

PERU

Items	Regulations in force on 31 December 2013
1: Notification procedures in the case of individual dismissal of a worker with a regular contract	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 cause of 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 following a special procedure (see Item 5).
2: Delay involved before notice can start	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; b) 30 days if the reason is related to the employee's capacity, so that the worker can demonstrate its capacity. The 6 day period applies to the case of fault, therefore it is not considered for EPL indicators. Calculation (for EPL indicators): average of dismissal with justified cause related to capacity or low performance (30 days plus 1 day for the notification letter) and arbitrary dismissal (1 day for the notification letter): 16 days
3: Length of notice period at different tenure durations (a)	Warning procedures prior to dismissal due to employee's conduct or capacity were mentioned in Item 2 (6 days in case of misconduct, 30 days in case of capacity). In case of dismissal without justified cause, there is no statutory provision regarding notice period.
4: Severance pay at different tenure durations (a)	No severance pay in case of dismissal for justified reason (causa justa) related to the employee's conduct or capacity (article 34 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 (see Item 5). Following this regime, the option between severance payment or reinstatement will depend on the way the employer dismisses an employee, on the remedy chosen by the latter and on the procedure followed by the worker (Labour Court or Acción de amparo). Given the system described in Item 5, for EPL purposes severance payment is reflected under Item 7 (compensation following unfair dismissal) and Item 8 (reinstatement). Therefore, values corresponding to severance payment were set to 0, despite the fact that dismissals may end by paying severance indemnity. <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. Calculation (for EPL indicators): 0 (as severance payment is reflected in Items 7 and 8).

