

PANAMA

Items	Regulations in force on 31 December 2013
1: Notification procedures in the case of individual dismissal of a worker with a regular contract	<p>Written notification indicating the date and reasons for dismissals must be given to the employee. Any additional reason subsequently alleged and differing from the one set out in the notification letter is invalid (article 214 Labour Code – hereinafter LC).</p> <p>Prior authorization from the Labour Authority is required for dismissal (individual or collective) based on economic reasons (articles 213 Letter C, 215 and 216 LC). The employer must prove before the authority the just cause for dismissal due to economic reasons. Dismissals carried out without the fulfilment of said procedure is considered unjustified. However if after 60 calendar days, the Labour Authority has not issue its decision, the employer may proceed to dismiss.</p> <p>For dismissals based on other reasons – mainly related to employee’s conduct or capacity- (article 213 Letters A and B), the employer has the option to request prior authorization from the Labour Tribunal (article 217). However, in this case, authorization is not mandatory.</p> <p>Calculation (for EPL indicators): (average 1 for personal reasons and 3 for economic reasons): 2</p>
2: Delay involved before notice can start	<p>The notice must be communicated in written to the employee, indicating the date and reasons for dismissal (article 214 LC). For dismissal based on economic reasons a (individual or collective) a procedure must be followed: the employer is obliged to request prior authorization from the Labour Authority, proving the just cause alleged. The Labour Authority has to inform the workers of said request, giving them a maximum of 3 days to present their case. The authority must examine the evidence within a reasonable period of time and issue an immediate decision granting or refusing the authorization. After being notified, the parties may appeal the decision before the competent authority (article 216 LC). It is worth noting that, according to article 215 LC, if Labour Authority does not issue its decision before a 60 day calendar period, the employer may proceed to dismiss.</p> <p>For dismissals based on personal reasons (article 213 Letters A and B) the employer has the option to obtain prior authorization, however, this authorization is not mandatory.</p> <p>Calculation (for EPL indicators): (average of 1 day for personal reasons and 60 days for economic reasons –maximum time period given to Labour Authority): 30.5 days</p>
3: Length of notice period at different tenure durations (a)	<p>General rule: no statutory notice periods to be observed.</p> <p>Exception: 30 days prior notice is required to dismiss certain categories of workers, excluded from “just cause” rule (articles 211 and 212 LC) see Item 5. These workers can be dismissed without just cause provided prior notice is given and severance indemnity for unfair dismissal is paid: 1) Employees not exceeding 2 years tenure, 2) Domestic workers, 3) Permanent workers of small agricultural, fishing or manufacturing undertakings, 4) Seafarers serving on board vessels operating on international routes, 5) Apprentices, 6) Employees in retail sales establishments and in undertakings with five or fewer workers, except in the case of insurance establishments or real estate.</p> <p>Calculation (for EPL indicators): (average of general rule and exception in the case of workers with less than 2 years of tenure, 0 for other cases): 9 months tenure: 0.5; 4 years tenure: 0 month; 20 years tenure: 0 month.</p>
4: Severance pay at different tenure durations (a)	<p>Dismissal with just cause related to personal reasons: no severance payment (articles 212, 213 A-B). Dismissal with just cause related to economic reasons: compensation equivalent to severance payment for unfair dismissal (articles 213 C, 215 and 225).</p> <p>According to article 225 LC severance payment for unjustified dismissal amounts: 3.4 w per year of service up to 10y 1 w per year of service > 10y</p> <p>Economic reason always determines severance payment for unjustified dismissal (be it with just cause or unjustified -when prior authorization is not requested-).</p> <p>Personal reason depends on whether just cause can be proved. If just cause is proved no severance payment. Otherwise, severance payment for unjustified dismissal</p> <p>A key aspect to consider regarding Panama’s legislation is that severance payment for unjustified dismissal is paid by the Severance Fund, article 229 LC (Fondo de Cesantía). The Severance Fund is a pool of capital that the employer is obliged to constitute through a trust. The employer must deposit or record on a quarterly basis, the amount of money corresponding to i) the seniority premium (“prima de antigüedad”) and ii) 5% of the monthly share of the compensation that each worker could be eligible in case of unjustified dismissal.</p> <p>Calculation (for EPL indicators): 0 months</p>

