

DOMINICAN REPUBLIC

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>Individual termination: The Labour Code (hereinafter LC) distinguishes between: Dismissal (article 87 LC) and 2) Desahucio (article 75 LC). 1) Dismissal: is defined as the unilateral termination of the labour agreement by the employer. It is justified when the employer proves the existence of a just cause (article 88 LC). On the contrary, it is unjustified (article 87 LC). 2) Desahucio is defined as the termination of the employment agreement -by either party- without alleging a cause. For purposes of this analysis also termed as dismissal without cause.</p> <p><u>Dismissal with cause:</u> employer has to notify the worker and within 48 hours of the dismissal, the former is required to give written notice to the Labour Department (or the local authority exercising such duties) and to the employee indicating the cause of dismissal (article 91 LC). Notification is a key issue: if the employer fails to comply with said procedure, dismissal is considered without cause (article 93 LC, Supreme Court of Justice N° 24 of 1999).</p> <p><u>Dismissal without cause or Desahucio:</u> written notice must be given to the employee and within 48 hours of such notice, a written communication to the Labour Department (or the local labor authority exercising such duties) must also be delivered (article 77 LC).</p> <p>Calculation (for EPL indicators): 2</p>
2: Delay involved before notice can start	<p>Dismissal with cause: employer must exercise the right to dismiss with cause within 15 days of the knowledge of the fault committed by the employee (article 90 LC). This is an expiry term for the employer to allege the just cause for dismissal. Supreme Court of Justice understands that if the term expires, dismissal is considered unjustified (Supreme Court of Justice N° 12 of 2000 and N° 2 of 2001) .</p> <p>For dismissal with or without cause: written notification to employee and Labour Department is required.</p> <p>Calculation (for EPL indicators): 2 days (written notification to employee and Labour Authority).</p>
3: Length of notice period at different tenure durations (a)	<p>Dismissal with cause: There is no advance notice period required. However if the court understands that the just cause for dismissal is not proved, pay in lieu of notice (amongst other payments) will be ordered.</p> <p>Dismissal without cause: The following notice periods must be given (article 76 LC):</p> <ol style="list-style-type: none"> a) 7 d > 3 m up to 6 m b) 14 d > 6 m up to 1y c) 28 d > 1y <p>Calculation (for EPL indicators): dismissal without cause: 9 months tenure: 14 days, 4 years tenure: 28 days, 20 years tenure: 28 days.</p>
4: Severance pay at different tenure durations (a)	<p>Dismissal with cause: No severance pay (articles 87 and 88 LC).</p> <p>Dismissal without cause or Desahucio: Severance payment ("auxilio de cesantía) varies according to different tenure durations (article 80 LC):</p> <ol style="list-style-type: none"> a) > 3m < 6m: 6 days´ salary b) 6m < 1y: 13 days´ salary c) 1y < 5 y: 21 days´ salary per year of service d) > 5y: 23 days´ salary per year of service <p>Calculation (for EPL indicators): dismissal without cause: 9 months tenure: 13 days; 4 years tenure: 84 days; 20 years tenure: 460 days</p>

