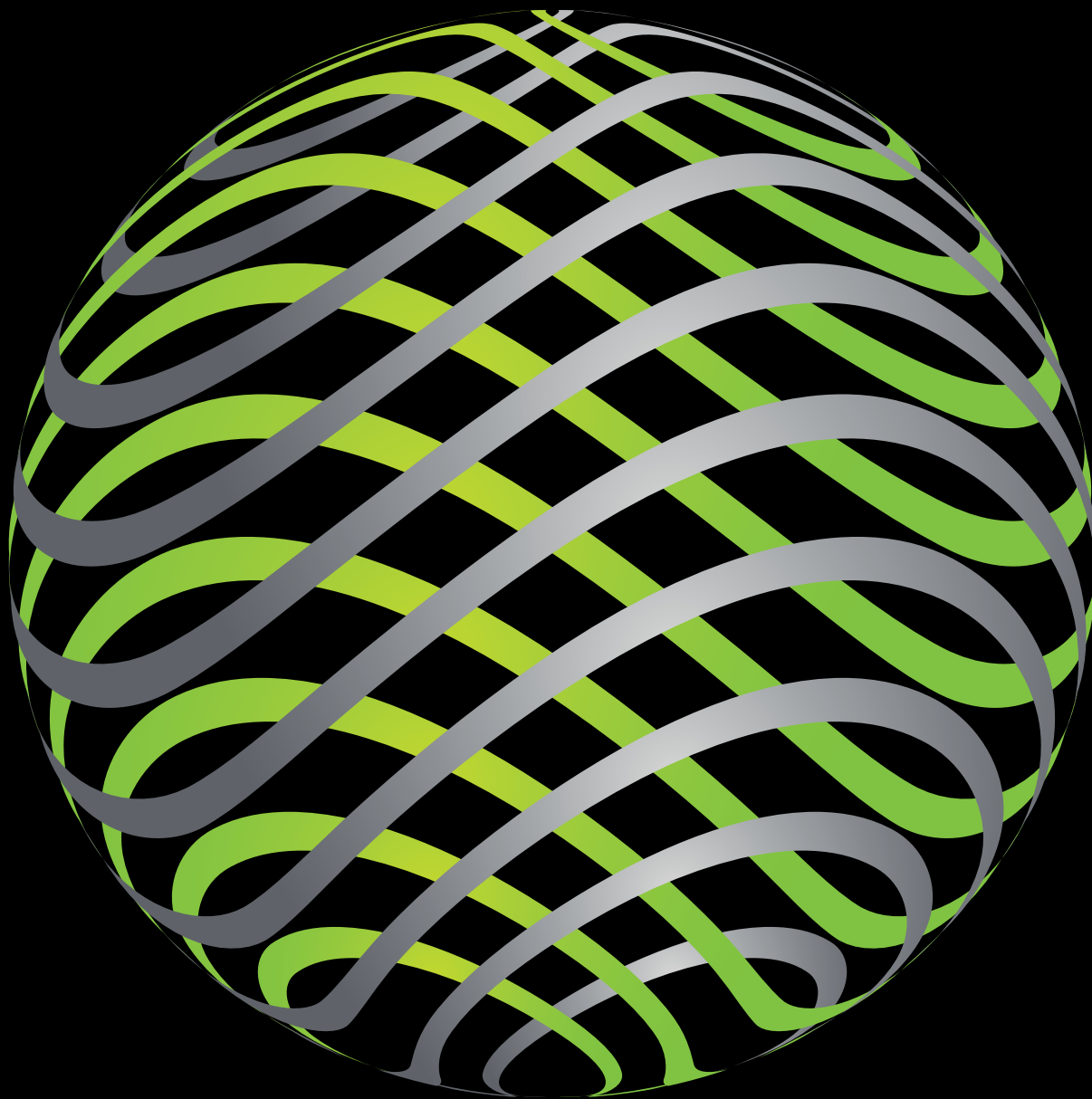


**Deloitte.**  
Legal



**Deloitte Legal Perspectives**  
International Dismissal Survey  
February 2018

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Countries across all regions (America, Europe and APAC) share many similar employment termination concepts.

## Introduction

This 4th edition of the International Dismissal Survey is more than a refresh. Firstly, the number of participating countries has increased by 15. In addition to more European countries (Cyprus, Serbia, Bosnia and Herzegovina, etc.), the survey for the first time also includes countries from Latin America (e.g. Brazil, Colombia, Ecuador) and the Asia-Pacific region (e.g. China, Singapore, Japan etc.). In total, this survey comprises the legislation of 46 countries:

*Austria, Albania, Azerbaijan, Belgium, Bosnia and Herzegovina, Brazil, Bulgaria, China, Colombia, Croatia, Cyprus, Czech Republic, Denmark, Ecuador, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Japan, Kazakhstan, Latvia, Lithuania, Luxembourg, Malta, Montenegro, Myanmar, Norway, Poland, Portugal, Romania, Russia, Singapore, Serbia, Slovakia, Slovenia, South Korea, Spain, Sweden, Switzerland, Thailand, the Netherlands, the United Kingdom and Vietnam.*

As in the previous edition, the survey begins with six cost comparisons, reflecting the dismissal cost for the employers in all participating countries based on three cases with a different seniority and remuneration package, as well as the difference between a dismissal with or without reason. The cost projections are drafted from an employer's perspective, which means that only dismissals by employer (and not by the employee) are taken into account and include social security costs as well as other costs (e.g. outplacement where relevant).

Supplementary to the cost projections, the survey contains two new comparative tables bringing more insights into the division of the overall employer cost. Such as, the reference income that is used to calculate the dismissal indemnities and whether or not these indemnities are subject to social security charges, with or without the application of a cap. In addition, there is a third new table which illustrates the 'balance of power' in each country, indicating the countries where upfront approval is required from the court to dismiss a person, or where a court appeal can result in a reinstatement or an increased indemnity.

Finally, each of the 46 countries has its own country report, summarising its individual dismissal rules, the formalities that need to be complied with, and any upcoming legislative changes. New to these country reports is that they contain more information regarding the determination of the notice period in relation to seniority (if applicable) and a translation in the official country language of the most important terms.

# Cost projection

## Comparison of the dismissal cost

In order to compare the employer's dismissal cost in the various countries, three practical examples were used which were approached equally by all participating countries, taking into account the respective local dismissal regulations.

The case examples have been selected to provide relevant information on the differences in the regulations in the participating countries. Amongst other, the impact of the following elements on the dismissal cost was determined: contracts of indefinite term, age (younger vs. older employee), level of salary (lower vs. higher salary), composition of the salary (elements taken into account) and seniority (medium vs. higher). In order to obtain a correct comparison, the use of similar salary packages was needed, although we are fully aware that such packages are not in line with market practice in a number of countries.

The following sets of parameters were used:

### Case 1

- Employee, **age 30**
- Legal counsel in an IT company
- 4 years seniority
- Gross annual base salary: €30,000
- Gross variable salary per year: €2,500
- Benefits in kind per year (gross): €4,000

### Case 2

- Employee, **age 35**
- Legal counsel in an IT company
- 7 years seniority
- Gross annual base salary: €60,000
- Gross variable salary per year: €5,000
- Benefits in kind per year (gross): €8,000

### Case 3

- Employee, **age 49**
- Legal counsel in an IT company
- 11 years seniority
- Gross annual base salary: €120,000
- Gross variable salary per year: €10,000
- Benefits in kind per year (gross): €16,000

In all practical examples, the participating countries were requested to provide the dismissal cost, always considered from an employer's perspective, in view of both a dismissal due to objective individual or economic reason as well as a dismissal without an objective individual or economic reason.

In general, there is no or little difference in cost for employers between a dismissal for individual reasons and a dismissal for economic reasons. Only a very limited number of countries, such as the Czech Republic, Ireland, Romania and the United Kingdom may show a difference. For these countries, the cost projections are based on a dismissal for economic reasons.

For completeness sake, it should be noted that the case examples have been calculated by the various countries while taking into account the worst-case scenario, especially for the examples related to dismissals without objective reason, in order to show the maximum possible employer cost. In principle, the difference between the scenarios with and without reason show the maximum span in which an agreement with the employee can normally be reached.

The figures date from December 2017 and do not take into account any legislative updates from a later date. Please note however that such legislative changes have been covered as much as possible in the descriptive part of this survey (i.e. the report on country regulations).

The survey focuses on dismissal costs in the framework of individual dismissals and excludes the rules and best practices in view of collective dismissals. However, the underlying data collected in the framework of this survey clearly shows that nearly all the countries have different rules specific to multiple and/or collective dismissals.

A limited number of countries were not in a position to provide a cost assessment in case of dismissal without a reason, because the cost for the employer varies depending on the court's decision (Malta) or dismissal without reasons is not possible according to the legislation (the Czech Republic, Kazakhstan, Latvia, Croatia, Slovenia and the Netherlands).

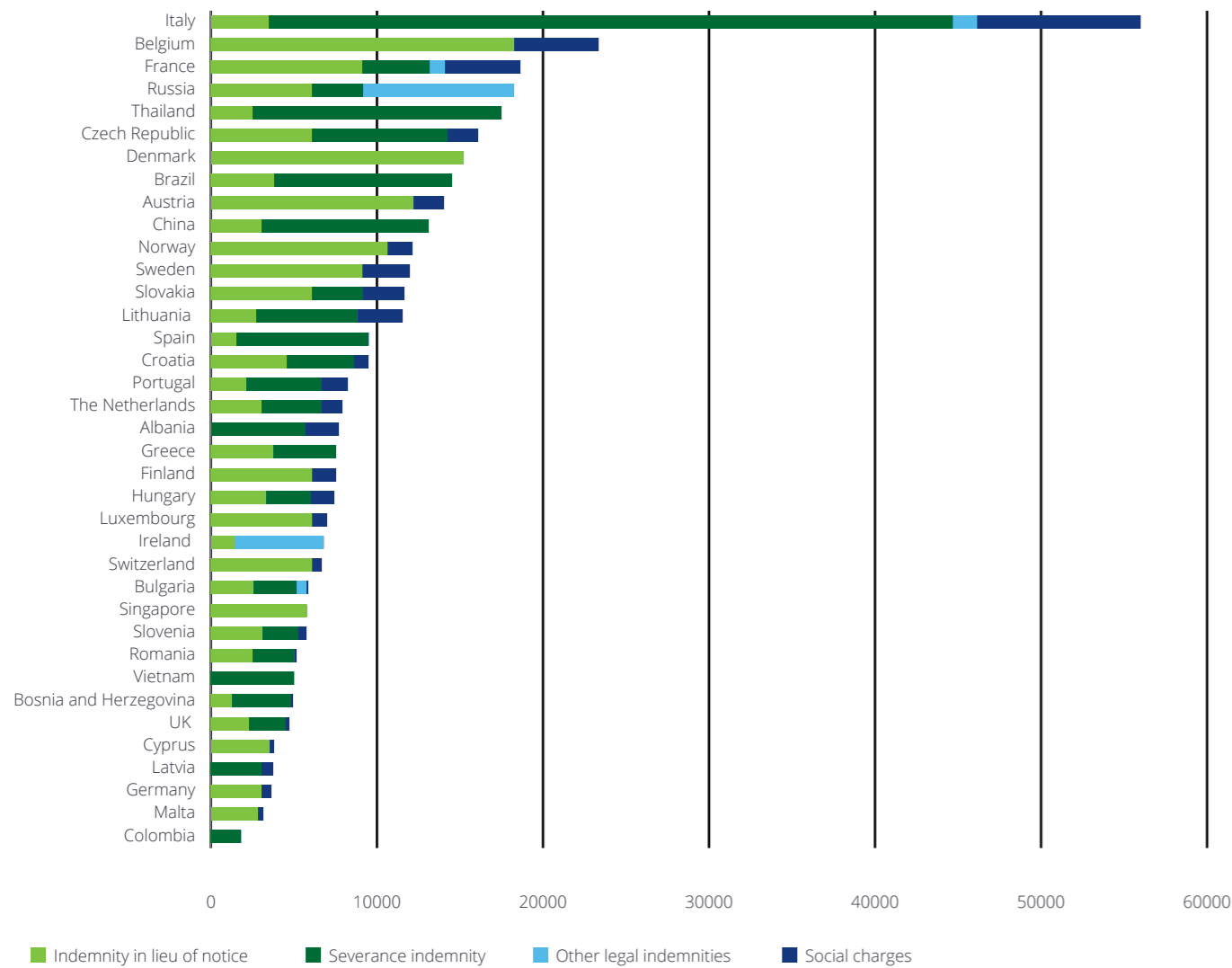
**Case 1**

- Employee, age 30
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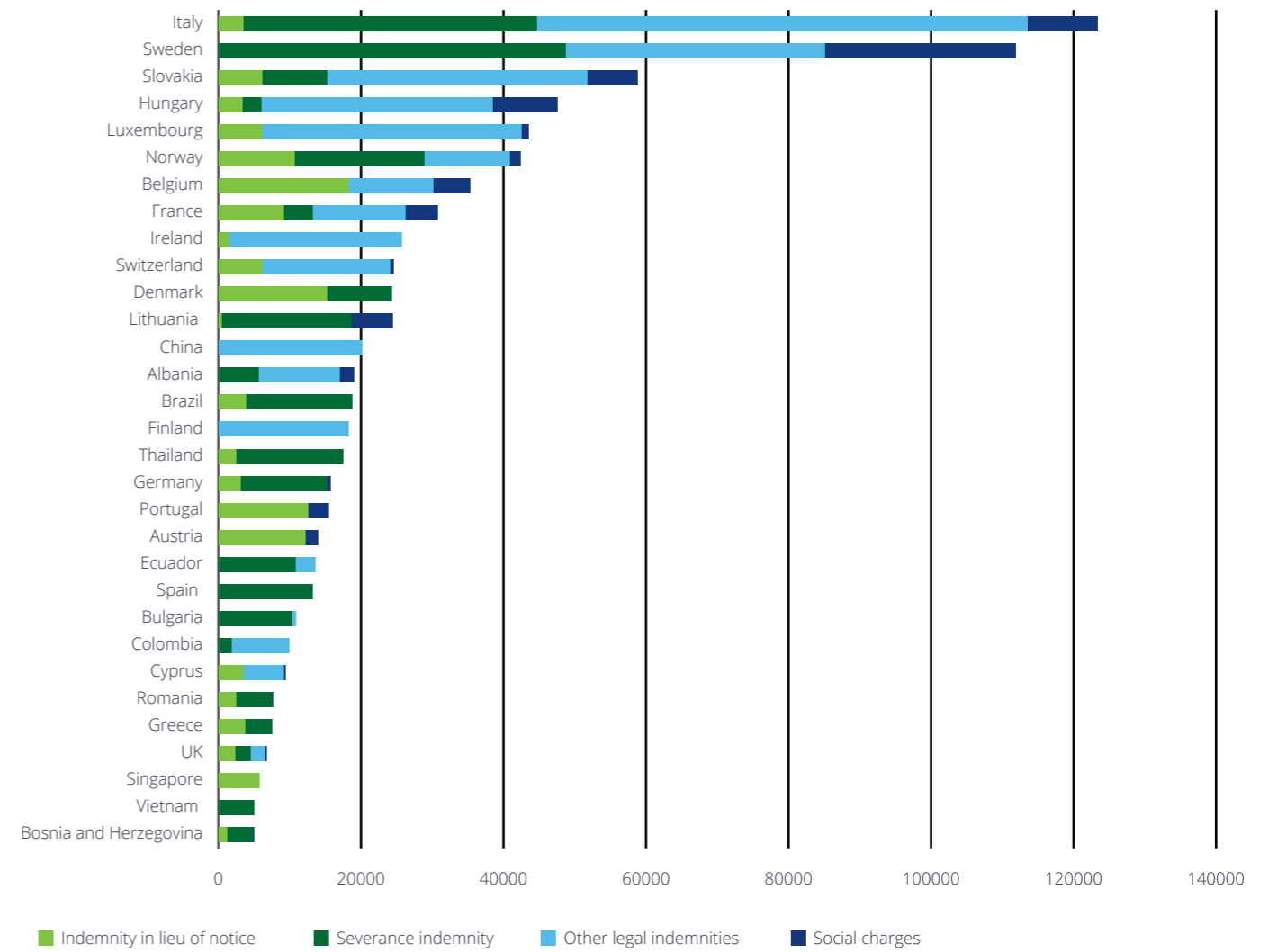
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- Employee, age 30
- Legal counsel in an IT company
- 4 years seniority
- Gross annual base salary: €30,000
- Gross variable salary per year: €2,500
- Benefits in kind per year (gross): €4,000

**Case 1.1: dismissal due to objective individual or economic reasons**



**Case 1.2: dismissal without objective individual or economic reasons**

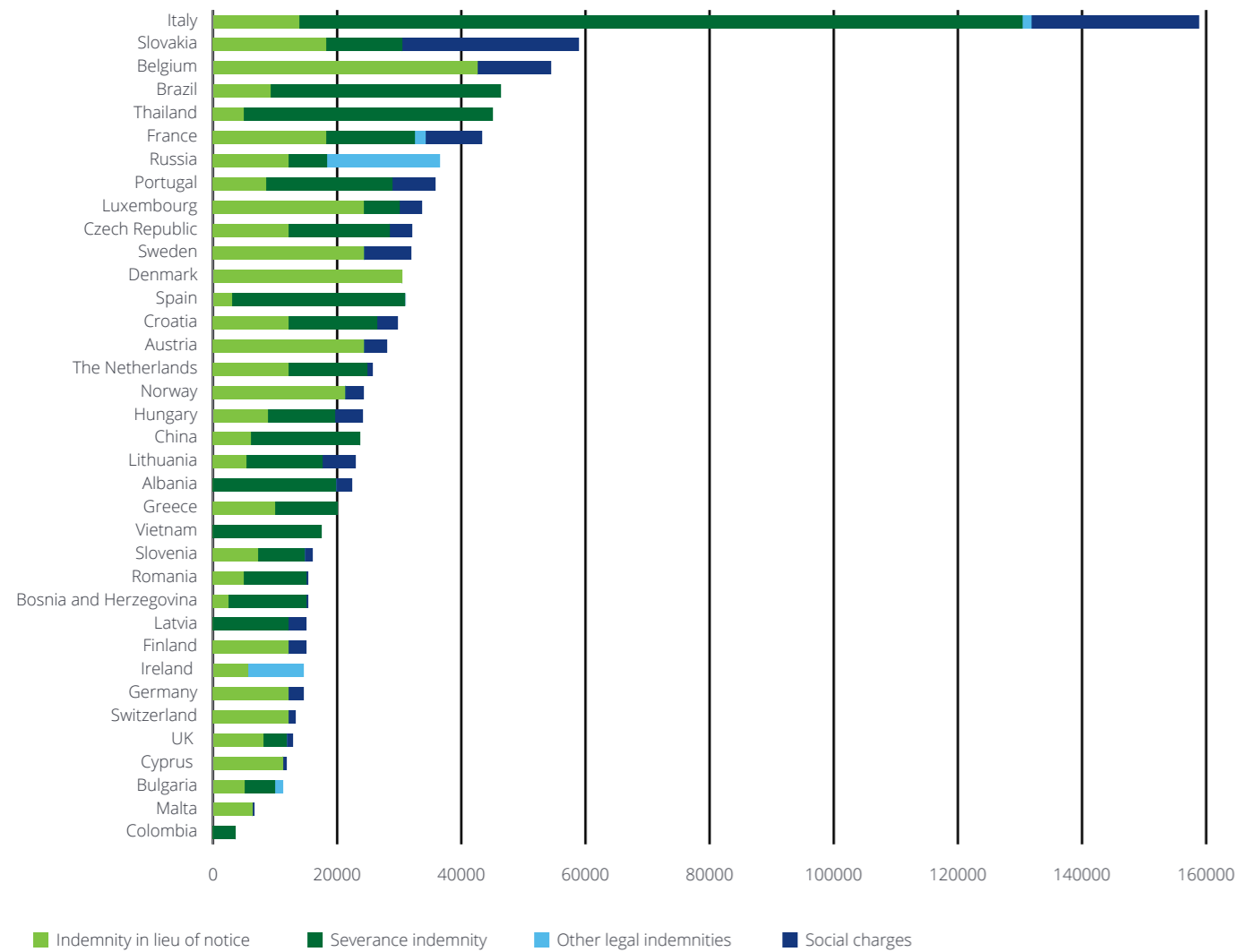


\* Assumptions: not considered unfair dismissal

**Case 2**

- Employee, age 35
- Legal counsel in an IT company
- 7 years seniority
- Gross annual base salary: €60,000
- Gross variable salary per year: €5,000
- Benefits in kind per year (gross): €8,000

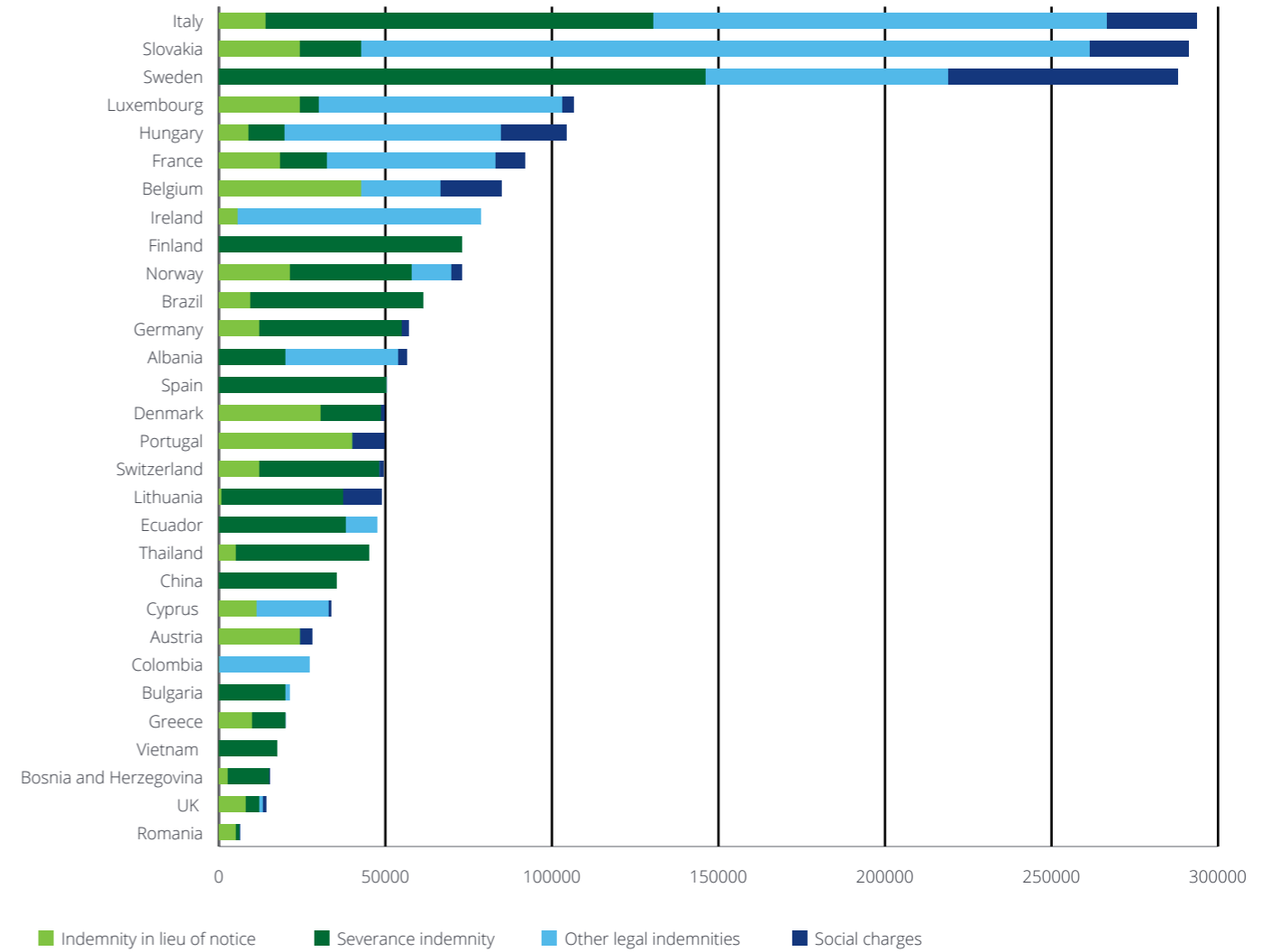
**Case 2.1: dismissal due to objective individual or economic reasons**



**Case 2**

- Employee, age 35
- Legal counsel in an IT company
- 7 years seniority
- Gross annual base salary: €60,000
- Gross variable salary per year: €5,000
- Benefits in kind per year (gross): €8,000

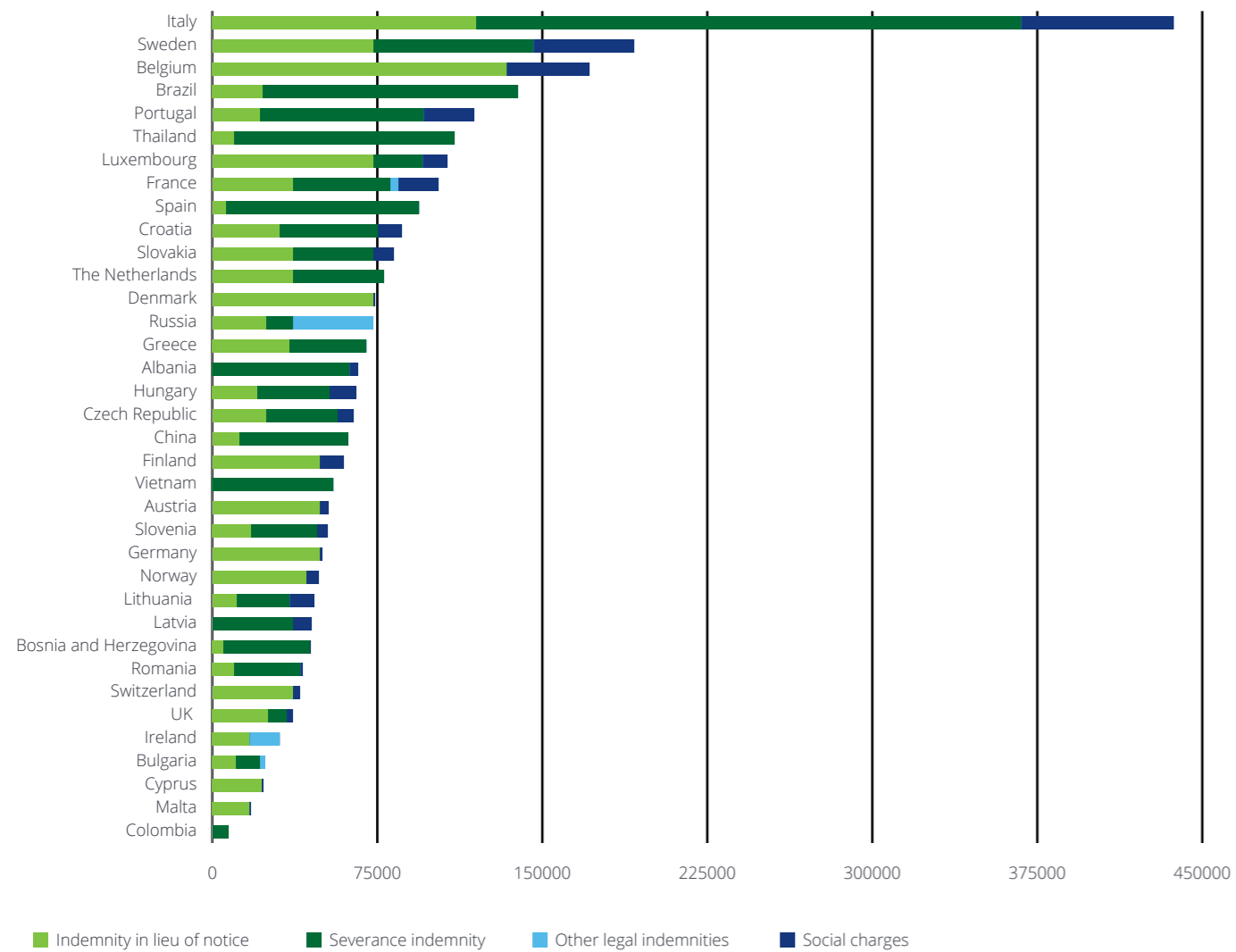
**Case 2.2: dismissal without objective individual or economic reasons**



**Case 3**

- Employee, age 49
- Legal counsel in an IT company
- 11 years seniority
- Gross annual base salary: €120,000
- Gross variable salary per year: €10,000
- Benefits in kind per year (gross): €16,000

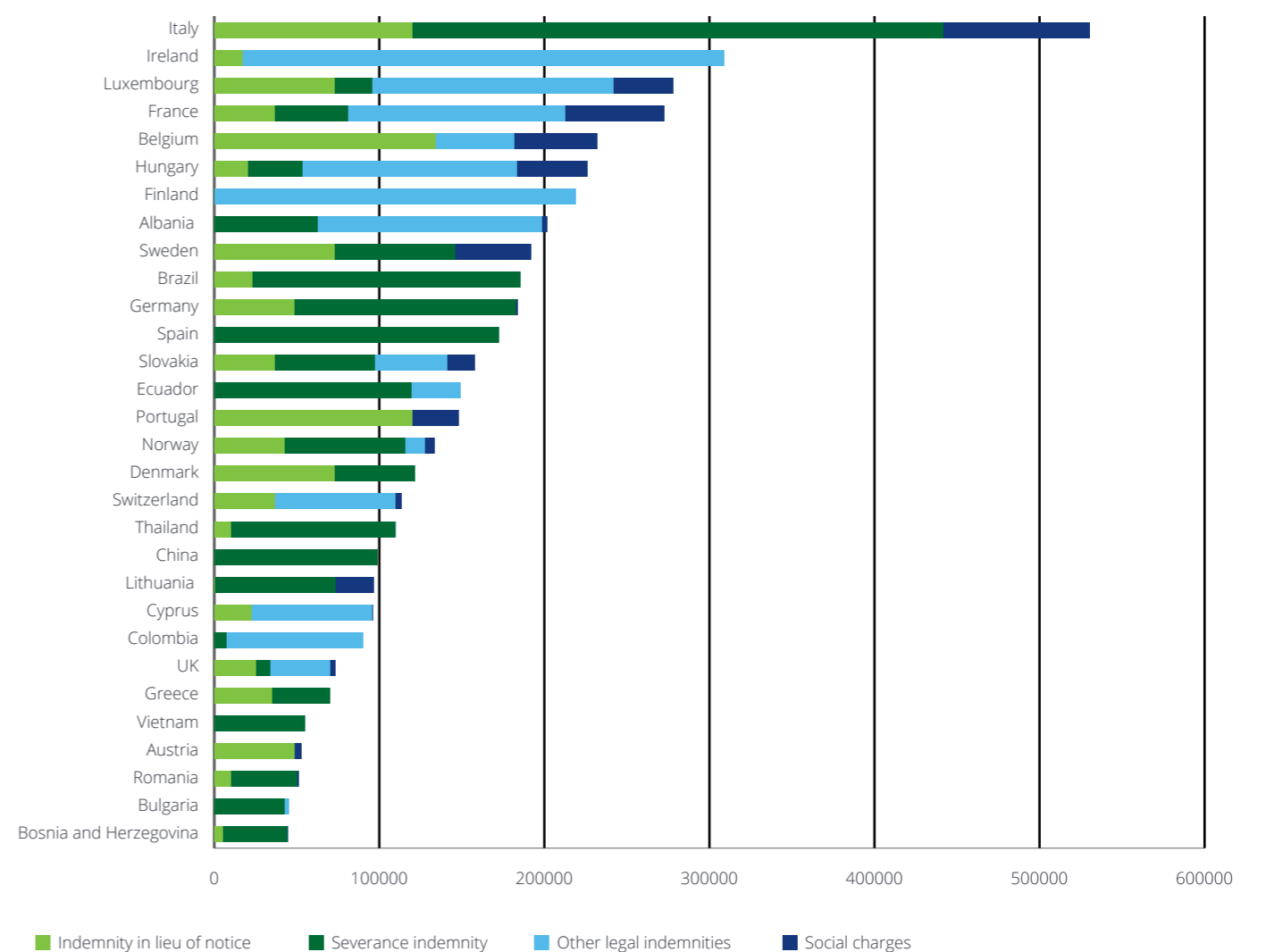
**Case 3.1: dismissal due to objective individual or economic reasons**



**Case 3**

- Employee, age 49
- Legal counsel in an IT company
- 11 years seniority
- Gross annual base salary: €120,000
- Gross variable salary per year: €10,000
- Benefits in kind per year (gross): €16,000

**Case 3.2: dismissal without objective individual or economic reasons**



# Main observations

## 1. General remarks

The Dismissal Survey has been extended this year to include not only European countries, but also Latin American and Asian participants. Given this wide variety of legislations and the limited sample of Latin American and Asian participants, it is difficult to compare the regions and draw general conclusions.

While gathering the data for this survey, it did become clear that the countries across all regions share many similar concepts regarding the termination of employment contracts, although many differences exist within a region. For example, basic dismissal concepts such as dismissal for serious cause and protection against dismissal of certain categories of employees (e.g. maternity, educational leave, political mandate, etc.) are present in almost all countries.

In both Japan and Finland, an indemnity in lieu of notice is not possible or only possible with the consent of the employee, and in Kazakhstan, Russia, Serbia and Vietnam lawful dismissal is only possible for a number of reasons explicitly stipulated by law. In Brazil, Colombia and Ecuador a dismissal with reason is only possible based on reasons stipulated by law, however while in Ecuador no indemnities whatsoever are due, in Colombia a severance indemnity and in Brazil both an indemnity in lieu of notice and a severance indemnity are due.

## 2. Dismissal systems

The cost projection data clearly shows the existence of two systems in case of dismissal with objective reasons: about 40% of the countries (e.g. Germany, Singapore, Belgium, etc.) attribute only a notice period or an indemnity in lieu of notice, while in about 50% of the countries (e.g. Brazil, France, Italy, etc.) both a notice period (or garden leave) and a severance indemnity are due. Finally, in about 10% of the surveyed countries (e.g. Latvia, Vietnam, Colombia, Serbia, Montenegro) only a severance indemnity has to be paid.

A different analysis has to be made in case of a dismissal without objective reasons. Then, a severance indemnity or other legal indemnity (e.g. indemnity for unfair dismissal) is due in about 90% of the surveyed countries. In 10% of the surveyed countries, only an indemnity in lieu of notice remains due (e.g. Singapore, Austria, Portugal, etc.).

Finally, we encountered a third system, which is not apparent in the cost projection data. In some countries, termination is only possible for the reasons stipulated explicitly by law, in which case no (or only minimal) indemnities and/or notice periods are due (e.g. Ecuador).

## 3. Rankings

If we compare all scenarios for dismissal with an objective individual reason or economic reason, we see that the dismissal cost varies widely between legislations, without any geographical preference. The underlying data clearly shows that employers in Brazil and Thailand face roughly the same costs as employers in France and Portugal. There is also a significant gap between the two most expensive countries: Italy is almost twice as expensive as Belgium.

Only Ecuador is not reflected in the above ranking since no notice period or indemnity is due when the dismissal is approved by the Ministry of Labour.

If we compare all scenarios for dismissal without any objective reason, employers in certain European countries encounter the highest costs, even though huge regional variations continue to exist.

The highest increase in dismissal cost is triggered by the severance indemnity or indemnity for unlawful dismissal which is due if an employee is dismissed without an objective reason. On average, the cost factor associated with such a dismissal is at least one and a half times the cost for dismissal with objective reason. However, there are important discrepancies per country. For example, in Ireland the cost factor for the employer can reach 10, while other countries (Greece, Austria, Bosnia and Herzegovina, Vietnam, Thailand for instance) do not appear to be familiar with the concept of unlawful dismissal. In these countries, employers do not incur higher a cost in case of dismissal without objective reason.

A limited number of countries were not in a position to provide a cost assessment in case of dismissal without a reason, because the cost for the employer varies depending on the court's decision (Malta) or dismissal without reasons is not possible according to the legislation (the Czech Republic, Kazakhstan, Latvia, Croatia, Slovenia and the Netherlands).

### Country ranking: average cost of all scenarios in case of dismissal with objective individual or economic reason

1		Italy
2		Belgium
3		Sweden
4		Brazil
5		Thailand
6		France
7		Portugal
8		Slovakia
9		Luxembourg
10		Spain
11		Russia
12		Croatia
13		Denmark
14		Czech Republic
15		Netherlands
16		China
17		Greece
18		Hungary
19		Albania
20		Austria
21		Norway
22		Finland
23		Lithuania
24		Vietnam
25		Slovenia
26		Germany
27		Bosnia and Herzegovina
28		Latvia
29		Romania
30		Switzerland
31		Ireland
32		United Kingdom
33		Bulgaria
34		Cyprus
35		Malta
36		Colombia

### Country ranking: average cost of all scenarios in case of dismissal without objective or economic reason

1		Italy
2		Sweden
3		Slovakia
4		Luxembourg
5		Ireland
6		France
7		Hungary
8		Belgium
9		Finland
10		Albania
11		Brazil
12		Germany
13		Norway
14		Spain
15		Portugal
16		Ecuador
17		Denmark
18		Switzerland
19		Thailand
20		Lithuania
21		China
22		Cyprus
23		Colombia
24		Greece
25		Austria
26		Vietnam
27		Bulgaria
28		Romania
29		Bosnia and Herzegovina
30		United Kingdom



**4. Balance of power**

In over 75% of the surveyed countries, the employer is free to dismiss an employee, but the employee can afterwards contest the dismissal before the court and request his/her reinstatement. Upfront approval of the dismissal by a court or administrative body is only required in a few countries (Ecuador and the Netherlands). In the other surveyed countries (e.g. Belgium, Luxembourg, Sweden, etc.) the court can only attribute an indemnity in case of unlawful dismissal but is not entitled to reinstate the employee.

Country	Upfront approval by court/ authorities required	Post-dismissal review with possible reinstatement by court	Courts cannot reinstate but only determine indemnity
Albania		✓	
Austria		✓	
Belgium			✓
Bosnia and Herzegovina		✓	
Brazil		✓	
Bulgaria		✓	
China		✓	
Colombia		✓	
Croatia		✓	
Cyprus		✓	
Czech Republic		✓	
Denmark			✓
Ecuador	✓		
Finland			✓
France		✓	
Germany		✓	
Greece		✓	
Hungary			✓
Ireland		✓	
Italy		✓	
Japan		✓	

Country	Upfront approval by court/ authorities required	Post-dismissal review with possible reinstatement by court	Courts cannot reinstate but only determine indemnity
Kazakhstan		✓	
Latvia		✓	
Lithuania		✓	
Luxembourg			✓
Malta		✓	
Montenegro		✓	
Myanmar		✓	✓
Norway		✓	
Portugal		✓	
Romania		✓	
Russia		✓	
Serbia		✓	
Singapore		✓	
Slovakia		✓	
Slovenia		✓	
Spain		✓	
Sweden			✓
Switzerland			✓
Thailand		✓	
the Netherlands	✓		
United Kingdom		✓	
Vietnam		✓	✓

### 5. Computation base

The computation base for the 'indemnity in lieu of notice', where applicable, includes in more than 50% of the surveyed countries the total remuneration package (annual base and variable salary as well as benefits in kind), whereas for the calculation of the 'severance indemnity' only 40% of the countries take into account the entire remuneration package.