<p>5: Definition of unfair dismissal (b)</p>	<p>Justified dismissal: To terminate an employment relationship of indefinite duration, employers must allege a just cause for dismissal (article 211 LC). Just causes for dismissal (article 213 LC) are related to:</p> <ol style="list-style-type: none"> 1) Worker's conduct (letter A "Naturaleza disciplinaria") 2) Worker's capacity & others (Letter B "Naturaleza no imputable"). Numerals 1 and 4 relate to worker's capacity (inability or manifest inefficiency, mental or physical incapacity or professional inaptitude). The LC is very strict in the definition of dismissal related to incapacity as it requires inefficiency to be manifest. 3) Economic reasons (Letter C "Naturaleza económica) related to proven reduction of activity (see Item 18). <p>Exclusion from the just cause requirement: Certain categories of workers are excluded from the just cause rule. In those situations, employers can dismiss without alleging a just cause, provided notice period is respected and severance indemnity for unjustified dismissal is paid. This situation applies to: 1) Employees not exceeding 2 years tenure, 2) Domestic workers, 3) Permanent workers of small agricultural, fishing or manufacturing undertakings, 4) Seafarers serving on board vessels operating on international routes, 5) Apprentices, 6) Employees in retail sales establishments and in undertakings with five or fewer workers, except in the case of insurance establishments or real estate.</p> <p>Unjustified dismissal: occurs when: 1) Just cause for dismissal cannot be proved by the employer -before the Labour Tribunal or the Board of Conciliation-, when challenged by the employee (article 218). 2) Employer's failure to request prior approval for dismissal based on economic reasons (articles 215 and 225), 3) Termination of employment contract by the employee due to employers misconduct (article 223 LC).</p> <p>Calculation (for EPL indicators): 2 since poor performance per se is not a just cause for dismissal (incapacity should be manifest)</p>
<p>6: Length of trial period (c)</p>	<p>Probationary period can only be stipulated when the worker requires certain aptitudes or special skills. The maximum period is of 3 months (article 78 LC).</p> <p>For other workers, no probationary period is admitted under LC.</p> <p>Calculation (for EPL indicators): (average of 3 months for jobs requiring certain aptitudes or skills, 0 for others): 1.5 months.</p>
<p>7: Compensation following unfair dismissal (d)</p>	<p>Under article 218 LC, if the Conciliation Board or the Labour Tribunal, finds that the just cause for dismissal is not proved by the employer, an order of reinstatement or the payment of severance indemnity for unfair dismissal will be awarded, depending on the employee's request: 1) If the employee requests compensation, then severance payment for unjustified dismissal (article 225) and back pay will be ordered by the Tribunal. 2) If the employee requests reinstatement, the employer, however, may avoid such order by paying the employee: for workers hired after the enforcement of Act 44 of 12.08.1995, severance indemnity for unjustified dismissal, surcharges of 25% of said amount (only if the employer is currently not paying the Severance Fund ("Fondo de Cesantía") and back pay. For those workers that were with the employer when Act 44 of 12.08.1995 entered into force, severance indemnity for unjustified dismissal, 50% surcharge plus backpay (cf. art. 34 of the act).</p> <p>Calculation (for EPL indicator): Average with and without a reinstatement order (assuming that a Court case takes 6 months and the workers has 20 years of tenure (hired on April 30, 1994): 6 months + (1/2)*50% of severance indemnity (44 weeks).</p>
<p>8: Reinstatement option for the employee following unfair dismissal (b)</p>	<p>If just cause for dismissal is not proved at court, the employee can request for reinstatement or compensation for unfair (unjustified) dismissal (article 218 LC). However, if reinstatement is ordered by the court, the employer nonetheless can terminate the labour relationship by paying compensation for unfair dismissal, a surcharge of 25% or 50% (as applicable) and back pay (article 219 LC).</p> <p>According to EPL methodology, when employer can avoid reinstatement by paying compensation, value is 0.</p> <p>Calculation (for EPL indicators): 0</p>
<p>9: Maximum time period after dismissal up to which an unfair dismissal claim can be made (e)</p>	<p>There are two statutory limits (article 221 LC)</p> <ol style="list-style-type: none"> 1) 60 days if the claim relates to reinstatement or the payment of severance pay for unfair dismissal 2) 1 year if the claims relates only to the payment of severance pay for unfair dismissal <p>Calculation (for EPL indicators) average: 7 months</p>
<p>10: Valid cases for use of standard fixed term contracts</p>	<p>FTC are permitted only in the following situations (article 75 LC): a) to provide a service or perform a work which in its nature is of limited duration, b) to substitute an employee on leave, on vacation, or due to temporary impediment; and c) in other cases provided for in the LC.</p>

