

TUNISIA

Items	Regulations in force on 1 January 2014
1: Notification procedures in the case of individual dismissal of a worker with a regular contract	<p>In the case of individual dismissal of a worker with a regular contract, notification procedures vary according to the reason :</p> <p>-</p> <p>Dismissal on personal grounds:</p> <ul style="list-style-type: none"> - This type of dismissal, related to disciplinary reasons, is subject to procedural requirements (questionnaires, defence in front of a disciplinary committee), and substantive requirements (previous disciplinary events, fault – real and serious cause). - Notify the employee by registered letter (or by letter delivered personally with acknowledgment of receipt), specifying the cause of dismissal. - comply with a notice period. <p>Dismissal on economic grounds:</p> <ul style="list-style-type: none"> - send a request for authorisation of the labour inspector (<i>inspecteur du travail</i>), specifying the economic causes. - the labour authority (<i>commission de contrôle des licenciements</i>) issues an opinion in favour or against the dismissal - the employer is not obliged to follow the opinion of the labour authority <p>The dismissal of a worker representative or trade-union officer requires authorisation of the labour inspector and a hearing in front of the disciplinary committee.</p>
2: Delay involved before notice can start	<p>Dismissal on personal grounds:</p> <ul style="list-style-type: none"> - This type of dismissal, related to disciplinary reasons, is subject to procedural requirements (questionnaires, defence in front of a disciplinary committee), and substantive requirements (previous disciplinary events, fault – real and serious cause). <p>Dismissal on economic grounds:</p> <p>Conciliation with mediation of the <i>Inspection du Travail</i> (15 days max). If no agreement, the labour authority (<i>commission de contrôle des licenciements</i>) issues an opinion within 15 days.</p> <p>In both cases :</p> <p>Notification to the employee by registered letter (or by letter delivered personally with acknowledgment of receipt), specifying the cause of dismissal.</p> <p>Calculation : average of personal reasons (6+3) and economic reasons (with and without agreement: 15 +15/2 +3) = 17.25 days</p>
3: Length of notice period at different tenure durations (a)	<p>1 month for all open-ended contracts whatever the job tenure of the worker. Collective agreements may set a different duration. In some cases the latter differs across occupations (blue collars, clerks, technicians, supervisors).</p>

<p>4: Severance pay at different tenure durations (a)</p>	<ul style="list-style-type: none"> ✓ Any worker dismissed after the expiration of the probationary period is entitled to severance pay, except in cases of dismissal for fault. ✓ Severance pay is calculated as one day per month in the same firm, on the basis of the last wage and taking into account all bonuses and benefits. ✓ Severance pay cannot exceed 3 months, except when collective agreements stipulate conditions more favourable to workers <p>Many collective agreements (e.g. insurance, construction, hotels, restaurants, trade, and textile industries) entail higher severance pay (most frequently 1 month per year of tenure with an upper limit of 6-12 months or more)</p> <p>Calculation : average of most frequent minimum and maximum values : 9 months=$(0.3+0.75)/2=0.525$ 4 years=$(1.6+4)/2=2.8$ 20 years=$(3+9)/2=6$</p>
<p>5: Definition of unfair dismissal (b)</p>	<p>Fair: There must be real and serious grounds for a dismissal to be deemed fair. Grounds may be personal, economic or technical.</p> <p><u>Dismissal on personal grounds:</u> the employer must justify grounds that are valid and related to the individual in order to proceed with dismissal (professional misconduct, incompetence, inaptitude, etc.). The term "faute grave" employed by the labour code and the framework collective agreement (Art. 37) suggests that this type of dismissal relate essentially to disciplinary issues.</p> <p><u>Dismissal on economic or technological grounds:</u> possible for technological or economic reasons. Art. 21 of the labour code makes reference to the suppression of all or part of an establishment for economic or technical reasons. However the high court (<i>cour de cassation</i>) accepted that the art. 21 LC be applied to the case of one single employee due to its lack of capability to work on a new machine, replacing an older one (C. Cass., arrêt n° 4510 du 27/03/1980). The employer can claim the following reasons : business closing ; firm re-organisation ; temporary reduction of activities ; lack of demand ; downsizing ; restructuring ; preventive measures to adapt to technological change. Yet, the applications for economic dismissal that are more likely to be approved by the <i>commission de contrôle</i> must present serious reasons, notably linked to financial difficulties or important contraction of demand.</p> <p>Unfair: An <u>unfair dismissal</u> is a dismissal that is not based on real and serious grounds or that is implemented without respecting the procedures set in the labour code or collective agreements.</p> <p>The judge will evaluate whether the grounds are real and serious and whether procedures have been respected. It can order any type of investigation.</p> <p>Dismissals made without asking for the opinion of the <i>commission de contrôle du licenciement</i> are unfair, except in cases of force majeure or in the presence of an agreement among the parties.</p> <p>Calculation: 2.5 (because personal reasons – without fault – are rarely real and serious grounds).</p>
<p>6: Length of trial period (c)</p>	<p>In open-ended contracts, the probationary period is regulated by collective agreements, individual contracts, customs and the law.</p> <p>In the framework collective agreement and in most other collective agreements the probationary period is:</p> <ul style="list-style-type: none"> - 6 month for execution employees, - 9 month for technician, - 1 year for manager and supervisors. <p>This period can be renewed once or reduced by mutual agreement.</p> <p>Calculation : average of execution employees and supervisors, assuming a 50% probability of renewal : $(9+18)/2=13.5$</p>