In almost all surveyed countries, seniority within the company is the key factor in determining the level of dismissal cost for employers. However, over 60% of all surveyed countries have capped the seniority in order to calculate the indemnity in lieu of notice and severance indemnity. Two countries (the Netherlands and the United Kingdom) have even determined a maximum severance indemnity. Finally, in a limited number of countries (e.g. Bulgaria, Kazakhstan, etc.) seniority has no impact on the duration of the notice period.

Country	Computation base		
	Indemnity in lieu of notice	Severance indemnity	Other legal indemnities
Albania	-	ABS + AV + AB	ABS + AB
Austria	ABS + AV + AB	ABS + AV + AB	ABS + AV + AB
Belgium	ABS + AV + AB	-	ABS+AV+AB
Bosnia and Herzegovina	ABS + AV	ABS + AV	ABS + AV
Brazil	ABS + AV	ABS + AV	ABS+AV+AB
Bulgaria	ABS	ABS	ABS
China	ABS + AV + AB	ABS + AV + AB	ABS + AV + AB
Colombia	-	ABS + AV	ABS + AV
Croatia	ABS + AV + AB	AV	-
Cyprus	ABS + AB + AV	-	ABS + AB + AV
Czech Republic	ABS + AB + AV	ABS + AV	-
Denmark	ABS + AV + AB	ABS + AV + AB	ABS + AV + AB
Ecuador	-	-	ABS + AV
Finland	ABS + AV + AB	ABS + AV + AB	ABS + AV + AB
France	ABS + AV + AB	ABS + AV + AB	ABS + AV + AB
Germany	ABS+AV+AB	ABS+AV+AB	-
Greece	ABS + AV	ABS + AV	-
Hungary	ABS + AV	ABS + AV	ABS + AV
Ireland	ABS + AV + AB	-	ABS + AV + AB
Italy	ABS	ABS + AV + AB	-
Japan	-	-	-
Kazakhstan	-	-	ABS + AB
Latvia	-	ABS + AV + AB	-
Lithuania	ABS + AV	ABS + AV + AB	-
Luxembourg	ABS + AV + AB	ABS	-
Malta	ABS + AV + AB	-	-
Montenegro	-	ABS	-
Myanmar	ABS	ABS	-
Norway	ABS+AV+AB	ABS+AV+AB	-
Portugal	ABS	ABS	ABS
Romania	ABS	ABS	ABS
Russia	ABS + AV + AB	ABS + AV + AB	ABS + AV + AB
Serbia	-	ABS	-
Singapore	ABS	-	-
Slovakia	ABS + AV + AB	ABS + AV + AB	ABS + AV + AB
Slovenia	ABS + AV	ABS + AV	ABS + AV
Spain	ABS + AV + AB	ABS + AV + AB	ABS + AV + AB
Sweden	ABS + AV + AB	ABS	-
Switzerland	ABS + AV + AB	-	ABS + AV + AB
Thailand	ABS	ABS	-
the Netherlands	ABS + AV + AB	ABS + AB + AV	-
United Kingdom	ABS	ABS	ABS + AV + AB
Vietnam	-	ABS	-

#### \* Legend

ABS = Annual Base Salary  
AV = Annual variable Salary  
AB = Annual Benefits

Country	Social charges		
	Employer Social charges due?	Calculated on:	Cap for social security charges
Albania	Yes	SI	Yes
Austria	Yes	ILON + OLI	Yes
Belgium	Yes	ILON + OLI	No
Bosnia and Herzegovina	Yes	ILON + SI + OLI	No
Brazil	No	-	No
Bulgaria	Yes	-	Yes
China	No	-	No
Colombia	Yes	OLI + SI	No
Croatia	Yes	ILON + SI	Yes
Cyprus	Yes	ILON	No
Czech Republic	Yes	ILON	Yes
Denmark	No	-	Yes
Ecuador	No	-	No
Finland	Yes	ILON + OLI	No
France	Yes	ILON + OLI	No
Germany	Yes	ILON	Yes
Greece	No	-	No
Hungary	Yes	ILON + OLI	No
Ireland	No	-	-
Italy	Yes	ILON	No
Kazakhstan	Yes	ILON + SI + OLI	No
Latvia	Yes	SI	No
Lithuania	Yes	ILON + SI	No
Luxembourg	Yes	ILON	Yes
Malta	Yes	-	Yes
Montenegro	Yes	SI	No
Myanmar	No	-	No
Norway	Yes	ILON	No
Portugal	Yes	ILON + SI + OLI	No
Romania	Yes	ILON + SI	No
Russia	Yes	SI	Yes
Serbia	Yes	SI	No
Singapore	No	-	No
Slovakia	Yes	ILON + SI + OLI	Yes
Slovenia	Yes	ILON + SI + OLI	No
Spain	No	-	No
Sweden	Yes	ILON + SI + OLI	No
Switzerland	Yes	ILON + OLI	No
Thailand	No	-	No
the Netherlands	Yes	ILON+SI+OLI	Yes
United Kingdom	Yes	ILON	No
Vietnam	Yes	OLI	No

### 6. Social security contributions

In about 25% of the surveyed countries, no social security contributions are due on the termination indemnities. In another 25% of the surveyed countries, the social security contributions are capped (e.g. Albania, Bulgaria, Germany, Russia, the Netherlands, etc.).

### 7. Managing directors

In about half of the surveyed countries, managing directors do not fall under the same regime as ordinary employees and enjoy less protection. In certain countries (e.g. Belgium, France, Serbia, Colombia, etc.), a managing director can opt to either have an employment contract (and be treated as an ordinary employee) or a management agreement (and not fall under the protection of the employment legislation).

### 8. Changes

Since the last survey, a limited number of countries have substantially changed their dismissal regulations, such as France, where the change was triggered by the new Macron-government. Other countries have indicated that they, in the near future, will change their dismissal regulations (such as the Netherlands). Since the final modifications to the legislation were not yet known at the time this survey was conducted, these changes have not yet been included in the cost projections but have been reflected in the country reports.

#### \* Legend

ILON = Indemnity in lieu of notice  
SI = Severance indemnity  
OLI = Other legal indemnity

# Dismissal Calculator

## Understand & plan for implications of employee dismissal



### What does the calculator do?

**Dismissal Calculator estimates the implications of an employee dismissal including:**

- Notice period
- Severance and other dismissal cost
- Employer's social security charge

**Calculations can be customized** to consider factors relevant to an employee:

- Salary
- Age
- Seniority



### How does the calculator work?

**Dismissal Calculator's intuitive user interface offers:**

- **Easy-to-use** format
- **Explanations** of relevant terms within the tool
- **General overview** of local dismissal rules and regulations
- **Output** in the form of a downloadable report with estimates given in USD, EUR, GBP
- **Contact information** to learn more

**The calculator covers 15 European countries:** Belgium, Croatia, Czech Republic, France, Germany, Hungary, Italy, Luxembourg, Norway, Poland, Romania, Spain, Sweden, Switzerland, and The Netherlands.



### Who can benefit?

The Dismissal Calculator is designed to help business decision makers understand and plan for the implications of an individual employee dismissal, and can also serve as a starting point for investigating the implications of a collective dismissal.

**Understanding the effects of a dismissal can be useful with issues related to human resources, cross-border talent acquisition and workforce reduction, and employee and business tax.**



### Where can the calculator be found?

**Getting started is easy:**

- The Dismissal Calculator is available free of charge.
- It is accessed via [www.deloitte.com/dismisalcaldculator](http://www.deloitte.com/dismisalcaldculator)
- Contact your Deloitte Tax or Legal partner, principal or director to learn more about the Dismissal Calculator. If you do not have a Deloitte contact, please email [DismissalCalculator@deloitte.com](mailto:DismissalCalculator@deloitte.com).

More information is available at [www.deloitte.com/dismisalcaldculator](http://www.deloitte.com/dismisalcaldculator)

# Country reports

## Albania

### 1. Kinds of dismissal

An employment contract for an indefinite period can be terminated by the employer at any time by giving a notice period (*afat njoftimi*).

An employer can also terminate an employment contract without a notice period, in the event of serious cause (dismissal for serious cause) (*zgjidhje e menjëhershme për shkaqe të justifikuara*).

### 2. Necessity of reasons for dismissal

As from 22 June 2016, the employee is entitled to know the concrete reasons that have led to his/her dismissal. In the event the court decides the dismissal is unfair, the employee will be entitled to additional compensation (up to 12 monthly salaries, plus the salary pertinent to the relevant notice period).

In the event of dismissal for serious cause, the employer is obliged, in virtue of the dismissal procedure, to give written notice of the reasons for the termination for serious cause. A serious cause is a breach that immediately and definitively makes any further cooperation between the employer and the employee impossible, in accordance with the principle of good faith (examples: theft, competition, aggression, etc.).

### 3. Notice period

As of 22 June 2016, the duration of the notice period is exclusively based on the employee's seniority, meaning the period during which the employee was employed by the same company. The notice period is provided by law and is expressed in weeks/months, and will take effect on the date the termination notice has been delivered to the employee.

Seniority	Notice by the employer
0 < 3 months (trial period)	5 days
3 < 6 months	2 weeks
6 < 24 months	1 month
24 < 60 months	2 months
After 60 months	3 months

If the employer terminates the employment contract without notice, such termination shall be considered as a termination with immediate effect. If the immediate termination is without justified cause, the employee is entitled to an indemnity amounting up to one year's salary plus the salary pertinent to the applicable notice period.



# Austria



If the salary and/or benefits of the employee are wholly or partly variable, the average of the variable salary and/or benefits, which can be rightfully claimed for payment during the 12 months preceding the dismissal, might be taken into account. However, it is to be noted that the Albanian legislation is silent in this regard, and there is also no consolidated practice in relation to such cases.

Regarding the employment contracts concluded before 22 June 2016, the parties are obliged to reflect therein the novelties of the amendments to the labour code that became effective as of the mentioned date.

#### 4. Forms of dismissal

Notice must be given in writing and comply with the mandatory procedural requirements applicable in Albania. The employer who wants to terminate the employment relationship should invite the employee to a meeting, at least 72 hours in advance, in order to discuss this. During the meeting, the employer presents the employee with the reasons of the decision to be taken and gives him/her the possibility to express his/her opinion on the decision. The termination notice must be notified to the employee, in writing, not earlier than 48 hours and not later than one week after the meeting date. It must state the start date and the duration of the notice period, the grounds for termination, which relate to causes such as the skills, the behaviour of the employee or operational needs of the employer.

#### 5. Further requirements for dismissal

In case of a dismissal for serious cause, the contract might be terminated with immediate effect. In any case, the procedure and the terms mentioned in section 4 above must be followed.

#### 6. Special dismissal protection

Some categories of employees enjoy special statutory protection against dismissal. It concerns:

- employees that filed a harassment or discrimination complaint;
- employees reporting corruption practices, in the ambit of the legislation on whistleblowers;
- employees that are representatives of trade unions;
- employees that are temporarily incapable of work (benefiting from incapacity payment from the employer or social security system, for a period of up to one year), on maternity leave, adoption leave or any other leave granted by the employer (i.e. parental leave, annual leave, etc.).

These categories of protected workers cannot be dismissed (except for reasons unrelated to the grounds for which they are protected); otherwise, such dismissal shall be invalid.

#### 7. Legal means of employees

In case of termination of the employment contract without reasonable or justified cause, an employee can raise a claim within 180 days following the termination date. The employee can also raise a claim in excess of such term, within 30 days upon becoming aware of the non-reasonable non-justifiable cause of termination. Other claims of the employee regarding his/her rights as per the labour code become time-barred after three years following the date on which the relevant right becomes effective. If the employee's right is based on the provisions of the Criminal Code, the claims shall become time-barred as set out by such instrument dependent on the sort of criminal offence/contravention committed.

#### 8. Severance pay

The employer is obliged to pay to the employee at the end of the notice period, *inter alia*, the unused accrued leave, the seniority compensation (if applicable – equal to 1/2 monthly salary for each year of employment, if the employee has worked for the employer for three consecutive years), and the proportional part of the year-end bonus until the date of termination (provided that the bonus has been granted by the employer for at least three consecutive years without any expressed disclaimers). In case of immediate termination with justified cause (i.e. a serious cause or repeated slight breaches despite prior warning by the employer), the employee is not entitled to the seniority compensation.

#### 9. Managing directors

Unlike employees, the managing directors (*administratoret*) are not subject to the labour code.

It is to be noted that a substantial part of managing directors are bound to the company with a service agreement, in which case they are considered to be self-employed and, as a result of which, the labour code and, thus the abovementioned dismissal rules, do not apply. In this case, the contractually agreed termination modalities will apply.

#### 1. Kinds of dismissal

There are two kinds of dismissals: ordinary dismissals (*Kündigung*) and dismissals for serious cause (*Entlassung*). These two kinds differ in reason for dismissal, notice period (*Kündigungsfrist*) and dismissal protection.

#### 2. Necessity of reasons for dismissal

An ordinary dismissal does in principle not require any reasons but is subject to a notice period. This principle however is mostly restricted in practice. In any company facility with five or more employees and after duration of the employment for longer than six months, a dismissal has to be 'socially justified'; otherwise - following an appeal by the works council and/or the employee - the labour court could set aside the dismissal (see below).

In case of dismissal for serious cause, the employment agreement can be terminated by either party for 'good cause' with immediate effect where that party cannot reasonably be expected to continue employment under the circumstances. The reasons why an employer may terminate the employment for serious cause (*wichtiger Grund*) are provided in a binding, but not exhaustive, way in the Austrian White-Collar Employees Act (*Angestelltengesetz - AngG*). The employer may immediately terminate the employment particularly in the following cases:

- if the employee is disloyal in his service, accepts bonuses in connection with his service from third parties without informing

- the employer, or commits acts that make him unworthy of the employer's trust (e.g. theft, falsification of any employment or company records, disclosure of business and trade secrets);
- if the employee is incapable of performing the agreed services or for another reason cannot perform such services for a longer period of time;
- if the employee violates his duty of non-competition;
- if the employee does not perform the agreed services for a considerable period of time (except due to illness or accident) or refuses to comply with orders of the employer.

#### 3. Notice period

An ordinary dismissal is subject to a notice period stipulated by the White-Collar Employees Act, the applicable collective bargaining agreement and the employment contract. Pursuant to the provisions of the White-Collar Employees Act, the minimum period of notice to be given by the employer is six weeks and increases with seniority (after two working years: two months; after five working years: three months, etc.).

Seniority	Notice given by employer
0 < 2 years	6 weeks
2 < 5 years	2 months
5 < 15 years	3 months
15 < 25 years	4 months
As of 25 years	5 months

The applicable collective bargaining agreement may contain additional requirements and may provide, for example, for a longer notice period. The White-Collar Employees Act allows, as a general rule, terminations by employers only to be effective at the end of each calendar quarter. However, this rule can be changed by individual agreement so that employment may end on the fifteenth or on the last day of each calendar month.

A dismissal for serious cause does not have a notice period. As the dismissal is only possible if the continuation of the employment relationship is unacceptable for the employer, the employment contract ends as soon as the employer has explained the dismissal (and the employee has received the notice of dismissal). It is particularly important that once the case for a dismissal for serious cause arises, the dismissal must be declared immediately without undue delay (which normally means only one or two days). Otherwise, the employer is deemed to have waived its right to immediately terminate the employment for cause.

#### 4. Form of dismissal

Basically, no specific form is required. The dismissal may be declared in writing or orally. Only a few laws contain special regulations stipulating that dismissals have to be in writing. The reasons for the dismissal do not need to be stated in the notice.

#### 5. Further requirements for a valid dismissal

In all plants in which at least five employees are regularly employed, all employees are entitled to some protection against dismissal. The legal provisions on dismissal protection (*Kündigungsschutz*) include procedural rules and provide for the mandatory involvement of the works council. If a works council has not been elected, the rules involving the works council do not apply, but the remaining provisions are still applicable.

If a works council is established, the employer must notify the works council of the intended dismissal in advance. The works council may then comment on the ordinary dismissal within a week. After that period, the employer may proceed with the ordinary dismissal. A violation of the pre-notification requirement makes the ordinary dismissal void. If it explicitly agrees to the dismissal, it cannot be challenged in front of a court later on the grounds of social unfairness (*Sozialwidrigkeit*). Generally speaking, a dismissal is held socially unfair if the employees' interests are seriously affected, unless it can be proven that either the employee as a person has had a negative impact on the business (either personal or conduct related reasons) or commercial reasons make it difficult not to dismiss the employee (e.g. reorganisation or stopping of production, measures of rationalisation, drop in orders). Any dismissal of an employee declared in contravention of said information duties vis-à-vis the works council is void.

#### 6. Legal means of the employees

In general, the works council or the employee may contest the dismissal by way of filing a complaint with the labour court. If the works council has objected to the dismissal vis-à-vis the employer, it may, upon request by the employee, appeal against the dismissal within one week; if the works council does not comply with the employee's request within one week, the employee may file an action himself within two additional weeks. If the works council does not comment on the dismissal within the period of a week, the employee may file an action within two weeks after receipt of the notice of dismissal. If the works council explicitly agreed to the dismissal, it cannot be challenged later on the grounds of social unfairness. The employee may appeal against the dismissal within one week after receipt only on grounds of an unlawful motive.

The dismissal may be set aside by the court on one of the following two grounds: the dismissal was based on an unlawful motive (*verpöntes Motiv*; e.g. membership in a trade union), or the dismissal was socially unjustified (*sozialwidrig*), which means that it infringes substantially upon the interests of the employee and, in a balance-of-interests test, is not sufficiently justified by the employer (see above).

If the dismissal is set aside, the employment agreement continues and the employee is entitled to back pay.

#### 7. Special dismissal protection

Several groups of employees enjoy special protection against ordinary as well as dismissal for serious cause (*besonderer Kündigungsschutz*). The exact scope of the protection varies; however, essentially for all of these employees, even ordinary dismissal requires some good reason, the labour court or an administrative agency must usually approve the termination. The protected groups are in particular members of and candidates for the works council, pregnant employees until four months after birth, employees during parental leave, employees doing their military service, persons with disabilities.

#### 8. Severance pay

Upon ordinary dismissal, the employee may – apart from the application of a notice period (see above) – be entitled to receive a severance pay (*Abfertigung*). For all employment relationships beginning on or after 1 January 2003, the new severance pay regime applies, according to which the employer has to pay on a monthly basis 1.53% of each employee's gross salary to a special fund (*Betriebliche Vorsorgekasse*). On dismissal, the employee has the option to either have the accrued amounts paid out by this fund as severance pay (provided that the employee was employed for more than three years) or to leave the amount in the fund, into which any new employer will continue to contribute monthly payments. No employer liability for severance pay arises upon termination of employment. Employment relationships that date back longer may still be subject to the previous statutory regime. Under the old regime, an employee that has been employed for more than three years is entitled to a mandatory severance pay when the employment ends. The amount of the severance pay depends on the seniority and ranges between two and 12 monthly salaries. The basis of the calculation is the most recent monthly salary of the employee including all regularly granted payments (pro-rated bonuses, etc.). As regards such older employment contracts, a change from the old to the new system is possible.

#### 9. Mentionable aspects/particularities

Special rules apply to collective dismissals.

#### 10. Managing directors

Members of the managing board (*Vorstand*) of a stock corporation (*AG*) are not regarded as employees and do not enjoy any protection under employment law. Managing directors (*Geschäftsführer*) of a limited liability company (*GmbH*) may be regarded - depending on the circumstances - as employees within the meaning of the White-Collar Employees Act. In this case, the mandatory notice periods stipulated in the White-Collar Employees Act would have to be observed.

# Azerbaijan

#### 1. Kinds of individual dismissals

In accordance with the labour code of the Republic of Azerbaijan an employment agreement for an indefinite or definite period can be terminated at the employer's initiative with or without a notice period, depending on the legal grounds.

#### 2. Necessary reasons for individual dismissal

Under the labour code, an employment agreement can be terminated by the employer on the following grounds:

- liquidation of an entity;
- redundancy of employees/staff;
- upon resolution of attestation committee (composed of experienced and highly skilled employees of the entity and representatives of trade unions, created for the purposes of assessing whether the current position of an employee is in line with his/her occupational degree, experience, level of professionalism) the employee does not comply with his/her position due to lack of professionalism, qualification (profession);
- failure of an employee to meet expectations during the probation period;
- if an employee working in a state-funded enterprise has reached the pension age (65 years);
- if an employee does not fulfil obligations delineated in job description/employment agreement, or grossly violates his/her labour functions. Termination of an employment agreement under this ground is only allowed provided that an employee deliberately or negligently fails to fulfil his/her job functions, job duties which leads to interruption of normal flow of work, production, labour and performance discipline, or infringes the rights of proprietor, employer, staff or certain members of staff, or inflicts damage to their interests protected by law.

The following cases are considered as gross violation of labour functions, with respect to point 'f' above, provided that an employee:

- is absent from work for a full day without any rational reason (e.g. illness, or illness of a family member, etc.);
- comes to work drunk or under the influence of drugs, psychotropic and other toxic substances or brings alcohol, drugs, psychotropic and other toxic substances to work;
- causes material damage to the proprietor as a result of guilty actions (inactions);
- violates the procedures on protection of labour as a result of his guilty actions (inactions) and causes damage to the health of his colleagues leading to their death;
- intentionally fails to maintain the confidentiality of state, production and commercial secrets or fails to fulfil his/her obligations to keeping the said secrets confidential;
- causes serious damage to employers, enterprises or owners' lawful interests as a result of his/her gross mistakes or the infringement of the law during his/her employment activity;
- breaches the job description a second time within six months, regardless of the disciplinary actions imposed by the employer;
- commits administrative offences or crimes creating a public menace during working hours.

An employer shall justify the necessity of termination based on any of the above grounds.



Apart from the aforementioned grounds for dismissal, the labour code defines the following grounds of termination of an employment agreement, which will also be considered in this survey:

- Expiration of the duration of an employment agreement;
- Alteration of working conditions;
- Change of proprietor of an enterprise (only with respect to heads, deputy heads, chief accountants of an entity or directors of other structural divisions performing direct management functions).

### 3. Notice period

There is no notice period when an employment agreement is terminated immediately. The labour code outlines only the following cases requiring an employer to send a notification to the employee prior to the termination of an employment agreement:

- Redundancy of employees/staff;
- Alteration of working conditions;
- Failure of an employee to pass the probation period.

Thus, notice periods are defined as follows:

- In the event an employment contract is terminated due to staff reduction, the employees must be personally notified of such termination no less than two months prior to the actual termination date. During the notice period, the employee shall be exempted from execution of employment functions for at least one working day per week in order to search for a new job. Upon the employee's consent, an employer can terminate the employment agreement for the foregoing reason without waiting till the end of the notification period, provided that the employee is provided additional severance payment on top of the notice (legal) constituting at least the amount of his/her salary for two months;
- In case of any alteration of working conditions, the employee must be provided one month notice prior to alteration. It shall be noted that working conditions may be amended while preserving the employee's profession, specialisation or position. However, provided that an employee does not agree to work under the new conditions, followed by the impossibility to transfer him/her to another position, the employer is entitled to terminate the employment agreement on the grounds of alteration of working conditions. However, upon the employee's consent, the aforementioned notice period may be substituted by a one-time severance payment provided to the employee, which shall, at least, be equal to the employee's salary for two months, followed by termination of the employment agreement for the foregoing reason.

- In case of failure of an employee to pass the probation period, an employer may terminate the employment agreement on the respective grounds by giving written notice three days prior to the employee.

Nevertheless, it shall be noted that although the labour code imposes an obligation on the employer to notify the employee in cases mentioned above, neither does it prohibit to expressly define a notice period for other grounds of termination of the employment agreement. In such case, the notice period shall be reflected and its period freely defined in the employment agreement upon mutual consent of both parties.

### 4. Form of individual dismissal

In practice, the notice of dismissal of an employee is made in writing and must be signed and confirmed by the employer, whilst the employee signs for receipt.

Provided that the parties do not expressly stipulate the conditions concerning the documentation of a termination in the employment agreement, dismissal must be formalised by an employer's reasonable written order (decree, decision), signed and sealed properly.

The dismissal order (decree, decision) must include the following information:

- name and legal address of the entity, the number of the dismissal order (decree, decision), date of the document, full name and position of the employer who signs the document;
- employee's full name;
- position of the employee specified in the employment agreement;
- grounds for terminating the employment agreement;
- reference to the respective article of the labour code where such grounds are specified;
- date of termination of the employment agreement;
- official documents serving as a reason for issuing the order (decree, decision) on termination of the employment agreement.

Provided that the order (decree, decision) does not reflect any of the information mentioned above, such order (decree, decision) may be deemed invalid during a litigation process.

### 5. Further requirements for a valid dismissal

There are some additional legislative requirements providing for additional obligations for the employer regarding dismissal. Some of them are stated below:

- In cases related to change of a proprietor of an enterprise, the employer shall either terminate the employment agreement of the employees (i.e. heads, deputy heads, chief accountants of an entity or directors of other structural divisions performing direct management functions) on the respective grounds or amend conditions outlined in their employment agreements in the manner prescribed in the point b above (alteration of working conditions).
- In cases of dismissals of employees who are members of trade union, due to staff reduction or failure to fulfil obligations delineated in job description/employment agreement, or gross violation of labour functions, the employment agreement can be terminated only after approval of such termination by the trade union.
- In case of dismissal of an employee due to expiration of a duration of an employment agreement, the employer is entitled to dismiss the employee within one week. Provided that employment relations between the employee and the employer remain in force one week after the expiration of a temporary employment agreement and neither of the parties terminate it, such agreement is automatically deemed to be further extended for a period defined earlier in the agreement. If an employee is reasonably absent on a workplace (e.g. is on a vacation or business trip, etc.), the employer may only terminate the employment agreement not later than one week after the first day of employee's work.

### 6. Dismissal protection

Dismissal protection applies to certain employees in protected categories (except for the cases of termination due to liquidation of an entity and expiration of a term of an employment agreement):

- pregnant women and women having a child below the age of three, as well as single men taking care of a child below the age of three;
- employees raising a child below school age whose only income source is the company (s)he is working for;
- employees who have temporarily lost the ability to work;
- employees afflicted with diabetes or scarred sclerosis;
- for being members of trade union or any political party;
- employees having dependents with a restricted health younger than 18 years old or first group disabled.

The employment agreement may not be terminated at the initiative of the employer while the employee is on vacation or secondment, or is involved in collective negotiations.

### 7. Other unlawful indemnities

In general, an employee may appeal to the court for resolution of an individual labour dispute within one calendar month from the day when he/she became aware that he/she has been unlawfully dismissed. The labour code further entitles an employee to appeal to the court within one year from the day when he/she became aware that his/her rights have been violated provided the appeal is related to money and other property claims, as well as to labour disputes emerged as a result of caused damages. The appeal period shall not be applicable to claims on compensation for damages inflicted to employee's life and health.

### 8. Severance payments

Under the labour code, an employer has to provide severance payment in the following cases and amounts:

- In case of individual dismissal due to redundancy of employees/staff or liquidation of an entity, the employer shall provide disbursement benefit equaling to a monthly average salary, along with the average monthly salary for second and third months from the day of dismissal till the employee finds a new job. However, employment agreements may include a higher and longer period for severance payments in the foregoing cases.
- In case of individual dismissal due to alteration of working conditions, mandatory commencement of military or alternative service and if an employee cannot fulfil his/her functions due to complete loss of working ability for continuous period of more than six months, the severance payment shall constitute at least two times the employee's average monthly salary.
- No less than three times the employee's average monthly salary is paid to the employee's heirs in case of his/her death;
- No less than three times the employee's average monthly salary in case of individual dismissal due to change of the owner of the entity.

An employer may also define additional imbursements in case of termination of an employment agreement on various grounds and reflect such condition in the employment agreement.

### 9. Mentionable aspects/particularities

It should be emphasised that hiring, transfer to another position, increase of the annual fixed salary or termination of employment must be registered via the internet portal of the Ministry of the Republic of Azerbaijan on Labour and Social Protection of Population. Any changes become legally valid only after registering them on said system.

### 10. Managing directors

The rules of individual dismissal of a managing director who works for a given company under an employment agreement are the same. The rules on corporate governance established under the Civil Legislation must also be considered in terms of decision making on such dismissal. Under the Civil Legislation of Azerbaijan, managing directors are appointed and dismissed by the resolution of shareholders.

# Belgium

## 1. Kinds of dismissal

An employment contract for an indefinite period can be terminated by the employer at any time by either giving a notice period (*opzeggingstermijn/délai de préavis*), or by paying an indemnity in lieu of notice (*opzeggingsvergoeding/indemnité compensatoire de préavis*) in which case the contract is terminated with immediate effect.

An employer can also terminate an employment contract without a notice period nor indemnity in lieu of notice, in the event of 'serious cause' ('dismissal for serious cause') (*ontslag om dringende reden/licenciement pour motif grave*).

## 2. Necessity of reasons for dismissal

Since 1 April 2014, in principle, dismissed employees have the right to know the concrete reasons that have led to their dismissal. This does however not oblige employers to provide these reasons upon each dismissal. Dismissed employees who wish to be informed of the reasons of their dismissal must indeed submit a request to their employer. In the event the court decides the dismissal is unfair (i.e. the dismissal is not related to the employee's behaviour, aptitude or the organisation's needs, and (ii) would not have been decided by a reasonably prudent employer), the employee will be entitled to additional compensation (up to 17 weeks' salary max.).

In the event of dismissal for serious cause, the employer is obliged to give written notice of the reasons for the termination for serious cause within stringent deadlines. A serious cause is a breach that immediately and definitively makes any further cooperation between the employer and the employee impossible (examples: theft, embezzlement, fraud, competition, violence on the workplace, etc.).



## 3. Notice period

The Unified Status Act introduced new fixed notice periods. As of 1 January 2014, the duration of the notice period is exclusively based on the employee's seniority, meaning the period during which the employee was employed by the same undertaking. The notice periods are provided by law and are expressed in weeks and will take effect on the Monday following the week during which the notice is notified (see below):

Note that, as of the date of this report, discussions regarding the potential shortening of notice periods during the first months of the employment relationship are taking place at political level.

Seniority	Notice by the employer	Seniority	Notice by the employer
0 < 3 months	2 weeks	As of 10th year	30 weeks
3 < 6 months	4 weeks	As of 11th year	33 weeks
6 < 9 months	6 weeks	As of 12th year	36 weeks
9 < 12 months	7 weeks	As of 13th year	39 weeks
12 < 15 months	8 weeks	As of 14th year	42 weeks
15 < 18 months	9 weeks	As of 15th year	45 weeks
18 < 21 months	10 weeks	As of 16th year	48 weeks
21 < 24 months	11 weeks	As of 17th year	51 weeks
As of 3rd year	12 weeks	As of 18th year	54 weeks
As of 4th year	13 weeks	As of 19th year	57 weeks
As of 5th year	15 weeks	As of 20th year	60 weeks
As of 6th year	18 weeks	As of 21st year	62 weeks
As of 7th year	21 weeks	As of 22nd year	63 weeks
As of 8th year	24 weeks	As of 23rd year	64 weeks
As of 9th year	27 weeks	Per additional year	1 additional week per year

If the employer terminates the employment contract without notice, the employee is entitled to an indemnity in lieu of notice which is calculated on the basis of the employee's weekly salary (i.e. employee's fixed monthly salary multiplied by three and divided by 13) multiplied by the number of weeks of notice period that should have been given in conformity with Belgian legislation. If the salary and/or benefits of the employee are wholly or partly variable, the average of the variable salaries and/or benefits which can be rightfully claimed for payment during the 12 months preceding the dismissal, is taken into account.

Regarding the employees who were already in service before 1 January 2014, transitional measures have been introduced in order to safeguard the termination rights built up by the employees up to and including 31 December 2013. For these employees who are already in service, the notice period will be determined in two parts:

- The first part of the notice period will have to be determined per 31 December 2013, in accordance with the 'old' rules (statutory, regulatory and contractual), on the basis of the seniority acquired up to and including this date. Therefore, it is important to remain in possession of a 'snapshot' of the employee's seniority and remuneration package on 31 December 2013.
  - The notice period for white-collar employees earning more than EUR 32,254 gross/year on 31 December 2013 will be limited to one month per started year of seniority, with a minimum of three months, unless a sector/company/individual regulation existing at that time, is more advantageous for the employee.
  - For white-collar employees whose annual gross salary was equal to or lower than EUR 32,254 on 31 December 2013, the notice period will amount to three months per commenced five-year period of service (unless a more beneficial regime existed as per 31 December 2013).
- The second part of the notice period (or the indemnity in lieu of notice) will have to be determined, on the basis of the new rules, in accordance with the seniority that is accrued as of 1 January 2014 (counter reset to zero). See table as set above.
  - The final notice period shall in principle be the result of the sum of the notice periods resulting from both parts.

## 4. Forms of dismissal

Notice must be given in writing and comply with the mandatory language requirements applicable in Belgium. It must state the start date and the duration of the notice period. The notice period begins on the Monday following the week during which it was notified. Failure to comply with these requirements makes the notice void (resulting in the employment contract being terminated effective immediately and an indemnity in lieu of notice being due). In addition, if notice is sent by registered letter, this takes effect three working days after posting. Notice may also be served by writ, in which case it takes effect on the Monday following the week during which the writ was served.

If the employer terminates the employment contract with immediate effect and the payment of an indemnity in lieu of notice, there are no specific formalities.

## 5. Further requirements for dismissal

In case of a dismissal for serious cause, the contract must be terminated within three working days after the day on which the act constituting the serious cause came to the employer's knowledge. Dismissal for serious cause should preferably be notified by registered mail. To avoid an invalid dismissal for serious cause, the employee must also be provided with the reasons for the termination, ultimately within three working days after the dismissal for serious cause and preferably by registered mail.

## 6. Special dismissal protection

Some categories of employees enjoy special statutory protection against dismissal and are entitled to additional compensation if dismissed for reasons linked to the cause of protection. This concerns, amongst other categories:

- employees that filed a harassment or discrimination complaint,
- employees with a political mandate,
- employees on special leave (career interruption, parental, maternity, palliative care, educational leave),
- prevention advisors,
- etc.

These categories of protected workers cannot be dismissed except for reasons related to the grounds on which they are protected. In most cases the employee can claim a protection indemnity (*beschermingsvergoeding/indemnité de protection*) equal to six months' remuneration, on top of normal notice requirements if proof of unrelated reasons cannot be brought forward.

Members, deputies, or candidates for election to the company's Works Council or Committee for the Prevention and Protection at Work and Union Delegates are particularly well protected against dismissal. If the specific legal requirements for the termination of their contract are not met, they could be entitled to termination payments equal from one to eight years' remuneration.

## 7. Legal means of employees

During one year following his/her exit date, an employee can raise claims based on employers' obligations. If a violation of these employer's obligations would be criminally sanctioned, this period increases to five years following his/her exit date.

## 8. Severance pay

With the exception of additional compensation related to insufficient justification (see point 2) and certain protection indemnities, under Belgian law, no additional severance pay is due on top of the notice period or indemnity in lieu of notice.

## 9. Managing directors

No specific dismissal rules apply for managing directors (*gedelegeerd bestuurders/administrateurs délégués*) in so far as they are bound by an employment contract. A substantial part of managing directors are however bound to the company by a service agreement, in which case they are considered to be self-employed. As a result, labour law rules (and thus the above-mentioned dismissal rules) do not apply. In that case, the contractually agreed termination modalities will apply.



# Bosnia and Herzegovina

## 1. Kinds of dismissal

The employer can terminate the employment relationship within the regulated notice period (*otkazni rok*) if such dismissal is justified due to:

- economic reasons, technical reasons or organisational reasons
- individual reasons, where employee is not able to perform its employment obligations.

If the employee stops working prior to the prescribed notice period at the request of employer, the employer is obliged to pay indemnity in lieu of notice (*naknada plate*).

Expiration of the term of an employment contract for a definite period is not considered as termination of employment contract.

## 2. Necessity of reasons for dismissal

The employer can terminate the employment contract due to economic reasons, technical reasons, organisational reasons and individual reasons if it cannot be reasonably expected from the employer to employ the employee on other types of jobs or to provide additional education or training for employee for work on other jobs.

Termination of employment contract is given in writing, and employer is obliged to explain the dismissal.

Non-justified reasons for employee dismissal are:

- temporary inability for work due to illness or injury ;
- filing an appeal or a lawsuit or participating in the procedure against employer due to the breach of law, regulation, collective bargaining agreement or labour rulebook or employee's referral to the competent executive authorities;
- employee's referral to competent state persons or authorities due to reasonable suspicion on corruption or filing an application of that suspicion in good faith.

## 3. Notice period

The notice period cannot be shorter than 14 days in cases when the employer is terminating employment contract.

The employer can terminate the employment relationship without notice period in case of dismissal for serious cause (*teži prijestup/ teža povreda radnih odnosa*) where it is not reasonable to expect from the employer to continue employment relationship. In case of minor causes, employment relationship cannot be terminated without prior written notice to the employee. The written notice must contain description of the offence for which the employee is held accountable and the statement of intention to terminate employment contract without notice period if the offence is repeated within six months from the issuing of the written notice. The collective bargaining agreement, employment agreement, and labour rulebook, respectively, determine the types of serious and minor causes.

During the trial period (*probni rad*), which can last up to six months, the employment can be terminated with a notice period of seven days. The employment relationship with the employee that does not meet the expectations of job position during the trial period is terminated with the expiry of trial period.

## 4. Forms of dismissal

The notice must be given in writing and comply with the mandatory form, content and language requirements applicable in Bosnia and Herzegovina. The written notice must state the start date of notice period and its duration. In cases when the employer is terminating the employment agreement, the notice must contain an explanation of the reasons which led to the termination (*rationale*).

If the employment contract is terminated due to serious cause, the termination is effective immediately.

## 5. Further requirements for dismissal

If the employer terminates the employment contract due to individual reasons, the employer is obliged to enable the employee to make a statement regarding the elements of his/her responsibility.

The employer which employs more than 30 employees and which intends to perform collective dismissal of at least five employees in next three months due to economic reasons, technical reasons or organisational reasons is obliged to consult with the Council of Employees and the Labour Union.

The above stated consulting obligation is based on the written document prepared by the employer and starts at least 30 days prior to giving written notice to the employees concerned. The written document is delivered to the Council of Employees or the Labour Union and it especially contains the following information:

- reasons for intended termination of employment agreements,
- number, category and gender of employees for whose dismissal is intended,
- measures through which the employer considers that some or all of intended dismissals can be avoided (deployment of the employees to other jobs at the same employer, additional education and training if necessary, temporary reduction of working hours),
- measures which the employer considers could help the employees to find employment with other employers.