<p>5: Definition of unfair dismissal (b)</p>	<p>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 the capacity of the worker (art. 23 LPCL): deterioration of the physical or mental faculties or an acquired incapacity having a major effect on his or her performance on the job; inadequate output in relation to the worker's capacity or in comparison to the average output for similar work under similar conditions; or unreasonable refusal on the part of the worker 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 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.</p> <p>Regime applicable to unfair and other types of dismissals: in Peru, two different regimes co-exist regarding dismissals:</p> <p>1) Dismissals ruled by the Law: LPCL and Supreme Decree N° 001-96 TR which define the figures of:</p> <ul style="list-style-type: none"> a) Dismissal with just cause (articles 22 to 28, 31 to 34 LPCL) related to employee's conduct or capacity as stated above. b) 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, according to the law, the employee has to file a lawsuit before the Labour Court claiming the payment of severance indemnity for arbitrary dismissal. c) Null dismissal (articles 29, 34, 40 to 42 LPCL, Law N° 26626 and Law N° 27050): when dismissal is based on the following 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, according to the law, the employee can claim reinstatement plus back pay before the Labour Court. d) 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. <p>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 dismissals, in addition to the ones defined by the law. The key issue of this types of dismissals is the fact that the employee must claim the remedy following a special procedure called "acción de amparo" before the TC and not before the Labour Court, being the remedy the reinstatement of the worker. If the employee claims before a Labour Court (except in the case of null dismissal where reinstatement is available), the remedy would be the payment of severance indemnity (not reinstatement).</p> <ul style="list-style-type: none"> 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. However, the reason of redundancy is unlikely to be considered a breach to the right to work. <p>Calculation (for EPL indicators): 2</p>
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<p>6: Length of trial period (c)</p>	<p>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:</p> <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. <p>Calculation for EPL indicators (average between the first situation and the average of the last two situations): $(3 + (6+12)/2) / 2 = 6$ months.</p>
<p>7: Compensation following unfair dismissal (d)</p>	<p>See Items 4 and 5. 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).</p> <p>Calculation for EPL indicators (employee 20 years tenure): 12 months.</p>
<p>8: Reinstatement option for the employee following unfair dismissal (b)</p>	<p>See Item 5. Reinstatement option is available in case of: 1) null dismissal (before the Labour Court), 2) dismissal without cause, 3) fraudulent dismissal and 4) dismissal in breach of constitutional rights. In these last 3 cases if claimed by the employee before the TC.</p> <p>Reinstated employees are entitled to back pay (article 40 LPCL for null dismissal). For other types of dismissals, although reinstatement is claimed before TC, the latest has no jurisdiction to grant back pay. Up to date, employees have been claiming back pay before a Civil Court. A project of law is being considered by Parliament (Proyecto de Ley N° 2581-2013) to include these types of dismissals in article 40 LPCL, allowing back pay.</p> <p>Calculation (for EPL indicators): 2</p>
<p>9: Maximum time period after dismissal up to which an unfair dismissal claim can be made (e)</p>	<p>30 calendar days after its occurrence. This provision is applicable only to claims for arbitrary dismissal, null dismissal and indirect dismissal (article 36 LPCL).</p> <p>Under Law N° 27.321, labour claims related to employment issues (different from the ones stated above) have an expiry term of 4 years.</p>
<p>10: Valid cases for use of standard fixed term contracts</p>	<p>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:</p> <p>1) <u>Temporary reasons</u> (article 54 LPCL):</p> <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) <p>2) <u>Incidental reasons</u> (article 55 LPCL):</p> <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) <p>3) <u>Specific piece of work or service</u> (article 56 LPCL):</p> <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)
<p>11: Maximum number of successive standard FTCs (initial contract plus renewals and/or prolongations)</p>	<p>No limitation.</p> <p>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.</p>
<p>12: Maximum cumulated duration of successive standard FTCs</p>	<p>5 years.</p> <p>As stated in item 10 FTC fall under 3 categories. For each category, a different maximum period is specified within each category.</p> <p>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</p>
<p>13: Types of work for which temporary work agency (TWA) employment is legal</p>	<p>According to article 3 of Law 27.626, TWA employment is only legal to provide services that are of temporal, complementary or of specialized nature. TWA employee's are not allowed by law to perform the permanent tasks related to the core activities of the User firm.</p> <p>TWA contracts are not permitted to replace striking workers at the User firm or after a collective layoff.</p>
<p>14: Are there restrictions on the number of renewals and/or prolongations of TWA assignments? (f)</p>	<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>
<p>15: Maximum cumulated duration of TWA assignments (f)</p>	<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?	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/mostrarResultado.php?id=826&tip=9#
17: Do regulations ensure equal treatment of regular workers and agency workers at the user firm?	Equal treatment of regular workers and agency workers (Article 7 of Law 27.626).
18: Definition of collective dismissal (b)	Under LPCL, provisions of collective dismissal grounded on economic, technological and structural reasons apply when it involves at least 10% of the employees.
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> <ol style="list-style-type: none"> Notify the union or workers' representatives and provide them with the relevant information regarding the reasons of the retrenchment and the names of the affected workers. A communication must be sent to the Labour Administrative Authority to open the corresponding file. The union or workers' representatives and the employer must undertake a negotiation in order to determine the conditions in which the employment contracts will be terminated or on the possible alternatives to avoid dismissals (suspension, reduction of working hours). After consultations with the trade unions, the employer is obliged to file an application before the 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 employer and the unions or workers' representatives under the auspices of the Labour Administrative Authority must be held in order to find agreement on the retrenchment's modalities. The parties must try to reach to 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 reason. A procedure before the Labour Administrative Authority is mandatory, together with a communication to the union or worker's representatives. The employer is also required to present before the Labour Administrative Authority an expert opinion of the reasons of the closure. This opinion will be delivered to the union or workers representative. A meeting to reach an agreement between the employer and the union will be convoked by the Labour Administrative Authority. If there is no agreement, the parties may decide to submit the dispute to arbitration. Otherwise, the Labour Administrative Authority will submit its final decision, which can be appealed by the parties.</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 44 days (60 days minus 16 days –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. Re-hiring is not considered for EPL purposes.</p> <p>Calculation (for EPL indicators): 0</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:

- 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.

- 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.