

## VENEZUELA

Items	Regulations in force on 31 December 2013
<p><b>1:</b> Notification procedures in the case of individual dismissal of a worker with a regular contract</p>	<p>Articles 85 and 86 of the Venezuelan Organic Labor Law for Workers – Decree 8938 of April, 30<sup>th</sup> 2012 (OLLW), grant job stability. Only dismissal for just cause is admitted. Article 89 OLLW states that when the employer dismisses one or more employees a written notification must be sent to the Substantiation, Mediation and Execution Judge of the corresponding jurisdiction, explaining the causes which justify the dismissal, within the next following 5 days as of when the dismissal takes place. In case the employer does not notify the Judge, it should be considered that the dismissal was unfairly executed.</p> <p><u>However</u>, the dismissal regime in Venezuela has been amended by several Presidential Decrees enacted at regular intervals since 2002, with one year validity. For year 2013, Presidential Decree N° 9.322 of December, 27<sup>th</sup> 2012, grants job stability (In Spanish “Inamovilidad Laboral”), during the period January 1<sup>st</sup> 2013 – December 31<sup>st</sup> 2013, for employees of the private and public sector, excluding workers with less than one month tenure, employees in management position, seasonal and occasional workers. As a result of this immunity decree, employees may not be dismissed or transferred, nor may their employment conditions be worsened, without a just cause (article 79 OLLW) previously approved by the Labour Inspector following the procedure established in article 422 OLLW (see Item 2)..</p> <p>Dismissal without case is not possible due to the immunity decree, except for workers with less than 1 month tenure, employees in managerial position, seasonal and occasional workers.</p> <p>Calculation (for EPL indicators): 3 for all workers, except the limited categories excluded from the immunity decree. For the latest an oral statement is enough.</p>
<p><b>2:</b> Delay involved before notice can start</p>	<p>Delays are those of the procedure of prior approval by the Labour Inspector (Presidential Decree N° 9.233 and article 422 OLLW). The procedure is as follows: the employer must request prior approval from the Labour Inspector within 30 days of the occurrence of a just cause for dismissal. Within 3 days, the Labour Inspector must notify the employee compelling him to appear at a hearing that must be held within the following 2 days. During the hearing, the Labour Inspector will attempt conciliation: If it fails, the Inspector must order an 8 day evidentiary period, where the parties must present the corresponding proof. Within 2 days of the conclusion of the evidentiary stage, the parties must prepare and submit their allegations. Finally, within a maximum period of 10 days, the Labour Inspector must issue its decision. Therefore, if the employer plans to dismiss an employee protected by the immunity decree, he must follow the procedure stated above requesting the Labour Inspector to authorize the dismissal because a justified cause exists, and during the time while this procedure lasts, the employee must continue to work for the employer and may not be separated from his job, until de Labour Inspector authorizes the dismissal.</p> <p>Dismissal without just cause is not possible due to the immunity decree (except for workers with less than one month tenure, employees in managerial position, seasonal and occasional workers).</p> <p>Calculation (for EPL indicators): 25 days</p>
<p><b>3:</b> Length of notice period at different tenure durations (a)</p>	<p>The OLLW does not establish a notice period when the employer dismisses the employee with just cause, other than the procedure and delays mentioned in Items 1 and 2.</p> <p>Calculation (for EPL indicators): 0 days</p>