## 6. Special dismissal protection

If the court determines the dismissal to be unlawful, can oblige the employer to:

- reinstate the employee to his former position or other appropriate position and to perform back-pay in the amount of salary that the employee would have made if still working and pay an indemnity for unlawful dismissal (such as damages compensation), or
- pay the employee:
  - back-pay in the amount of salary that the employee would have made if still working;
  - indemnity for unlawful dismissal (such as damages compensation);
  - severance payment that the employee is entitled in accordance with law, collective bargaining agreement, labour rulebook or employment contract.

The employee that disputes his dismissal can request the competent court to issue temporary injunction on reinstatement until the court procedure is finished.

The employer is obliged to offer employment to collectively dismissed employees prior to employing other persons, if the employer intends to employ workers with same qualifications and educational level or at the same position within one year since the dismissal or collective dismissal

## 7. Legal means of employees

The employee which considers that the employer has violated some of his employment rights can request exercising those rights from the employer within 30 days from the reception of a decision that is violating his/her rights or since the day he/she knew of the violation of his/her rights. If the employer fails to comply with the request, the employee can file a lawsuit to the competent court within 90 days. The employee that previously did not file the stated request, cannot request the protection of the violated rights in front of the competent court, except when the request is related to damages compensation or another monetary claim arising from employment relationship.

The statute of limitation for all monetary claims arising from employment relationship is three years since the incurrance of liability.

## 8. Severance pay

The employee has a right to severance payment (*otpremnina*) when the employer terminates the employment contract for an indefinite period with him/her **after at least two years of continuous employment except if the contract is terminated due serious cause or non-fulfilment of employment obligations.**

The severance payment is determined by the collective bargaining agreement, labour rulebook or by the employment contract. The severance payment cannot be lower than the 1/3 of average monthly salary paid to the employee (in last three months prior to employment termination) for every work year at that employer. The severance payment cannot be higher than six average monthly salaries paid to the employee in last three months prior to termination of employment contract. Exceptionally, the employer and employee can agree on another form of remuneration. The method, conditions and deadlines of severance payment are determined by the written contract between both parties.

## 9. Managing directors

The dismissal rules stated in the Federation of Bosnia and Herzegovina do not apply for managing directors (*direktor*). Employment relationship of director lasts up to the expiration of his term or until his dismissal.



# Brazil

## 1. Kinds of dismissal

Apart from the general ways of terminating an employment contract (mutual agreement, end of term ...), the employer can also proceed to a dismissal with or without a reason:

**Dismissal without reason:** occurs when the employment contract is terminated by the employer. In this case, the employee will be entitled to an indemnity in lieu of notice.

**Dismissal with reason:** occurs when the employee commits serious faults (as described below – Causes of dismissal with reason).

## 2. Necessity of reasons for dismissal

The following causes of dismissal with reason are mentioned under Brazilian legislation:

Act of misconduct;

- Incontinence of conduct or wrongdoing;
- Habitual negotiation on the employee's own or without permission of the employer, or when the activity competes with the activity of the employer, or it is damaging for the employer;
- Criminal sentencing of the employee under a final and conclusive judgement, provided that execution of the penalty has not been suspended;
- Negligence of the employee regarding his respective duties;
- Working under the effects of alcohol or other toxic substances;
- Company's secrecy violation;
- Act of insubordination or indiscipline;
- Abandonment of employment;
- Act aiming to offend the honour and good reputation of any person, carried out in the workplace, or offences against physical integrity, except in case of self-defence or in order to defend others;
- Act aiming to offend the honour and good reputation or offences against physical integrity against the employer, except in case of self-defence or in order to defend others;
- Consistent practice of gambling.

On the other hand, Brazilian legislation foresees also the following scenarios where the employee can consider its employment contract terminated:

- Whether the employee is demanded to provide services beyond his/her capacities, or whether the services are unlawful, against good habits, and unrelated to the employment contract;
- Whether the employee is treated by his/her superiors with extreme severity;
- Whether the employee is exposed to risks that can bring considerable damages;
- Whether the employer does not comply with its obligations;
- Whether the employer or its agents act against the employee's or its relatives, honour and good reputation;



- Whether the employer or its agents physically hurt the employee, except in case of self-defence or in the defence of others;
- The employer reduces the employee's volume of work, when it is rendered by piece or by job, affecting sensitively the salary amount.

In case of the sub-items 'd' and 'g', the employee is allowed to request the termination of the employment contract and the payment of the due indemnities, being able to opt to continue rendering the service until final decision.

The employee is allowed to suspend the service providing or to terminate the employment contract, when compelled to perform legal duties, incompatible with the continuation of the service providing.

The employee of an single owner company is also allowed to terminate the employment contract, in case of death of the employer.

## 3. Notice period

Both parties (employee and employer) shall observe a minimum notice period of 30 days, counted from the first day following the written dismissal request. A notice period of less than 30 days is unlawful, even if agreed upon between parties. Only in case employees have less than one year seniority in the company, the notice period is reduced to a proportion of this 30 days' notice period.

Furthermore, a three days' notice should be added to the 30 days' notice period for each year of seniority of the employee in the same company, limited to a maximum of 60 additional days (and a grand maximum of 90 days).

As a rule, during the notice period, the employment contract remains fully in force and the employee continues to work, however, payment of an indemnity in lieu of notice is also possible.

During the working notice period, the employee may work two hours less, regardless of the normal working hours, for the same remuneration. The employee may opt to convert the shortened working hours to seven absence days. This option should be formalised at the moment of the dismissal communication. This option is available even for employees that already have a reduced working day, such as banking and phone operators' employees. In case of indemnity in lieu of notice, the compensation due corresponds to the minimum of 30 days of work, based on the last salary. In case the compensation is composed of commission or variable compensation, the indemnity should amount to the average of the last 12 months or the average of the worked period (if it is less than 12 months). The indemnity in lieu of notice shall encompass the allowances related to unhealthy and unsafe environments and night work, which shall correspond to the average of allowances paid during the last 12 months.

If, on the other hand, the employee continues to work during the notice period, the corresponding compensation should encompass the salary, as well as the allowances that will be earned during the notice period.

## 4. Forms of dismissal

All dismissals should be in written form to avoid labour courts questioning. In case of abandonment of employment, it is a good practice to send a registered letter to the employee to attest the situation.

## 5. Further requirements for dismissal

For employees with some special dismissal protection, the employer must obtain a prior consent of the labour courts to dismiss the employee with reason.

## 6. Special dismissal protection

The employment security is a period granted to the employee in which the employer cannot dismiss the employee, excepting in cases of dismissal with reason and force majeure. Below are the cases that grant dismissal protection:

- **CIPA:** the employee elected to a directive position of CIPA, has employment stability as from the registration of his candidacy until one year after the end of his mandate, except in cases of dismissal with reason.
- **Pregnant woman:** a pregnant woman has temporary stability, as from the confirmation of the pregnancy until five month after the birth
- **Union leader:** the unionised employee has employment stability, as from the registration of his candidacy to a union leader position or in a professional association, until one year after the end of his mandate.
- **Cooperative leader:** the cooperative leader has the same stability as the union leader.
- **Work-related accident:** the employee that suffer a work-related accident has stability of 12 months, counted as from the medical discharge.

# Bulgaria

The unions, under the object of granting the employees the employment and salary, may establish in collective and union agreements the following protections:

- Protection of those about to reach the age of legal retirement;
- Notice period;
- The month following the end of the vacation period;
- Pregnant woman stability.

The employer should check with the unions which protection each professional category is entitled to.

## 7. Legal means of employees

In general, an employee may appeal to the court for resolution of an individual labour dispute within two calendar years from the termination date.

If no action is taken within the above-mentioned period, the termination will be considered valid as from the start and the contract will expire on the date specified in the declaration of termination.

If a court establishes the nullity of the termination of the employment contract, the employment contract shall be considered not terminated. In this case, the employer will have to reintegrate or pay the employee a compensation corresponding to the period determined by labour courts, including wages and other habitual receivables.

## 8. Severance pay

In case of dismissal without reason, the employee is, on top of the indemnity in lieu of notice, entitled to overdue unused vacation plus the constitutional 1/3, proportional vacation and Christmas bonus, compensation balance, and a 40% fine upon Federal Severance Pay Fund (*FGTS*). The employee is entitled to have the total amount of *FGTS* paid in his/her account. The employer will have to issue all necessary documents so the employee may be eligible to receive

the Unemployment Insurance (*Seguro-Desemplego*), which is a benefit granted to the unemployed worker with the purpose of assisting him/her temporarily (for maximum five months) due to the dismissal without reason.

In case of a dismissal with reason, the employee is only entitled to the compensation balance and overdue unused vacation plus the constitutional 1/3.

Please note that even in case of dismissal by mutual agreement, the employee is still entitled to the payment of half of the indemnity in lieu of period and 20% *FGTS* penalty, and other labour charges due (overdue unused vacation plus the constitutional 1/3, proportional unused vacation and Christmas bonus, compensation balance). The employee may release up to 80% of the *FGTS* deposit, but the employee will not have any unemployment insurance rights.

Severance pay (most often including the constitutional 1/3) is also due in case of early termination of a fixed term contract, in case of termination by mutual fault and at the end of a fixed term contract. All severance payments should be made either at the day following the termination of the contract (in case of dismissal with a notice period) or at the latest 10 days following the dismissal notification (when there is no notice period).

Finally, the payment has to follow specific procedures (e.g. must be done with a banking establishment in the city of the employees' workplace, cash payments are only possible with illiterate employees or when performed by the Special Group of Mobile Inspection).

## 9. Managing directors

No specific dismissal rules apply for managing directors.

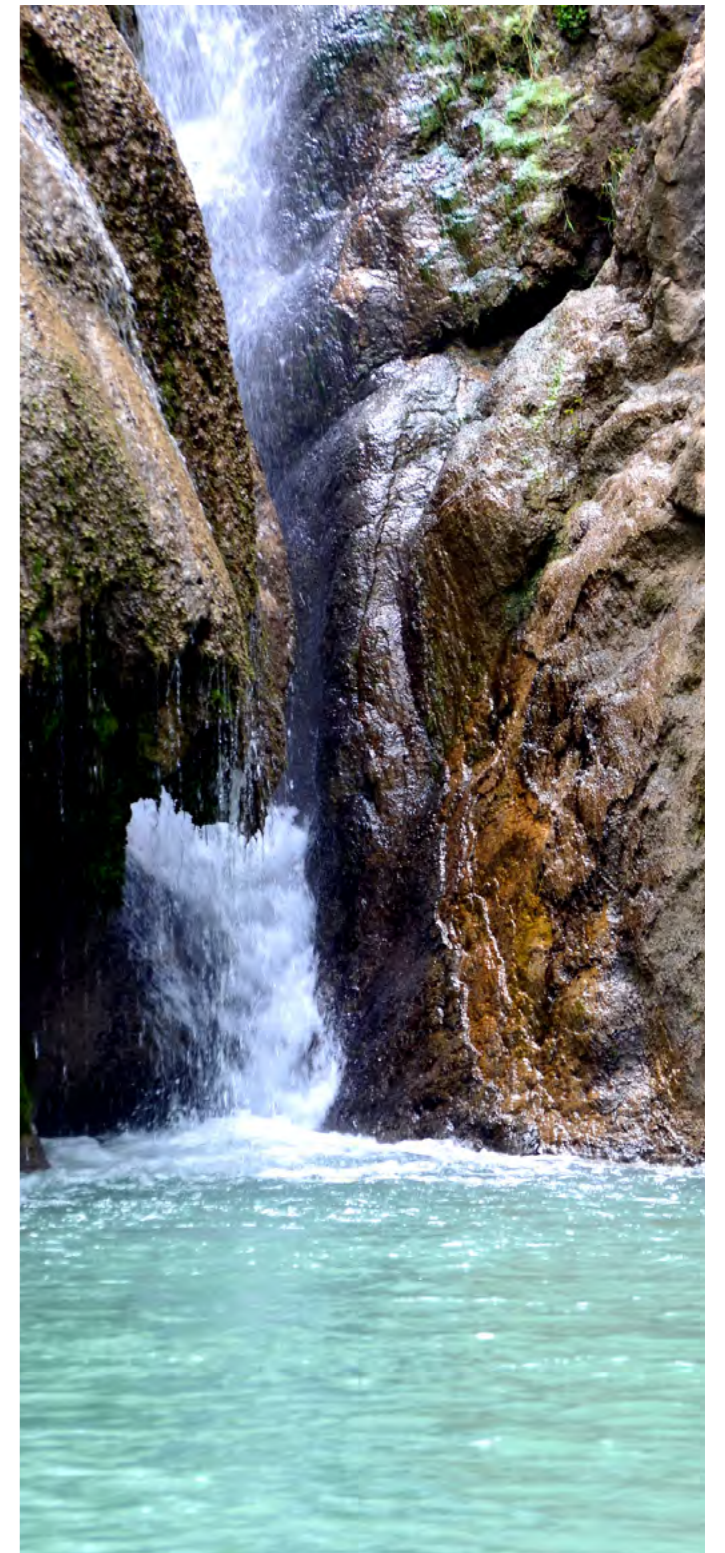
## 1. Kinds of dismissal

According to the Bulgarian law, an employment contract can (and in some cases must) be terminated at the initiative of the employer (e.g. due to staff reduction, etc.) – either with or without a notice period (*предизвестие*) depending on the legal ground.

## 2. Necessity of reasons for dismissal

By general rule, a reason for dismissal must be stated. The reasons are defined by law; the list is exhaustive and binding for the parties. These reasons could be:

- Dismissal with a notice period: closure of the company or a part of it; staff reduction; reduction in the workload; ceasing the working process for more than 15 days; lack of competence, qualification and capacities of the employee; movement of the company to another town where the employee does not agree to follow the enterprise, etc. In some of the above specified dismissal cases the employee is entitled to receive compensation for the time during which he/she has remained unemployed, but for no more than one month (unless compensation for a longer period of time is agreed under a collective labour agreement or in a deed of the Council of Ministers). However, in all cases of dismissal the employer is obliged to pay the employee compensation for unused annual paid leave if any.
- Dismissal without a notice period: dismissal for serious cause (*дисциплинарно уволнение*) (due to a serious breach of the working discipline); when the employee is deprived of performing their professional duties by means of administrative act or court decision, etc. In these cases the employee is entitled only to receive compensation for unused annual paid leave if any, but no other compensations. Furthermore, pursuant to the Bulgarian labour legislation, in the event of dismissal for serious cause the employee shall pay to the employer compensation calculated on the basis of the employment remuneration due for the notice period – in case of an employment contract for an indefinite period, or at the amount of the actual damages suffered by the employer – in case of an employment contract for a definite period.
- Dismissal at the initiative of the employer against agreed between the parties compensation: the employer may offer its employees to terminate their employment contracts after paying them a one-time compensation at the minimum amount of four monthly remunerations of the dismissed employees. In this case the law stipulates only the minimum amount of the compensation, but the parties are free to agree on a higher compensation (there is no limitation regarding its maximum amount). In this case, the employer shall again pay to the employee compensation for unused annual paid leave.



# Mainland China

The employer shall pay compensation at a maximum amount of six monthly remunerations if the performed by the latter dismissal has been announced illegal by the Bulgarian civil court (with a final court decision). This specific compensation is calculated on the basis of the months during which the employee has not worked (or has worked for a lower salary) but its amount cannot exceed the six-month remuneration of the dismissed employee.

### 3. Notice periods

The notice period is subject to agreement by the employer and the employee, but only within the timeframe prescribed by law. It is always equal for both parties.

- Notice period in case of employment contracts for an indefinite period: the notice period the parties could agree on may vary between 30 days and three months. Unless the parties agree otherwise, the notice period is 30 days. It should be noted that the most common notice period is 30 days.
- Notice period in case of employment contracts for a definite period: the notice period is three months, but not more than the remaining duration of the contract.

### 4. Form of dismissal

Irrespective of the reason, the dismissal must be given in writing. Also, the employer is always obliged to issue an order stating the reason of dismissal. The reasons for dismissal must be clearly identified and stated in the documents. In certain cases (e.g. staff reduction) the employer is required to perform preliminary paperwork.

### 5. Further requirements for a valid dismissal

Upon staff reduction and in some other cases, the employer is obliged to perform preliminary selection (*право на подбор*) between employees. Absence of selection causes inconformity with the law and thus invalidity of the dismissal. The employer has specific obligations in the event of collective dismissals (e.g. to provide certain information to the representatives of the employees and the employment agency).

### 6. Special dismissal protection

Some employees enjoy a special protection against dismissal. The protection applies in exhaustively determined cases, such as staff reduction, termination due to decrease of the intensity of the work of the company, dismissal due to breach of working discipline, etc. The protected categories of employees are, amongst others, the

following: mothers of children less than three years old, employees with disabilities who work under special working conditions, employees suffering specific illnesses (exhaustively listed by law), each employee while using any type of leave, employee representatives, trade union representatives, etc. The protection could consist of prior consent of the labour authorities required, valid dismissal only in specific cases (e.g. dissolution of the whole company), etc.

### 7. Legal means for protection of the employees

The employees are entitled to challenge the dismissal before court. This right could be performed within two months following the dismissal. Basically, the employee may claim recognition of the dismissal as unlawful and its cancellation or, alternatively, recognition of the dismissal as unlawful and reinstatement of the employee to the previous job position. Monetary compensations related to the illegal dismissal may be claimed within three years. When challenging the dismissal the employee is not required to pay any court fees.

### 8. Severance pay

Upon dismissal with compensation, the employee is entitled to severance pay (*обезщетение*) amounting to minimum four gross monthly salaries. Furthermore, there exist numerous form of severance pay regulated by law. The major ones, amongst others, are compensation for unused annual paid leave, compensation for non-observed notice period (if applicable), compensation for becoming unemployed (applicable only in specific cases), etc.

### 9. Mentionable aspects/particularities

The termination of an employment contract especially where initiated by the employer, is quite formal and requires a lot of paperwork. In addition, the court practice is employee protective.

### 10. Managing directors

The relations between the managing directors (*управител*) and the company are regulated by a management agreement. The management agreement is not governed by the employment legislation. The managing director can be dismissed by means of a resolution of the general meeting of the shareholders/sole owner of the share capital of the company. The managing agreement may envisage specific rules for termination, such as the notice period of termination, compensation in case of terminations, etc.

### 1. Kinds of dismissal

An employment contract can be terminated unilaterally by the employer only for the statutory grounds set out in the Labour Contract Law, including economic reasons and individual reason.

Generally, the employer is required to pay severance pay (*经济补偿金*) on top of 30 days' notice (or an indemnity in lieu of notice) to terminate unilaterally an employment contract, except for dismissal for serious cause.

### 2. Necessity of reasons for dismissal

The employer is required to prove the satisfaction of at least one of the following statutory grounds when unilaterally terminating any employee:

- Termination without notice (dismissal for serious cause)
  - the employee's failure to satisfy recruitment requirements during his probationary period;
  - the employee is in material violation of employer's rules and regulations;
  - the employee has committed a serious dereliction of duty or graft which causes substantial damages to the employer;
  - the employee establishes another employment relationship;
  - the employment contract is invalid due to deception or coercion by the employee or the employee's taking advantage of or exploiting the employer's difficulties;
  - the employee's criminal liability is pursued according to the law.
- Termination on one month's notice
  - the employee, who has been sick or has suffered non-work-related injuries (*非因工负伤*), is unable to perform his original duties or other duties arranged by the employer when a statutory medical treatment period (*医疗期*) expires;
  - the employee is not competent to perform the job duties, and remains incompetent after training or being moved to another position;
  - The objective circumstances on the basis of which the employment contract was concluded have changed significantly, making it impossible to perform the employment contract and, after consultation, the employer and employee cannot reach agreement on amending the employment contract.

In the event the employer unitarily terminates an employee without reason (dismissal without reason), the employee may bring a labour dispute against the employer claiming for either reinstatement or if the employee accepts the termination, an indemnity for unlawful dismissal which is two times the statutory severance pay.



### 3. Notice period

In certain circumstances (see point 2-II), the employer may terminate an employee by giving 30 days' notice.

If the employer terminates the employment contract without notice, the employee is entitled to an indemnity in lieu of notice which equals to the employee's last month salary.

### 4. Forms of dismissal

In the event of termination with notice, the notice must be given in writing at least 30 days prior to the termination date.

There are no other specific formalities required by law, while it shall comply with the requirements in the employment contract if any.

### 5. Further requirements for dismissal

The employer must give a notice to the trade union before unilaterally dismissing any employee, with the ground for termination. The trade union has the right to force the employer to rectify any violations of the laws, regulations or the employment contract.

### 6. Special dismissal protection

Some categories of employees enjoy special statutory protection against dismissal other than dismissal for serious cause, it concerns:

- employees who are engaged in operations that expose them to occupational disease hazards who have not undergone pre-departure occupational health check (职业健康检查), or who are under medical observation to find out whether they have contracted an occupational disease (职业病);
- employees who have contracted an occupational disease or suffered a work-related injury (因工负伤) and are confirmed to have lost his/her work capability wholly or partially;
- employees who is in the statutory medical treatment period for illness or non-work-related injury.
- female employees who is in pregnancy, maternity leave or lactation period;
- employees who has been working for the employer continuously for 15 years or longer and is less than five years away from the statutory retirement age.
- etc.

These categories of protected workers cannot be dismissed except for serious cause such as material violation of employer's rules and regulations, serious dereliction of duty or graft, etc.

### 7. Legal means of employees

During one year following the termination date, an employee can apply for arbitration of labour disputes (劳动争议仲裁).

### 8. Severance pay

With the exception of dismissal for serious cause (see point 2-I) where the employment contract can be terminated without notice and the employer is not required to pay severance pay to the employee, in the event of dismissal with reason, severance pay is due on top of the notice period or indemnity in lieu of notice.

The statutory severance pay is calculated in reference to the seniority (i.e. number of years of service an employee has worked continuously for the employer). The basic formula is:

The employee's average monthly salary for 12 months prior to termination × Number of service years

Please note, salary, bonus, allowance and other monetary remuneration paid to the employee under the employment contract must be included for calculating his average monthly salary. The PRC Labour Contract Law (effective as of January 1, 2008) specifies a cap for the highly paid employees, i.e. three times the city average monthly salary. If an employee's average monthly salary is higher than three times the city average monthly salary, his monthly statutory severance pay will be set as the cap level, and the entire severance is capped at an amount equal to 12-month salary. However, for employees who started working for the employer before the effectiveness of the PRC Labour Contract Law (i.e. January 1, 2008), the three times cap will not apply for the service period before January 1, 2008.

With regard to the number of service years as of January 1, 2008, any period not less than six months but less than one year shall be counted as one year; however, any period less than six months shall be counted as half a year. While for service period before January 1, 2008, any period less than one year is treated as one year for purposes of calculating the severance pay.

### 9. Managing directors

No specific dismissal rules apply for managing directors (高级管理人员) in so far they are bound by an employment contract. Generally, the general manager and other managing directors shall conclude employment contracts with the company.

# Colombia



### 1. Kinds of dismissal depending on the employment contract

Under Colombian labour law, the kinds of dismissal vary according to the type of employment contract:

- Employment contract for an indefinite period (*contrato a termino indefinido*): This type of contract can be agreed by the parties verbally or in writing. Under this type of agreement there is no legal requirement for termination notice in advance; the agreement may be terminated at any time, subject to corresponding indemnifications.
- Employment contract for a definite period (*contrato a termino fijo*): This type of agreement must be documented in writing and its term cannot exceed three years. It can be renewed indefinitely if its initial term is higher than one year. In the event of a shorter initial term, the contract can only be renewed up to three equal terms

or for shorter terms, after which it can be indefinitely renewed for periods of one year. Termination of this type of contract requires a prior thirty calendar days written termination notice.

### 2. Necessity of reasons for dismissal

According to article 62 of the labour code, the employer can terminate an employment contract with just cause in the following circumstances:

- Having been cheated, or been subject to deception by the employee through the presentation of false certificates for admission or with the purpose of getting undue benefits;
- Any acts of violence, insults, poor treatment or serious indiscipline carried out by the employee, during the performance of his/her duties, against the employer, his/her family members, high-level employees or fellow co-workers;
- Any serious acts of violence, insults or poor treatment carried out by the employee, while not performing its duties, against the employer, his/her family members, representatives or partners, heads of workshops or security personnel;
- Any material damage caused intentionally by the employee against the buildings, works, machinery, equipment, raw materials, instruments and any other objects related to work, and any serious negligence that jeopardises the security of persons or objects;
- Any immoral or delinquent acts committed by the employee in the workplace or during the performance of his/her duties;
- Any serious breach of obligations or prohibitions pursuant to articles 58 and 60 of the labour code, or any serious fault considered as such in collective bargaining agreements, arbitration decisions, individual employment agreements or regulations;
- The arrest of the employee for more than 30 days, unless it is subsequently absolved of any charges (jurisprudential restrictions have to be considered to apply this cause);
- The disclosure of technical or commercial secrets or matters that are confidential, causing damages to the company;
- The poor performance of an employee given his/her abilities and in comparison with the average performance of similar positions, and the employee does not improve his/her performance within a reasonable time, despite being requested to do so by the employer;
- The systematic breach of the employer's legal or conventional obligations without valid reason;
- Any habits of the employee that disturb the discipline of the establishment;

- The employee's systematic refusal to accept the preventive, curative or healing procedures prescribed by the employer's doctor or health authorities in order to avoid illness or injury;
- The employee's ineptitude in carrying out his/her duties;
- The fact that the employee is granted a retirement or disability pension while in the service of the employer; and
- Chronic or contagious illness of the employee that is not work-related, or any other illness or injury that has not been cured within 180 days (jurisprudential restrictions have to be considered to apply this cause).

Under Colombian law the employment contract can also terminate as a consequence of the death of the employee, mutual consent of the parties, the expiration of the term, the completion of the work or task hired, the closing down or winding up of the business, a suspension of activities for 120 days or more, a judge's decision, and the employee not returning to his/her position after a leave or licence.

### 3. Notice period

For fixed term employment agreements, the employer must give notice of its decision of not renewing the agreement with at least 30 days prior to the expiration date; otherwise the agreement will automatically be extended.

As for indefinite term employment agreements, an employer can decide to terminate the agreement at any time without having to give notice to employees, but with the obligation of paying an indemnity for unilateral termination if the termination is not grounded on a just cause.

If termination is grounded on a just cause, whether the employment agreement is for a fixed or an indefinite term, in certain cases the employer must give the employee a 15 days' notice.

### 4. Trial Period

The trial period depends on the type of employment agreement that the parties agreed.

During the trial period (up to two months in a contract for indefinite duration) the labour contract may be unilaterally terminated at any time without prior notice, and without the payment of severance indemnification for termination without cause.

The trial period must be agreed in writing.

### 5. Forms of dismissal

There are two different forms of dismissal, both must be done in writing:

- With fair cause: the employer can dismiss the employee with fair cause if one of the mentioned circumstances occur. The employer must communicate in writing the employee
  - the reason why the contract has been terminated with fair cause and
  - the date until the contract will be in force.
- Without fair cause

### 6. Special dismissal protection

The following employee's categories enjoy special protection against dismissal and are entitled to additional compensation if dismissed:

- Employees on medical leave.
- Employees on special leave (parental and maternity leave).
- Employees with a disability condition.
- Employees who are part of unions.

These categories of protected workers cannot be dismissed except for reasons unrelated to the grounds on which they are protected and always with Ministry of Work permit.

When the employee is on medical leave or with a disability condition, they can claim a protection indemnity (*indemnización*) equal to 180 days of their monthly remuneration.

Union Delegates are particularly well protected against dismissal. If the specific legal requirements for the termination of their contract are not met, they could be entitled to termination payments equal to the severance pay for unlawful dismissal.

### 7. Legal means of employees

The employee can raise claims based on employers obligations up to the three years followed of the contract termination (except for pension contributions that can be any time after the contract termination).

### 8. Severance pay

Under Colombian labour law, if the employer terminates the employment relation without fair cause (dismissal without reason/unlawful dismissal), the employee is entitled to an indemnity for unlawful dismissal (*indemnización por despido sin justa causa*).

The severance pay varies depending on the type of contract, the employee's salary and seniority within the company.

- In the case of fixed-term agreements, the severance salaries will correspond to the remaining until the completion of the term.
- In the case of indefinite term agreements, the following table indicates the amount of the severance to be paid to employees upon termination of the employment agreement:

Seniority	Amount payable (expressed in days)
1 year or less	30 days of salary if the employee's salary is below 10 minimum monthly legal salaries (MMLS) <sup>1</sup> .
More than 1 year	20 days of salary per year or proportionally for fraction thereof, in addition to the 30 days of the first year, if the employee's salary is below 10 MMLS.
	15 days of salary per year or proportionally for fraction thereof, in addition to the 20 days of the first year, if the employee's salary is 10 or more MMLS.

### 9. Managing directors

No specific dismissal rules apply for managing directors (*trabajadores de dirección, confianza y manejo*) in so far they are bound by an employment contract.

### 10. Separation agreements

The termination of the employment agreement can occur by unilateral decision of the employer, by the resignation of the employees or by mutual agreement of the parties.

The separation agreements are usually signed in mutual consent scenarios in which the parties settle in a total and definite manner all eventual differences and disputes.

Under this type of termination, the company grants to the employee a settlement amount or ex gratia payments (*bonificación por terminación del contrato*) which is usually calculated as the mandatory indemnification plus an additional amount in order to encourage the employee to sign the document (otherwise the employee will probably have no reason to negotiate and will rather go for the option of unilateral termination). Usually, the additional amount ranges from 10%-30% over the severance amount.

As compensation, the employee will declare that he/she satisfactorily received all the payments and benefits that he/she was entitled to during the labour relationship and at its termination, and thus, he/she resigns to file any future claim before the judicial or administrative authorities for any future and eventual differences.

The document may be signed either

- before a judicial authority or labour inspector, case in which both parties must assist to an appointment previously arranged with the labour judge, or
- before a public notary in Colombia.

<sup>1</sup> Ten minimum salaries are equivalent to approximately USD\$2,254 (at an exchange rate of COP\$3,058).

# Croatia



## 1. Kinds of dismissal

In accordance with the labour act there are two kinds of dismissals: ordinary dismissal (*redoviti otkaz ugovora o radu*) and dismissal for serious cause (*izvanredni otkaz ugovora o radu*).

## 2. Necessity of reasons for dismissal

In case of an ordinary dismissal an employer may dismiss the employment contract in case there is a legitimate reason (*opravdani razlog*) to do so:

- In case there is no need for performing certain work due to economic, technological or organisational reasons (dismissal due to business reasons)
- In case the employee is not capable of fulfilling his/her employment related duties because of his/her permanent characteristics or abilities (dismissal due to personal reasons); or
- In case the employee violates his/her employment obligations (dismissal due to the employee's misconduct). Prior to the regular notice due to the employee's misconduct, the employer has to warn the employee, in writing, about the possibility of termination of the employment contract if further violations occur bearing in mind his/her employment obligations, unless circumstances exist due to which the employer cannot be reasonably expected to do so.
- In case the employee didn't perform satisfactory during the trial period (*probni rad*) (dismissal due to unsatisfactory performance during the trial period).

In making a decision about dismissal due to business reasons, the employer must take into account the seniority, age and maintenance obligations resting on the employee, unless he/she employs less than 20 employees. In case of dismissal due to business reasons, an employer cannot hire another person for the same job position within the next six months.

Dismissal for serious cause is the case if the employer has justified reasons to terminate the employment contract without respecting a notice period if continuation of the employment contract is no longer possible due to an extremely grave violation (*osobito teška povreda radne obveze*) of an employment obligation or due to another highly important fact (*osobito važne okolnosti*), while respecting all circumstances or interests of both contracting parties. The employment contract can only be terminated by dismissal for serious cause within 15 days from the day when the employer learned about the fact(s) on which the dismissal is based. The employer has the right to claim compensation for damages, from the employee, for non-performance of obligations arising from the employment contract.

If the employment agreement is terminated without legitimate reason or without serious cause, the dismissal is null and void and will not create any legal effects.

## 3. Notice period

The notice period starts on the day on which the written notice of dismissal is delivered to the employee. The following minimum duration of notice periods are prescribed by law:

Seniority	Notice by the employer
0 < 1 year	2 weeks
1 < 2 years	1 month
2 < 5 years	1 month and 2 weeks
5 < 10 years	2 months
10 < 20 years	2 months and 2 weeks
> 20 years	3 months

For the employee who has a seniority of more than 20 years, the notice period is increased with two weeks if the employee is more than 50 years old, and with one month if the employee is more than 55 years old.

If the dismissal is caused by the employee's behaviour i.e. violation of employment duties, then the above listed notice periods are reduced by half.

The notice period does not run during pregnancy, maternity leave, leave for taking care for a child with serious developmental problems, exercise of the right to work short-time working hours by the parent or adoptive parent, adoption leave, temporary inability to work and military service.

A maximum notice period is not prescribed, except when the notice period is interrupted by employee's temporary inability to work. In that case, the maximum notice period is six months.

## 4. Form of dismissal

A dismissal by the employer has to be in written form. The employer has to explain the reasons for dismissal in writing and the notification of the dismissal has to be provided to the employee in person, by registered mail or in another way prescribed in the work rules.

## 5. Further requirements for a valid dismissal

If a works council is established within the company, the employer must notify the works council and consult it with regard to the intended dismissal. In case no works council exists, but a trade union representative is active in the company, that representative takes over the rights and obligations of the works council.

## 6. Special dismissal protection

For certain categories of employees a special protection against dismissal exists:

- **No dismissal possible** - pregnant women and persons exercising their rights under the special law on parental right → can't be dismissed at all, except during liquidation of the company
- **Prior consent of the works council or trade union required**
  - employees who are disabled due to work related injuries or professional disease → can be dismissed only with the prior consent of the works council if the employer proves that he/she has done his/her best to provide appropriate job to the employee
  - member of a works council
  - candidate for works council member (three months after the elections)
  - employee above the age of 60
  - employee's representative in the supervisory board
  - Trade union representative
  - Occupational safety representative<sup>2</sup>

## 7. Legal means of the employees

If an employee believes that his/her dismissal was unlawful he/she can request the employer to change its decision on the dismissal accordingly. Such request has to be done within a period of 15 days starting from the day of delivery of the notice on dismissal. If the employer does not accept the request in the next period of 15 days, starting from the day of delivery of the employee's request to the employer, the employee has the right to initiate a court procedure.

## 8. Severance pay

Employees with at least two years' seniority are entitled to severance pay (*otpremna*) – paid on top of and after the expiration of the notice period, unless the notice is caused by the behaviour of the employee in which case no right to severance pay exists. The severance pay cannot be lower than one-third of the average monthly salary earned by the employee in the three months prior to the termination of the employment contract for each year in service with the same employer. Unless otherwise specified by the law, collective bargaining agreement, employment regulations (*Pravilnik o radu*) or employment contract, the total amount of severance pay may not exceed six times the average monthly salary earned during the three months preceding the termination of the employment contract.

The non-taxable amount of the severance pay is HRK6,500 for each year of seniority with the same employer in case of termination due to business reason and termination due to personal reasons and HRK8,000 for each year in case of work related injuries or professional disease. To the seniority with the same employer, the seniority with the previous employer is also added if the employment contract has been transferred to the new employer (i.e. due to the change of the legal form of the employer or merger of two companies or, for some other similar reasons where the employer has not effectively changed).

Otherwise (e.g. in case of termination in mutual agreement), the severance pay is fully taxable.

## 9. Mentionable aspects/particularities

None

## 10. Managing directors

Managing directors (*članovi uprave/direktori*) (who are registered as legal representatives of the company), can (but do not need to) enter into an employment contract with the company. If they do enter into an employment contract with the company, the provisions of the labour act referring to termination of employment, notice period and severance pay do not apply to such contracts. The managing director and the company can freely agree on the manner of termination of the employment contract.

<sup>2</sup> Pursuant to Article 72. of the Croatian Occupational Safety Act (Official Gazette NN 71/14, 118/14, 154/14).

# Cyprus

## 1. Kinds of dismissal

An employment contract for an indefinite period can be terminated by the employer at any time by giving a notice period (*περίοδος προειδοποίησης*) in accordance with paragraph 3 below or by paying an indemnity in lieu of notice (*πληρωμή αντί προειδοποίησης*) in which case the contract is terminated with immediate effect.

The employer has the right to terminate the employment of an employee without notice, where the employee's conduct justifies his dismissal without notice, such as in the following cases:

- Gross misconduct by the employee in the course of his duties;
- Commission by the employee in the course of his duties of a criminal offence without the agreement, express or implied, of his employer;
- Immoral behaviour by the employee in the course of his duties, and
- Serious or repeated contravention or disregard by the employee of work or other rules in relation to his employment.

## 2. Necessity of reasons for dismissal

For a dismissal to be considered lawful, without the employee being entitled to compensation, one of the following reasons of dismissal must apply:

- The employee has become redundant. However, it should be noted that in this case, the employee is entitled to compensation if he has at least 104 weeks' seniority.
- The termination is due to force majeure (war, political uprising, act of God or destruction of the premises by fire not caused by the willful act or negligence of the employer).
- The employment is terminated at the end of a fixed term contract or because of the attainment by the employee of the normal retirement age by virtue of custom, law, collective agreement, work rules or otherwise.
- The dismissal is due to the employee's fault e.g. if he/she fails to carry out his/her work in a reasonably efficient manner or conducts him/herself in a manner that renders him/her liable to dismissal without notice.

In the event the court decides that the dismissal is unlawful, and provided that the employee has at least 26 weeks' seniority with the same employer, the employee will be entitled to compensation. The amount of compensation is determined by the Labour Disputes Court after an application by the employee, but it can in no case be less than the amount of redundancy payment, to which the employee would be entitled (as set out in the table



below), had he been declared redundant, or higher than two years' wages. In assessing the amount of compensation, the court gives consideration, inter alia, to the remuneration of the employee, the length of his service, the loss of his career prospects, his age and the circumstances of his dismissal.

Redundancy payments are calculated taking into account the period of the employee's continuous service and his final wages, as follows:

Seniority	Amount of redundancy payment
First 4 years of employment	2 weeks' wages for each year of continuous employment
More than 4 and up to 10 years	2.5 weeks' wages for each year of continuous employment
More than 10 and up to 15 years	3 weeks' wages for each year of continuous employment
More than 15 and up to 20 years	3.5 weeks' wages for each year of continuous employment
More than 20 and up to 25 years	4 weeks' wages for each year of continuous employment

The amount of compensation up to the wages of one year is payable by the employer and any amount in excess of such wages is payable out of the Redundancy Fund.

## 3. Notice period

An employer intending to terminate the employment of an employee, who has at least 26 weeks' seniority with that employer, is obliged to give the employee a minimum period of notice, depending on the length of his service, as follows:

Seniority	Notice by the employer
26 to 51 weeks	1 week
52 to 103 weeks	2 weeks
104 to 155 weeks	4 weeks
156 to 207 weeks	5 weeks
208 to 259 weeks	6 weeks
260 to 311 weeks	7 weeks
312 or more weeks	8 weeks

The employer has the right to require the employee to accept payment of his wages, in lieu of the period of notice to which he is entitled.

The employer is not obliged to give notice to the employee, if the employment is on a probationary basis for a period not longer than 104 weeks. Where such period is longer than 26 weeks, notice is not required where the probationary period has been fixed in a written agreement between the employer and the employee at the time of recruitment.

