemnity is paid. • Sickness: Double severance indemnity for an employer who dismisses an employee during sick leave or after 30 days of his return to work. • Professional illness or labour accident: Triple severance indemnity for an employer who dismisses an employee during a professional illness leave or labour accident or after 180 days of his return to work. • Pregnancy or maternity leave: severance indemnity plus 6 months´ salary for an employer who dismissed an employee due to pregnancy or after a period of 6 months of her reincorporation to work. • Sexual harassment: an employee, who suffered from sexual harassment, can terminate the employment agreement and claim the general severance indemnity plus 6 monthly salaries. <p>As of a certain number of dismissals: Social plans are common practice, and outplacement or retraining courses are generally offered to employees.</p> |
| 6: Length of trial period (c) | No statutory regulation. Common practice is to stipulate a 3 months trial period as a clause of the employment agreement. The jurisprudence has accepted the validity of this clause. |
| 7: Compensation following unfair dismissal (d) | Compensation following unfair (abusive) dismissal: If the Tribunal finds that the grounds for a claim for abusive dismissal are proved, the Tribunal can order the payment of damages which amount from 1 to 3 times the ordinary severance indemnity. |

Uruguay

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| 8: Reinstatement option for the employee following unfair dismissal (b) | Reinstatement option only applies to dismissals related to trade union membership or participation in union activities (Law 17.940). It is not possible to avoid enforcement of reinstatement orders by paying compensation. According to court case, reinstatement has been ordered in very few cases. |
| 9: Maximum time period after dismissal up to which an unfair dismissal claim can be made (e) | 1 year (Law 18.091). |
| 10: Valid cases for use of standard fixed term contracts | No statutory regulation. Case Law and collective agreements provide that FTC are only permitted for objective or material reasons. |
| 11: Maximum number of successive standard FTCs (initial contract plus renewals and/or prolongations) | No statutory regulation. However, successive FTC is construed as a unique contract of indefinite duration by case law. |
| 12: Maximum cumulated duration of successive standard FTCs | Although there is no statutory provision on maximum duration of FTC, collective agreements provide and jurisprudence recognizes that the maximum duration of a FTC is of 6 months, and only 1 renewal is allowed, making the maximum cumulated duration of 12 months. |
| 13: Types of work for which temporary work agency (TWA) employment is legal | TWA are only allowed to perform services of a temporal and exceptional basis. |
| 14: Are there restrictions on the number of renewals and/or prolongations of TWA assignments? (f) | The law is silent. However labour doctrine and jurisprudence understand that as TWA are only allowed to perform temporary or occasional services, renewals should be the exception. |
| 15: Maximum cumulated duration of TWA assignments (f) | No statutory regulation. No limit but services should be on a temporal basis (cf. Item 13) |
| 16: Does the set-up of a TWA require authorisation or reporting obligations? | Yes. Both authorization and reporting obligations are required. |
| 17: Do regulations ensure equal treatment of regular workers and agency workers at the user firm? | The principal of equal treatment regarding labour benefits (remunerations and other payments in cash or kind) applies (article 5 Law N° 18.099). |
| 18: Definition of collective dismissal (b) | No statutory definition of collective dismissal. However, it is advisable to take additional notification steps and offering social plans are common practice. Value (for EPL indicators): average of 0 and 4 = 2 |
| 19: Additional notification requirements in cases of collective dismissal (g) | No statutory regulation. However a communication to the trade union and the Labour Ministry (DINATRA) is advisable and a common practice. Value (for EPL indicators): average of cases with and without communication to the Labour Ministry |
| 20: Additional delays involved in cases of collective dismissal (h) | There is no statutory procedure for collective dismissal. However, as it is advisable and common practice to communicate the decision to the trade union and the Labour Ministry (DINATRA), certain days of delay should be considered. Calculation (for EPL indicators): 15 days minus 5 days for consultation (item 2): 10 |
| 21: Other special costs to employers in case of collective dismissals (i) | No legal provision regarding costs or social compensations. However, additional severance indemnities are generally offered to employees or outplacement or retraining courses. Value for (EPL indicators): 1 as these practices are used on a general basis to avoid trade union measures (such as strikes, occupation of the workplace). |
| 22: The worker alone has the burden of proof when filing a complaint for unfair dismissal | No |
| 23: Ex-ante validation of the dismissal limiting the scope of unfair dismissal complaints | No. |
| 24: Pre-termination resolution mechanisms granting unemployment benefits | Unemployment benefits are applicable to dismissed workers. |