<p><b>4: Severance pay at different tenure durations (a)</b></p>	<p><u>Dismissal with just cause:</u> No severance pay in case of dismissal with just cause (“justa causa”), which corresponds to employee’s misconduct (article 79 OLLW). Employee’s capacity is not a just cause for dismissal.</p> <p><u>Dismissal without just cause:</u> is not possible under immunity decree, except for workers with less than one month tenure, employees in managerial position and seasonal and occasional workers).</p> <p><u>Termination benefits, regardless the reason:</u> Under article 142 of the OLLW, employees are entitled to the following termination benefits, regardless the reason:</p> <ol style="list-style-type: none"> <li>Each quarter, the employer must deposit the equivalent to 15 days of salary in favour of each employee, calculated on the basis of the last salary earned, as a guarantee of the termination benefits. The right to this deposit is acquired at the time when the quarter begins.</li> <li>In addition, after the first year of service, the employer will deposit in favour of each employee 2 days of salary per year, accumulative up to thirty days of salary.</li> <li>When the employment relationship terminates for any reason whatsoever, the termination benefits will be calculated on the basis of 30 days per year of service or fraction of six months, calculated with the last salary.</li> <li>The worker will receive, on account of termination benefits, the higher of the total of the guarantee deposited according to letters a) and b) and the calculation made upon termination according to letter c).</li> <li>If the employment relationship terminates before the first three months, the payment will amount to 5 days of salary per month of work or fraction thereof.</li> </ol> <p><u>Termination due to dismissal:</u> Under article 92 of the OLLW in the case of termination of the employment relationship for reasons beyond the worker’s control or in case of dismissal without any reasons justifying the same, if the employee states his will not to bring a proceeding to obtain reinstatement, the employer must pay him an indemnity equivalent to the amount corresponding to termination benefits. Likewise, if after bringing the proceeding, the employee voluntarily receives double payment, the proceeding must be concluded with the additional payment of salaries accrued and not paid.</p> <p><u>For employees not covered by the immunity decree,</u> severance payment would amount to: 9 months tenure: higher of letter a or 30 days (letter c); 4 years tenure: higher of letters a and b or 120 days (letter c); 20 years tenure: higher of letters a and b or 600 days (letter c).</p> <p><u>However,</u> the above mentioned rule does not apply to workers covered by the immunity decree (all workers except employees with less than one month tenure, employees in managerial position and seasonal and occasional workers). Under said decree, employees can only be dismissed for a just cause previously approved by the Labour Inspector. Failure to comply entails mandatory reinstatement.</p> <p>Calculation (for EPL indicators): 0 days</p>
<p><b>5: Definition of unfair dismissal (b)</b></p>	<p>Fair dismissal: Article 79 OLLW provides a limited list of reasons for dismissal with justified cause, which are related to employee’s misconduct: Capacity is not a just cause for dismissal.</p> <ol style="list-style-type: none"> <li>Dishonesty; 2) Physical violence, unless exercised in self-defence; 3) Any immoral act in offense to the employer, his representatives, or to members of his family who live with him; 4) Intentional acts or with gross negligence which seriously affect the security or hygiene of the workplace; 5) Omissions or imprudence which seriously affect the security or hygiene of the workplace; 6) Unjustified absences during 3 working days in a one month period; 7) Material damages, intentionally inflicted or with grave negligence, on the work machinery, tools or instruments, work equipment, raw material or manufactured products; 8) Disclosure of trade secrets or procedures; 9) Any act which constitutes a serious violation to the obligations imposed by the labour relationship; 10) Abandonment of work, 11) Sexual or labour harassment;</li> </ol> <p><u>Unfair dismissal:</u> when dismissal occurs without a just cause (article 77 OLLW) or when the employer breaches its obligations (constructive dismissal, article 80 OLLW).</p> <p>Therefore, as a result of the immunity decree, it is not possible for an employer to dismiss an employee (except for the excluded workers) for a reason other than a conduct related just cause (article 79 OLLW). Redundancy is not a just cause for dismissal.</p>
<p><b>6: Length of trial period (c)</b></p>	<p>OLLW does not establish a trial period (except for employees who have been upgraded to a higher category, article 80 OLLW).</p> <p>Although immunity decree does not apply to employees during the first month of service (article 5 Presidential Decree N° 9.322), termination benefits are applicable as from the first month (article 142 OLLW).</p> <p>Calculation (for EPL indicators): 1 month</p>
<p><b>7: Compensation following unfair dismissal (d)</b></p>	<p>Under article 92 of the OLLW in the case of termination of the employment relationship for reasons beyond the worker’s control or in case of <u>dismissal without any reasons</u> justifying the same, if the employee states he/she will not to bring a proceeding to obtain reinstatement, the employer must pay him/her an indemnity equivalent to the amount corresponding to termination benefits. Likewise, if after bringing the proceeding, the employee voluntarily receives double payment, the proceeding must be concluded with the additional payment of salaries accrued and not paid.</p> <p><u>However,</u> under immunity decree N° 9.322, article 3, in case of unfair dismissal of a worker protected by job stability, the employee can request before the Labour Inspector, within 30 days, reinstatement, back pay plus the benefits he should have received, had the relationship not ended.</p> <p>Calculation (for EPL indicators): 20 year tenure employee: 40 months plus 6 months of back pay</p>
<p><b>8: Reinstatement option for the employee following unfair dismissal (b)</b></p>	<p>Under Presidential Decree N° 9.322, employees of the private and public sector are protected by job stability (except workers with less than one month tenure, employees in managerial position and seasonal and occasional workers). Reinstatement option is always available.</p>