During the period of notice, the employee, by agreement with his employer, is entitled to time off not exceeding eight hours per week, subject to a maximum of 40 hours in total, without loss of pay, in order to be able to seek new employment.

An employee who has been given notice is entitled, if he finds new employment, to leave the employment of his employer without any notice. In such case the employee loses his entitlement to payment for the remainder of the period of notice.

## 4. Forms of dismissal

Notice must be given in writing, however, there are no specific language requirements that need to be complied with by the employer.

If the employer terminates the employment contract with immediate effect and the payment of an indemnity in lieu of notice, there are no specific formalities.

## 5. Further requirements for dismissal

Where the employee's conduct is such as to justify his dismissal without notice, the employer has to exercise his right to such a dismissal within reasonable time. If he does not do so, the termination of employment is deemed to be unjustified.

## 6. Special dismissal protection

The following can in no case constitute a valid reason for dismissal and dismissal for such reasons renders the employer liable to pay compensation:

- Union membership or participation in union activities outside the working hours or, with the consent of the employer, within working hours, or participation in a safety committee under the Safety and Health at Work Laws.
- Seeking office as, or acting or having acted in the capacity of a workers' representative.
- Filing of a complaint or participation in proceedings against the employer involving violation of laws or regulations, or appealing to an administrative authority.
- Race, colour, marital status, religion, political opinion, ethnic extraction or social origin.
- Pregnancy or maternity.
- Parental leave or leave for force majeure.

These categories of protected workers cannot be dismissed except for reasons unrelated to the grounds on which they are protected.

## 7. Legal means of employees

For the purposes of compensation for unlawful dismissal, the employee must submit an application in the prescribed form to the Labour Disputes Court, within 12 months at the latest from the date of dismissal or within nine months from the date of receipt of the notice of rejection of his claim by the Redundancy Fund.

## 8. Severance pay

With the exception of a redundancy payment made to employees who have at least 104 weeks' seniority with the same employer and have been dismissed because of redundancy, under Cypriot Law, no additional severance pay is due on top of the notice period or indemnity in lieu of notice.

## 9. Managing directors

No specific dismissal rules apply for managing director.



# Czech Republic



## 1. Kinds of dismissal

According to Czech law, there are three types of dismissal: i) dismissal with notice period (can also be understood as ordinary dismissal, in Czech: *výpověď*), ii) dismissal for serious cause (in Czech: *okamžitě zrušení pracovního poměru*), and iii) dismissal during the trial period (usually 3 months, 6 months in case of executive staff, in Czech: *zrušení pracovního poměru ve zkušební době*).

## 2. Necessity of reasons for dismissal

The employer may give termination with notice period to his/her/ its employee but only for the limited reasons set in the Labor Code. These reasons are the following:

- a. if the employer's undertaking, or its part, is closed down;
- b. if the employer's undertaking, or its part, relocates;
- c. if the employee becomes redundant because of a decision of the employer or its competent organ, to change the enterprise's activities or its technology, to reduce the number of employees for the purpose of increasing labor efficiency, or to make other organizational changes;
- d. if, according to a medical certificate, the employee is not allowed to perform his/her current work anymore due to

work injury (in Czech: *pracovní úraz*) or occupational disease (in Czech: *nemoc z povolání*), or due to threat of occupational disease, or if the employee's workplace is subjected to a maximum permissible level of harmful exposure;

- e. if, according to a medical certificate, the employee has lost (in a long-term perspective), his/her capability to perform his/her current work due to his/her state of health;
- f. if the employee does not meet the prerequisites prescribed by statutory provisions for performance of the agreed work, or if, through no fault of the employer he/she does not meet the requirements for proper performance of such work; if the employee's failure to fulfill these requirements is reflected in his/her unsatisfactory work performance results, the notice of termination may only be given provided that the employer called upon him in writing during the last 12 months to rectify the employee's failure, and the employee has not done so within a reasonable period of time;
- g. if there are reasons on the employee's part due to which the employer could immediately terminate the employment relationship (please see reasons below), or if the employee has seriously breached his/her duties arising from statutory

provision and relating to the work performed by him/her. In some cases of ongoing (by ongoing it is usually understood at least three times) but less serious breaches of the working duties the employee may be given notice of termination by his/her employer provided that at least 6 months earlier the employer warned the employee of this possibility in writing;

- h. if the employee commits a particularly gross breach (in Czech: *porušení zvláště hrubým způsobem*) of any other of his/her duties during the first 14 calendar days of duration of temporary unfitness to work, i.e. to observe the regime of an insured person who is temporarily unfit to work, in respect of the obligation to stay at his/her place of residence and comply with the time and scope of permitted absence from home pursuant to the Sickness Insurance Act at the time of temporary unfitness to work.

The employer may only terminate the employment contract for serious cause for the following reasons set in the Labor Code.

- a. if an employee has been sentenced, under a final verdict, for a willful criminal offence to a term of unconditional imprisonment of over one year, or if an employee has been sentenced, under a final verdict, for a willful criminal offence committed during performance of his/her working tasks, or in direct connection therewith, to an unconditional imprisonment of no less than 6 months; or
- b. if an employee has breached his/her duties arising from the statutory provisions and relating to the work performed by him/her, in an especially gross manner. (The definition of especially gross manner of breach of working duties is not stipulated by any legal regulation, it depends on consideration of breach in each individual case. By practice of the courts, on especially gross manner of breach of working duties was found in case an employee directly assaulted the employer, or where an employee caused significant damage to the employer and there was threat of further damage's occurrence, etc.)

During the trial period, the employer may terminate the employment without stating any reason. The employer cannot terminate the employment contract during the trial period within the first 14 days of the employee's temporary illness or quarantine.

Moreover, with regard to the ordinary dismissal or the dismissal for serious cause, where the reason for termination consists in the employee breaching his/her duties, the employer is only entitled to dismiss the employee for serious cause within a certain time period starting from the breach of duties or gaining knowledge

thereof. After lapse of this time period, the employment contract cannot be terminated due to this particular breach of duties.

## 3. Notice period

Where ordinary dismissal was given, the employment relationship terminates upon the expiry of the notice period. The notice period has to be at least 2 months. A longer notice period may be agreed in the employment contract; however has to be the same for the employer and the employee. The notice period shall start on the first day of the calendar month following the month, in which the notice of termination was given to the employee. Please note that there are some exemptions with respect to notice period duration, e.g. the notice period does not run during the "protection period" (in Czech: *ochranná doba*) where the employer has given notice before the beginning of the "protection period".

In the event of dismissal for serious cause, the employer can terminate the employment contract with immediate effect.

During the trial period the employment contract may be terminated effectively as of the day of delivery of the respective notice, unless a later date within the trial period is stipulated in the notice.

## 4. Form of dismissal

The ordinary dismissal and dismissal for serious cause must be (i) given in writing, (ii) have to be delivered to the employee and (iii) must stipulate the reason for termination. Otherwise the notice or immediate termination will be null and void. The termination during the trial period has to be in writing and has to be delivered to the employee.

## 5. Further requirements for a valid dismissal

The reason of the ordinary dismissal and dismissal for serious cause must be fulfilled and explicitly specified (in the respective notice or notification about the dismissal for serious cause) so that it cannot be confused with another reason.

Specific deadlines apply when the employer wants to dismiss an employee by giving notice or summarily terminate the employment for the reason consisting in the breach of the employee's duties. In this case, termination must be done within 2 months as of the day the employer learns about such reason, or, if the breach was committed abroad, within 2 months of the employee's arrival (but no later than 1 year after the cause). The employer may give notice to the employee based on grounds of particularly gross breach of his/her duties during the first 14 calendar days of duration of temporary unfitness to work only within 1 month from the day the

employer became aware of the reasons for such notice, but not later than 1 year from the date when such reasons for giving notice arose.

Moreover, in case of ordinary and dismissal for serious cause, the employer is obliged to consult the trade union, if this is present at the employer, in advance. In cases of employees holding an office in the trade union, the prior consent of the trade union with the dismissal must be given.

### 6. Special dismissal protection

The employer cannot terminate the employment during the trial period within the first 14 days of the employee's temporary illness or quarantine.

There are some special ways of protection with respect to the dismissal of certain groups of employees during their so-called "protection period". The protection period applies to cases of pregnancy of the employee, maternity leave, illness or holding public office, etc. Also, the employer cannot dismiss pregnant women, women on maternity leave or an employee on parental leave for serious cause.

### 7. Legal means of the employees

Where the employer has terminated an employment relationship in a manner, which is void and

- i. the employee concerned has informed the employer in writing that he/she insists on being reinstated by this employer, the employment relationship will continue and the employer shall pay a compensatory salary to this employee from the day of such information until the day when the employer allows the employee to work or until the day the employment relationship is terminated validly; if the period for payment of the compensatory salary exceeds 6 months, the employer may request the court to reduce it;
- ii. the employee concerned does not insist to be reinstated, it is deemed that the employment was terminated by agreement. If the employment has been terminated immediately or terminated in the trial period and this act-in-law is void, the employee is entitled to an indemnity in lieu of notice (in Czech: náhrada mzdy za dobu výpovědní doby) in the amount of the average earnings for the notice period.

Please note that void termination and rights said above must be

claimed before the competent court. The period for such petition is two months from the day when the employment relationship in question ought to have come to an end as a result of such termination.

### 8. Severance pays

The entitlement to severance pay (in Czech: *odstupné*) arises when the employee was ordinarily dismissed or concluded an agreement on termination for the reasons indicated under 2. a) to c). He/she is entitled to severance pay amounting to at least one (in case of an employment duration of less than 1 year), two (in case of an employment duration of at least 1 year, but less than 2 years) or three (in case of an employment duration of 2 years and more) times the average monthly earnings.

Where the employee is ordinarily dismissed or concluded an agreement of termination for the reason indicated under 2. d), i.e. continued incapacity to work due to industrial injury, occupational disease or reaching the maximum permissible level of exposure, the employee is entitled to a severance pay amounting to at least twelve times the average monthly earnings. However, in case of industrial injury or occupational disease, where the employer is entirely relieved from his/her/its liability, the entitlement to the severance pay does not arise.

### 9. Mentionable aspects/ particularities

None.

### 10. Managing Directors

No specific dismissal rules apply for Managing Directors (in Czech: *vedoucí zaměstnanci*).



# Denmark



## 1. Kinds of dismissal

Employment contracts governed by Danish labour law can be terminated by the employer at any time with notice (*opsigelse*) or without notice (*bortvisning*).

## 2. Necessity of reasons for dismissal

A dismissal must be reasonably justified by the conduct of the employee and/or the circumstances of the company.

If the employment contract is governed by the Danish Salaried Act (*funktionærloven*) the employee can claim an indemnity for unlawful dismissal, if the employee has been employed for more than one year at the time of receiving the dismissal. The indemnity amounts to one to six months' salary depending on the employee's age, seniority and circumstances of the matter.

If the employment contract is not governed by the Danish Salaried Employees Act or a collective bargaining agreement, the employee cannot claim an indemnity, even though the dismissal is unlawful.

### Ordinary dismissal

Usually scaling-down due to economic circumstances and restructuring of the company will be regarded as a valid reason for dismissal. Employee-related factors can also be regarded as a valid reason for dismissal, e.g. bad behaviour, poor performance, breach of internal policies, etc. Pursuant to case law, dismissal will usually only be reasonably justified by the conduct of the employee, if the employee has received a written warning prior to dismissal giving the employee chance to improve his/her conduct/performance and describing the consequences if the employee fails to improve.

### Dismissal for serious cause

In the event of gross misconduct (*væsentlig misligholdelse*) by the employee, a dismissal for serious cause will be considered as

just. Gross misconduct are for example: financial crimes, gross dereliction of duty, gross disloyal acts and offence against the employer.

In addition, a dismissal for serious cause can also take place in connection with a prior warning, if the violation is a serious matter. The dismissal will be regarded as valid if the employee violates his/her duties again in the same way after such a warning.

## 3. Notice period

### Ordinary dismissal

The notice periods for ordinary dismissals are regulated by the Danish Salaried Employees Act and depend on the employees' seniority. The following notice periods must be given by the employer:

Seniority	Notice by the employer
0 < 6 months	1 month's notice to the end of a month
6 months < 3 years	3 months' notice to the end of a month
3 < 6 years	4 months' notice to the end of a month
6 < 9 years	5 months' notice to the end of a month
As of 9 years	6 months' notice to the end of a month

It is possible to agree on a trial period (*prøvetid*) in the beginning of an employment contract. During a trial period of maximum three months, the notice period is 14 days.

According to the Act, the parties may agree upon a shorter notice period (one month) in the event of the employee having received salary during periods of illness for a total period of 120 days during any period of 12 consecutive months.

Longer notice periods can be agreed upon in the individual employment contract subject to certain requirements.

If the employment contract is not governed by The Danish Salaried Employees Act or a collective bargaining agreement, and an individual notice period is not agreed between the employer and the employee, the employee might be dismissed without a notice period, depending on the specific circumstances, in other instances, the employee will be entitled to a reasonable notice period.

### Dismissal for serious cause

A dismissal for serious cause does not imply a notice period. The employment contract terminates immediately and without a notice period.

## 4. Form of dismissal

Dismissals do not need to be in writing in order to be valid, and can therefore be written or oral. It is however for reasons of proof recommended that dismissals be made in writing.

## 5. Further requirements for a valid dismissal

In case of a dismissal for serious cause, it is important that the dismissal takes place within few days after the employer receives information about the grounds for the dismissal. Otherwise, the employer loses his/her right to dismiss for serious cause.

If an employee has received a dismissal without a description of the reason for the dismissal, the employee is required to demand a written reason for the dismissal and the company is obliged to provide such a written reason.

## 6. Special dismissal protection

In Danish labour law different kinds of non-discrimination legislation – mostly based on EU-legislation – provide protection for certain groups of employees.

The Danish Act on Prohibition against Discrimination in Respect of Employment prevents discrimination, including dismissal, due to race, skin colour, religion, political orientation, sexual preferences, age, disability, nationality or social or ethnical origin. The Act on Freedom to Join a Union protects employees from being dismissed because of the employees' membership to a trade union.

The principles of equal treatment of men and woman within the labour market are laid down in the Danish Act on Equal Treatment of Men and Women as regards Access to Employment. Consequently, an employer cannot for instance dismiss a woman due to her pregnancy.

The Danish Act on Part-time Employment and the Danish Act on Fixed Term employments protect the part-time and the fixed term employee from being discriminated or dismissed due to the fact that the employee requests to be employed on a part-time or fixed term basis.

If an employee is dismissed, regardless of the above regulations, the employer must pay compensation to the employee. The size of such compensation varies in the different areas of discrimination. Such compensation is not capped and may amount to up to six to 12 months' salary.

Union representatives, spokespersons, health and safety representatives and members and deputies of the company's works council have a special protection against dismissal.

## 7. Legal means of the employees

In cases where the court finds that the dismissal is not reasonably justified, the employee may be entitled to a compensation.

In most cases, the court cannot grant the employee the right to be reinstated to his/her job. However, in case of discrimination, the court can find the dismissal invalid. Generally, the legal outcome in these cases is also compensation as opposed to invalidity of the dismissal.

## 8. Severance pay

After 12 and 17 years of seniority an employee governed by The Danish Salaried Act has a right to be paid respectively one or three months' salary, including any benefits, as severance pay (*fratrædelsesgodtgørelse*). The severance pay applies both in the event of fair and unfair dismissals but not in the event of a fair dismissal without notice.

If the employment contract is not governed by the Danish Salaried Employees Act or a collective bargaining agreement, and an individual severance pay is not agreed between the employer and the employee, the employee is not entitled to any severance pay.

## 9. Managing directors

Managing directors may also be subject to the Danish Salaried Employees Act and the rules stated above.

If the managing director is not subject to the Danish Salaried Employees Act, the terms of employment and termination (notice periods, reason for dismissal and any severance pay) are governed by the managing director's service agreements. In general, the notice periods for managing directors are longer than the ones provided in the Danish Salaried Employees Act (e.g. six or 12 months), but in return usually dismissal of a managing director does not require a valid reason.

# Ecuador

## 1. Kinds of dismissal

An employment contract for an indefinite period can be terminated based on the following concepts:

- Dismissal with reason (*Visto Bueno*)
- Dismissal without reason (*Despido Intempestivo*)

## 2. Necessity of reasons for dismissal

The employer may dismiss an employee with reason on the following grounds:

- Repeated lack of punctuality or attendance at the work place. Abandonment of the work place without due cause for more than three consecutive days in a one-month period.
- Serious disobedience with respect to the internal regulations of the company or business, or indiscipline;
- Lack of honesty or immoral conduct;
- Serious offences conducted against the employer, employer’s wife, family or employer’s legal representative;



- If the employee is incapable of performing the agreed service;
- If the employee submits an unjustified complaint against the employer to the social security office;
- If the employee fails to comply with security and hygiene measures required under the law; or by opposing to medical prescriptions and/or orders.
- When the employee discloses secrets or makes disclosures occasioning harm to the employer; and,
- When the employee has induced the employer to sign a contract by means of false certificates.

The employer may dismiss an employee without reason (*terminación por despido intempestivo*), without a notice period and the obligation to inform the employee of the specific reasons for his/her dismissal.

## 3. Notice Period

No notice period is required in case of dismissal without reason. The employer may dismiss the employee with immediate effect.

In case of dismissal with reason, an administrative procedure has to be followed, during which the employer must deposit one month’s salary to suspend the labour relationship.

## 4. Forms of dismissal

When an employer wishes to dismiss an employee with reason (*Visto Bueno*), he/she must file an administrative petition requesting the termination of the employment contract based on one or more of the grounds listed above. The termination must be authorised by the Ministry of Labour.

Once a petition to dismiss an employee with reason has been filed by the employer, the administrative procedure called ‘*Visto Bueno*’ begins. The employer is entitled to request the suspension of the labour relationship in his initial petition, while the administrative investigation is underway. To suspend the labour relationship, the employer must deposit the equivalent of one monthly salary of the employee. The employer has a one-month term to file this petition as of the occurrence of offence by the employee.

The labour inspector must notify the employee of the petition and the suspension of the labour relationship, once the petition has been filed and the deposit has been made.

Throughout this procedure, a labour inspector will carefully analyse the evidence and arguments that both the employer and employee have filed. Afterwards, the inspector will authorise or deny, through a grounded resolution, the employer’s petition to dismiss the employee.

This administrative procedure may lead to a subsequent judicial proceeding. The resolution issued by the labour inspector can only be challenged before a labour judge. The inspector’s resolution must be filed as evidence in this judicial proceeding. In case of dismissal without reason, no special process or summons apply. The dismissal may be directly notified by the employer to the employee either in writing or orally.

## 5. Special dismissal protection

Some employees enjoy special protection by the law against dismissal, as follows:

- Pregnant women and women in lactation period: prohibition on termination of an employment contract if a woman is pregnant or in lactation period.
  - In such case, the termination is considered invalid and the employee may choose to be reinstated (*despido ineficaz*) in her job position or to receive a severance equivalent to a one-year salary.
- Union leaders: prohibition on dismissal of a union leader without reason.
  - In such case, the termination is considered invalid and the employee may choose to be reinstated to his/her job position or to receive a severance equivalent to a one-year salary.
- The following categories of employees enjoy special statutory protection and are entitled to additional compensation if dismissed:
  - Handicapped employees
  - Temporary incapacity due to non-professional illness, as long as such does not exceed one year
  - Employees obligated to attend military service or to serve in a public office
  - Employees dismissed due to discriminative circumstances.

## 6. Severance/Payment

If the administrative petition for the dismissal with reason (*Visto Bueno*) is authorised by the Ministry of Labour, the employer is bound to pay the employee only the pending amount of the employee’s salary.

If the employer decides to dismiss an employee without reason, he/she has to indemnify for unlawful dismissal (*indemnización por despido intempestivo*), in accordance with the employee’s seniority and the following range:

Seniority	Corresponding amount
0-3 years	Three months’ salary
3 years or more	One month’s salary for each year of service, but not exceeding 25 months’ salary

Additionally, the employer must pay another legal severance indemnity (*bonificación por desahucio*) equivalent to a 25% of the last salary that the employee earned, multiplied by the number of years he/she worked for the employer.

## 7. Legal means of employees

During the three years following his/her end date, an employee can submit claims based on employers’ obligations.

## 8. Managing directors

No specific dismissal rules apply for managing directors (*Mandatarios*) as long as they are not bound by an employment contract. Managing directors are bound by the civil code and are thus not considered employees and the respective labour code provisions and dismissal rules do not apply.

# Finland

## 1. Kinds of dismissal

In accordance with the Employment Contracts Act, an employment contract for an indefinite period can be terminated by the employer either via:

- Dismissal for economic reasons; or
- Dismissal for individual reasons. Dismissal with individual reasons can take place either with a notice period (i.e. so called ordinary dismissal) or with an immediate effect (i.e. so called dismissal for serious cause - *työsopimuksen purkaminen*).

## 2. Necessity of reasons for dismissal

### Principal rule

The termination of an employment contract requires objective and justifiable reasons.

The employer shall not terminate an employment contract for an indefinite period without proper and weighty reason.

An employment contract for a definite period cannot mainly be terminated during its term, unless the parties have otherwise specifically agreed or unless there is a serious cause as referred to above.

### Grounds for termination

#### • Dismissal for individual reasons

Dismissal for individual reasons requires serious breach or negligence of obligations arising from the employment contract or the law, having an essential impact on the employment relationship. In addition, also essential changes in the conditions necessary for working, related to the employee's person, may constitute a valid reason for dismissal.

#### • Dismissal for economic reasons

Dismissal for economic reasons requires that the work to be offered has diminished substantially and permanently for financial or production related reasons or for reasons arising from reorganisation of the employer's operations.

#### • Dismissal for serious cause

Dismissal with an immediate effect is applicable only upon serious cause (e.g. when a breach or negligence is made in such a manner that it is unreasonable to expect that the employer should continue the contractual relationship even for the period of notice).

#### • Dismissal during trial period

The employer and the employee may agree on a trial period of maximum of six months, starting from the beginning of the work. Furthermore, in case of an employment contract for a definite period, the trial period may not (in addition to the above mentioned limit) exceed half of the agreed employment period. During the trial period, the employment contract may generally be terminated with an immediate effect by either party, unless the reason to do so is discriminatory or inappropriate with regard to the purpose of the trial period.

## 3. Notice period

The employer shall inform the employee of the termination of the employment contract without delay by giving notice.

The length of the notice period is stipulated either in the employment contract, applicable collective agreement or the law. However, pursuant to the Employment Contracts Act, the agreed notice period may not exceed six months.

Notice periods for termination of an employment contract by the employer set forth in the law are dependent on the seniority of the employee as follows:

Seniority	Notice given by the employer
< 1 year	14 days
1 < 4 years	1 month
4 < 8 years	2 months
8 < 12 years	4 months
Over 12 years	6 months

## 4. Form of dismissal

Before dismissal of an employee, the employer shall provide the employee with an opportunity to be heard concerning the reasons for dismissal. Furthermore, according to the Employment Contracts Act, the notice of termination shall be delivered to the employee in person. If this is not possible, the notice may be delivered by letter or electronically. The form of dismissal is not stipulated in the Employment Contracts Act but for reasons of proof, a written form is highly recommended. In addition, termination reasons must be notified to the employee in writing at the employee's request.

## 5. Further requirements for a valid dismissal

### Warning

Employees who have neglected their duties arising from the employment relationship or committed a breach thereof shall not be given notice before they have been warned and given a chance to amend their conduct. As an alternative to the dismissal, the employer must also consider e.g. whether the employee could be transferred to other duties.

## Consultation obligation as regards dismissals for economic reasons

In case the employer employs normally at least 20 persons, the Act on Co-operation within Undertakings shall be applicable.

The objective of the Act on Co-operation within Undertakings is to collectively develop operations of an undertaking and the employees' opportunities to influence in the decisions to be made within the undertaking relating to the work and the working conditions of the employees.

The parties to the co-operation procedure are the employer and the employee of the undertaking (either employee, whom the co-operation negotiations concern and his superior or the representatives of the employee group and the representatives of the employer).

There are special rules, formalities and time-lines applicable to the co-operation procedure, especially as regards dismissals for economic reasons related procedure. The employer shall, for example, issue a written proposal for negotiations in order to commence the co-operation procedure. Such a proposal shall be issued at least five days prior to the commencement of the negotiations. Also e.g. the content and length of the consultation process is regulated in detail. Furthermore, there are various training, re-deployment and re-employment obligations set forth for the employers in case of dismissals for economic reasons.

## 6. Special dismissal protection

### Pregnancy and family leave

The employer shall not terminate an employment contract on the basis of the employee's pregnancy or because the employee is exercising his/her right to family leave.

### Shop steward (*luottamusmies*) and comparable elected representative (*luottamusvaltuutettu*)

The employer shall be entitled to terminate the employment contract of a shop steward (employee representative elected on the basis of a collective agreement) or of a comparable elected representative on grounds related to the employee's person only if a majority of the employees whom the shop steward or the comparable elected representative so agree. The employer shall be entitled to terminate the employment contract of a shop steward or a comparable elected representative also if the employer is declared bankrupt. Furthermore, also dismissal for economic reasons is possible, provided that the work of the shop steward or the comparable elected representative ceases completely and the employer is unable to arrange work that corresponds to the person's professional skills, or is otherwise suitable, and that the person cannot be trained to perform for some other tasks.



# France

## 7. Legal means of the employees

If the employer intentionally or through negligence commits a breach against obligations arising from the employment relationship or the Employment Contracts Act, the employer shall be liable for the loss thus caused to the employee. If the employer has terminated an employment contract contrary to the reasons laid down in the Employment Contracts Act, the employer is liable to pay compensation for unjustified termination of the employment contract. The exclusive compensation must be equivalent to the pay due for a minimum of three months and a maximum of 24 months (a maximum of 30 months as regards shop stewards). In case of dismissal for economic reasons and dismissal for serious cause, the above mentioned provision on minimum compensation shall not apply. Furthermore, an employer who has deliberately or negligently failed to observe the co-operation provisions in respect of an employee who has been dismissed for economic reasons, shall be liable to pay to the employee an indemnification amount of max. EUR34,519.

## 8. Severance pay

There is no mandatory severance pay (*eroraha*) in Finland (stipulated by law or by collective agreements) to be paid in addition to the notice period salary. Pursuant to the Employment Contracts Act, the employment shall continue throughout the notice period. Thus, the employee is entitled to the salary and other employment benefits during the course of employment until the end of the notice period.

## 9. Mentionable aspects/particularities

As of 1 January 2017, it is stipulated in the Employment Contracts Act that an employee's employment relationship is terminated without giving notice and without a notice period at the end of the calendar month during which the employee reaches the age of retirement, unless the employer and the employee agree to continue the employment relationship. The foreseen retirement age is 68 for those born in 1957 or earlier, 69 for those born in 1958 – 1961, and 70 for those born in 1962 or thereafter. It should, however, be noted that the retirement age provisions mentioned above are not equal to separate provisions of law regulating the pensionable age of employees.

## 10. Managing directors

As the managing directors (*toimitusjohtaja*) are not regarded as employees in Finland and are thus not protected by the provisions of the Employment Contracts Act, it is common to draft a specific managing director agreement to confirm the terms and conditions applicable to the position of the managing director. Managing director can be terminated at any time without any specific reason and as there is no mandatory notice period to be applied by the parties, it is common to agree on termination provisions in detail between the parties in the managing director agreement. A fairly common 'termination protection package' of a managing director consists of a notice period between one to six months (for both parties) and a separate severance payment amounting from three to 24 months' salary (payable in case the termination is not caused by any failure or breach of the managing director).



## 1. Kinds of dismissal

There are two kinds of dismissal in France:

- Dismissal for individual reasons (*licenciement pour motif personnel*), for example a dismissal for misconduct (*licenciement disciplinaire*) or for professional insufficiency. Serious misconduct (*faute grave*) entails that the termination of the employment contract must occur immediately, as it is deemed inappropriate that the employee remain within the company during the notice period. Gross misconduct (*faute lourde*) is deemed to have occurred when the employee has behaved with malice.
- Dismissal based on economic reasons (*licenciement pour motif économique*), is dismissal for reasons, unrelated to the person dismissed, and which results from job cuts, a job transformation or a substantial change in the employment contract refused by the employee, due, in particular, to economic difficulties, technological changes, the necessity of safeguarding the company's competitiveness, or the definitive suspension of the company's activities in France.

Pursuant to a recent French law dated August 8 2016, the French labour code specifies that economic difficulties are characterised by the significant alteration of at least one economic indicator, such as a decline in orders or in turnover, operating losses, a deterioration of cash flow, a deterioration of EBITDA, or any other element proving these difficulties.

A significant decline in orders or turnover is deemed to have been established when the duration of this decline is, as compared to the same period of the previous year, equal to at least

- one quarter for a company with less than 11 employees,
- two consecutive quarters for a company with at least 11 but no more than 50 employees,
- three consecutive quarters for a company with at least 50 but no more than 300 employees,
- four consecutive quarters for a company with 300 employees or more.

## 2. Necessity for reasons for dismissal

Any kind of dismissal must be based on a real and serious reasons (*cause réelle et sérieuse*).

Otherwise, the dismissal will be deemed unfair by the labour court and the employee concerned is entitled to damages.

In order to be deemed to rest on a real and serious reasons, the facts raised by the employer must be accurate, specific, objective and serious.

## 3. Notice period

### Existence of a notice period

In principle, when a permanent employment contract is terminated at the employer's initiative, a notice period (*préavis*) must be observed by the employee. In practice, the employer may decide to release the employee from performing this notice period with the payment of an indemnity in lieu of notice.

However, as an exception, French law provides that no notice period is to be observed in case of dismissal for serious or gross misconduct (*faute grave* or *faute lourde*).

**Duration of notice period**

Seniority	Notice given by employer
6 months < 2 years	1 month
2 years or more	2 months

Different notice period durations may also be provided for by the collective bargaining agreement, the employee's contract of employment, or the company's custom. It should be noted that the duration of notice periods provided for by collective bargaining agreements usually depends on the employee's status (executive level status or employee-level status) and the employee's seniority. The duration provided for by the law is therefore the one to be applied, unless one of the sources listed above provides for a more favourable duration for the employee.

**4. Form of dismissal**

All dismissals must be notified in writing to be valid.

The dismissal letter must specify the reasons for dismissal and must be served to the employee by registered letter with acknowledgement of receipt.

Please note that the recent French Labour Reform (Decree dated December 29 2017) provides for the possibility for the employer to use a pre-filled form with a reminder of the rights and obligations of each party, as well as all mandatory information provided for by the French law.

**5. Further requirements for a valid dismissal**

A specific procedure must be observed in order to dismiss an employee.

The employer must comply with the following procedure in the case of dismissal for individual reasons (please note that further and specific rules apply in the case of dismissal for economic reasons, as well as when the dismissal concerns protected categories of employees):

- The employee to be dismissed must be invited by the employer to attend a preliminary meeting by registered letter with acknowledgement of receipt (or delivered by hand against receipt). A period of five working days must be respected between
  - the first presentation of the invitation letter by the French postal service at the employee's home (or the date on which the employee takes the letter in hand) and
  - the date of the preliminary meeting.

- The invitation letter must inform the employee that he/she may be assisted by an employee of the company during the preliminary meeting. Should the company not have any staff representatives, the employee may also be assisted by a person of his/her choice registered on a specific list established for this purpose by the departmental 'Préfet'.
- During the preliminary meeting, the employer must clearly inform the employee that his/her dismissal is under consideration and the reasons for his/her dismissal.
- The employee must then be notified of his/her dismissal by registered letter with acknowledgement of receipt. A period of at least two working days must be respected between the preliminary meeting and the serving of the notice of dismissal. In the case of dismissal for misconduct, the notice of dismissal must be served no later than one month as from the preliminary meeting.
- It is recommended that all justification of the reasons for dismissal must be compiled in a file, in order for the employer to be able to demonstrate that the dismissal is based on real and serious reasons in case of litigation before the labour courts.
- Please note that since the recent French Labour Reform (Decree dated 15 December 2017), the employee is entitled to request, by registered letter with acknowledgement of receipt (or delivered by hand against receipt), further clarification as to the reasons for dismissal within 15 days following the notification of the dismissal, the employer having 15 days to respond as from the reception of the employee's request, also by registered letter with acknowledgement of receipt (or delivered by hand against receipt). Moreover, the employer may, of its own initiative, also provide further clarification as to the reasons for dismissal within the same period of 15 days and in the same form.

**6. Special protection from dismissal (*protection contre le licenciement*)**

Under French law, a special protection from dismissal is principally provided for the following employees (principal examples, but other cases exist):

- Staff representatives
- Former staff representatives
- Former candidates to the last staff representatives' elections
- Employees appointed by a trade union to negotiate a company collective bargaining agreement
- Employees appointed from the company (judges presiding over the labour court, assistants to employees during preliminary meetings prior to dismissal, administrators for social security organisations)
- Pregnant women
- Disabled employees
- Employees elected to local, national or EU elections

For these employees, a specific procedure must be implemented in the case of dismissal. In particular, the prior authorisation of the French administration is required in the case of such dismissals.

**7. Legal means of the employees**

Should an employee consider that his/her dismissal is not based on real and serious reasons, he/she may claim damages for unfair dismissal (*licenciement sans cause réelle et sérieuse*).

Since 23 September 2017, the French labour code provides for a statutory fixed scale of damages, i.e. with a minimum and maximum amount to be awarded to the employee depending on his/her seniority within the company and the size of the company (+/- 11 employees):

- the minimum amount ranges from 15 days (as from a full year of seniority) to three months of salary,
- the maximum amount ranges from one to 20 months of salary,
- the amount determined by the judge within the scope of this statutory fixed scale will depend on the loss suffered by the employee.

Should an employee consider that the employer has not complied with the legal requirements regarding the dismissal procedure, he/she may claim damages for unlawful dismissal (up to one month of salary).

French law provides that a judge may deem a dismissal null and void only in situations expressly provided for by law or when a fundamental freedom (*liberté fondamentale*) has been breached. A dismissal can notably be annulled if it is based on the employee's pregnancy, status as staff representative, participation in a strike or on discrimination.

Should the employee's dismissal be deemed null and void, the employee may be reinstated. If the employee's reinstatement within the company proves impossible, or if the employee does not wish to be reinstated, he/she is entitled to higher damages (i.e. at least six months of salary irrespective of the employee's seniority and the headcount of the company).

**8. Severance pay****Existence of severance pay**

Severance pay (*indemnité de licenciement*) is set either by law, the collective bargaining agreement or the employee's contract of employment.

Under French law, severance pay is due only to employees having at least eight months of seniority.

As an exception, French law provides that no severance pay is due for employees dismissed for gross or serious misconduct (*faute grave or faute lourde*).

**Amount of a severance pay**

French law provides that severance pay amounts to 1/4 of the monthly salary for each year of seniority up to 10 years, and to 1/3 of the monthly salary for each year of seniority in excess of 10 years.

If different severance pay is stipulated by the applicable collective bargaining agreement or the employment contract, the amount most favourable to the employee will apply.

**9. Mentionable aspects/particularities**

None

**10. Managing directors**

No specific rules governing dismissal apply for managing directors (*cadres dirigeants*). However, managing directors are sometimes corporate officers (*mandataires sociaux*) and not employees, in which case they are not subject to labour law but to corporate law.

# Germany



## 1. Kinds of dismissal

In German labour law, there are two kinds of dismissals: ordinary dismissals (*ordentliche Kündigungen*) and dismissals for serious cause (*außerordentliche Kündigungen*). These two kinds differ in reason for dismissal, notice period (*Kündigungsfrist*) and dismissal protection (*Kündigungsschutz*).

## 2. Necessity of reasons for dismissal

### Ordinary dismissal

An ordinary dismissal is basically valid if the applicable notice period is observed and the dismissal does not violate public policy (e.g. if based on discriminatory grounds).

However, this principle is mostly restricted in practice. Employees working in a company (*Betrieb*) with more than 10 regular employees and providing for a seniority (*Betriebszugehörigkeit*) of more than six months, enjoy comprehensive dismissal protection under the Dismissal Protection Act (*Kündigungsschutzgesetz, KSchG*). Accordingly, a dismissal has to be 'socially justified' (*sozial gerechtfertigt*), which means there has to be a specific reason for the dismissal. The Dismissal Protection Act sets out three particular categories of reasons that may socially justify a dismissal: (1) person-related reasons (*personenbedingte Gründe*), (2) conduct-related reasons (*verhaltensbedingte Gründe*) and (3) operational reasons (*betriebsbedingte Gründe*).

- Generally, a dismissal for **person-related** reasons can be socially justified if the employee is unable to perform his contractual duties as owed under the employment contract for reasons from his/her personal sphere. It is irrelevant if the employee is responsible for this inability or not. In practice, the most important circumstance leading to such inability is illness – either long-term illness or frequent short-term absences. However, effectively dismissing an employee due to illness is extremely difficult in Germany. Pursuant to case law of German labour courts, there are three strict prerequisites for such dismissal. First, at the time the dismissal is declared, it must be presumed that the employee's absence due to illness will continue in the future which is generally indicated by severe absence times in the past (usually multiple weeks per year over a couple of years). Second, the continued absence has to be a serious detriment to the employer's business interests (e.g. loss of production or customers). Third, the employer's interests in the termination of the employment relationship have to outweigh the employee's interests into its continuance. As a dismissal is always only an *ultima ratio*, also a relocation to another job position or any other action to avoid the dismissal must be considered.
- A **conduct-related** dismissal as an employer's response to an employee's breach of contractual duties covers various forms of employees' misconduct. According to case law, such

dismissal in first instance requires a significant breach of duty on the employee's part to be lawful (e.g. unexcused absence, poor performance or inappropriate conduct towards employer or colleagues). Second, it must be likely that the employee will breach his contractual duties again in the future. In this context, the employer is in particular obliged to issue usually several warnings (written form recommended for reasons of proof). A conduct-related dismissal without at least one prior written warning is usually invalid. In practice, special attention should be paid to issuing effective warnings in compliance with the prerequisites set by German labour courts and in a properly documented way. Third, again, the employer's interests to terminate the employment relationship have to outweigh the employee's interests. By way of example, social data as the employee's age, seniority and number of dependents have to be considered to the advantage of the employee. Finally, given the dismissal's *ultima ratio* character, no less restrictive means may be available.

- Dismissals for **operational reasons** are of utmost importance in practice and are based on structural entrepreneurial decisions on the employer's part. A dismissal for operational reasons requires in a first step that the employee's job position ceases to exist due to an entrepreneurial decision of the employer based either on so-called external business reasons (e.g. drop in the demand for a product) or on internal business reasons (e.g. a modification in production methods, closure of an entire business or outsourcing of work to other companies). The mere dismissal of a particular employee may generally not be content of such entrepreneurial decision. The underlying entrepreneurial decision leading to the elimination of a job position is, however, subject to review by a German labour court only to the extent to which it is arbitrary (*willkürlich*). Second, the employer has to carry out a so-called social selection (*Sozialauswahl*) which is one of the key issues in the context of dismissals for operational reasons. If the employee at risk could also perform the job of a comparable employee, the employer has to assess whether the employee at risk enjoys greater social protection than his/her relevant colleagues being employed in the same operation. The statutory criteria for this selection process are age, seniority, maintenance obligations and disabilities of the affected employees. In the end, the employee with the social criteria least worthy to protect would have to be dismissed. Third, there may not be any other open and reasonable job position on an appropriate hierarchy level that could be offered to the employee in question. This search for an open job position is not limited to the same operation but must also consider job positions in other operations of the same legal entity.