<p>11: Maximum number of successive standard FTCs (initial contract plus renewals and/or prolongations)</p>	<p>FTC must be expressed in written. <u>General rule:</u> The total duration of FTC cannot exceed 1 year (article 74). When the employee continues to render services beyond the date of termination, the contract shall be considered of indefinite duration (article 77). Succession of contracts are not allowed. <u>Services requiring special technical preparation:</u> A maximum duration of 3 years can be stipulated. In this case, if vocational training is provided by the employer, up to 2 renewals are permitted (article 74). <u>New companies or new activities:</u> successive FTC for a total of no more than 2 years are permitted only if the work is for a new company or activity (articles 74 and 77 A). In 2009 the Government of Panama issued two Executive Decrees to improve enforcement of LC protections for temporary workers. Executive Decree N° 19 of 2009 regulates article 77 A LC which exempts for 2 years “new companies” and “new activities” from article 77 limitation on the use of successive FTC. The Decree requires the employer to submit objective proof that they qualify for the article 77 A exemption when registering a contract with the Ministry of Labour and Workforce Development (MITRADEL). For a new activity employers must include a clause in each FTC describing the new activity. Employers must also acknowledge in each contract that if their justification for temporary status is not confirmed, the worker will be deemed permanent from the time he was first hired. In addition Executive Decree N° 24 of 2009 requires the MITRADEL to take specific steps to improve oversight of employer’s use of FTC, including targeted inspections of companies that use temporary workers to ensure compliance with article 77 and to conduct a random sampling of registered FTC. Calculation (for EPL indicators): average of general rule (1) and average of special situations, assuming 2 for new activities): $(1 + (3+2)/2)2 = 1.75$</p>
<p>12: Maximum cumulated duration of successive standard FTCs</p>	<p>General rule: 1 year. Services requiring special technical preparation: 3 years. New companies or new activities: 2 years. Calculation (for EPL indicators): (average of general rule and average of special situations): $(1 + (3+2)/2)2 = 1.75$ years</p>
<p>13: Types of work for which temporary work agency (TWA) employment is legal</p>	<p>LC prohibits agreements, combinations or arrangements by which an employer provides workers to a third party for the performance of the latter’s core business activities (article 94 LC). However, prior approval of the Ministry of Labour and Workforce Development, the provision of workers by an employer to a third party is admitted only for the development of temporary services not exceeding 2 months and subject to prescribed rules: 1) Employees must receive the highest minimum wage of the district they are working at. 2) Both companies are jointly liable of the payment of the employee’s labour benefits, 3) Detrimental acts to the worker made by the third party are construed as being acts of the employer. Executive Decree N° 17 of 2009 establishes mechanisms to enforce the protection of workers against the improper use of this type of relationship and of subcontracting in general, including targeted inspections to determine the compliance of articles 94 and 95 LC. Calculation for EPL indicators: 2.</p>
<p>14: Are there restrictions on the number of renewals and/or prolongations of TWA assignments? (f)</p>	<p>No statutory regulation regarding the number of renewals or prolongations. Article 95 LC establishes maximum periods of 2 months.</p>
<p>15: Maximum cumulated duration of TWA assignments (f)</p>	<p>2 months.</p>
<p>16: Does the set-up of a TWA require authorisation or reporting obligations?</p>	<p>Prior authorization is required (article 95 LC, Executive Decree N° 17 of 2009).</p>
<p>17: Do regulations ensure equal treatment of regular workers and agency workers at the user firm?</p>	<p>Although the equal treatment principle is not explicitly expressed, it emerges from the rules established in article 95 LC.</p>
<p>18: Definition of collective dismissal (b)</p>	<p>No statutory definition of collective dismissal. However, article 213 LC provides a definition of dismissal for economic reasons, applicable to individual or collective dismissals. The following are valid economic reasons for the termination of employment agreements: 1) bankruptcy or liquidation, 2) Closure of the company or final reduction of the activities due to the notorious and manifest uncosteability of the business or exhaustion of the substance exploited by the extractive industry, 3) Final suspension of the activities of the employer due to serious economic crisis or partial uncosteability of the business due to decline in production or as a consequence of innovations in the procedures or machinery or due to a revocation of an administrative concession or cancellaiton of sales or purchasing orders or any similar reason duly proven by the competent authority. Calculation (for EPL indicators): no additional regulation for collective dismissal. Same rules for individual redundancies apply.</p>
<p>19: Additional notification requirements in cases of collective dismissal (g)</p>	<p>No additional notification requirement. The same procedure applies for individual and collective dismissals for economic reasons (articles 213 and 215 LC). Calculation (for EPL indicators): no additional notification requirement: 0.</p>