7: Compensation following unfair dismissal (d)	<p>In the case of fixed-term contracts, compensation for unfair termination is equal to the salaries due until the end date of the contract.</p> <ul style="list-style-type: none"> ✓ Beyond advance notice and severance pay, the compensation for unfair dismissal varies between one and two months of wage for each year of service, with a ceiling at three years of wage. The amount is fixed by the judge taking into account the worker's qualification, tenure, age, wage, family situation as well as the impact of dismissal on pension entitlements, the respect of procedures and other circumstances ✓ If the dismissal is justified by a real and serious cause but procedures have not been respected, compensation varies between one and four months of wage. The amount is fixed taking into account the nature of the procedures and their effects on the worker's rights. <p>The base of computation remains the wage of the worker at the time of dismissal</p> <p>Calculation : average of the two cases : $(30+2.5)/2=16.25$</p>
8: Reinstatement option for the employee following unfair dismissal (b)	<p>Tunisian legislation does not envisage the possibility of nullifying the dismissal decision. As a consequence, reinstatement is possible only in agreement with the employer.</p>
9: Maximum time period after dismissal up to which an unfair dismissal claim can be made (e)	<p>Any complaint for unlawful termination of labour contracts should be filed with the competent court (<i>conseil de prud'hommes</i>), within one year after termination.</p>
10: Valid cases for use of standard fixed term contracts	<ul style="list-style-type: none"> ✓ A fixed-term contract is permitted in the following cases : <ul style="list-style-type: none"> - To accomplish work in the first establishment or new tasks ; - To accomplish work arising from an extraordinary increase in demand; - The provisional replacement of an absent or suspended permanent worker; - Urgent repair and safety works ; - Seasonal work or work where it is not customary to resort to permanent contracts. ✓ By mutual agreement, a fixed-term contract can also be concluded in other cases, under the condition that overall duration, including renewals, does not exceed 4 years. <p>Calculation: the possibility of derogating to the list of valid cases by mutual agreement is taken into account.</p>
11: Maximum number of successive standard FTCs (initial contract plus renewals and/or prolongations)	<p>No special provision in the labour code on the number of renewals.</p>
12: Maximum cumulated duration of successive standard FTCs	<p>The maximum cumulated duration of a fixed-term contract cannot exceed 4 years including renewals. After the expiration of this term, any recruitment of a worker would be considered on an open-ended contract without probationary period.</p>
13: Types of work for which temporary work agency (TWA) employment is legal	<p>No restriction</p> <p>However the jurisprudence has established some limits to the use of outsourcing workers previously employed by the user-firm. In the absence of serious need, resorting to outsourcing will have no effect on the previously-started employment relationship.</p>
14: Are there restrictions on the number of renewals and/or prolongations of TWA assignments? (f)	<p>No limits</p>
15: Maximum cumulated duration of TWA assignments (f)	<p>Assignments: No limits.</p> <p>Contracts : same rules as for fixed-term and open-ended contracts</p>
16: Does the set-up of a TWA require authorisation or reporting obligations?	<p>Same rules as for any other firm.</p>
17: Do regulations ensure equal treatment of regular workers and agency workers at the user firm?	<p>No specific provision.</p>
18: Definition of collective dismissal (b)	<p>No specific provision.</p>
19: Additional notification requirements in cases of collective dismissal (g)	<p>Not applicable</p>

20: Additional delays involved in cases of collective dismissal (h)	Not applicable
21: Other special costs to employers in case of collective dismissals (i)	Not applicable

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.