## Dismissal for serious cause

An effective dismissal for serious cause requires a 'good cause' (*wichtiger Grund*) for terminating an employment relationship. Such good cause exists if facts are present on the basis of which – taking all circumstances of the individual case into account and weighing the interests of employer and employee – the employer cannot reasonably be expected to continue the employment relationship until the notice period has elapsed or – in employment relationships for a definite period – until the agreed term has ended. Such good cause may be constituted e.g. by repeated tardiness, persistent refusal to work, theft of employer's property or work for a competitor of the employer.

Furthermore, a dismissal for serious cause has to be declared within a two-week period after the employer has obtained knowledge of the facts constituting the good cause for the dismissal. Otherwise, the dismissal is invalid.

Overall, the legal thresholds for a dismissal for serious cause are extremely high under German law. Therefore, as a precautionary measure, also an ordinary dismissal is usually declared if there are doubts regarding the justification for a dismissal for serious cause.

## 3. Notice periods

For ordinary dismissals, certain statutory minimum notice periods exist. The length of these minimum notice periods depends on the individual employee's seniority with the employer and increases in favour of the employee with increasing seniority. During the optional but customary trial period (*Probezeit*) of up to six months, the statutory notice period is two weeks. Up to a seniority of two years, the notice period is four weeks to the 15th or to the end of a calendar month. The notice period then increases in irregular intervals to up to seven months:

Seniority	Notice period (each effective to the end of a calendar month)
after 2 years	1 month
after 5 years	2 months
after 8 years	3 months
after 10 years	4 months
after 12 years	5 months
after 15 years	6 months
after 20 years	7 months



In practice, many collective bargaining agreements (*Tarifverträge*) but also individual contracts – esp. with white-collar or executive employees – contain longer notice periods which prevail as they are more advantageous for the employees. If contractual notice periods are shorter than the statutory minimum notice periods, the longer statutory notice periods prevail.

A valid dismissal for serious cause takes immediate effect without observing a notice period.

#### 4. Form of dismissal

All dismissals – both ordinary dismissals and dismissals for serious cause – have to be declared in written form to be valid (originally signed by a competent company representative). The reasons for the dismissal do not need and should not be stated in the notice letter. In practice, the compliance with formal requirements and a provable delivery of the notice letter in due time are crucial for an effective dismissal. Particular attention should be paid to these aspects to avoid unnecessary disputes and costs on the employer's part.

#### 5. Further requirements for a valid dismissal

If a works council exists, it has to be heard on the planned dismissal, i.e. detailed information about the employee and the reasons for the dismissal have to be provided. Though this information can also be given verbally, written information is strongly recommended for a stronger evidential basis in case of later disputes on the effectiveness of the dismissal. Depending on whether the dismissal is ordinary or for serious cause, the works council has a certain number of days to process the dismissal. It may consent to the dismissal, object to it or not react to the information, at all. Even if the works council objects, the employer may give notice. However, notice may only be given after the applicable period for the works council hearing process has elapsed. If the works council is not informed properly, the dismissal is null and void.

#### 6. Special dismissal protection

Besides the particularities mentioned above, certain categories of employees enjoy increased protection against dismissal. Most important in practice, this affects severely disabled employees (*Schwerbehinderte*), pregnant employees, employees on maternal leave (*Mutterschutzfristen*) and employees on parental leave (*Elternzeit*). For these protected categories, dismissals are generally prohibited and only permitted in very exceptional cases and with the prior consent of competent authorities.

Moreover, works council members enjoy special dismissal protection considering their office within the company. A dismissal of such employees is extremely difficult in practice. Particular attention should also be paid to the dismissal of apprentices for whom ordinary dismissals are generally excluded after the trial period.

#### 7. Legal means of the employees

If an employee wants to challenge the effectiveness of a dismissal, he has to file a wrongful dismissal claim (*Kündigungsschutzklage*) at the competent labour court (*Arbeitsgericht*) within three weeks from delivery of the notice. Otherwise, the dismissal will be effective.

In practice, the vast majority of cases is mutually settled in a first court hearing (*Gütetermin*) – usually against payment of severance (*Abfindung*). Where in exceptional cases no agreement might be reached, a second court hearing (*Kammertermin*) is scheduled. In this case, the employer has to demonstrate and prove that the applicable requirements for the dismissal were fulfilled upon its delivery. The labour court then decides whether the prerequisites for an effective dismissal were fulfilled. If this was not the case, the labour court will generally judge that the employment relationship has not been terminated effectively and that the employee has to be reinstated.

#### 8. Severance pay

Most importantly and unlike as in many other countries, there is no statutory severance entitlement.

As the underlying principle of German dismissal protection law is 'in or out', a judge can only terminate court procedures by a judgment over a severance pay under special circumstances, especially when a continuation of the employment is unacceptable for the employee.

However, as wrongful dismissal procedures often last for a long time and the outcome is tricky to predict due to various imponderabilities, employers usually accept a mutual settlement and therefore a termination of the employment relationship against payment of severance in the first court hearing. The severance pay is usually calculated by the formula: 1/2 gross monthly salary per year of seniority. Depending on the justification for the dismissal and therefore the employer's chances to win the case, this amount decreases or – more likely – increases.

#### 9. Mentionable aspects/particularities

Different to other countries, there is no indemnity in lieu of notice under German law. Employees generally work throughout the term of the notice period. Sending employees on garden leave is only permitted in exceptional cases, esp. where the employer made a valid reservation in the employment contract.

There are comprehensive additional requirements for collective dismissals, in particular information obligations towards German authorities.

#### 10. Managing directors

From an employment law perspective, substantial differences apply to the dismissal of employees and managing directors (*Geschäftsführer*) of a German company with limited liability (*Gesellschaft mit beschränkter Haftung, GmbH*). Compared to the strict requirements for the effective dismissal of an employee, dismissals of managing directors are generally easier in practice. Most importantly, the Dismissal Protection Act does not apply to managing directors. Therefore, an ordinary dismissal does not require a particular reason. The company is generally free to ordinarily terminate the service relationship with managing directors – which strictly has to be differentiated from a managing director's position as officially appointed company representative. In practice, managing director service agreements (*Geschäftsführerdienstverträge*) often provide for a contractual notice period of at least six months. Moreover, many managing director service agreements contain provisions on contractual severance payments or other benefits due in case of a termination of the service relationship. In terms of dismissals for serious cause, basically the same rules as for employees also apply to managing directors.

Managing director service agreements usually provide that also notice to managing directors might only be given in written form. In case a managing director wants to challenge the effectiveness of a dismissal, he may generally only do so by bringing the case to a civil court (*Zivilgericht*) without having to observe a certain period. As managing directors do not enjoy dismissal protection (generally also no special dismissal protection), the company's risk in case of court procedures is comparably small, so regularly no severance needs to be paid to managing directors in case of a dismissal – unless explicitly agreed otherwise or considered esp. for strategical reasons.

# Greece



## 1. Kinds of dismissal

Greek law operates a distinction between blue and white-collar workers - whereby white-collar workers mainly perform intellectual work, and blue-collar workers mainly perform manual work. This distinction has a significant impact.

For white-collar workers, an employment contract for an indefinite period can be terminated by the employer at any time, by paying an indemnity in lieu of notice and/or serving a notice period. The notice period, as well as the indemnity level, depends on the seniority (the indemnity level, also, depends on whether the employer has given notice or not), but is only due in case this exceeds 12 months. In the opposite situation, the employee can be dismissed without a notice period or an indemnity in lieu of notice. For blue-collar workers, an employment contract for an indefinite period can be terminated by the employer at any time by paying an indemnity in lieu of notice. No notice period needs to be observed. In case of a serious cause (e.g. if the employee is accused of penal crimes by the employer or for more serious crimes by any other person and this crime has a negative impact on the smooth function of the employment relationship, or in case the employee with his 'extremely' provocative behaviour forces the employer to dismiss him), the employer is not obliged to pay any compensation to the employee (regardless the distinction between white-collar and blue-collar workers).

An employment contract for a definite period, regardless the distinction between white and blue-collar workers, can be terminated without a notice period, when there is a serious cause. More specifically, an incident that immediately and definitively makes any further cooperation between the employer and the employee impossible has to occur (examples: breach of contractual obligations by the employee, incompetence, theft, closing down of the undertaking). However, if the serious cause is related to the employer, the latter may have to pay lump sum compensation until the contractual end of the employment contract. Exceptionally: If a specific term is included in the individual's employment contract, it is allowed to be terminated before its expiry, under the condition that a severance indemnity is paid.

## 2. Necessity of reasons for dismissal

In case of an employment contract for an indefinite period, it is in principle not necessary for the employer to give a reason for the termination. However, the latter may bear such obligation, in case of an eventual litigation regarding the dismissal's validity. An employment contract for a definite period can only be terminated by serious cause before the end of its term. However, given the fact that a dismissal for serious cause does not have to take a written form, nor can an eventual invalidity be alleged by a person other than the dismissed employee, the employer is obliged to justify his/her decision only in case the dismissed employee lodges a lawsuit for a relative invalidity of the dismissal.

## 3. Notice Period

For white-collar workers, an employment contract for an indefinite period can be terminated with or without a notice period. However, a dismissal that is in compliance with the legally set notice period allows the employer to pay half the amount of the indemnity in lieu of notice that he is obliged to pay in the opposite case (see below section 8). The notice period set by the labour regulations escalates as follows:

Seniority	Notice period
From 12 months to 2 years	1 month
From 2 years (completed) to 5 years	2 months
From 5 years (completed) to 10 years	3 months
From 10 years (completed) and above	4 months

## 4. Form of dismissal

The dismissals has to be in writing in order to be valid.

## 5. Further requirements for a valid dismissal

In case of an employment contract for an indefinite period, the relative legal provisions also require the payment of an indemnity in lieu of notice (the eventual sum is to be calculated according to the relevant legal provisions), as well as the registration of the employee at the Social Insurance Institution's records. The latter requirement is necessary only for white-collar workers, and needs to be complied with during the period of employment. In case of an employment contract for a definite period, there are no further requirements.

## 6. Special dismissal protection

According to Greek law, a specific dismissal protection is mainly provided for the following categories of employees:

- Unions' founding members and current union officials;
- Pregnant women;
- Employees, who have been conscripted for military service;
- Disabled employees;
- Due to vacation leave period.

## 7. Legal means of the employees

Should an employee consider his/her dismissal not to be valid, Greek law provides that this can be annulled, as long as the respective lawsuit is lodged and notified to the employer within a peremptory time limit of three months as from the dismissal. Accordingly, eventual claims regarding the indemnity in lieu of notice have to be lodged within a peremptory time limit of six months. In this context, the employee may claim salary in arrears, as well as compensation for moral damages.

## 8. Severance pay

According to Greek law, in case of an employment contract for an indefinite period, a minimum severance pay is due to employees, whose seniority with the same employer is at least 12 months. This severance pay is calculated based on the last monthly salary plus 1/6, and it must be paid in full and in cash or through a bank check which can be cashed immediately; otherwise the termination is void. The severance pay can however be paid in installments, but only in case the severance pay is over two months' salary. In case of an employment contract for white-collar employees, in the situation where the dismissals are to be effected immediately - which is the most common scenario according to the Greek practice - the employee is entitled to severance pay of a specified number of monthly wages according to their length of service following the below table:

Seniority	Minimum statutory severance pay
From 12 months to 4 years	2 months
From 4 years (completed) to 6 years	3 months
From 6 years (completed) to 8 years	4 months
From 8 years (completed) to 10 years	5 months
10 full years	6 months
+ 1 month per full year seniority (max 12 months' severance pay)	

In case that an employee has more than 17 years till the date of 12 November 2012, the table is extended until 28 years of seniority according to the same rule (+ one month per full year seniority, max 24 months' severance pay). This extra severance pay is calculated based on the last monthly salary up to the amount of EUR2,000.

As already mentioned above, if the employer proceeds to terminate the employment contract implementing advance notice, he is obliged to pay only half of the above statutory minimum severance pay.

In case of an employment contract for a definite period, a severance pay until the contractual end of the employment contract, as well as compensation for moral damages, may be due, in case of dismissal for a serious cause related to the employer.

## 9. Mentionable aspects/particularities

None

## 10. Managing directors

No specific dismissal rules apply for managing directors.

# Hungary



## 1. Kinds of dismissal

According to Hungarian labour law (Hungarian labour code, entered into force on 1 July 2012), there are two kinds of dismissal: dismissal (*felmondás*) and dismissal for serious cause (*azonnali hatályú felmondás*). These two kinds differ in the reason for dismissal as well as the notice period. Further, the parties of the employment contract are free to terminate the employment at any time by mutual consent. Finally, they may agree that for a period of up to one year the employment relationship may not be terminated by dismissal by either party.

## 2. Necessity of reasons for dismissal

In accordance with the Hungarian labour code, the employer must justify the dismissal and the justification shall clearly indicate the cause thereof. The cause shall be in connection with the employee's ability, his/her behaviour in relation to the employment relationship or with the employer's operation. The reasons arising from the employer's operation can be internal (e.g. measures of rationalisation) or external circumstances (e.g. decrease of orders because of economic crisis), but always have to result in the

termination of the concerned employee's job function. Accordingly, there has to be a reasonable connection between the operational changes and the dismissal. In the event of a dispute, the employer must prove the authenticity and substantiality of the reason for dismissal.

Employment contracts for a definite period may also be terminated by dismissal by the employer for the reason of ongoing liquidation or bankruptcy procedures, due to the abilities of the employee, or because the sustainment of the employment is impossible for the employer due to an unavoidable external reason.

The employment relationship may be terminated by a dismissal for serious cause in the event that the employee, on purpose or by gross negligence, commits a serious violation of any substantive obligations (*lényeges kötelezettségzegés*) arising from the employment relationship or otherwise the employee's behaviour renders the employment relationship impossible. The rules on justification and possible causes of dismissal shall also apply to a dismissal for serious cause.

During the probationary period, the employment relationship may be terminated by dismissal without reason.

## 3. Notice periods

The statutory notice period for dismissal by the employer shall be at least 30 days and is maximum 90 days, depending on the seniority of the employee.

Seniority	Notice given by employer
From the starting date of the employment relationship	30 days
After 3 years	35 days
After 5 years	45 days
After 8 years	50 days
After 10 years	55 days
After 15 years	60 days
After 18 years	70 days
After 20 years	90 days

The notice period in case of dismissal by the employee is 30 days and may not be extended. The employer and the employee may agree to a longer notice period in the employment contract, but not exceeding six months. There is no statutory notice period stipulated by the labour code for dismissal for serious cause.

## 4. Form of dismissal

Pursuant to the Hungarian labour code, employers shall provide the dismissal in a written form, executed by the person duly authorised to exercise the employer's rights.

The right of dismissal for serious cause shall be exercised within a period of 15 days starting on the day on which the employer gains knowledge of the reasons thereof, but not later than within one year of the occurrence of such grounds, or in the event of a criminal offense, up to the statute of limitation.

## 5. Further requirements for a valid dismissal

The labour code requires that the dismissal contains the possible legal remedies against it.

## 6. Special dismissal protection (*speciális felmondási védelem*)

The labour code protects two categories of employees representatives in case of a dismissal:

- the president of the works council; and
- an elected official of the trade union.

These employees may be dismissed only with the prior consent of the concerned employee's direct principal in the trade union/works council.

Furthermore, it is not possible to terminate the employment by way of dismissal of employees belonging to protected groups. The protected groups are, among others: pregnant employees, employees during parental leave until the third year of the child (in case of being on non-paid leave), employees doing their military service and persons receiving rehabilitation benefits (*rehabilitációs járadék*).

At the same time, the labour code allows that a dismissal is notified to the employee but prevents the notice period from commencing during the period of inability to work due to illness or due to absence for caring for an ill child, or during the non-paid leave taken for home-care of a close relative. Restrictions on the legitimate reasons or an obligation to offer an adequate job function exist with regard to employees during a protected period (i.e. five years before the age of retirement, mothers returning to work before the child turns three years old or persons receiving rehabilitation benefits).

## 7. Legal means of the employees

The employee may file an action at the court against the dismissal within 30 days after having received the dismissal. If the court finds that the employer has unlawfully terminated the employment relationship, the employer may be obliged to:

- provide compensation for damages resulting from the unlawful termination of an employment relationship. Compensation for loss of income from employment relationship payable to the employee may not exceed 12 months' absentee fee\* (*távolléti díj*);
- in addition to the above, the employee is entitled to severance payment as well, if:
  - the unlawfulness of the dismissal meant the exclusion of a formal notice or

– if the employee was not entitled to severance payment because the reasons for the unlawful termination were related to his/her behaviour or non-health related abilities

- instead of the above, the employee may demand payment equal to the sum of the absentee fee due for the notice period when the employment relationship is terminated by the employer;
- at the employee's request, the court shall reinstate the employment relationship (if certain conditions are met, e.g. if the dismissal breached the principle of equal treatment, if the dismissed employee belonged to a protected group or was an employee representative) and pay all unpaid salary and allowances for the period when the employee was not employed and pay other damages of the employee.

## 8. Severance pay

In the event of dismissal, the employee is entitled to a severance payment (*végkielégítés*), if the seniority exceeded three years before the termination of the employment. The amount of severance payment is between one and six months' absentee fee of the employee, depending on the seniority of the terminated employment. In case of a dismissal executed within five years of entitlement to pension, the amount of the severance payment increases with one to three months' absentee fee. The severance payment does not need to be paid if

- the reasons for dismissal were the behaviour of the employee nor if they were non-health related abilities of the employee, or if
- the employee was a pensioner at the time of the dismissal. Furthermore, the employee shall not be entitled to severance payment if the employer terminates the employment relationship by dismissal for serious cause.

## 9. Mentionable aspects/particularities

Should the employer wish to dismiss a larger number of employees (collective dismissal), the employer shall fulfil strict information and consultation obligations towards the employees and authorities.

## 10. Managing directors

In case the employee is considered an executive (*vezető állású munkavállaló*) by law (e.g. managing director) or the parties agree that the employee is an executive (if holding position of trust and the salary is at least seven times the minimum wage in Hungary), the employment agreement may deviate with some limitations, from the provisions of the labour code both to the benefit and to the detriment of the employee. In case an issue is not regulated in the employment agreement, the special provisions on executives of the labour code apply.

Accordingly, no reason is required in case of dismissal by the employer and the severance payment may amount to more than six months absentee fee in case the termination takes place after the commencement of the bankruptcy or forced liquidation procedure. The retained amount of the severance payment should be paid after the closing of these procedures.

# Ireland

## 1. Kinds of dismissal

In Ireland there are three kinds of dismissal: fair, unfair and wrongful dismissal.

In Ireland, the Unfair Dismissals Acts 1977-2015 (the Acts) do not protect an employee from the termination of their employment, but the Acts do provide employees with a means of questioning the fairness of the dismissal. Under the Acts, a dismissal is deemed to be unfair and the onus is on the employer to establish otherwise. To prove that the dismissal was fair, the employer must demonstrate that they

- had reasonable grounds for carrying out the dismissal; and
- that they applied full and fair procedures prior to and during the implementation of the dismissal.

An employee can bring a claim for wrongful dismissal where the dismissal breaches the employee's terms and conditions of employment. This may occur where, for example, the employee is not given valid or proper notice; or the employee is dismissed for serious cause in circumstances which do not justify dismissal for serious cause, i.e. valid or proper notice should have been given.

## 2. Necessity of reasons for dismissal

In accordance with the Acts, dismissals arising from the following reasons are regarded as fair in Ireland:

- the employee's capability, competence or qualifications;
- the conduct of the employee;
- redundancy;
- the fact that continuation of the employment would contravene another statutory requirement; or
- other substantial grounds justifying the dismissal. This is a broad category which must be reasonably applied by employers, and can include situations of illegality or a breakdown in trust and confidence.

In addition to demonstrating that there are substantial grounds justifying the dismissal, the employer must be able to demonstrate that it acted reasonably in effecting the dismissal.

## 3. Notice periods

Under Irish law, an employee's notice period is typically set out in their contract of employment. If this is not the case, the Minimum Notice and Terms of Employment Acts 1973-2014 set out minimum statutory notice periods that will apply depending on the employee's length of service with the employer. The following are the statutory minimum periods of notice to be given by an employer to an employee:



Seniority	Notice period required
13 weeks - 2 years	1 week
2 years - 5 years	2 weeks
5 years - 10 years	4 weeks
10 years - 15 years	6 weeks
15 years and over	8 weeks

Notice periods must not be less than statutory requirements.

Subject to the terms of an employee's contract of employment, the employer may be entitled to pay the employee an indemnity in lieu of notice of all or part of his/her notice period or place an employee on garden leave during this time in circumstances where the employer does not require the employee to work out the notice period. Summary dismissal, that is, without notice, may be appropriate in circumstances where the employee is dismissed by reasons of gross misconduct, provided the employee was afforded fair procedures in accordance with the employer's disciplinary process.

In accordance with the Redundancy Payments Acts 1967-2014, an employee who is being made redundant (and who has at least two years' continuous service) must be given at least two weeks' notice of the redundancy in writing.

## 4. Form of dismissal

In accordance with the Acts, within 28 days of entering into a contract of employment, an employer is required to give an employee written notice setting out the procedure which the employer will observe before and for the purpose of dismissing the employee, for example, the employer's disciplinary policy and procedure.

Generally, employment contracts provide that an employer must give the employee written notice of their dismissal but if not, written notice of ordinary dismissal is not specifically required by Irish law.

If requested by the employee, the employer is required to furnish to the employee, within 14 days of the request, details in writing of the principal grounds for the dismissal.

## 5. Further requirements for a valid dismissal

Of paramount importance to employers is the issue of full and fair procedures. In order for an employer to dismiss an employee (even in instances of gross misconduct by the employee) the employer will be expected to have a clear and documented procedure in place and to have followed it precisely.

The requirements of fair procedures may vary from case to case but essential elements include:

- an entitlement to be accompanied at disciplinary meetings;
- access to all evidence of allegations against the employee, including witness statements;
- compliance with the principles of reasonableness, proportionality and natural justice; and
- communication to the employee of the employer's dissatisfaction and affording the employee an opportunity to respond.

The employee is entitled to a reasonable period or periods (which are not prescribed) in which to meet the improvement required by the employer and will also be entitled to assistance required to meet those standards.

## 6. Special dismissal protection

Dismissals arising from the following grounds are automatically unfair under Irish law:

- the employee's membership of or trade union activities;
- the employee's religious or political opinions;
- actual or threatened legal proceedings by the employee against the employer;
- the employee's race, colour or sexual orientation;
- the employee's age;
- the employee's membership of the traveller community;
- maternity related dismissals;
- dismissals related to Parental, Adoptive, Paternity, Carer's Leave, and the Minimum Wage Acts;
- unfair selection for redundancy; and
- the employee having made a protected disclosure.

## 7. Legal means of the employee

In order for an employee to bring an unfair dismissals claim, generally the employee must have one year's continuous service which includes the individual's notice entitlement. This service requirement does not apply in circumstances where an employee was dismissed on the grounds of the employee's trade union activity or maternity-related reasons, including pregnancy, or in relation to their rights under the Parental, Paternity, Adoptive, Carer's Leave, and Minimum Wage Acts, or for making a protected disclosure.

The dismissed employee must lodge their unfair dismissal claim with the Workplace Relations Commission (the WRC) within six months of the dismissal or where reasonable cause can be shown which *'prevented the giving of the notice'*, within 12 months. The Adjudication Officer assigned by the WRC will consider the reasons for the termination of employment and consider whether a fair reason applied to that termination and whether a fair and proper process was followed.

If successful, the employee may be entitled to one of the following avenues of redress: reinstatement, re-engagement and/or compensation.

In order to take a claim for damages for wrongful dismissal, in circumstances where the employee is owed his/her notice period, a dismissed employee may initiate a claim in the civil courts. There is no qualifying period of service and such employees have six years within which to bring their claims before the courts.

It may also be open to employees to apply to the High Court for an employment injunction restraining the termination of their employment. This is a high risk strategy for an employee in terms of legal costs and the prospect of success and would ordinarily be reserved for senior executive level employees. The risk to an employer if such an injunction is granted is the preservation of the status quo until the hearing of the action.

# Italy

## 8. Severance pay

There is no statutory severance payment (beyond the discharging of employment entitlements such as notice pay and pay in lieu of accrued but untaken annual leave etc.) required under Irish law in situations of termination of employment – with the exception of dismissal on grounds of redundancy in which case an eligible employee is entitled to a statutory lump sum payment as set out below.

If the dismissal is made by way of redundancy, the dismissed employee is entitled to redundancy pay. There are two elements to redundancy pay in Ireland

- the required statutory lump sum payment; and
- the optional enhanced ex gratia payment.

An eligible employee with two or more year's continuous service is entitled to a statutory redundancy payment, which comprises two normal weeks' pay for each year of continuous and reckonable employment, plus one bonus week's pay. For the purposes of calculating a statutory redundancy, the value of a week's pay is capped at EUR600. Employees must also be compensated for any accrued but unused rights as of the date of termination date. The best example of this is untaken annual leave which can be paid in lieu in such circumstances.

Employers are not legally obliged to pay anything in addition to the statutory entitlements set out above unless there is a contractual obligation to do so. However, voluntary 'top-up'/ex gratia' payments are common in Ireland and can be significant. This may, for example, be due to industry standards, previous custom and practice, commercial or industrial relations advantages. The amount of any such payment is a matter for the employer to determine and should be the subject of a signed compromise agreement in full and final settlement of all claims in relation to the relevant employee's employment and its termination.

Where compensation is ordered in an unfair dismissals claim, the employee can receive compensation of up to a maximum of two years' remuneration. The employee is however under a duty to mitigate their loss by looking for alternative work. Compensation is confined to economic loss only and a person cannot be compensated for the stress/emotional trauma of being dismissed. In circumstances where the employee suffers no actual loss, for example by taking up new employment immediately following dismissal, the employee may be entitled to a token compensation of four weeks' pay at the WRC's discretion.

An employee who is successful with a wrongful dismissal claim will be entitled to an award which puts them back into a position (by way of financial compensation) as if the wrong/breach had never occurred. For a breach of (insufficient) notice claim, an employee's claim for damages would be the balance of their contractual notice or 'reasonable' notice, if different. However, other losses may flow from that breach, for example, diminution of pension, loss of bonus etc.

## 9. Mentionable aspects/particularities

Discriminatory dismissal claims may be brought to the WRC by an employee, regardless of their length of service, in circumstances where an employee considers his/her dismissal is based on one of the nine grounds of discrimination set out in the Employment Equality Acts 1998-2015, those being: gender, civil status, family status, member of the traveller community, sexual orientation, religion, age, disability and race.

In contrast to the maximum compensation of two years' remuneration available under the Acts, under the Protected Disclosures Act 2014 a 'whistleblowing' employee may be awarded significant compensation of up to five years' remuneration for unfair dismissal on the grounds of having made a 'protected disclosure'. An employee who claims to have been dismissed or threatened with dismissal for having made such a disclosure may apply to the Circuit Court to restrain the dismissal.

## 10. Managing directors

Where an employee is also a director of the company, in addition to the steps outlined above, the Articles of Association of the company may prescribe additional measures to be taken in order to effect the removal of a managing director from the board of directors of the company. Where a managing director is removed from the board of directors, it does not necessarily mean that he/she ceases to be an employee of the company, unless the contractual documentation in place specifically provides that this is the case. Regardless of whether or not the managing director remains on the board of directors of the company, he/she is still entitled to the same protections against unfair dismissals in their capacity as an employee of the company.

## 1. Kinds of dismissal/Necessity of reasons for dismissal

According to the Italian labour law, there are various kinds of dismissal, depending on the different prerequisites requested by the law:

- Individual dismissal (*Licenziamento individuale*) or individual plural dismissal (*Licenziamento individuale plurimo*) for economic reasons, based on objective grounds linked to the employer's activity (e.g. production reasons or business management reasons – *Licenziamento per giustificato motivo oggettivo*);
- Individual dismissal for serious cause (*Licenziamento per giusta causa*) i.e. based on subjective grounds linked to the employee's behaviour/conduct. In case the misconduct of the employee is so severe/serious that the employment relationship cannot continue, the employee can be dismissed without a notice period, provided that the employer is able to demonstrate the existence of a justified ground depending on the employee's conduct.
- Individual dismissal based on individual reason (*Licenziamento per giustificato motivo soggettivo*), i.e. due to a considerable breach of the contractual duties of the employee, but not serious enough to justify a dismissal for serious cause. In this case the employer is obliged to respect a notice period and has to demonstrate the existence and what kind of breach the employee has made;

## 2. Notice periods

Generally speaking, the withdrawing party has to observe a notice period, (except, e.g., the termination by mutual consent or, as said above, when the dismissal of the employee or his resignation takes place for serious cause).

The Italian law assigns the duration of the notice period to the National Collective Bargaining Agreement provisions. In the majority of cases the minimum duration of the notice period is fixed by the National Collective Bargaining Agreement (hereinafter NCBA) and could be different depending on the professional category of the employees (blue-collar workers - operai, white-collar workers - impiegati, cadre – quadri or executives – dirigenti), rank, seniority, and depending whether it concerns a dismissal or a resignation. During the notice period the parties of the employment relationship maintain all the duties and the rights arising from the contract.



## 3. Form of dismissal

The employer has to communicate the dismissal in writing, on penalty of ineffectiveness, by means of a dismissal letter (to be delivered by hand or by registered mail), jointly indicating the reasons of dismissal.

In case of an individual dismissal for justified objective reason and if the employer employs more than 15 employees, the dismissal must be preceded by a communication to the employee and to the local labour office, that starts a settlement procedure. In case of failure of the settlement procedure, the employer can dismiss the employee and the dismissal is effective from the preliminary communication of the employer and the period from said communication to the dismissal is considered as notice period.

#### 4. Further requirements for a valid dismissal

Under Italian labour law, in case of individual dismissal based on justified subjective reason (as described above) or a dismissal for serious cause, the employer has to follow a particular procedure to dismiss the employee among which the following provisions are the most relevant:

- to predispose a Disciplinary Sanctions Code with the list and description of the breaches of duties and the relevant sanctions for the employees (usually a summary extracted from the NCBA applicable to the sector of the employer's activity);
- to make the Disciplinary Sanctions Code public to the employees, by means of/through the billposting of the said code in accessible places for all the employees;
- to communicate the disciplinary action to the employee who breached his duties with a written contestation. The letter of contestation has to be immediate (i.e. the breach of the Disciplinary Code has to be contested to the employee as soon as the breach has been ascertained, and in any event within the terms possibly provided for by the NCBA), and has to specify the facts considered as breaches to consent the right of defense to the employee. The breaches contested in the written contestation are unchangeable subsequently to the start of the disciplinary action.

During the disciplinary action the employer, if asked, is obliged to consent to the employee to exercise the right to be heard to defend himself. The employee can only be dismissed as from five days starting from the receipt of the letter of contestation. The dismissal is, in every case, effective from the date of the written contestation and, in case of dismissal for subjective reasons, the period from contestation to dismissal is considered as notice period.

#### 5. Special dismissal protection (*Divieti di Licenziamento*)

According to the Italian labour law, every agreement and pact carried out by the employer which discriminates employees (male or female), e.g. for religious or sexual or health conditions' reasons, is unlawful and void. There are also some mandatory provisions that prohibit the dismissal in case of

- pregnancy and maternity leave,
  - sickness leave,
  - marriage leave,
- on penalty of the dismissal being void.

Moreover, it has to be considered that settlements and waivers regarding employment relationships in Italy are regulated by particular and statutory rules.

The Italian civil code provides that waivers and settlements regarding the rights of an employee arising from mandatory provisions of the law and from the NCBA concerning the employment relationships are not valid. The action challenging such waivers and settlement can be sued within six months from the date of the termination of employment or from the date of the waiver or settlement, if these occurred after the termination of the employment.

The waivers and settlement above mentioned can be challenged by the employee through a written document to make his intent known.

The provisions of the above are not applied to an agreement undersigned before a labour court, the local labour office or the trade unions. Substantially, the law provides that the employees may dispose of their rights only within the limits and the formalities stated in these provisions: otherwise, they can challenge their renouncements.

#### 6. Legal means of the employees

From a general point of view, if the employee considers his dismissal to be unfair, he can claim against the dismissal assuming

- the lack of cause or justified reasons,
- the breach of the disciplinary procedure,
- the discriminatory or unlawful reasons (e.g. dismissal in case of marriage or maternity leave), ask for reinstatement and compensation for damages.

As a first step, the employee has to contest in writing to the employer the dismissal within 60 days from the receipt of the communication of dismissal. Following, the employee can file the claim before the labour court. If the judicial action (or the conciliation or arbitration request) is not filed within the following 180 days, the employee's contestation against the dismissal will be ineffective.

The laws provide for sanctions in case of unlawful dismissal with reference to companies employing more than 15 employees in each productive unit or within the same municipality or in any case more than 60 employees at national level (please note that under these thresholds a different regime could apply).

In particular, there are differences between employees hired before and after 7 March 2015, when the last labour law reform (i.e. so called Jobs Act) entered into force, with regard to protection against unfair dismissal.

#### For companies with no more than 15 employees hired before 7 March 2015, the following rules apply:

- Null and void dismissal (or in case of dismissal announced without respecting the written form)- if the dismissal is based on discriminatory reason or parental issues, the court will order the reinstatement or pay him the equivalent of 15 months' salary, plus damages equal to the salary that would have been paid from the date of dismissal until reinstatement (min. five months' salary).
- Dismissal for serious cause or subjective/objective justified reason held as unfounded- in this case the employer must either re-hire the employee within three days or pay the employee compensation equal to an amount ranging between two and a half to six months' salary (the employer has the choice).

#### For companies with no more than 15 employees hired after 7 March 2015, the following rules apply:

- Null and void dismissal (or in case of dismissal announced without respecting the written form)- if the dismissal is based on discriminatory reason or parental issues, the court will order the reinstatement or pay him the equivalent of 15 months' salary plus damages equal to the salary that would have been paid from the date of dismissal until reinstatement( min. five months' salary).
- Dismissal for serious cause or subjective/objective justified reason held as unfounded- in this case the dismissal remains in place but the employer must pay the employee compensation equal to one month's salary for each year of length of service with the company (max six months' salary).
- Dismissal for serious cause or subjective/objective justified reason with formal defects- in this case the dismissal remains in place but the employer must pay the employee compensation equal to half a month's salary for each year of length of service with the company (max six months' salary).

#### For companies with more than 15 employees hired before 7 March 2015, the following rules apply:

- Null and void dismissal (or in case of dismissal announced without respecting the written form)- if the dismissal is based on discriminatory reason or parental issues, the court will order the reinstatement or pay him the equivalent of 15 months' salary plus damages equal to the salary that would have been paid from the date of dismissal until reinstatement (min. five months' salary).
- Dismissal for serious cause or subjective/objective justified reason where the allegations are not existent or punished with a minor sanction according to NCBA, dismissal for objective justified reason held as evidently not existent- in this case the court will order the reinstatement or pay him the equivalent of 15 months salary plus damages equal to the salary that would have been paid from the date of dismissal until

reinstatement (max. 12 months salary).

- Dismissal for serious cause or subjective/objective justified reason held as unfounded - in this case the dismissal remains in place the employer must pay the employee the damages ranging between 12 and 24 months' salary.
- Dismissal for serious cause or subjective/objective justified reason with formal defects- in this case the dismissal remains in place but the employer must pay the employee the damages ranging between six and 12 months' salary.

#### For companies with more than 15 employees hired after 7 March 2015, the following rules apply:

- Null and void dismissal (or in case of dismissal announced without respecting the written form)- if the dismissal is based on discriminatory reason or parental issues, the court will order to reinstate the employee (reintegra) or pay him the equivalent of 15 months' salary plus damages equal to the salary that would have been paid from the date of dismissal until reinstatement (min. five months' salary).
- Dismissal for serious cause or subjective/objective justified reason where the fact alleged is not existent- in this case the court will order to reinstate the employee or pay him the equivalent of 15 months' salary plus damages equal to the salary that would have been paid from the date of dismissal until reinstatement (max. 12 months' salary).
- Dismissal for serious cause or subjective/objective justified reason held as unfounded- in this case the dismissal remains in place but the employer must pay the employee the damages equal to two months' salary for each year of length of service with the company (min. four, max. 24 months' salary).
- Dismissal for serious cause or subjective/objective justified reason with formal defects- in this case the dismissal remains in place but the employer must pay the employee compensation equal to one month's salary for each year of length of service with the company (min. two, max. 12 months' salary).

#### 7. Severance pay

In every case of termination of an employment relationship, the employee who has been dismissed is entitled to receive:

- the severance pay on top of notice (so-called *Trattamento di Fine Rapporto* - TFR) which is equivalent to one year's salary divided by 13.5 for every year of employee's seniority, plus the monetary revaluation; and
- the indemnity in lieu of notice (*indennità di preavviso*), whose amount depends on the employee's level and seniority, except in case of dismissal due to misconduct of the employee as described above or when the employee works during the notice period.

# Japan

This amount is always subject both to taxation and social security charges. Moreover, the employee is entitled to receive: 1) the amount relating to his possible not enjoyed annual holidays (payment in lieu of holidays); 2) a quota of additional monthly salaries (depending on which month of the year the employee is dismissed) and incentive compensation accrued (depending on the incentive scheme).

## 8. Mentionable aspects/particularities

None

## 9. Executives

Specific rules on individual dismissal are not applied to employees qualified as executives (*Dirigenti*).

The rules for executives' dismissal are set out in the Italian civil code and in the applicable NCBA (e.g. Industry, Tertiary etc.). NCBA generally state that the dismissal has to be communicated in writing, on penalty of being void, and has to be justified.

The notion of 'justifiable' (*licenziamento giustificato*) elaborated by the Italian jurisprudence for the executives' dismissal is different and wider than 'just cause' (*giusta causa*) and 'justified subjective reason' (*giustificato motivo soggettivo*) used for the ordinary employee dismissal. Therefore, facts or conducts unqualifiable as 'just cause' or 'justified subjective reason' for ordinary employees dismissal can be considered as 'justifiable' for the executives one by the competent labour court (e.g. executive's incompetence related to the employer's expectations or an executive's inappropriate behaviour out of work able to damage the company's image).

In case the competent labour court consider the dismissal unlawful, the employer could be condemned to pay to the executive an additional compensation according to the applicable NCBA.

Additional rules are established by different NCBA for special cases (e.g. dismissal due to pension age, for liquidation or restructuring of the company, etc.)

The same principles established under paragraph 7 above would apply also to executives' individual dismissal.

## 10. Managing directors and member of the board of directors (BoD)

In Italy, managing directors (e.g. CEOs – *Amministratore Delegato*) and other members of the BoD (*Amministratori*) are not employees, but are appointed by the shareholders' meeting. In the S.p.A., managing directors and members of BoD are appointed for a period no longer than three fiscal year while in the S.r.l. they can be appointed for an undetermined period.