<b>9: Maximum time period after dismissal up to which an unfair dismissal claim can be made (e)</b>	10 years (article 51 OLLW).
<b>10: Valid cases for use of standard fixed term contracts</b>	According to article 64 OLLW, FTCs are only permitted: a) if so required by the nature of the service, b) for a temporary and lawful replacement of an employee, c) for contracts concluded with Venezuelan nationals to perform services abroad.
<b>11: Maximum number of successive standard FTCs (initial contract plus renewals and/or prolongations)</b>	Only initial contract plus one renewal is admitted (article 62 OLLW). Calculation (for EPL indicators): 2 (initial contract plus 1 renewal).
<b>12: Maximum cumulated duration of successive standard FTCs</b>	FTC must not exceed 1 year. Same time limit applies to renewal (article 62 OLLW). Calculation (for EPL indicators): 24 months
<b>13: Types of work for which temporary work agency (TWA) employment is legal</b>	<p>According to article 47 OLLW, outsourcing (“Tercerización”) is understood as the simulation or fraud committed by employers with the purpose of distorting, failing to acknowledge, or hindering the application of the labour legislation. The administrative or judicial entities with competence over labour matters will establish the liability of the employers in the event of simulation or labour fraud under the law. Article 48 OLLW states that outsourcing is prohibited. Therefore, the following will not be permitted:</p> <ol style="list-style-type: none"> <li>1. Agreements with entities to execute permanent works or services within the facilities of the contractor, related to its productive process.</li> <li>2. Hiring of workers through intermediaries to evade the obligations derived from the labour relationship of the hiring entity.</li> <li>3. Work entities created by the employer to evade the obligations to the workers.</li> <li>4. Fraudulent contracts or agreements intended to simulate a labour relationship, through the use of juridical forms of civil or mercantile law.</li> <li>5. Any other form of labour simulation or fraud.</li> </ol> <p>In the above mentioned cases, the employers will comply with all their obligations derived from the labour relationship according to the law and will include the outsourced employees in the payroll of the hiring entity. Said outsourced workers will be covered by job stability up to the time when they are actually incorporated into the hiring entity.</p> <p>Thus, provision of workers for the development of non-core activities at the user firm is prohibited, since that may be considered hiring of workers through intermediaries in order to evade the obligations derived from the labour relationship of the hiring entity.</p>
<b>14: Are there restrictions on the number of renewals and/or prolongations of TWA assignments? (f)</b>	TWA contracts are prohibited by law.
<b>15: Maximum cumulated duration of TWA assignments (f)</b>	TWA contracts are prohibited by law.
<b>16: Does the set-up of a TWA require authorisation or reporting obligations?</b>	TWA employment is illegal
<b>17: Do regulations ensure equal treatment of regular workers and agency workers at the user firm?</b>	TWA employment is illegal
<b>18: Definition of collective dismissal (b)</b>	<p>Article 95 OLLW defines mass dismissal when it affects: a) 10% of employees of an entity of more than 100 workers; b) 20% of employees of an entity of more than 50 workers; c) 10 employees of an entity of less than 50 workers within a period of 3 months or more if the circumstances make dismissals critical. However, Ministry of Labour may stop dismissals issuing a special resolution.</p> <p>Article 148 OLLW states that if technological or economic reasons might determine job loss, workforce reduction or changes in working conditions, the Ministry of Labour might intervene in the process to avoid job loss. During the procedure, with the participation of workers, unions and the employer, the Ministry of Labour will grant job stability to employees.</p> <p>The above mentioned rules do not apply to workers covered by the immunity decree, who can only be dismissed for a just cause previously approved by the Labour Inspector. However, article 3 of the immunity decree 9.233 reserves the right of employers and employees to conclude agreements to carry out redundancies or modify working conditions, through collective bargaining.</p>

<p><b>19:</b> Additional notification requirements in cases of collective dismissal (g)</p>	<p>OLLW was enacted on April, 30<sup>th</sup> 2012, repealing the previous Organic Labour Law (OLL) amended on June, 18<sup>th</sup> 1997. Although a partial regulation of OLLW was enacted on April, 30<sup>th</sup> 2013, it refers to working conditions. No regulation up to date referring to mass dismissal or reduction of workforce. Therefore, there is no information available on procedures and notification requirements.</p> <p>However, under immunity decree mass dismissal is illegal as it grants job stability to workers covered by its provisions. Yet, article 3 of the immunity decree 9.233 reserves the right of employers and employees to conclude agreements to carry out redundancies or modify working conditions, through collective bargaining.</p> <p>Calculation (for EPL indicators): 1</p>
<p><b>20:</b> Additional delays involved in cases of collective dismissal (h)</p>	<p>No information available. However, under immunity decree mass dismissal is illegal as it grants job stability to workers covered by its provisions. Yet, article 3 of the immunity decree 9.233 reserves the right of employers and employees to conclude agreements to carry out redundancies or modify working conditions, through collective bargaining.</p>
<p><b>21:</b> Other special costs to employers in case of collective dismissals (i)</p>	<p>No information available. However, under immunity decree mass dismissal is illegal as it grants job stability to workers covered by its provisions. Yet, article 3 of the immunity decree 9.233 reserves the right of employers and employees to conclude agreements to carry out redundancies or modify working conditions, through collective bargaining. These agreements are likely to include some advantages for the workers (e.g. termination payments). As the outside option is no dismissal, employees are in a strong bargaining position.</p> <p>Calculation (for EPL indicators): 1</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:

- 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.