New Zealand

NEW ZEALAND

Items	Regulations in force on 1 January 2019
1: Notification procedures in the case of individual dismissal of a worker with a regular contract	Personal reasons: Under the Employment Relations Act 2000 (ERA), employers, employees and unions must deal with each other in good faith. This means that before an employer can dismiss an employee, an employer must give their employee warnings and provision of an opportunity to the employee to answer allegations and improve performance, clear explanations and reasonable notification of the reasons for that employee's dismissal. Further, all employment agreements must set out, in plain language, the procedure for resolving employment relationship problems, which may include a procedure for notification. The minimum requirements for a fair disciplinary process are: i) having regard to the resources available, did the employer sufficiently investigate the allegations against the employee; ii) did the employer raise his or her concerns with the employee before taking action; iii) did the employer give the employee a reasonable opportunity to respond to those concerns; and iv) did the employer genuinely consider the employee's explanation (if any) in relation to the allegations. Redundancy: the principle of good faith also applies specifically to making employees redundant. It requires consultation with employees and unions over matters that affect collective employment interests (such as selection and ways of avoiding dismissal). This means that an employer must give unions and employees explicit, reasonable notice before redundancies are implemented. Employment agreements must contain provisions to prescribe procedures when restructuring occurs due to contracting out or the sale or transfer of the employee's work. The employer's action must be that of a fair and reasonable employer taking all the circumstances of the case into account. (Employment Relations Act 2000 s4(1A), s103A and s120). Case law provides that if the reasons for dismissal were misstated in error at the time of dismissal, the employer can correct them within the 14 day period. Employers need to provide a credible explanation for any correction. When deciding whether a dismissal is justified, the Employment Relations Authority or Employment Court will not consider matters that occur to an employer after the dismissal, or matters which – although known – were not considered at the time. Calculation for EPL indicators for individual dismissals: average of redundancy and personal reasons: 2.75 = (3+2.5)/2 As of a certain number of dismissals (see Item 18): see 19.
2: Delay involved before notice can start	Personal reasons: Notification orally or in writing (as provided for in contract), after previous warning. Redundancy: The principle of good faith requires consultation with employees and unions over matters that affect collective employment interests (such as selection and ways of avoiding dismissal). Calculation for EPL indicators for individual dismissals: average of redundancy and personal reasons Personal reasons 1 day for notice + 6 days for prior warning procedure; 1 day for notice and 5 days for consultation
3: Length of notice period at different tenure durations (a)	All workers: No specific period is required under the ERA, but the duty of good faith, as well as case law, requires that reasonable notice be provided. Usually 1-2 weeks for blue collar and 2+ weeks for white collar workers (Employment Relations Act 2000 s4). An analysis of collective employment agreements (CEA) by a New Zealand university in 2012 indicated that 4 weeks' notice for redundancy is the most common provision in CEAs.
4: Severance pay at different tenure durations (a)	Personal reasons: none. Redundancy cases: no statutory requirements to pay severance pay. However, collective agreements often require severance pay. But only a small percentage of workers are covered by collective agreements. There are some entitlements in the case of redundancy due to outsourcing of part of the production process to a contractor. In such cases, the affected workers have the right to transfer to the new employer (the contractor). If the new employer refuses the transfer of one or more workers, the affected workers are entitled to redundancy entitlement from the new employer including compensation upon agreement of both parties. If they fail to agree, the authority will determine such entitlement (Employment Relations Act 2000 s69N and s69O).

5: Definition of unfair dismissal (b)	Dismissal is justified if there is a good substantive reason to dismiss (where it could be open to a fair and reasonable employer to dismiss an employee in those particular circumstances) and the employer carries out the dismissal fairly and reasonably in those circumstances. However, the legislation recognises that there may be more than one fair and reasonable response or outcome that might be justifiably applied by a fair and reasonable employer in these circumstances. What is a "good substantive reason" for dismissal will depend upon the circumstances of each individual case, but there are three main grounds: misconduct, lack of competence, redundancy. What is 'fair' process of dismissal will also depend upon the circumstances of each individual case. The Authority and the Court have generally placed most emphasis on the fact that an employee must be given reasonable notice of the specific allegation against them, a reasonable opportunity to respond to those allegations. An employer must also give unbiased consideration to an employee's explanation. The test used by the Employment Relations Authority (and the Courts) also sets out the minimum requirements of a fair process (as above), but the Authority must not determine that a dismissal is unjustifiable solely because of defects in the process, if the defects are minor and did not result in the employee being treated unfairly. The test of justification is expanded on in case law. Case law has established that when a redundancy is challenged, the Authority or court must enquire into the employer's business reasoning for the redundancy. Employers need to be able to demonstrate genuine business reasons for restructuring resulting in redundancy. They need to be able to explain the overall business reasoning for a redundancy, why it decided on a particular redundancy or redundancies, and why other alternatives were rejected. The ERA does not require alternatives to dismissal for economic reasons to be considered. However, case law requires employers to consider redeployment first and consult employees about any valid redeployment options. When an employer creates a new role that is not substantively different from an old role, the employee in the current role must be redeployed in the new one. (Employment Relations Act 2000 s4(1A) and s103A).
6: Length of trial period (c)	The maximum length of trial periods is 90 days. Employers and employees can agree on a shorter trial period. Trial periods must be agreed to in writing before the employee starts work and they may only be entered into with new employees (they cannot have worked previously for that employer). An employee who is dismissed before the end of a trial period cannot raise a personal grievance on the grounds of unjustified dismissal. They can raise a personal grievance on other grounds, such as discrimination or harassment or unjustified action by the employer. An employee whose employment agreement contains a trial period is to be treated no differently from an employee whose employment agreement contains no trial provision or contains a trial provision that has ceased to have effect. This means that even if no notice period is stipulated in an individual contract, a fair and reasonable notice period must be given. (Employment Relations Act 2000 s67A, s67B).
7: Compensation following unfair dismissal (d)	Compensation is set on a case-by-case basis. The ERA's provisions on personal grievances provide for some of the following remedies: reinstatement, reimbursement of lost wages; and payment of compensation, including compensation for humiliation, loss of dignity, injury to employee's feelings, and for loss of any benefit (Employment Relations Act 2000 s123-s128). Statistics on the amounts awarded by the Authority for all personal grievance cases (including unfair dismissal) are published on the Ministry of Business, Innovation and Employment's website: https://www.employment.govt.nz/about/employment-law/compensation-and-cost-award-tables/ The median cost awarded in the Employment Relations Authority was about $3750 in the first half of 2019 Calculation (for EPL indicators): Typical compensation at 20 years tenure: backpay of 6 months (assumes case takes 6 months to complete) + median compensation payment of NZ$3750 in the first half of 2019 (equivalent to 4.65 weeks wages based on median weekly wages and salaries earnings taken from 2008 New Zealand Income Survey).
8: Reinstatement option for the employee following unfair dismissal (b)	The Authority may provide for reinstatement as a remedy where practicable and reasonable. In determining whether it is practicable to order reinstatement, the Authority will determine whether the level of mutual trust and confidence that remains between the parties would enable them to resume a productive employment relationship if reinstatement were ordered (Employment Relations Act 2000 s125) .