In both cases, they can be removed at any time and without justified ground by the shareholders' meeting. In the event that the managing director is removed without justified ground, he is entitled to compensation for the damages.

Anyway, it is possible that the managing director appointed by the shareholders is also an executive employed by the same or other company. In this case, both the above-described rules apply: the executives' ones are applied to the existing labour relation while the corporate ones are applied to the appointment of the executive as managing director. Therefore, the shareholders can remove the managing director at any time and without justified reason but the labour relation as executive will stay valid and safeguarded by the more protective rules above said for the executives.



## 1. Kinds of dismissal

### An employment contract for an indefinite period

An employment contract for an indefinite period cannot be terminated by the employer unless such a dismissal meets two requirements:

- it has 'objectively reasonable grounds' and
- it is considered to be 'appropriate in general societal terms'.

If it lacks either requirement, the dismissal will be treated as the employer's abuse of right to dismiss and become invalid.

When a dismissal meets the both requirements above, an employer must either provide 30 days' notice period to the employee to be dismissed, or pay an indemnity with 30 days' wage in lieu of such a notice in which case the contract is terminated with immediate effect.

### An employment contract for definite period

An employment contract for definite period cannot be terminated by the employer without 'unavoidable circumstance' until the expiration of the contract term. The 'avoidable circumstance' is

- stricter than the requirements and
- for a contract for an indefinite period.

## 2. Necessity of reasons for dismissal

Below only the employment contracts for an indefinite period will be discussed.

Individual dismissals in Japan can be justified only when they strictly meet both of the following requirements:

- Objectively reasonable grounds  
This includes:
  - Employee's inability to work, lack/loss in aptitude
  - Employee's violation/ infringement of discipline in the workplace
  - Business necessity
  - Based on the union shop clause in the collective labour agreement
- Appropriate in general societal terms  
According to case law, to meet the requirement 'to be appropriate in general societal terms', an employer needs to prove that
  - such dismissal has serious cause,
  - the company lacks remedy other than dismissal, and
  - there are little facts favourable for the employee.

The courts of Japan tend to carefully examine facts to determine whether the dismissal meets both

- the reasonable grounds and
- is appropriate.

The courts especially tend to protect employees for indefinite period because Japan has commonly had long-time employment system.

For example, even when an employee lacks the skills to work, a court often demands the employer to provide the employee with opportunities for training. If the employer does not provide sufficient opportunities to improve the employee's skills, the court will likely determine that such dismissal was not appropriate because the employee might have room to improve his/her skills.

### 3. Notice period

The Labour Standards Act stipulates the fixed notice period of at least 30 days. The duration of the notice period is always same regardless of an employee's seniority or other factors.

### 4. Forms of dismissal

In Japan, there is no specific formality for dismissing an employee. However, in general, an employer provides advance notice in writing.

On the other hand, however, employers have to issue a certificate of reasons for the dismissal, without delay when an employee is given an advance notice of leave and requests the employer to issue such a certificate.

### 5. Further requirements for dismissal

None

### 6. Special dismissal protection

Certain categories of employees enjoy special statutory protection against dismissal:

- Employees during a work absence period for medical treatment for injuries or illnesses suffered in the course of the employment or within 30 days thereafter; and
- Female employees during the period of absence from work before and after childbirth or within 30 days.

These protected employees above cannot be dismissed except in the following circumstances:

- When the employer pays compensation for discontinuation equivalent to the average wage that would be earned over 1,200 days when an employee fails to recover from the injury or illness within three years from the date of commencement of the medical treatment; or
- When the continuation of the business has become impossible due to either natural disaster or other unavoidable reasons.

Even in the abovementioned exceptional circumstances, the employer has to obtain an approval from the relevant government agency after disclosing the reasons for the dismissal.

## 7. Legal means of employees

### Litigation

An employee who was dismissed can claim the validity of such dismissal in court. In Japan, there is no specialised labour/employment court. If a court decides that the dismissal is invalid, the employer has to:

- Reinstatement of the employee to the former position
- Pay back-pay

The employer has to treat the employee as if he has been an employee in light of salary, position and any other work conditions.

### Labour tribunal (*Roudou-Shimpan*)

A dismissed employee can also file a petition at the labour tribunal. The tribunal proceedings are conducted by three members: a labour tribunal judge and two labour tribunal members, both of whom have knowledge and experience in labour area. A labour tribunal proceeding ends by either

- conciliation or
- failure of conciliation,

which a labour judge then renders a decision about. When either party files an objection against the labour tribunal decision, the filed petition with the labour tribunal becomes deemed to have been filed with a court and the court proceedings will continue.

### Administrative procedures

The Prefectural Labour Bureau (*Todofuken Roudou-Kyoku*) provides the following services for resolution of individual labour-related disputes:

- The advice and guidance system (*Jogen-shidou*)

In case the director of the Prefectural Labour Bureau is requested by one or both parties (hereinafter referred to as 'disputing parties') to an individual labour-related dispute for assistance in the resolution thereof, the director may give necessary advice or guidance to the parties. The disputing parties are not obliged to accept such advice or guidance from the director.

- The conciliation system (*Assen*)

In case one or both disputing parties file(s) an application for mediation with respect to an individual labour-related dispute (except for disputes with respect to matters concerning the recruitment and employment of workers), the director needs to have the Dispute Coordinating Committee conduct mediation if the director deems this necessary. In addition to hearing opinions from the disputing parties, mediators can hear the opinions of witnesses or request expert opinions. The mediators finally prepare a mediation plan and present it to the disputing parties. The parties are not obliged to accept such a plan.

## 8. Severance pay

There is no severance payment requirement in Japan. In other words, an employer cannot terminate an employment agreement without an employee's consent even though the employer pays any amount of money to the employee. Validity of a dismissal depends only on whether

- such dismissal has objectively reasonable grounds and
- it is considered to be appropriate in general societal terms.

If a dismissal is regarded as valid, the employer does not need to pay severance payment other than the retirement allowance stipulated in the work rules.

In practice, however, when a court finds that the dismissal cannot be justified but that the employment relationship cannot be maintained because of the seriousness of the dispute, it often undertakes mediation to terminate the agreement in exchange for a payment by the employer. A governmental study<sup>3</sup> found the following average settlement amounts:

Amount of the settlement	-1 months' salary	1-2 months'	2-3 months'	3-4 months'	4-5 months'	5-6 months'	6-9 months'	9-12 months'	12-24 months'	+24 months'
Conciliation	37.5%	28.4	10.2	13.6	5.7	2.3	-	-	-	-
Labour tribunal	4.9	8.8	13.4	13.4	11.3	11.9	18.0	4.6	9.5	4.3
Judicial settlement	6.3	10.2	8.7	7.9	8.7	3.1	18.1	15.7	14.2	7.1

<sup>3</sup> The report of 'the study group on transparent and fair labour dispute resolution system etc.' Available at: <http://www.mhlw.go.jp/file/05-Shingikai-11201000-Roudoukijunkyoku-Soumuka/0000166655.pdf> [Accessed 15 November 2017]



# Kazakhstan

## 1. Grounds of dismissal

Under Kazakh labour legislation, the following grounds of termination of the employment contract exist, apart from the general ways of terminating an agreement (mutual agreement, end of term...):

- Upon initiative of the employer;
- Due to transfer of the employee to another employer;
- Upon initiative of the employee;
- For reasons beyond the parties' control;
- Refusal of the employee to continue the labour relations;
- Transfer of the employee to elective work (position) or appointment to a position excluding the possibility of continuing the labour relations, except if otherwise stipulated by law;
- Violation of the terms and conditions of conclusion of the employment contract.

Each of the grounds of termination, mentioned above, includes additional reasons of termination. Thus, procedure for dismissal of the employee and termination of the employment contract, including notice period, differ for each of the cases, mentioned above, and depend on the ground and reason used for termination.

## 2. Necessity of reasons for dismissal

Under Kazakh labour law, an objective and fundamental reason is required to dismiss the employee. Dismissal without reason is prohibited by the legislation.

- The legislation provides for the following reasons of dismissal upon initiative of the employer:
- Liquidation of an employer that is a legal entity, or termination of the activity of an employer who is a natural person;
- Reduction in employee or staff number;
- Reduction of production output, work performed or services provided, which led to deterioration in the employer's economic position;
- Employee's incompatibility with the position held or failure to meet the demands of the work to be performed because of insufficient qualifications as confirmed by certification results;
- Repeated failure to pass tests of knowledge on work safety and protection or industrial safety by an employee who is in charge of ensuring work safety and protection at an organisation carrying out industrial activity;
- Employee's incompatibility with the position held or failure to meet the demands of the work performed for health reasons that impede or exclude continuation in the current position;
- Poor results during the trial period; and others.



## 3. Notice period

Kazakh labour legislation stipulates different notice periods (*Срок уведомления*) for different grounds and reasons of termination of the employment contract at the employer's initiative, in particular:

Ground and reason for termination	Notice period
1. Liquidation of an employer that is a legal entity, or termination of the activity of an employer who is a natural person.	1 month
2. Reduction in employee or staff number.	1 month
3. Reduction of production output, work performed or services provided, which led to deterioration in the employer's economic position.	15 business days. Upon agreement between the employer and employee, the indemnity in lieu of notice can be substituted with the payment of the salary calculated in proportion to the unworked time.
4. Poor results during the trial period.	The employer is entitled to terminate the agreement through a written notification stating the reasons for termination.
5. Attainment of the pension age established by the legislation, with an annual right to prolong the term of the employment contract by mutual agreement of the parties.	1 month
6. Absence of the employee from work for more than one month due to reasons unknown to the employer.	The dismissal may be carried out if the employee fails to present the reasons for the absence within 10 calendar days, following the notification of dismissal by registered letter.

Dismissal of employees based on disciplinary offences is carried out in compliance with the disciplinary punishment procedure.

Prior to the termination of employment on these grounds, the employer shall:

- Demand a written explanation of the disciplinary offence from the employee;
- If the employee's written explanation is not provided within two days of the employer's request, a corresponding act of the employer shall be issued. The failure to provide a written explanation may not be considered an obstacle for disciplinary sanctions;
- Issue an order on the imposition of disciplinary sanctions;
- Familiarise the employee with said order within three days after its issuance. If the employee refuses to confirm that he/she is aware of the order by signing it, this shall be noted in the order. If it has not been possible to ensure that the employee is aware of the order, it should be sent to the employee by recorded delivery.

Please note that disciplinary sanctions should be applied within six months from the date on which the disciplinary offence was committed, excluding disciplinary offences discovered as a result of an audit or review of the employer's financial and economic activities. In such cases, the employee may be held to account within one year from the date the disciplinary offence was committed.

Moreover, an employee's appearance at the workplace in a state of alcoholic, narcotic or psychotropic inebriation should be certified medically. The employer should officially send the employee to a medical examination. If the employee refuses to undergo said examination, this shall be noted in the act.

**4. Documentation of dismissal**

Termination of the employment contract (*Расторжение трудового договора*) shall be formalised through the issuance of an act of the employer (usually, an order) with the grounds, specified in accordance with the labour code. Copy of the act shall be passed to the employee or sent to the employee by registered mail within three business days from the date of its issuance.

**5. Further requirements for dismissal**

There are some other legislative requirements providing additional obligations for the employer with regards to dismissal. Generally, the employer is not allowed to terminate the employment contract while the employee is on vacation or temporarily disabled, with the exceptions set out by the law. Some of them, not outlined earlier above, are stated below.

**6. Special protection from dismissal**

Some categories of employees enjoy special statutory protection against dismissal, it includes *inter alia*:

- Employees, who have temporary disability (sick leave) and are on vacation, except cases of violations of labour duties by the head of an executive body of the employer, by his deputy or manager of a unit of the employer (subsidiary organisations, representative offices and other units of the employer, which are determined by an act of the employer), which entail material damages for the employer;
- Pregnant women, women having children at the age up to three years, single mothers and guardians caring for a child at the age up to fourteen years (disabled child up to eighteen years) in case of 1) reduction in employee or staff number and 2) reduction of production output, work performed or services provided, which led to deterioration in the employer's economic position;
- Pre-retirement age (employees, who have less than two years until retirement) in case of 1) reduction in employee or staff number and on the ground of employee's incompatibility with the position held or failure to meet the demands of the work to

be performed because of insufficient qualifications as confirmed by certification results. Such employees may only be dismissed upon the decision of a committee that consists of an equal number of employee and employer representatives.

**7. Legal remedies that can be used by employees**

In case of any disputes between the employee and employer, the conciliation commission shall consider the individual dispute. If the dispute is not settled or the decision of the conciliation commission is not followed, then such dispute shall be settled by court proceedings (except for small size business entities and in case of managing directors).

The dispute shall be considered by the commission within 15 business days from the date of registration of the employee's application.

The employees can address their claims to the commission within one month from the date of receipt of the copy of the act on dismissal. Employees can also apply to court within two months from the date of receipt of the copy of the decision of the commission if dispute is not settled or the decision of the conciliation commission is not followed by one of the parties. The terms of applying to commission or court shall be suspended if there is a mediation agreement in place, or in case the conciliation commission was not formed during the period required for forming of such commission.

In addition, in case of an employee's reinstatement in a job, the employer shall pay the indemnity for unlawful dismissal equal to the average monthly salary for the entire period of dismissal or the difference in the salary for the period of performing the low-paid work in case of unlawful transfer of the employee to another work (but not more than for six months).

Furthermore, the decision of the commission or court on employee's reinstatement in a job shall be enforced immediately.

Otherwise, the commission or court will issue another decision imposing the obligation to reimburse to the employee the average salary or difference in the salary for the period of delay in enforcement of the decision.

**8. Severance pay**

The amounts due by the employer to the employee should be paid not later than three working days after employment contract termination. In addition to regular salary payments, the employer will be obligated to pay the employee compensation for unused vacation, regardless of the grounds for termination.

Moreover, the law stipulates the following mandatory reimbursements in respect of certain types of termination:

**In the amount of one month's salary, in case of:**

- Employer's liquidation;
- Dismissal due to staff reduction;
- Non-fulfilment of employment contract terms by the employer;

**In the amount of the average salary for two months, in case of:**

- Termination due to decreased volumes of production, work or services resulting in a deterioration in the employer's economic status.

The employment contract and collective agreement can provide for higher amount of the compensation to be paid.

**9. Managing directors**

In case of the general director/managing directors (*Члены исполнительного органа*), the employment contract can be terminated based on the decision of the participant/shareholder of the entity. The general notice period is not less than one month. Legislation does not provide for requirement of payment of any compensation for dismissal of the general director/managing directors, unless otherwise foreseen by the employment contract or the employer.

Ground and reason for termination	Notice period
1. Reduction in employee or staff number.	Employees who have less than two years until retirement may be laid off only upon the decision of a committee that consists of an equal number of employee and employer representatives.  It is not allowed to terminate the employment with pregnant women, women having children at the age up to three years, single mothers and guardians caring a child at the age up to 14 years (disabled child up to 18 years).
2. Employee's incompatibility with the position held or failure to meet the demands of the work to be performed because of insufficient qualifications as confirmed by certification results.	Employment contract may be terminated based on the decision of the assessment committee, which should include at least one employee representative. Restrictions on pre-retirement age termination shall be observed.

# Latvia

## 1. Cases of dismissal

According to Latvian labour law, an employee may be dismissed:

- Due to individual reasons (circumstances related to his/her behaviour and abilities);
- Due to economic reasons (economical, organisational or technological measures taken by the company; or due to long-term illness of the employee);
- Due to other reasons decided by the court.

## 2. Necessity of reasons for dismissal

The employer has the right to dismiss the employee only in case there is a specific reason for it.

According to the Latvian labour law, the reasons for dismissal are the following:

- the employee has (without any justified cause) significantly violated the employment contract or the specified working procedures;
- the employee, when performing work, has acted illegally and therefore has lost the trust of the employer;
- the employee, when performing work, has acted contrary to moral principles and such action is incompatible with the continuation of professional relationships;
- the employee, when performing work, is under the influence of alcohol, narcotic or toxic substances;
- the employee has grossly violated labour protection regulations and has jeopardised the safety and health of other persons;
- the employee lacks adequate occupational competence for performance of the contracted work;
- the employee is unable to perform the contracted work due to his/her state of health and such state is certified with a doctor's opinion;
- the employee who previously performed the relevant work has been reinstated at work;
- the number of employees is being reduced;
- the employer – legal person or partnership – is being liquidated; or
- the employee does not perform work due to temporary incapacity:

Continuously for more than six months, if the incapacity is uninterrupted; or, for one year within a three-year period, if the incapacity recurs with interruptions. Prenatal and maternity leave as well as a period of incapacity due to an accident at work or occupational disease is excluded from the period.

On an exceptional basis, the employer has the right within a one-month period to bring an action for termination of employment legal relationships in court in cases not referred to above if he/

she has a good cause. Any condition which does not allow the continuation of employment legal relationships on the basis of considerations of morality and fairness shall be regarded as such cause. The issue whether there is good cause shall be settled by court at its discretion.

## 3. Time period for a notice of termination

The time period for a notice of termination by the employer is subject to the Latvian labour law. However, parties may also specify longer time period for a notice of termination in the employment agreement or collective agreement.

According to the Latvian labour law, the duration of the time period for a notice of termination may vary from immediate termination to one month.

The immediate termination shall be applied if the notice of termination of the employment contract is given in following cases:

- the employee, when performing work, has acted illegally and therefore has lost the trust of the employer;
- the employee, when performing work is under the influence of alcohol, narcotic or toxic substances;
- the employee is unable to perform the contracted work due to his/her state of health and such state is certified with a doctor's opinion.

The time period for a notice of termination is equal to 10 days – if the notice of termination of the employment contract is given in following cases:

- the employee has without justified cause significantly violated the employment contract or the specified working procedures;
- the employee has acted contrary to moral principles while working and such action is incompatible with the continuation of employment legal relationships;
- the employee has grossly violated labour protection regulations and has jeopardised the safety and health of other persons;
- the employee did not perform work due to temporary incapacity for more than six months, if the incapacity is uninterrupted, or for one year within three years, if the incapacity repeats with interruptions, excluding a prenatal and maternity leave in such period, as well as a period of incapacity, if the reason of incapacity is an accident at work or occupational disease.

The time period for a notice of termination is equal to one month, – if the notice of termination of the employment contract is given in following cases:

- the employee lacks adequate occupational competence for performance of the contracted work;
- an employee who previously performed the relevant work has been reinstated at work;



- the number of employees is being reduced;
- the employer – legal person or partnership – is being liquidated.

During the probation period of maximum three months period for a notice of termination of the employment contract is three days without a duty to indicate the cause of such notice.

## 4. Form of dismissal

According to the labour law, the notice of termination has to be in a written form. It should also specify termination arrangements.

## 5. Further requirements for a valid dismissal

According to labour law, dismissal is valid in case the employer has requested the explanation from the employee before dismissal.

When giving a notice of termination of an employment contract, the employer has a duty to notify the employee in writing regarding the circumstances that constitute the basis for the notice of termination of the employment contract.

In case the employee was dismissed for individual reasons, the employer has the right to dismiss the employee not later than within a one-month period from the date of detecting a violation.

It is permitted to give notice of termination of an employment contract for economic reasons or due to long-term illness of the employee, if the employer can not employ the employee with his/her consent in other work in the same or another undertaking.

Prior to giving a notice of termination of an employment contract, the employer has a duty to ascertain whether the employee is a member of a trade union. If the employee is a member of the trade union, the employer is obliged to receive consent for dismissal.

## 6. Special dismissal protection

Latvian labour law prevents discrimination including dismissal due to race, skin colour, religion, political orientation, sexual preferences, age, handicap, nationality, social, ethnical origin or due to other reasons.

The employer is prohibited to terminate an employment contract of a pregnant woman, as well as the employment contract of a woman following the period after birth up to one year. In case a woman is breastfeeding, this prohibition lasts during the whole period of breastfeeding, but no longer than until two years of age of the child, except in cases where termination is planned due to the circumstances related to employees' behaviour and abilities or liquidation of the employer.

The employer is prohibited to terminate an employment contract of an employee who is declared to be a disabled person, except in cases where termination is planned due to the circumstances related to employees' behaviour and abilities or liquidation of the employer.

# Lithuania

The employer is prohibited to terminate an employment contract of an employee during a period of temporary incapacity of the employee, as well as during a period when an employee is on leave or is not performing the work due to other justifiable reasons, except in cases when temporary incapacity has kept going for more than six months, if the incapacity is uninterrupted, or for one year within a three-year period, if the incapacity recurs with interruptions, excluding a prenatal and maternity leave in such period, as well as a period of incapacity, if the reason of incapacity is an accident at work, the cause whereof being related to the exposure to the environment factors or an occupational disease. This restriction does not apply if employer is being liquidated.

In case the employee does not perform work due to temporary incapacity for more than six months, if the incapacity is uninterrupted, or for one year within a three-year period, if the incapacity recurs with interruptions, excluding a prenatal and maternity leave in such period and the reason for incapacity is an accident at work or occupational disease the employer is prohibited from termination of the employment contract with the employee until its recovery or determination of disability.

Membership in trade union protects an employee from being dismissed because of his/her membership of a trade union. The employee may be dismissed only in case the trade union has accepted the dismissal. Exceptions: the employee is dismissed: a) during the probation period; b) due to use alcohol, drugs, toxic substances; c) due to liquidation of the employer; d) due to return of the employee who previously performed the relevant work.

## 7. Legal means of the employees

In cases where the court finds that the dismissal is contrary to law, it may provide obligation to the employer:

- to reinstate a dismissed employee;
- to pay compensation to an employee for absence from work or for performance of work of lower pay;
- to pay the non-pecuniary damages.

## 8. Severance pay

In case the employee was dismissed due to the economic, organisational, technological measures or due to long term illness of the employee, the company is obliged to pay the severance pay to the employee in the following amounts:

- in case the employee has been employed by the relevant employer for less than five years, the severance pay shall be paid in the amount of average earnings for one month (salary and other benefits the employee has received within the time period of the last six months).
- In case the employee has been employed by the relevant employer for a time period of five to 10 years, the severance pay shall be paid in the amount of average earnings for two months.
- In case the employee has been employed by the relevant employer for a time period of 10-20 years, the severance pay shall be paid in the amount of average earnings for three months.
- In case the employee has been employed by the relevant employer for a time period of more than 20 years, the severance pay shall be paid in the amount of average earnings for four months.

## 9. Mentionable aspects/particularities

None

## 10. Managing directors

The managing directors are usually the board members and therefore Latvian commercial law regulation applies to them and provisions of the Latvian labour law concerning termination of the employment relations are not applicable, provided that no employment contract is concluded with the respective managing director/board member.

Latvian commercial law stipulates the procedure of election and dismissal of the board members (managing directors), in accordance with which the board members are dismissed:

- by the decision of the meeting of the limited liability company's shareholders, or
- by the decision of the meeting of the joint stock company's council.

The aforementioned decisions shall be entered in the commercial register and shall enter into force with regard to the third persons upon their registration.

However according to court practice, a board member who provides services to the company and is an integral part of it and if, in return for those activities, the board member receives remuneration, it may be regarded as having the status of employee for the purposes of restriction of dismissal of a pregnant woman.

On 1 July 2017 the new labour code of the Republic of Lithuania (hereinafter the 'Lithuanian labour code') came into force. The aim of the Lithuanian labour code was to liberalise the employment regulation in Lithuania and to bring more flexibility to the employment relationship between employees and employers. The Lithuanian labour code introduced significant changes to regulation of many areas of employment, including the dismissal.

## 1. Kinds of dismissal

According to the Lithuanian labour code, the most common ways to terminate employment upon employer's initiative are: dismissal due to objective reasons (ordinary dismissal)(*darbo sutarties nutraukimas darbdavio iniciatyva be darbuotojo kaltės*) and dismissal upon the employer's will (*darbo sutarties nutraukimas darbdavio valia*). The aforementioned kinds of dismissal differ with regard to the reasons for dismissal, the notice period and protection the employees have against the dismissal.

## 2. Necessity of reasons for dismissal

In all cases the reasons have to be real and concrete. In case of ordinary dismissal, the reasons justifying termination of contract may be that:

- the employee's work function is no longer required due to the changes of work's organisation or other reasons related to activities of the employer;
- the employee does not reach the results agreed on with the employer in the plan on improvement of work results;
- the employee does not agree to change the key or additional terms of his/her employment agreement, place of work or working regime;
- the employee does not agree to continue employment after transfer of enterprise or a part thereof; and
- a court or an authorised body of the employer adopts a decision on employer's liquidation.

Employers may also terminate the employment due to other than abovementioned reasons (dismissal upon employer's will). The latter are not explicitly specified by the Lithuanian labour code.

It should be noted that a legitimate reason to terminate employment may not be:

- participation in the proceedings against the employer accused with violations of laws; or
- appealing to administrative bodies due to discrimination by employer on any grounds.

## 3. Notice periods

In case of a dismissal due to objective reasons, the standard notice period (*įspėjimo terminas*) is one month. When the employment continues for less than a year, a notice period of two weeks will apply.

It is important to note that the abovementioned notice periods are doubled for employees who will be entitled to the retirement pension in less than five years, and are increased three times for:

- employees raising a child (also adopted) under 14 years of age;
- employees raising a disabled child under 18 years of age;
- disabled employees;
- employees, who will be entitled to the retirement pension in less than two years.
- In case of dismissal upon employer's will, the notice period is three business days.

During the notice period the dismissed employees are entitled to be absent from work not less than 10% of their working time in order to look for a new job without affecting their entitlement to salary and other rights. In case of mutual agreement between the employer and employee to be absent for more than 10% of the working time, the payment for working time exceeding the 10% limit is determined by mutual agreement of the parties. Furthermore, the employer may, upon consent of the employee, exempt the employee from the obligation to work. However, in the latter case the employer still has to pay the salary to the employee.



#### 4. Form of dismissal

All dismissals have to be in written form to be valid. The dismissal decision (i.e. order of the employer or the administration) should be communicated to the employee in writing against his/her signature, and should contain the legal and factual reasons of the dismissal and the date the dismissal takes effect.

#### 5. Further requirements for a valid dismissal

All disbursements related to the employment relationship (salary due on the day of dismissal, compensation for unused annual leave and the severance pay (*išėitinė išmoka*)) have to be paid to the employee until the end of the employment relationship unless the employer and the employee agree that an employee will be paid no later than within 10 business days after termination of employment. At the request of the employee, the employer must issue him/her a certificate about his/her work indicating the functions (duties), the dates of commencement and end of the employment, and the amount of employee's wage. The employer shall inform the State Social Insurance Fund Board (*Valstybinė socialinio draudimo fondo valdyba* or SODRA) on the termination of employment not later than the day after the termination of employment contract.

#### 6. Special dismissal protection

Both kinds of dismissal (i.e. dismissal upon objective reasons and dismissal upon employer's will) are not allowed during the period of the employee's temporary disability (sick leave) and during the employee's annual leave.

Protection against dismissal also applies to the following categories of employees:

- pregnant employees: protection applies as of the day on which the employee submits to the employer a medical certificate confirming pregnancy until the child reaches the age of four months;
- employees who are called up for military service or alternative services;
- employees on maternity, paternity and parental leave;
- employees raising a child (or children) under three years of age: a contract may not be terminated due to objective reasons. Dismissal upon employer's will is allowed.
- It should be also noted that specific protection also applies if dismissal due to objective reasons is based on the fact that employee's work function is no longer required: when the work function which is no longer required is performed by several employees and the employer wishes to dismiss only a part of them, the employer has to follow certain dismissal criteria. Consultation with the representative body of the employees, if such an organ exists, is also necessary. The following categories of employees have priority to remain employed:
  - employees who sustained an injury or contracted an occupational disease at that workplace;
  - employees who raise more than three children (also adopted) under 14 years of age or raise a child (also adopted) under 14 years of age or a disabled child under 18 years of age as a single parent, or alone take care of other family members whose ability to work is below 55% or family members who have reached the retirement age and who are legally admitted to have high or moderate special needs;
  - employees whose continuous seniority at the workplace is at least 10 years, except for employees, who have become entitled to retirement at that workplace;
  - employees who will be entitled to the retirement pension in three or less years;
  - employees to whom priority right is granted under the collective bargaining agreement;
  - employees who are elected as member of the managing bodies of employee representatives.

#### 7. Legal means of the employees

The employee may appeal against the dismissal at Labour Dispute Committee within one month after its delivery and claim that the dismissal is not valid. If the Labour Dispute Committee finds that the employer dismissed the employee without a legitimate basis or breached the dismissal procedure set forth in the Lithuanian laws, the Labour Dispute Committee declares the dismissal to be unlawful. In this case, the employment agreement continues and the employee has a right to be reinstated and is entitled to receive his/her average monthly salary for the period (not longer than one year) of forced absence from work and compensation for material and non-material damage.

Alternatively, where the Labour Dispute Committee establishes that the employee may not be reinstated in his/her previous work due to economic, technological, organisational or similar reasons, or because he/she may be put in unfavourable conditions for work, it may decide to declare the termination of the employment contract as unlawful. In this case, it will award the employee his/her average monthly salary for the period (not longer than one year) of forced absence from work as well as compensation for material and non-material damage and grant a severance pay amounting to one average monthly salary per two years seniority, with a maximum of six average monthly salaries.

Decisions made by the Labour Dispute Committee are binding upon the parties and enforceable in accordance with the regulations of civil procedure. However, either party may appeal to the court.

#### 8. Severance pay

Upon ordinary dismissal, the dismissed employee is entitled to a severance pay of his/her two average monthly salaries. If the employment relationship lasted less than a year, the dismissed employee has to be paid 1/2 of his/her average monthly salary. Additionally, the dismissed employee may receive a severance pay from the State Social Insurance Fund Board, with the amount depending on his/her seniority.

In case of termination of the employment contract upon employer's will, the dismissed employee has to be paid a severance pay of at least six of his/her average monthly salaries.

#### 9. Mentionable aspects/particularities

None

#### 10. Managing directors

Regarding the dismissal of the head of the company, the Lithuanian labour code and Lithuanian Company Law establish that the governing body in the company, which has the right to appoint the managing director (*Generalinis direktorius*) of the company, may revoke him/her from this position at any time without application of notice periods. Such dismissal is not subject to any substantiation and/or prior written notification thereabout. The dismissed managing director is entitled to compensation amounting up to one of his/her average monthly salary, provided that he/she had at least two years' seniority. Severance pay is not paid if the managing director is revoked due to his/her faulty actions.

# Luxembourg



## 1. Kinds of dismissal

There are two kinds of dismissal in Luxembourg:

- dismissal with prior notice, and
- dismissal for serious cause (*résiliation pour motif grave*).

In principle, the employer may only dismiss with notice period (*période de préavis*) an employee on an employment contract for an indefinite period.

## 2. Necessity of reasons for dismissal

Any dismissal must be based on one or more real and serious reasons that prevent the continuation of the working relationship. The reasons for justifying a dismissal with notice period can be:

- related to the employee's behaviour, being reasons of personal nature related to the employee's aptitude or behaviour (i.e. individual reasons); or
- not related to the employee's behaviour, being reasons associated with the operational or financial necessities of the business (i.e. economic reasons).

A dismissal for serious cause (i.e. without notice period) is only justified in case the employee's gross misconduct makes immediately and definitively impossible the continuation of the working relationship (e.g. theft, unfair competition, aggression, etc.).

## 3. Notice periods

An employer who dismisses an employee for a reason other than for serious cause must grant a notice period to the employee. The duration of the notice period depends on the employee's seniority at the time of the dismissal notification.

Employee's seniority	Notice given by the employer
< 5 years	2 months
5 < 10 years	4 months
As of 10 years	6 months

The employer may exempt the employee from working during the notice period (garden leave) (*dispense de préavis*).

An employee who continues working for the employer during the notice period is entitled to request a leave to search a new job.

In case of garden leave, if the employee begins a new job during the notice period, the former employer must cover, until the end of the notice period, any difference between the employee's previous and new salary (if lower) as well as the employer's social security contributions relating to any difference in salary paid and the salary paid by the new employer (up to the level of the previous salary).

## 4. Form of dismissal

The employer informs the employee of the termination with notice of the employment contract in writing, either by signed registered letter or by giving the signed letter in person to the employee, who must acknowledge receipt by counter-signing a copy of the letter.

The notification must state that it is a dismissal with notice period. The following information shall also be added in the notification:

- the notice period to which the employee is entitled to in accordance with his/her length of service in the company;
- garden leave, if applicable.

The dismissal letter must be written in a language that can be understood by the employee.

The notice period begins on the:

- 15th day of the current month, if the letter of dismissal was notified to the employee before the 15th; or on the
- 1st day of the following month, if the letter of dismissal was notified to the employee between the 15th (included) and the last day of the month.

As per the current Luxembourg case law, the start date of the notice period is determined by the date on which the employee was notified by the post of the receipt of a letter of dismissal or the date on which the letter of dismissal was delivered by hand, against receipt, to the employee.

## Statement of reasons for dismissal upon request by the employee

The employer does not have to indicate the reasons for dismissal in the letter of dismissal, except in case of dismissal for serious cause. If the dismissed employee wishes to be informed of the reasons (if a pre-dismissal interview was not arranged), he/she can request this information:

- by registered letter; and
- within one month from the day on which he/she received the letter of dismissal.

The employer is thereby required to respond to the employee:

- by registered letter with acknowledgement of receipt;
- within one month from the date on which he/she received the request from the employee;
- by giving a detailed description of the reasons for dismissal; and
- in a language that can be understood by the employee.

## 5. Further requirements for a valid dismissal

### Dismissal for serious cause

An employer who dismisses an employee for serious cause shall:

- Notify the employee directly (or on the earliest one day following the preliminary interview, where applicable) of his/her dismissal in writing:
  - by registered letter; or
  - by giving the letter in person to the employee, who must acknowledge receipt by counter-signing a copy of the letter.
- The notification must indicate in detail the fact(s) the employee is accused of and which is (are) the reason(s) for his/her dismissal.
- Or place the employee on leave (garden leave) and dismiss him/her at a later date. During the leave, the employer must continue paying the employee's salary as well as any other benefits he/she is entitled to, until the day he/she is informed of his/her dismissal. The dismissal notification should be given within a period of minimum one to maximum eight days after the start of the garden leave. This eight-day period is suspended if the employee is on sick leave. During the sick leave, the employer temporarily loses the right to dismiss the employee.

The dismissal letter must be written in a language that can be understood by the employee.

### Pre-dismissal interview

Depending on the total number of employees employed by the group of companies considered as a sole economic and social entity of which the employer is part, or the stipulations of a collective bargaining agreement, a pre-dismissal interview may be required. The purpose of such interview is to inform the employee that his/her dismissal is envisaged, to explain the reasons and to give him/her the opportunity to explain himself.

## Informing the Conjecture Committee of a dismissal

This obligation only concerns dismissals with notice for reasons not related to employee behaviour (e.g. redundancy for economic reasons, recovery, reorganisation or restructuring measures resulting in job losses).

Any company with 15 or more employees must send a notification to the Conjecture Committee (*Comité de conjoncture*) for each dismissal not related to employee behaviour. The notification to the Conjecture Committee must take place at the latest when the employee is informed of his/her dismissal with notice period.

## 6. Special dismissal protection

In principle, the employer cannot dismiss with notice period an employee:

- on an employment contract for a definite period;
- on sickness leave;
- on maternity leave;
- on parental leave;
- on family reasons leave;
- on end of life assistance leave;
- on adoption leave;
- who has been recently redeployed;
- who is staff representative or candidate to a position as staff representative (staff delegate or joint work council member).

The employer who terminates an employment contract for a definite period before its term must pay a compensation that is equal to the total salaries that the employee would have received until the end of the contract. This amount is nevertheless limited to the amount that would have been paid during the notice period of an employment contract for an indefinite period.

## 7. Legal means of the employees

Dismissal is regarded as unfair if:

- The employer fails to provide the employee with detailed dismissal reasons as required by law;
- The dismissal is not founded on valid reasons related to the employee's aptitude or conduct, or arising from the operational needs of the business;
- The reasons are not real; or
- The reasons are not sufficiently serious.

With respect to the dismissal of employee who was legally protected against dismissal (e.g. during sickness leave or maternity leave), dismissal will either be regarded as unfair or null and void, as the case may be.

# Malta

If the employee challenges the reasons provided by the employer, the latter should not only demonstrate the factual circumstances but also their validity and seriousness.

The Luxembourg labour code does not provide for pre-determined compensation for damages resulting from an unfair dismissal. The judges in labour courts have the widest powers to judge at their own discretion the amount of the indemnification for unfair dismissal.

## 8. Severance pay

If the employer does not respect the notice period, it must pay the employee an indemnity in lieu of notice corresponding to the gross salary due for the number of days not respected. The calculation basis of the indemnity in lieu of notice includes the basic salary, variable salary and benefits in kind.

On top of that, the employer must pay severance pay (*indemnité de départ*) if the employee has a seniority of five years or more. The severance pay has to be paid at the end of the notice period (whether the notice was performed or not) and is not subject to income tax or social contributions.

The amount of the severance pay depends on the employee's seniority on the last day of the notice period (whether the employee has performed the notice period or not). The employer, which employs less than 20 employees, may choose between:

- paying a severance pay; or
- extending the notice period of the dismissed employee.

The employer must express its choice in the letter of dismissal.

The severance pay is calculated on the basis of the gross salaries effectively paid to the employee during the previous 12 months which immediately preceded the dismissal notification.

The following items are included in the calculation basis as well:

- financial allowances in the case of illness;
- standard allowances and supplements.

The following items are excluded from the calculation basis:

- overtime pay;
- bonuses;
- allowance for professional expenses.

## 9. Mentionable aspects/particularities

In case of dismissal for serious cause, the employer may, under certain conditions, demand that the employee repays the costs of any continuous professional training (such as a master's degree, an MBA, etc.).

In order to avoid any dispute, it is recommended that the employer drafts in a detailed and explicit manner all the amounts to be repaid, as well as the method of repayment, in the employment contract(s) (or in an addendum to the employment contract, where necessary).

## 10. Managing directors

No specific dismissal rules apply for managing directors.

## 1. Kinds of dismissal

Employment contracts for an indefinite period can be terminated by the employer without satisfaction of the minimum notice period and without any liability to pay an indemnity or provide for compensation, if there is good and sufficient cause for such dismissal (*dismissal for serious cause*).

Should there be no good and sufficient cause for dismissal, an employment contract for an indefinite period may only be terminated by the employer by giving the required minimum notice period, on grounds of redundancy (i.e. economic, organisational or technical reasons entailing changes in the workforce).

## 2. Necessity of reasons for dismissal

The employer may dismiss an employee, without satisfaction of the minimum notice period and without any liability to make payment as otherwise provided in accordance with law, if there is good and sufficient cause for such dismissal. The Employment and Industrial Relations Act, Chapter 452 of the Laws of Malta (the 'Act'), does not define what constitutes good and sufficient cause to terminate employment, it however describes 'unfair dismissal' as comprising:

- the termination by the employer of an employment contract for an indefinite period (other than during the trial period) not made solely on the grounds of redundancy or for a good and sufficient cause;
- the termination by the employer of an employment contract for an indefinite period pursuant to an act carried out by an employee in contemplation or furtherance of a trade dispute and in pursuance of a directive issued by a trade union, whether the employee belongs to it or not;
- the termination, which, though made on grounds of redundancy or for a good and sufficient cause, is discriminatory; or
- the failure of the employer to re-employ an employee whose employment was terminated on grounds of redundancy and was entitled to re-employment as the post formerly occupied by the said employee became available again within a period of one year from the date of termination of employment.