<p>5: Definition of unfair dismissal (b)</p>	<p>Fair dismissal: Article 88 LC sets out just causes for dismissal which are related mainly to workers misconduct. Inefficiency and lack of capacity (numeral 2) as a just cause for dismissal expires after 3 months' employment. Just causes: 1) if the worker deceived the employer by means of false letters of recommendation or certificates when the contract was concluded. 2) If the employee executes his tasks in a way that demonstrates his inability and inefficiency. This cause is no longer valid after the employee has been providing services for a period longer than three months. 3) If the employee has acted with lack of integrity and honor during the execution of tasks and has incurred in slander, acts of violence and mistreatment against the employer or the relatives of the latter who are under his watch. 4) If the employee commits any of the aforementioned acts against one of his fellow co-workers, causing an alteration to the workplace's order. 5) If during non working hours the employee commits any of the acts mentioned in numeral 3 against the employer, relatives or the top officials of the company. 6) If the employee willingly causes material losses during the execution of tasks or as a consequence of it to the buildings, machinery, constructions, equipment, raw materials, products and any other objects related to their works. 7) If the employee causes the serious damage mentioned in numeral 6 unwillingly, but with negligence or recklessness. 8) If the employee commits acts of dishonesty in the workplace. 9) If the employee reveals manufacturing secrets or exposes confidential matters to the detriment of the company. 10) If the employee carelessly or recklessly jeopardizes the security of the workshop, workplace or of the people inside them. 11) 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 or his representative, or without notifying the cause in the term established under article 58 (within the 24 hours). 12) If the employee is absent from work, does not notify the cause and is in charge of a task or machinery that if stalled, necessarily implies a disturbance to the company. 13) If the employee exits the workplace during working hours without an authorization from the employer or his representative and without previously notifying the employer or his representative the reasons for leaving the workplace. 14) If the employee disobeys the employer or his representatives, provided that the disobedience is related to the service provided. 15) If the employee refuses to adopt preventive measures or follow procedures established by law, the competent authorities or the employer, in order to avoid accidents or illnesses. 16) If the employee violates any of the provisions established under numerals 1, 2, 5 or 6 of article 45. 17) If the employee violates any of the provisions established under numeral 3 and 4 of article 45 after the Labour Department, at the requirement of the employer, has issued warnings for committing the same error. 18) If the employee has been sentenced to prison by irrevocable judgment. 19) If the employee lacks commitment in the execution of the tasks he has been hired for and/or fails to comply any other obligations established under the employment agreement.</p> <p>Unfair or Unjustified dismissal: In accordance with Article 87 LC, unjustified dismissal occurs when no just cause can be proved. In this case the employer is obliged to pay: prior notice, severance indemnity (auxilio de cesantía) plus back pay until the date of court decision, with a ceiling of 6 months (article 95) However, under Dominican's LC, the employer can always dismiss an employee without cause (Desahucio) provided prior notice is respected and severance payment (auxilio de cesantía) is paid (article 75 and 76 LC). Thus dismissal on personal grounds and redundancy is always possible.</p>
<p>6: Length of trial period (c)</p>	<p>LC does not establish explicitly a trial period. However, it should be noted that an employee has no right to prior notice (or payment in lieu of notice) or severance unless he has been employed for a period of at least 3 months (articles 76 and 80 LC). Moreover, inefficiency and inability as a just cause for dismissal expires after (3) months' employment (article 88/2).</p>
<p>7: Compensation following unfair dismissal (d)</p>	<p>In case of unfair dismissal (article 87), 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 (with a ceiling of 6 months' salary). Calculation (for EPL indicators): 20 years' tenure employee: 6 months' salary as back pay.</p>
<p>8: Reinstatement option for the employee following unfair dismissal (b)</p>	<p>No reinstatement option following an unfair dismissal. Reinstatement has been allowed at the employee's request in very limited scenarios, such as pregnant employees or members of a trade union (fuero sindical). These situations are not considered for EPL purposes.</p>
<p>9: Maximum time period after dismissal up to which an unfair dismissal claim can be made (e)</p>	<p>The maximum time period to claim for unfair dismissal is of 2 months (article 702 LC).</p>
<p>10: Valid cases for use of standard fixed term contracts</p>	<p>FTCs are permitted only in the following situations (articles 31 and 33 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) If a FTC furthers the interests of the employee. Calculation (for EPL indicators): 1 (as FTC can be used in situations of employee's needs).</p>
<p>11: Maximum number of successive standard FTCs (initial contract plus renewals and/or prolongations)</p>	<p>LC does not establish a maximum duration for FTCs. However, when an employee continues to render services for an employer beyond the date of termination, the contract shall be considered of indefinite duration as from the initial date (articles 31, 34, 35 and 73). Calculation (for EPL indicators): 1 for initial contract. (Renewal turns the contract into one of indefinite duration)</p>
<p>12: Maximum cumulated duration of successive standard FTCs</p>	<p>No limit is established by law. However the duration of FTCs is that of the task to be performed, which is in itself of fixed duration. Calculation (for EPL indicators): 1</p>
<p>13: Types of work for which temporary work agency (TWA) employment is legal</p>	<p>No statutory provisions.</p>

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.
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 of collective dismissal for economic reasons. However there are certain situations that determine the termination of all the employment agreements (article 82 numerals 4 and 5: a) Exhaustion of the substance exploited by the extractive industry, b) bankruptcy that determines the total cease of the business, c) closure of the company or final reduction of its staff, d) uncosteability of the business and any other similar situations. Prior approval from the Labour Department is required (article 82 num LC remits to article 56 LC- procedure for suspension of the employment agreements-). On the other hand, article 24 of the Rulings for the Application of the Labor Code states that in the event a company needs to reduce its personnel, the employer must give prior notice to the Labour Department, who will verify compliance with Articles 141 and 142 LC (priority rules for dismissal).
19: Additional notification requirements in cases of collective dismissal (g)	Article 82 numeral 5 LC requires the employer to follow the pocedure of article 56 LC (suspension of the employment agreements). The employer must communicate the cause of termination to the Labour Departament for its approval. Calculation (for EPL indicators): 0 (as there are no additional notification requirements on top of those requirements applying to individual dismissals).
20: Additional delays involved in cases of collective dismissal (h)	According to article 56, the Labour Department must analyse the cause for termination and issue its resolution in a maximum period of 15 days. Calculation (for EPL indicators): 15 days (minus item 2 and item 3): 0
21: Other special costs to employers in case of collective dismissals (i)	Article 82 states that if the employer ends the employment agreements due to the causes referred to in Item 18, the following "economic assistance" must be paid: a) 5 days´ salary if the employee worked more than 3 months but less than 6 months; b) 10 days´ salary if the employee worked from 6 months to less than 1 year; c) 15 days´ salary per each of service if the employee worked from 1 year onwards. Calculation (for EPL indicators): 0 (as costs to employers are lower for collective dismissals in comparison to individual ones in the situations referred to in article 82 numerals 4 and 5).

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.