9: Maximum time period after dismissal up to which an unfair dismissal claim can be made (e)	90 days, but a potential applicant may ask the Employment Relations Authority to allow for filing a claim out of time in exceptional circumstances, including trauma of employee caused by the dismissal, failure to file due to a dilatory agent, no explanation of employment relationship resolution problems in the employee's employment agreement and the failure of the employer to provide, on request, a written statement of the reasons for dismissal (Employment Relations Act 2000 s114).
10: Valid cases for use of standard fixed term contracts	The ERA provides that before an employee and an employer agree that the employee's employment will be based on a fixed term, the employer must have genuine reasons based on reasonable grounds for specifying that the employment of the employee is to be fixed term. The ERA also provides that the following reasons are not genuine reasons for agreeing to fixed term employment: to exclude or limit the rights of an employee under the ERA; and to establish the suitability of the employee for permanent employment (Employment Relations Act 2000 s66).
11: Maximum number of successive standard FTCs (initial contract plus renewals and/or prolongations)	There is no limit specified in legislation. However, there is a risk that that the Courts will find a fixed-term agreement does not meet the requirements for a fixed-term agreement if there is continuous renewal of the agreement. This will be decided on the individual circumstances of the case (Employment Relations Act 2000 s66).
12: Maximum cumulated duration of successive standard FTCs	No limit, unless it is shown that the employer does not have genuine reasons based on reasonable grounds (Employment Relations Act 2000 s66).
13: Types of work for which temporary work agency (TWA) employment is legal	General
14: Are there restrictions on the number of renewals and/or prolongations of TWA assignments? (f)	New Zealand does not have any specific provisions on temporary agency workers in its employment relations legislation. No limit specified in the case of assignments. A worker who has an employment relationship with an agency has the same employment rights and obligations as any other type of employee. If an agency employs a worker on a fixed term agreement, then they must have genuine reasons based on reasonable grounds for the fixed term (as per item 10).
15: Maximum cumulated duration of TWA assignments (f)	No limit, unless it is shown that the employer does not have genuine reasons based on reasonable grounds.
16: Does the set-up of a TWA require authorisation or reporting obligations?	No
17: Do regulations ensure equal treatment of regular workers and agency workers at the user firm?	There are no specific provisions on temporary agency workers that require their wages or working conditions to be equal to that of regular workers.
18: Definition of collective dismissal (b)	No definition of collective dismissal.
19: Additional notification requirements in cases of collective dismissal (g)	Notification of employee representatives: No special regulations for collective dismissal. Good faith applies to redundancy and requires consultation with employees and unions over matters that affect collective employment interests. This covers prior consultation over matters such as how to avoid dismissals. Notification of public authorities: Not required.
20: Additional delays involved in cases of collective dismissal (h)	No special regulations for collective dismissal.
21: Other special costs to employers in case of collective dismissals (i)	Type of negotiation required: No legal requirements apart from procedural fairness and consultation requirements plus additional employment protection for employees where the work they are performing is contracted out, sold, or transferred to another business (see Item 4 and below) Selection criteria: The duty of good faith requires than an employer's basis for redundancy selection be fair. In redundancy situations employees providing certain services (cleaning and food catering, laundry services in hospitals, age-related residential care facilities and the education sector, orderly services in hospitals and the age-related residential care facilities and caretaking in the education sector) have the right to transfer to a new employer on the same terms if they wish. Severance pay: No special regulations for collective dismissal.
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	A claimant who leaves a job voluntarily is not entitled to a benefit for 13 weeks from the date his or her employment ceased. A person subject to a 13 week non-entitlement period can complete certain activities for a continuous period of 6 weeks (or until then end of the 13 week non-entitlement period, whichever is the earlier) in order to get a provisional benefit. Approved activities include full-time employment and participation in an employment skills programme or employment-related training (Social Security Act 2018).

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.