The employer may terminate the employment of an employee when the employee reaches the pension age.

During the probationary period of any employment the employment may be terminated at will, by either the employer or the employee, without motivation.

## 3. Notice periods

Notwithstanding any contrary agreement, or any agreements between the employer and employee in cases of technical, administrative, executive or managerial posts, notice periods to be taken into account are the following:



Seniority	Notice period
1 - 6 months	1 week
6 months - 2 years	2 weeks
2 - 4 years	4 weeks
4 - 7 years	8 weeks
More than 7 years	1 additional week per commenced year of seniority with a maximum of 12 weeks

Or such longer periods as may be agreed by the employer and employee in the case of technical, administrative, executive or managerial posts

The period of notice shall begin to run from the next working day following the day on which notice is given.

Where employment is terminated for a good and sufficient cause, the employer is not required to give advance notice of termination.

## 4. Form of dismissal

The Act does not specify the form in which a dismissal has to be carried out, however for the purposes of evidencing any other legal requirements, dismissal is typically done in writing.

## 5. Further requirements for a valid dismissal

On receiving notice of termination of employment from the employer, an employee has the option either to continue performing the work until the notice period expires, or to require the employer to pay him an indemnity in lieu of notice equal to 50% of the wages that would be payable in respect of the unexpired notice period.

Employee's seniority at the last day of the notice period (whether performed or not)	Severance pay with standard notice		Option without severance pay (company with less than 20 employees)
	Severance pay	Notice	Notice extended without allowance
Less than 5 years	0	2 months	/
Between 5 and less than 10 years	1 month	4 months	5 months
Between 10 and less than 15 years	2 months	6 months	8 months
Between 15 and less than 20 years	3 months	6 months	9 months
Between 20 and less than 25 years	6 months	6 months	12 months
Between 25 and less than 30 years	9 months	6 months	15 months
30 years and more	12 months	6 months	18 months

# Montenegro



## 6. Special dismissal protection

The employer may not refer to the following reasons as a good and sufficient cause:

- that the employee, at the time of the dismissal, was a member of a trade union, or is seeking office as, or acts or has acted in the capacity of an employees' representative; or
- except in the case of a private domestic employee, that the employee no longer enjoys the employer confidence of the employer; or
- that the employee marries; or
- that the employee is pregnant or is absent from work during maternity leave; or
- that the employee discloses information, whether confidential or otherwise, to a designated public regulating body, regarding alleged illegal or corrupt activities being committed by the employer or by persons acting on the employer's name and interests;
- that the employee has filed a complaint or is participating in proceedings against the employer involving alleged violation of laws or regulations or is having recourse to competent administrative authorities; or
- that the business in which the employee is engaged has undergone a transfer of ownership, unless the employer proves that the termination is necessary for economic, technical or organisational reasons entailing changes in the workforce.

The Act provides that an employment contract may not, except with the consent of the employee, be terminated by the employer during any period of incapacity to work of the employee caused by personal injury by accident arising out of and in the course of employment or by any of the occupational diseases specified in the Social Security Act, Chapter 318 of the laws of Malta, in each case occurring while the employee is in the service of that employer. Such protection does not apply beyond the first 12 calendar months of incapacity.

The employer is also precluded from dismissing any full-time female employees during the period of their maternity or the period of five weeks following the end of such leave in which they are incapable to work owing to a pathological condition arising out of confinement.

## 7. Legal means of the employees

Where it is alleged that an employee has been unfairly dismissed by the employer, or where there is an alleged breach of any obligation arising out of any matter falling within the jurisdiction of the Industrial Tribunal (the 'tribunal') in accordance with the Act or any regulations prescribed thereunder, the matter shall be referred to the tribunal.

In cases where the tribunal finds that the grounds of the complaint are well-founded and the employee has requested to be reinstated, the tribunal may order the re-instatement of the complainant if it would be practicable and in accordance with equity. In situations where the employee occupied a managerial or executive post that requires special trust in the person of the holder of that post or in his ability to perform the duties thereof, the tribunal shall not order the reinstatement. Nevertheless if the employee was appointed or selected to such a post by fellow employees, the tribunal may order reinstatement in the post held before the appointment or selection.

Should the employee have made no specific request for reinstatement, or the tribunal decides not to order the reinstatement, the tribunal shall grant an award of compensation, to be paid by the employer, in respect of the dismissal. When determining the amount of such compensation, the tribunal shall take into consideration the real damages and losses incurred by the employee who was unfairly dismissed, as well as other circumstances that may affect the employment potential of the said employee, including age and skills.

## 8. Severance pay

No severance pay is required under Maltese law, except in case the employee, on receiving notice of the termination of his employment, elects to receive a payment equivalent to one half the wages that would have been payable in respect of the period of notice or any unexpired period thereof (*indemnity in lieu of notice*).

## 9. Mentionable aspects/particularities

Unless dismissals occur for economic, organisational or technical reasons entailing changes in the workforce (*redundancy*), an employee may not be dismissed pursuant to a transfer of a business or other undertaking, whether the business or other undertaking is transferred in whole or in part.

A decision or award of the tribunal may be made retrospectively to a date which is not earlier than the date of such dismissal.

## 10. Managing directors

No specific dismissal rules apply for managing directors.

## 1. Kinds of dismissal

An employment relation shall be terminated:

- by force of law;
- in the general way in which contract are terminated (expiration of term, mutual agreement...);
- by notice of termination of the employment contract by the employer or the employee.

An employment relation shall be terminated by force of law:

- when an employee is entitled to legal pension, unless otherwise agreed between the employer and the employee;
- when an employee has suffered loss of working ability;
- if the employee is forbidden to perform a particular job by law/court order, while it was not possible to assign him/her to perform other jobs;
- if due to serving a prison sentence employee has to be absent from work for a period exceeding six months;
- if the employee must be absent from work for more than six months due to a correctional or protective measure; and
- due to bankruptcy or liquidation, or in all other cases of termination of the employer.

According to the Montenegrin labour law, an employer may terminate the employee's employment contract for just cause, such as:

- unsatisfactory work performance for period at least 30 days, after providing instructions how to improve the work and providing the employee with warning and leaving five working days to respond to the respective warning;

- non-compliance with legal or contractual obligations, after having been warned by the employer and having had time to respond to the warning. In this case, no notice period must be served;
- if employee's behaviour is such that he/she cannot resume work with the employer in legally or contractually foreseen cases, after having been warned by the employer and having had time to respond to the warning. In this case, no notice period must be served;
- if employee refuses to conclude an annex of the employment contract regarding transfer to another job position with the same employer due to the needs of the process and organisation of the work or refuses to conclude an annex of the employment contract regarding work in another location with the same employer;
- if employee refuses to conclude an annex of the employment contract regarding the remuneration - in which case employee is entitled to the severance pay;
- if employee abuses the right to leave due to temporary inability to work;
- economic problems in business - in which case employee is entitled to the severance pay; and
- case of technical-technological or restructured changes due to which the need for employee's work has ceased - in this case employee is entitled to the severance pay and the employer may be obligated to conduct previous procedure with redundancy plan (depending of the number of employees who are considered as redundant). In event that the employer is not obligated to provide redundancy plan, it is obligated to inform employees who are considered as redundant about that fact five days before termination of employment.

Until 30 June 2018, the General Collective agreement provides additional grounds for termination of the employment contract, in which the employer is obligated to previously provide the employee with warning and to leave him/her deadline of five working days to respond to the allegations from warning, as follows:

- if, at the time of establishment of employment or job placement, employee has provided false information relating to the conditions for establishment of employment, i.e. for the performance of other jobs - in which case the employer is obligated to previously provide employee and trade union, whose member is the employee, with written warning that contains the reasons for the cancellation, evidence indicating that the conditions for the cancellation have been met and the deadline for responding to the warning, which cannot be less than five working days counting from the day of delivery of the warning;



- if the employee without the knowledge of the employer, a contrary to the concluded employment contract, violated the rights and obligations in respect of non-competition;
- coming to work drunk, drinking during work or use of narcotics, with the refusal of the appropriate test to determine the facts by qualified persons in accordance with special regulations;
- if employee has violated occupational safety and health regulations and has caused a danger to his/her own or the health of other employees, or more serious injury at work, occupational diseases or work-related illness, after having warned the employee and given time to respond to the warning;
- in other cases determined by a collective bargaining agreement.

In the following additional cases, provided by the General Collective Agreement, the employer can terminate the employment contract immediately, without a notice period:

- unjustified absence from work for more than two working days consecutively, or five working days with interruptions during the calendar year, after having warned the employee and given time to respond to the warning;
- use and disposal of business car, machine and tool for work contrary to the employer's instructions and policy, after having warned the employee and given time to respond to the warning;
- if employee abused the right to absence due to temporary inability to work, and especially if he/she was engaged in employment with another employer for the period of temporary incapacity for work, or if he/she does not submit a temporary employment report to the employer, personally or through another person, within five days from the day of issuing the report, after having warned the employee and given time to respond to the warning;
- violent, insolent or offensive behaviour towards clients or employees;
- if employee without a justified reason does not return to work within two working days upon completion of the unpaid leave or within 30 days from the day of termination of the reason for staying the rights and obligations from work;
- if an employee commits a criminal offence at work or in connection with work.

In case the employee is member of a trade union and is warned by the employer, the employer must submit a warning to the trade union, too, which is further required to give its opinion regarding the warning within five working days.

In event that the employment contract stipulates a trial period, an employee failing in the course of trial period to present corresponding work and professional abilities, shall have his employment relation terminated at the end of the trial period. Exceptionally, during the trial period, each contracting party may unilaterally terminate the employment contract even before the expiration of the period for which the contract was concluded with a written explanation, in accordance with the collective agreement and the employment contract.

## 2. Necessity of reasons for dismissal

An employment contract shall be cancelled by a ruling, i.e. decision, in writing, and shall include the legal basis for termination, the reasons and instructions regarding legal remedy.

The burden to prove the existence of a ground for dismissal by the employer rests on the employer.

## 3. Notice period

An employee has the right and duty to remain at work for at least 30 days from the date of delivery of the decision on termination of the employment contract, in the cases determined by the collective agreement and employment contract.

An employee may, if he/she agrees with the employer's competent authority, stop working even before the expiration of the notice period, in which case he/she is entitled to salary compensation in the amount determined by the collective agreement and the employment contract.

If an employee, upon the employer's request, stops working before the expiry of the notice period, he/she has the right to compensation of earnings and other rights from employment, as if he/she had worked until the expiration of the notice period.

During the notice period the employee has the right to be absent from work for at least four hours a week in order to seek new employment.

If the employee has become temporarily unable to work during the notice period, at his/her request, the notice period will only continue to run after the cessation of the temporary incapacity for work.

## 4. Forms of dismissal

As mentioned under section 2, an employment shall be terminated by a decision in writing and shall include the legal basis for the termination, the reasons and instructions regarding the legal remedy.

## 5. Further requirements for dismissal

In case of termination of the employment relation, an employer shall be bound to pay to the employee all unpaid earnings, compensation of earnings and other income effected by the employee until the day of termination of employment, as well to pay the legally required social security contributions.

The employer is obliged to pay the respective income to the employee before the dismissal is issued.

The employee may request for protection of rights, i.e. payment of the respective income, to the labour inspectorate within 30 days from the day of termination of employment.

## 6. Special dismissal protection

The following shall not be considered as a justified reason for cancelling the employment contract by the employer:

- temporary impediment for work due to illness, accident at work or occupational disease;
- use of maternity leave, i.e. parent leave, absence from work for child care and absence from work due to special child care;
- membership in a political organisation; trade union; difference in the personality of an employee (sex, language, nationality, social origin, religion, political or other belief or any other personal characteristic of an employee);
- activity as a representative of employees, in conformity with the labour law;
- addressing by the employee to the trade union or agencies in charge of protection of employment-related rights, in conformity with the law and the employment contract;
- addressing an employee to the competent state authorities for a reasoned suspicion of corruption or filing a complaint in good faith about that suspicion; and
- addressing or suggesting an employee to the employer or competent state authorities for endangering the environment in relation to the business of the employer.

During the absence from work for the care of a child and use of parental leave, the employer cannot terminate the employment contract.

To an employed woman who has a fixed-term employment contract in the period of use of the right to maternity leave, the period for which the employment contract has been concluded for a fixed-term employment shall be extended until the expiry of the right to maternity leave.

Parent who works half-time due to care for a child with severe disabilities, single parent who has a child under seven years of age or a child with a severe disability, or a person who uses any of the foregoing rights cannot be declared as persons who have been made redundant as a result of the introduction of technological, economic and restructuring changes in accordance with the law.

In addition, a representative of a trade union organisation and a representative of employees, during the performance of trade union activities and six months after the termination of trade union activities, cannot be called for responsibility in connection with the performance of trade union activities, proclaimed as employee for whose work the need has ceased, assigned to another job with the same or another employer, in connection with the performance of trade union activities or otherwise disadvantaged if he/she acts in accordance with the law and the collective agreement.

The employer cannot put in a more favourable or unfavourable position the representatives of the trade union organisation or representatives of employees due to membership in a trade union or his/her trade union activities.

# Myanmar

## 7. Legal means of employees

An employee who is not satisfied with the dismissal has the right to initiate a dispute before the competent court in order to protect his rights, within 15 days from the date of receipt of the dismissal by the employer, and may initiate the procedure before the Agency for the peaceful resolution of labour disputes.

If the court procedure finds that there were no legitimate or justified reasons for the termination of the employment contract, whether the employer prescribed them by its own act or provided them by the employment contract, the employee has the right to return to work, as well as the right to compensation of material and non-pecuniary damage.

If the court procedure determines that an employment contract has been terminated unlawfully or unreasonably, the employee has the right to return to work, as well as to compensation of pecuniary damage in the amount of lost salary and other income that would have been realised in his employment relationship and/or non-pecuniary damage, as well as payment of contributions for compulsory social security.

Compensation for damages shall be reduced for the amount of income that the employee earned under the employment contract with another employer upon termination of employment. If the court proceedings determine that the dismissal resulted in a violation of the rights of personality, honour, reputation and dignity, the employee has the right to compensation for non-pecuniary damage, in line with procedure prescribed by law.

## 8. Severance pay

According to the Montenegrin labour law, an employee is entitled to the severance pay in following cases:

- a retirement severance pay due to retirement in the calendar year in which the bankruptcy proceeding was initiated against the employer, if the right to retirement was realised before the initiation of bankruptcy proceedings – in amount of two minimum net salaries in Montenegro;
- severance pay in case of dismissal due to labour redundancy and other cases of termination of employment by the employer, as indicated under section 1, equal to the employee's monthly average earnings excluding taxes and contributions in the previous semester for each year of work with that employer, or 1/3 of the monthly average salary without taxes and contributions in Montenegro, if this is more favourable for the employee. The respective severance pay cannot be lower than three average monthly earnings excluding taxes and contributions with the employer in the previous half-year, i.e. average monthly earnings excluding taxes and contributions in Montenegro in the previous half-year, if this is more favourable for the employee. Also, the severance pay for an employed person with disabilities shall be determined based on the average salary of the employer, if it is more favourable for such employee. The disabled person who is declared redundant, but has not been granted any of the rights provided for the programme on redundancy, is entitled to the severance pay:
  - at least in the amount of 24 average salaries, if the disability is caused by injuries or illness out of employment;
  - at least in the amount of 36 average salaries, if the disability is caused by an injury at work or professional illness.

## 9. Managing directors

The director's employment, shall be terminated by the expiration of the time of his/her mandate, unless otherwise provided by a special law, if he/she is not re-elected or he/she was relieved of such duty.

**NOTE:** It should be borne in mind that certain issues, and in particular, but not limited to the severance issue, can be elaborated or more favourably regulated by the branch collective agreement, if it exists for the particular employer or by the general act of the employer, i.e. collective agreement.



## 2. Necessity of reasons for dismissal

Starting from 1 September 2017, under the Employment Contract prescribed by the Ministry of Labour, the employer may terminate the employee in the event of dismissal with economic reasons or individual reasons in accordance with the applicable labour laws. However, the employees may not be dismissed in contravention of provisions of law and regulations. In the event of dismissal for serious cause, the employer is not obliged to give written notice stating reasons for termination. A serious cause is a breach that immediately and definitively makes any further cooperation between the employer and the employee impossible (examples: gross misconduct, fraud, continuous negligence, etc.).

## 3. Notice period

According to the Employment Contract described above, the employer may terminate the employment by giving at least one month's prior notice in the event of dismissal for economic reasons or without reason and pay the severance payment to the employee.

The employer must pay all payable salary within two working days from the date of termination.

If the employer terminates the employment contract without notice, the employee is entitled to an indemnity in lieu of notice, which is calculated on the employee's last salary (i.e. employee's fixed monthly salary) with the severance payment calculated based on the continuous employment period of the employee as set out in the table below.

## 1. Kinds of dismissal

An employment contract for an indefinite period can be terminated by the employer at any time by either giving a notice period (အဖျက်ကာလပေးခြင်း), either by paying an indemnity in lieu of notice (အဖျက်ကာလပေးခြင်းအား ပေးသည့် ခေ့ဖျက်မှု) in which case the contract is terminated with immediate effect.

An employer can also terminate an employment contract without a notice period or indemnity in lieu of notice, in the event of 'serious cause' (dismissal for serious cause) (ဗဟို ခေ့ဘေးပြုမှုမှ ဘေးဖျက်မှုနှင့် အပူ ထုတ်ပယ်မှု)။

## 4. Forms of dismissal

Notice must be given in writing in Burmese. It must state the effective date and the duration of the notice period.

In case of the employer terminates the employment contract with immediate effect with the payment of an indemnity in lieu of notice, there are no specific formalities.

# Norway

## 5. Further requirements for dismissal

In case of dismissal for serious cause, the Employment Contract may be terminated by the employer. In such case, the employer or a person on his behalf shall sign the office order to the employee and keep records with reasons for termination. The employer is responsible for all matters regarding the termination or dismissal of the employee.

## 6. Severance pay

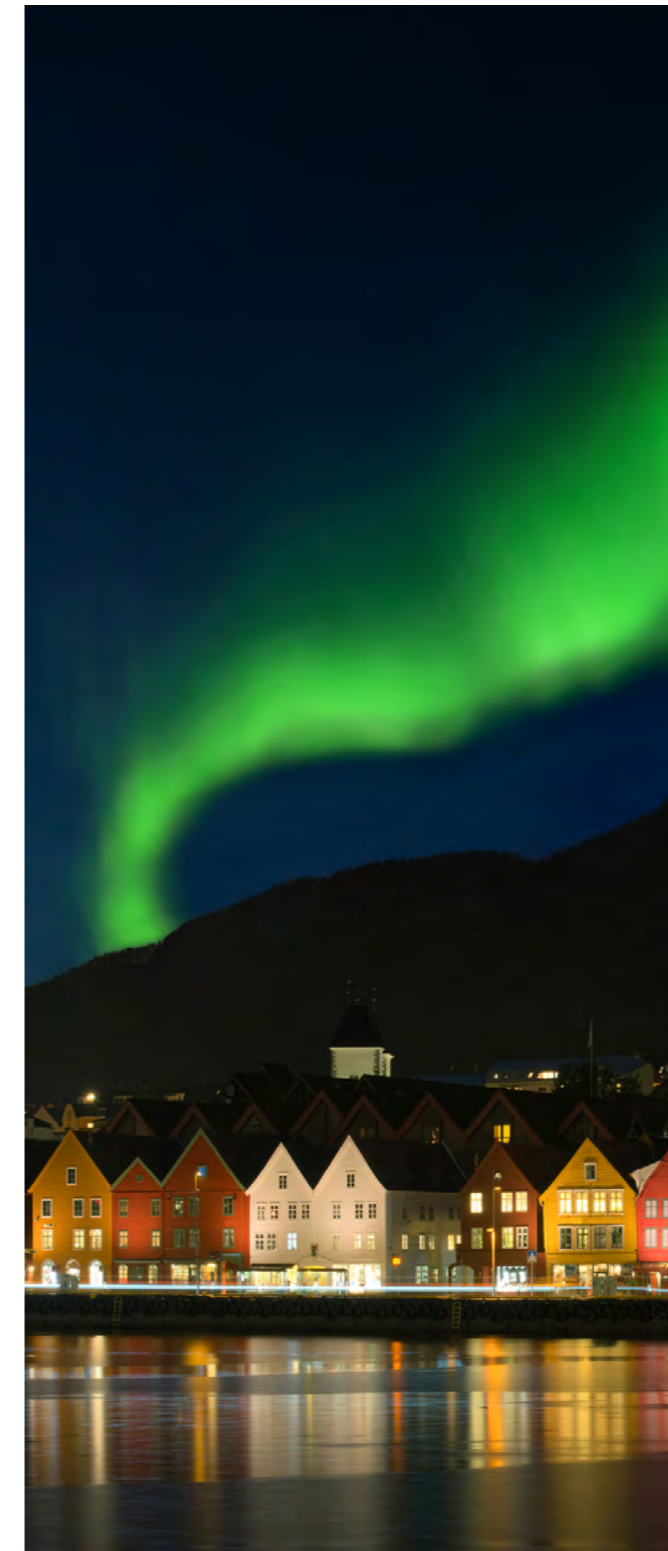
According to the laws of Myanmar, the Union Minister regulates the severance payment rates.

The severance pay is calculated based on the employee's last salary and his seniority as follows:

Seniority	Severance pay
6 months < 1 year	0.5 month's remuneration
1 < 2 years	1 month's remuneration
2 < 3 years	1.5 months' remuneration
3 < 4 years	3 months' remuneration
4 < 6 years	4 months' remuneration
6 < 8 years	5 months' remuneration
8 < 10 years	6 months' remuneration
10 < 20 years	8 months' remuneration
20 < 25 years	10 months' remuneration
As of 25 years	13 months' remuneration

## 7. Managing directors

No specific dismissal rules apply for managing directors (အမှုဆောင်ဒါရိုက်တာ) in so far they are bound by an employment contract. A substantial part of managing directors are, however, bound to the company with a service agreement, in which case they are considered to be self-employed as a result of which the labour code and thus the above-mentioned dismissal rules do not apply. In this case, the contractually agreed termination modalities will apply.



## 1. Kinds of dismissal

In accordance with the Norwegian labour law there are two kinds of dismissals; ordinary dismissals (*oppsigelse*) and dismissals for serious cause (*avskjed*). These two kinds differ substantially, both in relation to the reasons for dismissal, the notice period (*oppsigelsesfrist*) and the dismissal protection for the employee.

## 2. Necessity of reasons for dismissal

An objective reason is required, and fundamental, to dismiss an employee in Norway.

An ordinary dismissal may be objectively justified if it is based on circumstances related to the undertaking, the employer or the employee. An objective reason could be the financial situation in the undertaking and restructuring of the company (dismissal for economic reasons). An employee's underperformance or disloyalty etc. may also be considered as valid and justified reasons for dismissal (dismissal for individual reasons).

The employer may dismiss an employee for serious cause with immediate effect if he/she is guilty of a gross breach of duty or other serious breaches of the employment contract.

## 3. Notice periods

Seniority	Notice given by employer
< 5 years	1 month
5 < 10 years	2 months
As of 10 years	3 months 4 months (if older than 50) 5 months (if older than 55) 6 months (if older than 60)

The notice period runs from the first day of the month following the month in which notice is given.

One may agree upon a trial period of up to six months. The agreement must be in writing. During the trial period, the notice period can as a minimum be 14 days. Notice period during trial period runs from the day the employee receives the termination letter.

During the notice period the employee is entitled to ordinary salary. Furthermore, the employee is entitled to perform work throughout the notice period. If the employer refuses the employee to perform any work, the dismissal may be seen as a dismissal for serious cause, which requires gross misconduct from the employee.

In case of a dismissal for serious cause, no notice period has to be served, due to the extraordinary situation constituting the reasons for the dismissal.

#### 4. Form of dismissal

Any dismissal has to be in writing, and shall include specific formalities and information. A dismissal which does not fulfil the specific requirements and formalities is not valid and can be considered as void.

#### 5. Further requirements for a valid dismissal

There are several requirements needed for a dismissal to be valid. Some of these requirements are listed in the following:

- A dismissal must be given in writing (c.f. above).
- A dismissal given by an employer must be delivered to the employee in person or be forwarded by registered mail to the employee's (home) address. The notice shall be deemed to have been given when it is received by the employee. The notice letter must mention:
  - the employee's right to demand negotiations and to institute legal proceedings,
  - the employee's right to remain in his post during any negotiation or dispute,
  - the time limits applicable for requesting negotiations, instituting legal proceedings and remaining in the post, and
  - the name of the employer and the appropriate defendant in the event of legal proceedings.
- if the employee has been dismissed due to circumstances relating to the undertaking, the notice must also contain information concerning preferential rights of new employment in the same undertaking.

The employee is entitled to require that the employer states the reasons for the dismissal. The employee may demand that such information is given in writing. A dismissal shall as a main rule be discussed with the employee before a final decision is made by the employer, and any breach of this provision will be taken into account when considering whether a dismissal is lawfully justified.

#### 6. Special dismissal protection

A special protection against dismissal exists for certain groups of employees such as:

- employees during sick leave
- employees during pregnancy or maternity leave
- employees during military service, etc.

The law does not provide for a special protection for employee representatives/union delegates. It is common that collective bargaining agreements contain provisions regarding the dismissal protection for this group of employees.

#### 7. Legal means of the employees

An employee who wishes to claim that an ordinary dismissal or a dismissal for serious cause is unlawful may request negotiations with the employer by sending written notification to the employer within two weeks after the notice is given.

The employee can institute legal proceedings due to unfair or invalid dismissal within eight weeks after the negotiations are finalised or eight weeks after dismissal is given if negotiations have not been held. If the claim of the employee is limited to obtaining financial indemnification, the claim should be raised within six months after the dismissal is given. If the formalities for a valid dismissal is not fulfilled, there are no time limits for legal proceedings.

In the event of a dispute or legal proceedings concerning the termination of the employment contract, the employee may in general remain in his post as long as the negotiations are in progress. This however only applies when it comes to ordinary dismissals.

#### 8. Severance pay

The employee is entitled to ordinary salary during the notice period.

If legal proceedings are instituted within the time limits set out above, an employee has in general the right to remain in his post and receive salary until the court has made a decision. A legal proceeding may take up to 10 months, and the employer is, as a general rule, obliged to remunerate the employee during the whole period.

The employee's right to remain in his post does not apply to disputes concerning dismissals for serious cause, dismissals during trial periods or dismissals of contract workers or temporary employees.

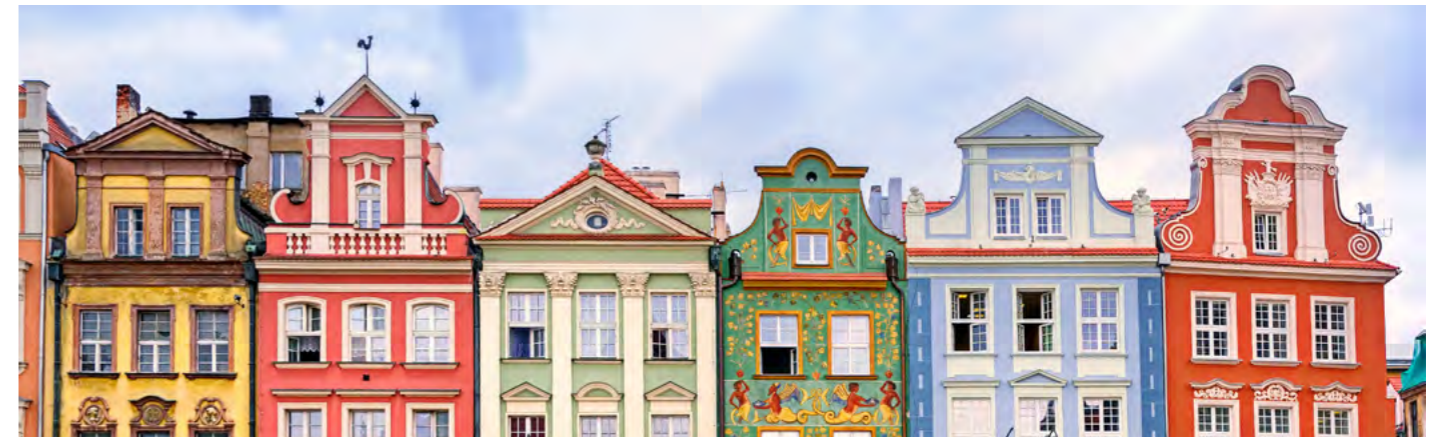
#### 9. Mentionable aspects/particularities

None

#### 10. Managing directors

The legal provisions concerning dismissals shall not apply to the managing director (*Virksomhetens øverste leder*) of the undertaking if he/she has waived the application of these provisions in a prior written agreement in exchange for compensation upon termination of the employment. Such agreement is binding both for the employer and the employee. Without such agreement, the legal provisions concerning dismissals will apply. The parties may however come to an agreement of termination if both parties agree. It is then common to agree on a severance pay (*sluttpakke*).

# Poland



#### 1. Kinds of dismissal

According to Polish labour law, there are two kinds of dismissal, ordinary dismissal (i.e. with a notice period) and dismissal without a notice period, including dismissal for serious cause. These two kinds differ as regards the reasons for dismissal, notice period, protection and legal means the employees have against the dismissal.

#### 2. Necessity of reasons for dismissal

Reasons for ordinary dismissal must be given only in case of terminating the contract concluded for an indefinite period. The reasons have to be real and concrete.

Reasons justifying termination of contract may be related to the employee (dismissal for individual reasons) or the employer (dismissal for economic reasons) (in the latter case, for instance, economical, technological, organisational or operational reasons).

Dismissal without notice for serious cause is allowed when the employee seriously violates his basic duties or within the period of validity of the employment contract commits an offence, which makes his further employment on the occupied post impossible (the offence must be evident or established by a valid judgment).

Moreover, in the following cases the employee can be dismissed without a notice period:

- the employee - due to his own fault – loses qualifications necessary for the performance of duties connected with his post.
- the employee's incapacity to work due to illness if:
  - the incapacity lasted for more than three months (if the employee has a seniority of less than six months), or
  - the incapacity lasted longer than the combined period of receiving remuneration and welfare benefits (for the case of illness) and the period of receiving rehabilitation benefits (the

latter period is limited to the first three months of receiving the rehabilitation benefits),(if the employee has a seniority of at least six months or if the incapacity to work was caused by an accident at work or by an occupational disease),

- justified absence of the employee from work due to reasons other than those enumerated above lasting for a period longer than one month.

Dismissal without a notice period must be accompanied by a statement of reasons.

#### 3. Notice period

In case of ordinary dismissal an appropriate notice period has to be complied with. Notice periods are regulated by law and they depend on the seniority and kind of employment contract. The notice period in case of an employment contract for an indefinite period and an employment contract for a definite period is:

- two weeks (if the employee has a seniority of less than six months),
- one month (if the employee has a seniority of at least six months) and
- three months (if the employee has a seniority of at least three years). In the circumstances when the employment contract concluded for indefinite period of time is terminated due to declaring the bankruptcy of the employer, liquidating the employer or by virtue of other reasons that do not concern the employees, it is possible to reduce the three-month notice period to one month with employee's right to indemnity in lieu of notice.

During the notice period the employee may be released by the employer from the obligation to perform work with the right to receive a regular salary. Such release may concern the whole notice period or only a part of it.

Specific rules apply in case of termination during the trial period. In case of dismissal for serious cause, there is no notice period to be followed. However, in order to dismiss the employee, a certain procedure has to be followed (described in the preceding and following paragraphs).

#### 4. Form of dismissal

All dismissals have to be made in written form. In case of dismissal of an employee employed on the basis of an employment contract for an indefinite period and in case of a dismissal for serious cause, the employer is obliged to state the reason for the dismissal.

From the point of view of reasons for dismissal, it can be generally divided into two groups, meaning the dismissals for individual reasons concerning the particular employee (e.g. the employee is not meeting the expectations of employer) or for reasons not concerning the employee - also known as 'economic reasons' (e.g. bankruptcy of employer, liquidation of employer, reorganisation implying liquidation of a work post).

The information regarding the employee's right to appeal to a labour court must be included in the notice of dismissal.

#### 5. Further requirements for a valid dismissal

In case of termination of an employment contract for an indefinite period with notice period, the employer shall inform in writing the trade union organisation representing the employee about his intention to dismiss the employee together with the underlying reasons.

In case of dismissal for serious cause, the employer has the right to dismiss the employee without a notice period due to the fault of this employee, within one month from the moment on which the employer obtains information about the circumstances justifying the dismissal for serious cause. In addition, the employer who wishes to dismiss the employee without a notice period due to the employee's fault is obliged to obtain an opinion from the establishment's trade union organisation representing the employee (if any), prior to making the final decision regarding dismissal.

#### 6. Special dismissal protection

In accordance with Polish labour law, special protection against dismissal is granted to certain groups of employees. The justification for such special regime lays either in the specific situation of such employees or in special functions that they hold.

The first group of protected employees covers in particular:

- those who will reach retirement age in no more than four years, if their period of employment allows them to acquire the right to retirement pension upon reaching such age,
- employees during leave or during justified absence from work (unless the absence exceeded statutory limits allowing the employer to dismiss the employee without notice, cp. section 2),
- employees during pregnancy and maternity leave, and
- employees during parental leave.

The second group covers, for instance, employees conscripted into military service or employees who are members of a trade union existing in employer's establishment entitled to represent employees' interests or members of the employees' council. In general, the dismissal of the aforementioned groups of employees is only allowed in very specific circumstances or after following a specific procedure.

#### 7. Legal means of the employees

The employee may appeal against dismissal to a labour court, within 21 days from the delivery of the notice of termination. As a result, in case of ordinary dismissal, if it is determined that notice of termination is unjustified or that it is contrary to the provisions on termination of employment contracts (unlawful ordinary dismissal), the labour court, according to the request of the employee, will reinstate him/her to work on former conditions or award compensation.

In some cases the employee is entitled only to compensation. This is the case when the unlawful termination concerns the contract concluded for a trial period or, with some exceptions, for definite period.

In case of a dismissal for serious cause executed in violation of the provisions on terminating employment contract (unlawful dismissal for serious cause), the employees are entitled to claim reinstatement in work on previous conditions or compensation which shall be ordered by labour court.

However, when the employee employed on the basis of an employment contract concluded for a definite period, is dismissed in violation of the provisions on terminating employment contract without notice and the period of the contract has lapsed or the reinstatement is without purpose because the remaining period of contract is short, such employee is entitled to compensation only. The same rule applies when the employee had been dismissed in an ordinary way (ordinary dismissal) and subsequently during the notice period the employer in violation of law dismissed the employee without notice (dismissal for serious cause).

In both cases, the labour court may decide on rejecting the employee's request to reinstate him to work, if it determines that such claim is impossible or without purpose. In such situation, the labour court shall award compensation.

#### 8. Severance pay

In some cases, prescribed by law, the employer shall pay severance to the dismissed employee. The amount of severance pay (*odprawa pieniężna*) depends on the employee's seniority and is as follows:

Seniority	Minimum statutory severance pay
< 2 years	1 monthly salary
2 < 8 years	2 months' salary
More than 8 years	3 months' salary

The manner of calculation of the severance pay is determined by specific regulations, but as a rule bonuses paid out in the applicable reference period are reflected in the calculation of the severance payment. The amount of statutory severance pay cannot exceed equivalent of 15 times statutory minimum salary (in 2017 it is therefore capped at PLN30,000 [approx. EUR7,000], but the cap changes each year due to changes in statutory minimum salary). In practice, the maximum cap can be abolished in the collective bargaining agreement, internal regulations or agreement with the employee.

Under Polish legislation, the statutory severance shall be paid to the employees in individual cases when the employer who terminates the employment contract hires at least 20 employees and the dismissals are justified solely by reasons not attributable to employee(s).

#### 9. Mentionable aspects/particularities

Special rules and procedures apply in case of collective redundancies (i.e. collective dismissals).

#### 10. Managing directors

No specific dismissal rules apply for managing directors (*kadra zarządząca*). In practice established as a result of court judgments, the requirements regarding the reasons for dismissal are less stringent in case of an employee fulfilling managerial functions (e.g. the reason may be the loss of confidence in the employee). Further, managing directors are also frequently granted additional contractual privileges applicable for dismissal, e.g. longer notice period or additional (voluntary) severance payment.

# Portugal



## 1. Kinds of dismissal

According to the Portuguese law an employment contract can be terminated upon the will of the employer, the employee or both. Based on the legislation currently in force, an individual employment contract for an indefinite period can be terminated by the employer on the following grounds:

- For serious cause; or
- Unfit for the role; or
- Extinction of the role; or
- Collective dismissal.

## 2. Necessity of reasons for dismissal

Reasons for dismissal of an employee are those provided by the Portuguese labour code and vary upon the type of dismissal:

### Dismissal for serious cause:

- Disobedience to one's hierarchic superior;
- Violation of rights and warranties of the company's workers;
- Repeated conflicts between workers;
- Continuous disregard of mandatory rules applicable to the role;
- Five continued non-justified absences or 10 interpolated absences during the same year;
- Noncompliance with safety and health rules at the work site;
- Physical violence against co-workers, board members or employers;
- Holding co-workers, board members or employers as hostages;

- Noncompliance with judicial or administrative ruling; and
- Abnormal reductions of productivity.

All of the above situations imply a disciplinary process which will determine the termination of the contract.

### Dismissal because employee is unfit for the role

Unfitness to perform the role is based on continuous reduction of productivity and quality, continuously breaking down the equipment used to perform the role, safety and security hazards or, in case of leadership/advance technical function, failure to meet the agreed goals.

### Dismissal because of extinction of the role/Collective dismissal

These types of dismissal are based on economic reasons related to market conditions (reduction of the company's activity as foreseen in the demand for its goods/services or impossibility, whether practical or legal to sell those goods and services in the market), economic structural problems (financial imbalance, change of core business, structural reorganisation of the company or substitution of dominant products), and technological changes (new production methods, including automation and/or robotisation of processes). The reasons indicated for dismissal cannot be attributed to the employer or the employee.

## 3. Notice periods

Portuguese law does not provide for notice periods to be observed by the employer when dismissing an employee.

## 4. Form of dismissal

The periods applicable to communicate the dismissal of an employee vary with the kind of dismissal and/or type of employment contract:

### End of contract:

- In the case of a contract without term the employer cannot dismiss the employee unless by mutual agreement between parties or in cases of termination for serious cause, unfitness for the role or extinction of the role/collective dismissal.
- In case of a contract with term, the employer must notify the employee 15 days before the contract's expiry date.

### For serious cause:

- In case of termination for serious cause, the employer has 60 days as of acknowledging of the facts, to issue a written notification to the employee. Nevertheless, the facts must have occurred within the last 12 months.