20: Additional delays involved in cases of collective dismissal (h)	No additional delays involved. Same rules for individual dismissals apply to collective termination.
21: Other special costs to employers in case of collective dismissals (i)	Costs are those of individual dismissals due to economic reasons. No other special cost involved.

Legend: d: days; w: weeks; m: months; y: years. For example "1m < 3y" means "1 month of notice (or severance) pay is required when length of service is below 3 years".

Notes:

- a) Three tenure durations (9 months, 4 years, 20 years). Case of a regular employee with tenure beyond any trial period, dismissed on personal grounds or economic redundancy, but without fault (where relevant, calculations of scores to compute OECD EPL indicators assume that the worker was 35 years old at the start of employment). Averages are taken where different situations apply – e.g. blue collar and white collar; dismissals for personal reasons and for redundancy.
- b) Based also on case law, if court practice tends to be more (or less) restrictive than what specified in legislation.
- c) Initial period within which regular contracts are not fully covered by employment protection provisions and unfair dismissal claims cannot usually be made.
- d) Typical compensation at 20 years of tenure, including back pay and other compensation (e.g. for future lost earnings in lieu of reinstatement or psychological injury), but excluding ordinary severance pay and pay in lieu of notice. Where relevant, calculations of scores to compute OECD EPL indicators assume that the worker was 35 years old at the start of employment and that a court case takes 6 months on average. Description based also on case law.
- e) Maximum time period after dismissal up to which an unfair dismissal claim can be made.
- f) Description based on both regulations on number and duration of the contract(s) between the temporary work agency and the employee and regulations on the number and duration of the assignment(s) with the same user firm.
- g) Notification requirements to works councils (or employee representatives), and to government authorities such as public employment offices. Only requirements on top of those requirements applying to individual redundancy dismissal count for the OECD EPL indicators (cf. Item 1).
- h) Additional delays and notice periods in the case of collective dismissal (only delays on top of those required for individual dismissals – as reported in Items 2 and 3 – count for the OECD EPL indicators).
- i) This refers to whether there are additional severance pay requirements and whether social compensation plans (detailing measures of reemployment, retraining, outplacement, etc.) are obligatory or common practice.