### Unfit for the role:

- The employer must notify the employee in writing, identifying the reason for the dismissal. Once all relevant parties have presented their arguments, the employer is entitled to terminate the contract within 30 days. If he doesn't, the contract may not be terminated using this argument.

### Extinction of the role/Collective dismissal:

- The employer must notify the employee or the employees' representatives in writing and identifying the reasons for the dismissal. Once all relevant parties have presented their arguments, the employer will have five days to decide. And the decision must be communicated 15 to 75 days before the end of the contract, depending on the employee's seniority.

## 5. Further requirements for a valid dismissal

Apart from the timely notification and depending on the type of dismissal, further requirements are to be observed in order for the dismissal to be valid.

### For serious cause:

- The employee has a right to counter argue the employer's assessment and is legally entitled to issue a formal reply within 10 days after the inquiry has been concluded.
- Afterwards the employee may present up to 10 witnesses to the employer to refute the assessment made.
- Once this process is concluded, the employer has 30 days to decide on the dismissal.
- Provided that no witnesses are brought up by the employee, the employer can only decide on the dismissal after five days counting from the opinion issued by the employee's workers commission or trade union.
- The final decision must be written and copies must be sent to the employee and to his representatives (workers' commission or trade union).
- The effectiveness of dismissal occurs when the employee gets the written statement from the employer.

### Unfit for the role:

- Prior to issuing the notice the employer must have provided the employee with formal training for his role and a 30 day trial period.
- In cases of unfitness to perform a role, the employee and his representatives (workers' commission or trade union) have 10 days to counter argue the notification.
- The employer has five days after receiving the arguments for no dismissal to issue his final decision.

### Extinction of the role/Collective dismissal:

- Dismissal can only occur when it is impossible to maintain the labour agreement; and
- There are no workers with fixed term labour contracts that will continue to perform similar roles.

## 6. Special dismissal protection

There are special protections against dismissal for, amongst others, pregnant employees, employees on maternity/paternity leave, employee representatives/union delegates.

## 7. Legal means of the employees

Any other form of dismissal than those mentioned above or that does not follow the rules determined by the Portuguese labour code is not valid and be contested in court.

## 8. Severance pay

The rules pertaining to the severance pay (*compensação por despedimento*) are the same to all kinds of dismissal, except for those which qualify as termination for serious cause in which case no severance is due to the employee.

The severance pay, applicable to contracts signed as of 1 October 2013 onwards, generally corresponds to 12 days of base salary (plus seniority payments) for each full year of seniority, however;

- The amount of the base salary (plus seniority payments) cannot exceed 20 times the minimum guaranteed monthly wage and;
- The global severance payment cannot exceed 12 times the monthly base salary (plus seniority payments), i.e. it cannot exceed 240 times the minimum guaranteed monthly wage and;
- The daily wage (plus seniority payments) is computed by dividing that monthly wage (plus seniority payments) by 30; or
- In case of fraction of a year, the severance is calculated proportionately.

Different rules apply to employment contracts signed before 1 October 2013 regarding the height of the severance pay.

## 9. Mentionable aspects/particularities

Personal income tax will only be due on the part of the severance pay that exceeds the average regular taxable income received in the 12 months prior to the dismissal, multiplied by the number of years or fraction of seniority in the company. If lower, the severance payment will not be liable to taxation in Portugal.

The severance arising from the termination of duties agreement will be fully taxed if, in the following 24 months after the termination of duties the assignee establishes a new professional or business link with the same entity or entity within the same group.

Severance payments are also fully liable to taxation if the employee received, in the last five years, a severance payment due to another dismissal, either fully or partially exempt from taxation. Social security contributions are due on the part that exceeds the amount foreseen by law.

## 10. Managing directors

No specific dismissal rules apply for managing directors.

# Romania

## 1. Kinds of dismissal

According to the Romanian labour code, there are two kinds of dismissal:

- dismissal for individual reasons;
- dismissal for economic reasons.

## 2. Reasons for dismissal

Employers may dismiss employees only in cases expressly regulated under the law, as follows:

### Dismissal for disciplinary reasons:

- disciplinary dismissal (*concediere disciplinară*): i.e. due to the employee's violation of disciplinary rules (serious or repeated disciplinary offence), rules set forth in the individual employment agreement, applicable collective bargaining agreement(s) or internal regulations;
- preventive custody or house arrest exceeding 30 days under the terms of the Romanian Criminal Procedure Code;
- physical and/or mental unfitness ascertained through decision of the competent medical body, which prevents the employee from fulfilling the duties corresponding to his/her job description;
- professional unfitness: i.e. the employee's lack of professional skills for the position held.

### Dismissal for economic reasons (i.e. suppression of job position (*desființarea locului de muncă*)):

In order to ground a dismissal decision on this reason, the suppression of the job position shall

- be effective, i.e. the respective job position is suppressed from the company's organisation chart, and
- have a real and serious cause, i.e. the cause has an objective nature, being triggered by obvious necessities regarding the improvement of the company's activity and it does not dissimulate reality.

Depending on the number of dismissed employees and the total number of the company's employees, dismissals for economic reasons can be either individual or collective.

## 3. Termination notice periods

In case of dismissal, the employer has the obligation to grant a notice period (*termen de preaviz*) to the dismissed employee of at least 20 working days. By way of exception, the law does not require granting employees the notice period in cases where the dismissal is grounded on disciplinary reasons or due to the fact the employee is held in preventive custody/house arrest for a period exceeding 30 days,

In addition, the employer may at any time terminate the employment contract, with no prior notice, during or before the end of the trial period.

## 4. Form of dismissal decision

Under the sanction of absolute nullity, the dismissal decision shall be communicated to the employee in writing and shall contain:

- in all cases:
  - the legal and factual reasons of the dismissal;
  - the duration of the notice period, if applicable and
  - the term in which the dismissal decision may be challenged and the court of law in front of which it shall be challenged;
- in case of dismissals for
  - physical and/or mental inaptitude and
  - professional unfitness: the list of all vacant positions available within the company and the term within which the employees may express their consent for occupying one of the respective vacant positions; should the employer have no vacant positions to offer, he/she has the obligation to seek assistance within the territorial employment agency.
- in case of disciplinary dismissal:
  - the description of the employee's misconduct;
  - the provisions of the employer's internal regulations, individual employment contract, applicable collective bargaining agreement breached by the employee;
  - the reasons for which the employee's defence during the prior disciplinary investigation was overruled, or the reasons for which the said investigation was not performed;
  - the legal grounds based on which the disciplinary sanction has been established.



## 5. Further requirements for a valid dismissal

Under the sanction of absolute nullity, in certain specific cases, the dismissal decision shall be issued with observance of the following additional aspects:

### In case of an employee's disciplinary departure, a prior disciplinary investigation shall be performed before issuing the dismissal decision, consisting of:

- the appointment of a person/commission to effectively conduct the prior disciplinary investigation, who shall summon the employee, in writing, stating the scope, date, time and place of the meeting;
- during the prior disciplinary investigation, the employee is entitled to submit and use all evidence in his/her defence and offer all the evidence and motivations he/she deems appropriate, and also the right to be assisted, at his/her request, by a representative of the trade union he/she belongs to;
- the employee's failure to attend the meeting, without an objective reason, entitles the employer to decide on the sanction, without further proceeding with the prior disciplinary investigation.
- the outcome of the prior disciplinary investigation may lead to the termination of the employment contract.

The dismissal decision shall be issued within 30 calendar days from the date of taking note of the employee's disciplinary misconduct, but not later than six months from the date the respective act was committed.

### In case of an employee's professional non-compliance, a prior evaluation procedure shall be performed before issuing the dismissal decision.

The prior evaluation procedure shall be settled in the applicable collective bargaining agreement or, in its absence, in the company's internal regulations.

The dismissal decision shall be issued within 30 calendar days from the date of ascertaining the cause of dismissal.

### In case of collective dismissals, a specific, distinctly regulated procedure shall be followed.

# Russia

## 6. Special dismissal protection

Employers should take into account that employers are precluded from dismissing the employees:

- on grounds of gender, sexual orientation, genetic characteristics, age, national origin, race, colour, ethnicity, religion, political option, social origin, disability, family status or responsibility, trade union membership or activity;
- on the ground of the employee exercising, in accordance with the law, his/her right to strike and trade union rights.

In addition, the law also regulates specific temporary prohibitions against dismissal, with the aim of protecting employees, namely

- during temporary work incapacity, ascertained through a medical certificate according to the law;

- during the suspension of the activity, following the initiation of quarantine;
- during pregnancy of the employee, as long as the employer took note of this fact before the issuance of the dismissal decision;
- during the maternity leave;
- during the parental leave for raising a child up to the age of two years or, in case of a disabled child, up to the age of three years;
- during the leave for looking after a sick child up to the age of seven years or, in case of a disabled child, for successive illnesses, until the age of 18 years;
- during the rest leave.

## 7. Legal means of the employees

The employee is entitled to challenge before the competent courts of law the employer's dismissal decision within 45 calendar days from the date of its communication. By way of exception, in case of dismissal for disciplinary reasons, the term of appeal is of 30 days, running from the date the dismissal decision was communicated to the employee. Should the dismissal decision be declared unlawful, the court shall order its cancellation and oblige the employer to pay damages to the employee, representing the salaries he would have been entitled to calculated from the date the dismissal started to produce effects until

- the court decision remains final or
- the employee is reinstated in the position held prior to the dismissal,

as well as other rights the employee would have been entitled to under the employment agreement had he not been unlawfully dismissed.

Upon the employee's request, the court which ordered the cancellation of the dismissal shall reinstate the employee in the position held prior to the issuance of the dismissal decision. In addition, if the court of law construes that the sanction applied (i.e. dismissal for disciplinary reasons) is disproportionate in relation to the misconduct committed by the employee, it may replace this sanction with a milder one.

## 8. Severance pay

Under Romanian labour law there is no minimum level of mandatory severance pay (*compensație pentru concediere*) in case of dismissal. There are rather general indications as to the conditions under which such payment may be granted.

In case of dismissal for physical and/or mental unfitness, the employer has the obligation to grant the dismissed employee a severance payment under the conditions set forth in the individual employment agreement or the applicable collective bargaining agreement.

The employees dismissed for economic reasons benefit from active measures for combatting unemployment and can benefit from severance pay under the conditions set forth in the law and the applicable collective bargaining agreement.

The severance pay shall always be granted in addition to the up-to-date rights to which the employee is entitled under the employment agreement.

## 9. Mentionable aspects/particularities

None

## 10. Managing directors

No specific dismissal rules apply for managing directors (*Directori Generali*).

## 1. Kinds of dismissal

In accordance with the Russian labour legislation, there are several types of grounds for termination of an employment contract:

- Termination of the employment contract at the employee's initiative
- Termination of the employment contract upon mutual agreement between the employer and the employee
- Termination of the employment contract due to circumstances beyond the parties' control
- Termination of the employment contract at the employer's initiative (dismissal)
- Other reasons for termination of the employment contract

## 2. Necessity of reasons for dismissal

- The following reasons for dismissal exist: liquidation of the company; staff reduction; unsuitability of the employee for his/her position or for the tasks which need to be performed (due to insufficient qualifications, confirmed by the results of an attestation); change of the company's owner (only applicable to the head of the company, deputy heads of the company, and to the chief accountant); repeated failure by the employee to perform his/her duties without good cause, provided that such employee has been disciplined; single gross violation by the employee of his/her duties, such as, in particular:
  - absence at work without good cause for over four consecutive hours within a working day;
  - alcoholic, narcotic, or other toxic intoxication at work;-- disclosure of the secret protected by the law (state, commercial, service and other) that became available to the employee as a result of execution of his/her labour responsibilities, including the divulgence of personal data of another employee; theft at the place of work (including petty theft) of others' property and the misappropriation and intentional destruction or impairment of such property where these acts have been established by a court verdict or a ruling of a judge, body or official authorised to examine administrative offence cases which has entered into legal force;
  - a violation of labour protection requirements by the employee which has been established by a labour protection commission or a labour protection agent if that violation has resulted in grave consequences (an industrial accident, breakdown or disaster) or was known to create a threat of the occurrence of such consequences;
- culpable acts committed by an employee directly in charge of funds or goods, if these actions provide grounds for the employer to lose confidence in such employee;
- failure to take measures by the employee on conflict of interest prevention or its settlement, failure to provide or provision of incomplete or false information on income, expenses, property



and obligations of property nature with regard to the employee, his/her spouse and infants, information on opening accounts in foreign banks, storage of cash and valuables in foreign banks, possession and (or) usage of foreign financial instruments by the employee, his/her spouse and infants in cases prescribed by the Russian legislation, if these actions provide grounds for the employer to lose confidence in such employee; commission of an immoral offence incompatible with the labour duties, if performed by an employee performing educational functions; unjustified decision by the head of the branch, his/her deputies or the chief accountant, that resulted in damage to the property, its unlawful use, or other detriment to the property of the company; single gross violation committed by the head of the branch or his/her deputies of their labour responsibilities; presentation of false documents or information known to be false to the employer at the conclusion of the employment



contract; in instances envisaged by the employment agreement with the director of an organisation and members of a collective management body of an organisation;

- in other cases stipulated by the labour code and other federal laws.

### 3. Notice period

The effective Russian legislation stipulates different notice periods (*сроки уведомления*) for different grounds for termination of the employment contract at the employer's initiative, in particular:

- In the event an employment contract is terminated due to staff redundancy or liquidation of the company, the employees must be personally notified of such termination not less than two months prior to actual termination against written receipt. Upon the employee's written consent the employer can terminate the employment contract for the foregoing reasons without a two month notification provided that the employee is paid additional compensation equal to the employee's average salary calculated in proportion to the time remaining until the expiry of the redundancy notice period. In the event that a fixed term employment contract concluded for a period under two months is terminated at the employer's initiative, the employer should notify the employee of the contract's termination three days prior to the termination. During the trial period (*испытательный срок*) the employment contract can be terminated at the employer's initiative for reasons of unsatisfactory employee's performance with a three-day written notice to the employee, specifying the reasons of unsatisfactory results.

### 4. Form of dismissal

The notice of dismissal of an employee is valid only if it is made in writing, and countersigned by the employee as proof of reception. However, Russian legislation does not contain any particular requirements for such a document (i.e. no special form is prescribed by the law). The termination of an employment contract (dismissal) shall be formalised by an order (instruction) of the employer. On the day of dismissal, the employer is obliged to issue the employee his/her work record book and other employment-related documents and to make a final settlement with him/her.

### 5. Further requirements for a valid dismissal

There are some additional legislative requirements providing additional obligations for the employer with regard to certain types of dismissal, e.g.:

- In case of staff reduction the employer shall offer the employee another position relevant to the employee's qualifications (should there be any suitable vacant positions within the company).

- In the event that an employment contract is terminated due to staff reduction or liquidation of the company, the employees must be personally notified of such termination not less than two months prior to the actual termination against written receipt. In case of termination of an employment contract for the reason of unsuitability of the employee for his/her position due to insufficient qualification, the lack of qualification needs to be confirmed by the attestation committee, specifically formed in the company for such purpose.

### 6. Special dismissal protection

The dismissal at the employer's initiative is not allowed (except in case of liquidation of the company) during the employee's temporary disability (sick leave) and during the employee's vacation. In some cases (for example, dismissal due to staff reduction or due to unsuitability of the employee for his/her position or for the works which need to be performed), the employer has to offer a vacant job (position) in the company or its separate subdivisions.

Besides the particularities mentioned above, a special protection against dismissal exists for certain groups of employees.

An employment contract can be terminated for such reasons as staff reduction and unsuitability of the employee for the position due to insufficient qualifications, only if the employee cannot be transferred to another position upon his/her consent. Moreover, in the events of staff reduction the following equally skilled employees shall retain employment:

- those having families with two or more dependants (disabled family members totally supported by the employee or receiving assistance from him/her, which is the main source of their means of subsistence);
- the only independent earners in the families;
- employees who sustained severe labour injury or professional disease in the company;
- people disabled during the Second World War or in State defence actions;
- employees undergoing on-the-job professional development upon the employer's direction.

Employment contracts with pregnant women cannot be terminated at the employer's initiative in any cases other than liquidation of the company.

Employment contracts with women having children under three years old, single mothers having children under 14 years old (in case of the child's disability – under 18 years old) or other custodians in the absence of a mother cannot be terminated at the employer's initiative except for the particular reasons stated in the Russian legislation.

An employment contract with the employee under 18 years old can be terminated upon the employer's initiative only upon consent of the State Labour Inspectorate and the Commission for Protections of the Minors (except for the case of liquidation of the company).

### 7. Legal means of the employees

If the dismissal was not allowed or the employer has breached the rules for a particular case of dismissal and obligatory prerequisites (i.e. notification period) were not observed and fulfilled, the employee may file a lawsuit within one month the date of dismissal and claim that the dismissal was not valid. In this case, the employer has to prove that all obligatory requirements of the dismissal have been met. In case the prerequisites were not fulfilled, the employment contract shall be recovered and the employee has the right to be reinstated. Moreover, the employer who has violated the required procedures of dismissal will have to pay a compensation reimbursing the period of forced absence at work.

### 8. Severance pay

In accordance with the Russian legislation the employer has to pay severance pay (*выходное пособие*) equal to one average monthly salary in case of dismissal at the initiative of the employer due to staff reduction or liquidation of the company, unless a higher amount has been agreed in the employment contract. Moreover, in these cases of dismissal the employer is also obliged to pay to the employee his/her average monthly salary for the period of his/her new job-seeking, but not exceeding two months. In exceptional cases this average monthly payment shall be retained by the said employee during the third month after the date of dismissal by a decision of a state employment service on the condition that the employee applied to that body and no job was found for him within one month after his dismissal.

An employee who is dismissed from an organisation located in the Extreme North or in equivalent areas (*организация, расположенная в районах Крайнего Севера и приравненных к ним местностях*), due to liquidation or a staff reduction is entitled to severance pay, and also entitled to retain the average monthly earning for the period of looking for a job but not exceeding three months after the dismissal (with the severance pay setting off this amount). In exceptional cases this average monthly payment shall be retained by the said employee during the fourth, fifth and sixth months after the date of dismissal by a decision of a state employment service on the condition that the employee applied to that body and no job was found for him within one month after his dismissal.

### 9. Mentionable aspects/particularities

Besides what is mentioned above, the employment contract with the head of the company (*руководитель организации*) (i.e. managing/general director) may be also terminated due to the following:

- dismissal of the head of a company – debtor in accordance with legislation on insolvency (*банкротцы*); decision on termination of an employment contract with the head of the company taken by an authorised body of a company or the owner of property of the company.

The additional grounds of termination of the employment contract between the employer and head of the company:

- non-observance of the indicated in the Russian legislation ultimate level of the ratio of the average monthly salary of the deputy head and/or chief accountant of the State non-budgetary fund, territorial Federal Compulsory Medical Insurance Fund, state or municipal institution or state or municipal unitary enterprise and the average monthly salary of employees of this fund, institution or enterprise;
- in cases envisaged in the employment contract with the head of the company.

The decision on termination of an employment contract with the head of the company taken by an authorised body of a company or the owner of property of the company, including one made as result of change of the company's owner does not require prior notification of the employee.

### 10. Managing directors

In case of termination of the employment contract with the head of the company, deputy heads of the company and the chief accountant (*руководитель организации, заместители руководителя организации и главный бухгалтер*) due the change of the company's owner, a compensation equal to not less than three monthly salaries should be paid to them. In case the employment contract with the head of the company is terminated by the authorised body of the company (in the absence of any culpable actions), the employer will have to pay an indemnity as agreed upon in the employment contract, but in any case not less than three average monthly salaries, to be increased with the applicable indemnity in lieu of notice.

# Serbia



## 1. Kinds of dismissal

An employment relation shall be terminated:

- when an employee becomes entitled to legal pension, unless otherwise agreed between the employer and the employee;
- in the general way in which contract are terminated (expiration of term, mutual agreement...);
- by notice of termination of employment contract by the employer or the employee (dismissal) and
- in other cases specified by the law.

The employment relation of an employee shall terminate independently of his/her intent and the intent of the employer:

- when the employee has suffered loss of working ability;
- if the employee is forbidden to perform a particular job by law/court order, while it was not possible to assign him/her to perform other;
- if due to serving a prison sentence employee has to be absent from work for a period exceeding six months;
- if the employee must be absent from work for more than six months due to a correctional or protective measure; and
- due to bankruptcy or liquidation or in all other cases of termination of the employer.

An employee is entitled to terminate the employment contract with the employer in which case the notice of dismissal of employment contract shall be submitted in writing by the employee to the employer, at least 15 days before the day indicated by the employee as the day of termination of employment relation (notice period). A longer notice period may be foreseen in the applicable employment contract/general act of the employer (hereinafter: work rules), but not longer than 30 days.

An employer may terminate the employee's employment contract for just cause which relates to employee's work ability and his conduct, such as:

- if the employee does not achieve the work results or does not have the necessary knowledge and skills to perform his duties, after having warned the employee regarding the deficiencies in employee's work, and provided guidance and appropriate deadline to enhance and improve work, and if the employee does not enhance work within the given deadline. The notice period in this case may not be shorter than eight nor longer than 30 days;
- if the employee is legally convicted of a crime in the workplace or related to workplace, without any notice period;
- if the employee does not return to work for the employer within 15 days of the expiry of the stay of employment .

The employer may terminate the employment contract of the employee who on his own fault commits a breach of a work duty without notice but after a warning in the following cases:

- if the employee is negligent or reckless in performing the work duty;
- if the employee abuses his position or exceeds authority;
- if the employee unreasonably and irresponsibly uses means of work;
- If he does no use or uses inappropriately allocated resources and personal protective work equipment; and
- if the employee commits other breach of work duty as determined by work rules or employment contract.

The employer may terminate the employment contract of an employee who does not respect work discipline without notice but after a warning in the following cases:

- if the employee unreasonably refuses to perform work and execute the orders of the employer in accordance with the law;
- if the employee does not submit a certificate of temporary incapacity for work due to illness;
- if the employee abuses the right to leave due to temporary incapacity for work;
- if the employee comes to work under the influence of alcohol or other intoxicating substances, or uses alcohol or other intoxicating substances during working hours, which has or may have an impact on the work performance;
- if the employee gave incorrect information that were critical for concluding the employment relation;
- if the employee works in jobs with higher risk, for which a specific health condition is a special requirement for work, refuses to undergo a health condition test; and
- if the employee does not respect work discipline prescribed by an act of the employer, or if his conduct is such that he cannot continue to work for the employer.

The employer may instruct the employee to undertake a medical examination to determine that an employee abuses the right to leave due to temporary incapacity for work or is under the influence of alcohol or other intoxicating substances, or uses alcohol or other intoxicating substances during working hours, which has or may have an impact on the work performance. Refusal of an employee to undergo a medical examination shall be considered as a breach of work discipline, too.

Prior to termination of the employment contract due to the violation of work duty and/or work discipline, an employer is obliged to warn the employee in writing of the existence of cause for termination of employment contract and to leave him a time period of not less than eight days from the day of delivery of the warning to answer to the allegations from the warning. The employee may attach to his answer the opinion of the trade union whose member he/she is, in which case the employer shall be obliged to take into account the attached opinion of the trade union.

The employer may terminate the employment contract of the employee due to the violation of work duty and/or work discipline, within three months from the day the employer has learned of the facts which are grounds for dismissal, or within six months from the occurrence of the facts which are grounds for dismissal.

Finally, an employee's employment relation may be terminated if there is a valid reason relating to the employer's needs:

- if as a result of technological, economic or organisational changes the need to perform a specific job ceases, or there is a decrease in workload. The employee will then be entitled to severance pay and the employer may be obligated to conduct previous procedure with redundancy plan (depending of the number of employees who are considered as redundant). Also the employer may not employ another person to perform the same job within three months from the day of termination of employment relation, except if it concerned a person with a disability/health condition, to which the employer could not provide performance of another suitable job according to his/her work ability. Prior to the expiry of time limit of three months, should it be necessary to perform the same jobs, the employee whose employment contract was terminated has priority;
- if employee refuses to conclude the annex of the contract in respect of transfer to another appropriate job or workplace with the same employer, assignment to an appropriate job with another employer, exercising measures in event of the labour redundancy, change of the elements for determination of basic earnings, work performance, compensation of earnings, increased earnings and other employee income that are contained in the employment contract.

In event that the employment contract stipulates a trial period, the employer or the employee may terminate the employment contract with a notice period which may not be shorter than five working days during the trial period. In event that the dismissal is given by the employer on this ground, he is obligated to give reasons for termination of employment contract.

An employee failing in the course of trial period to present corresponding work and professional abilities, shall have his employment relation terminated at the end of the trial period.

## 2. Necessity of reasons for dismissal

An employment contract shall be cancelled by a ruling, i.e. decision, in writing, and shall include the legal basis for termination, the reasons and instructions regarding legal remedy.

The burden to prove the existence of a ground for dismissal by the employer rests on the employer.

## 3. Notice period

In the event that the employer terminates the employment, a notice period is only due in three cases, i.e. when the employment contract is terminated due to unsatisfactory work performance,

or due to lack of necessary knowledge and skills in which case, the notice period cannot be shorter than eight, nor longer than 30 days, depending on length of insurance coverage and in case of dismissal during the trial period, in which case a notice period is minimum five working days.

All notice periods have to be previously defined by an employment contract/work rules.

The notice period shall begin to run on the day following the day of delivery of the dismissal.

In agreement with the employer, an employee may stop working even prior to the expiry of the notice period in case of dismissal due to unsatisfactory work performance, or lack of necessary knowledge and skills, under the condition that he/she has been provided the compensation of earnings in the amount determined by the work rules and the employment contract.

#### 4. Forms of dismissal

An employment contract shall be cancelled by a dismissal, in writing, and shall include the legal basis for termination, the reasons and instruction regarding legal remedy.

#### 5. Further requirements for dismissal

The dismissal shall be delivered to the employee in person, at the employer's premises, and/or to employee's residence or abode address.

Should the employer be unable to deliver to the employee the respective ruling, he shall be obliged to make a note in writing about that, in which case the dismissal shall be posted on the employer's billboard, and eight days following such posting, it shall be considered that the dismissal has been delivered to the employee.

Employment relation of the employee shall be terminated on the day of delivery of the dismissal, unless another time limit is determined by law or in the dismissal itself.

In case of termination of the employment relation, an employer shall be bound to pay to the employee all unpaid earnings, compensation of earnings and other income effected by the employee until the day of termination of employment relation in line with the general act and the employment contract.

The employer is obligated to make the payment of the respective income to the employee within 30 days, at the latest, from the day of termination of employment relation.

In some cases, such as dismissal due to breach of a work duty or work discipline, an employer is obligated to warn the employee in writing of the existence of cause for termination of employment contract prior to termination of employment contract and to leave him a time period of not less than eight days from the day of delivery of the warning to answer to the allegations from the warning. The respective warning should contain the grounds for dismissal, the facts and evidence which suggest that the conditions for dismissal were met and the time period for response to the warning.

#### 6. Special dismissal protection

The following shall not be considered as a justified reason for cancelling the employment contract by the employer:

- temporary impediment for work due to illness, accident at work or occupational disease;
- use of maternity leave, absence from work for child care and absence from work due to special child care;
- full-term serving or completion of serving in the military;
- membership in a political organisation or in a trade union, sex, language, nationality, social background, religion, political or other conviction, or other personal characteristic of the employee;
- activity as a representative of employees, in conformity with the labour law; and
- addressing by the employee to the trade union or agencies in charge of protection of employment-related rights, in conformity with the law, the general act and the employment contract.

Also, an employer may not cancel the employment contract during pregnancy, maternity leave, leave for nursing the child and leave for special care for child.

The decision on termination of the employment contract is null and void if at the date of rendering of the decision on termination of employment contract, the employer was aware of the existence of the mentioned circumstances (pregnancy, maternity leave, leave for nursing the child and leave for special care for child), or if the employee, within 30 days of termination of employment relation, informs the employer of the existence of such circumstances and submits the appropriate certificate of an authorised physician or other competent authority.

In addition to abovementioned, an employer may not terminate an employment contract, or in any other way to put the employee in a disadvantageous position because of his status or activities as an employee representative, trade union member, or because of his participation in trade union activities. The burden of proving that the termination of the employment contract or placing an

employee in a disadvantageous position is not a consequence of such status or activities shall be on the employer.

#### 7. Legal means of employees

An employee, and/or a representative of employee's trade union, if authorised by the employee, may institute proceedings before a competent court against a ruling that violates his/her right, or when such employee has become aware of the violation of the right.

The time limit for initiating the court proceedings shall be 60 days following the day of delivery of the ruling, and/or after becoming aware of the violation of right.

If the court determines that the employee's employment was terminated without legal basis, the court shall, at the request of the employee, reinstate him/her and compensate him/her and order that his/her corresponding contributions for compulsory social insurance shall be paid for the period in which the employee has not worked.

The compensation of damages shall be determined in the amount of lost earnings, which shall contain the corresponding taxes and contributions in accordance with the law, but which shall not include charges for meals at work, for food in course of work; subsidy for the use of annual leave, bonuses, awards and other income based on contribution to business success of the employer. Taxes and contributions for compulsory social insurance for the period in which the employee has not worked shall be calculated and paid on a specified monthly amount of the lost earnings.

If the court during the proceedings determines that the employee's employment relation was terminated without legal basis, and the employee does not request to be reinstated, the court shall, at the request of the employee, obligate the employer to compensate the employee for damages in the amount of up to 18 months' earnings depending of the employee's seniority, age and number of dependent family members.

If the court during the proceedings determines that the employee's employment relation was terminated without legal basis, but during the proceedings the employer proves that the circumstances exist which reasonably indicate that the continued employment, taking into account all the circumstances and interests of both sides in the dispute, is not possible, the court shall deny the request for reinstatement and order the employer to pay damages equal to 36 months' earnings.

If the court does determine that there were grounds for termination of employment relation, but that the employer

acted contrary to the law which prescribes the procedure for termination of employment, the court shall reject the request for reinstatement, and shall order the employer to compensate the employee's damages in the amount of up to six earnings.

Earnings is considered as earnings which the employee earned in the month preceding the month in which his employment relation was terminated.

Also, the compensation of damages shall be reduced by the amount of income that the employee earned working after termination of employment relation.

#### 8. Severance pay

According to the Serbian labour law, an employee is entitled to the severance pay only in two cases:

- a retirement severance pay in conformity with the work rules, but not less than amount of two average earnings in the Republic of Serbia;
- severance pay in case of dismissal due to labour redundancy in conformity with the work rules, but not be lower than the sum of the third of the employee's average earnings, paid for the three months preceding the payment of severance pay, for each full year of seniority with the employer, its predecessor or affiliates. Changing the ownership of capital shall not be considered as a change of employer in terms of exercising the right to severance pay. An employee may not qualify for severance pay for the same period for which he was already paid a severance pay at the same or another employer.

#### 9. Managing directors

No specific dismissal rules apply for managing directors, considering that they are employees too. The legal representative of the employer, however, may, but does not have to be in employment. In the event that he is employed for indefinite period of time, and his mandate stops at some point, the employer is obliged to offer him a transfer to another appropriate job, and if there is no appropriate job, then the employer may cancel the director's employment on ground of labour redundancy and to pay him a severance pay.

**NOTE:** It should be borne in mind that certain issues, and in particular, but not limited to the severance issue, can be elaborated or more favourably regulated by the branch collective agreement, if it exists for the particular employer or by the general act of the employer, i.e. collective agreement/employment rulebook or employment contract.

# Singapore

## 1. Kinds of dismissal

If an employment contract falls under the scope of the Employment Act, an employer may legally terminate an employee with notice, or without notice.

If the employer wishes to terminate without notice, the employer must pay the employee an indemnity in lieu of notice. In the event of employee misconduct, the employer may terminate the employment without notice, with no salary in lieu of notice paid (dismissal for serious cause).

## 2. Necessity of reasons for dismissal

Except in cases of employee misconduct, in which an inquiry must be held, employers do not need to provide reasons for the employee's termination. However, the Ministry of Manpower encourages employers to explain their reasons for termination, so that the employee can better understand the situation and achieve closure. Further, if the employer does not provide reasons for the employee's termination, the employee may approach the company's management or human resources department to find out the reason.

If the employee feels that he/she has been unfairly terminated, he/she may submit a written appeal to be reinstated to the Minister for Manpower, within one month from the last day of employment. If the minister is satisfied that the employee was unfairly dismissed, he/she may reinstate the employee in his/her former job, or order the employer to pay a sum of money as compensation.

## 3. Notice period

The notice period of employees is governed by the employment contract. If the employer and employee did not previously agree on a notice period, the duration of the notice period depends on the seniority, as follows:

Seniority	Notice given by employer
< 26 weeks	1 day
26 weeks < 2 years	1 week
2 years < 5 years	2 weeks
> 5 years	4 weeks

If the employer terminates the employment contract without notice, the employee is entitled to an indemnity in lieu of notice. This is calculated on the basis of a gross rate of pay, which is taken by multiplying an employee's monthly gross salary (i.e., basic salary plus allowances) by 12, and dividing the amount by 52 multiplied by the average number of days an employee is required to work in a week,

## 4. Forms of dismissal

Notice must be given in writing.

If the employer terminates the employment contract with immediate effect and the payment of an indemnity in lieu of notice, there are no specific formalities.

## 5. Further requirements for dismissal

In a case of a dismissal due to employee misconduct, the employer must conduct an inquiry before deciding whether to dismiss an employee or to take other forms of disciplinary action. There is no fixed procedure for an inquiry, but as a general guide, the person hearing the inquiry should not be in a position which may suggest bias, and the employee being investigated for misconduct should have the opportunity to present their case.

In accordance with the Singapore legislation, the employer may suspend the employee from work during an inquiry for a period not exceeding one week, and the employee should be paid at least half their salary during the suspension.

If no misconduct is found after the inquiry, the employer must restore the full amount of any salary that was withheld during the suspension period.

## 6. Special dismissal protection

If an employee has worked for an employer for at least three months, she will have maternity protection against retrenchment and dismissal without sufficient cause during pregnancy. It is an offence under Singapore law for an employer to dismiss an employee while she is on maternity leave. While an employee is on maternity leave, the employer has to continue to pay an employee's salary throughout her maternity leave as if she had been working without a break, and may not ask an employee to work during the first four weeks of her confinement.

If an employer terminates an employee while she is pregnant, or retrenches her during her pregnancy, the employer must pay the employee the maternity benefits that the employee would have been eligible for.

## 7. Legal means of employees

An employee may raise an appeal to the Minister of Manpower for reinstatement within one month from the last day of employment (see section 2). If the employee is in a managerial or executive position earning not more than S\$4,500 a month, he/she may only appeal if he/she has served the employer for at least 12 months.

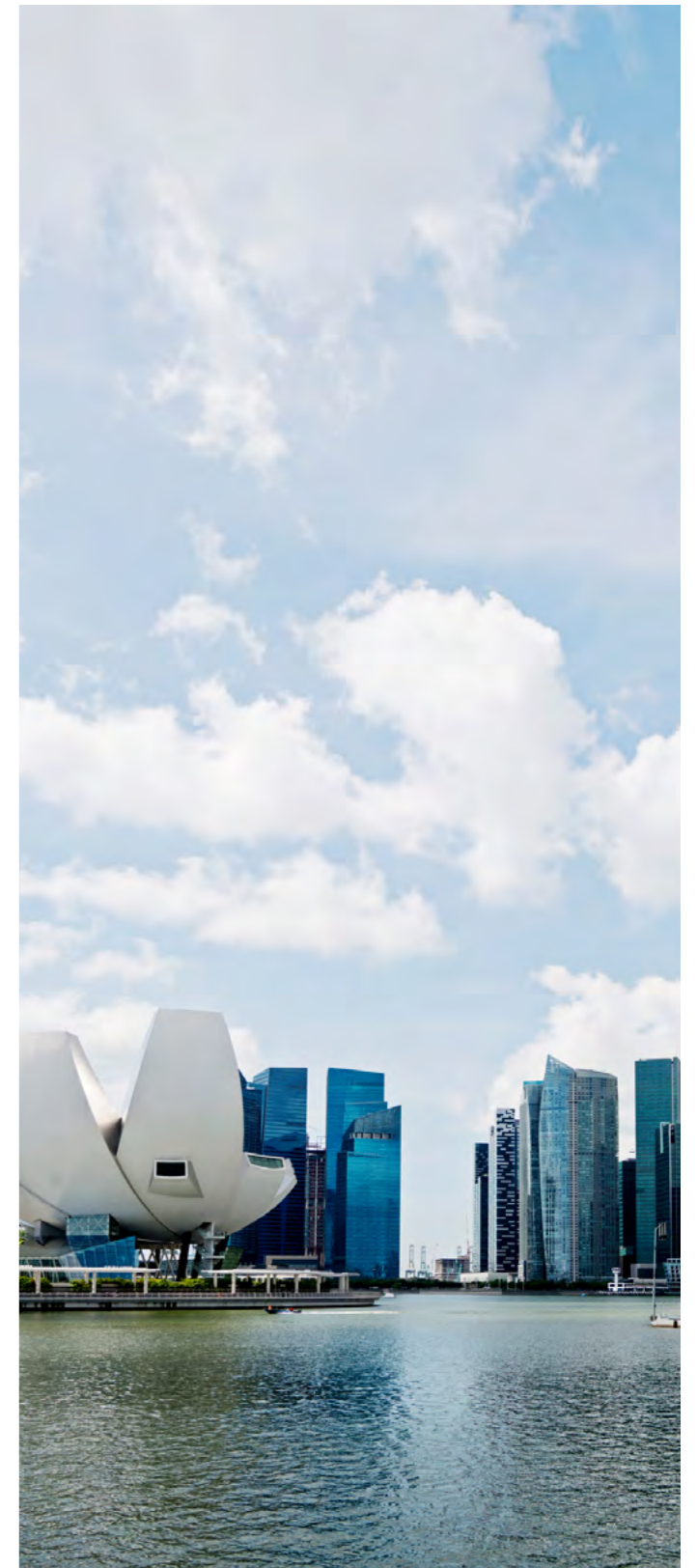
In all other cases, an employee's remedy is through court action.

## 8. Severance pay

There is nothing under Singapore law which provides for additional severance pay on top of the notice period or indemnity in lieu of notice.

## 9. Managing directors

No specific dismissal rules apply for managing directors.



# Slovakia



## 1. Kinds of dismissal

An employment relationship may be terminated by the employer in one of the following ways:

- By serving notice (*výpoveď*) (ordinary dismissal)
- For serious cause (*závažný dôvod*) (immediate termination/summary dismissal)
- Termination during the trial period (*skúšobná doba*)

An employment contract can also be terminated by mutual consent.

## 2. Necessity of reasons for dismissal

The necessity to provide a reason for the dismissal depends on how the employment relationship is terminated.

### Ordinary dismissal

If there is an ordinary working time, the employer may give notice to the employee only for the following reasons:

- the company of the employer or a part thereof is dissolved or relocated, and employee does not agree with the change of the agreed place of work;
- an employee becomes redundant by virtue of the employer or competent body issuing a written resolution on change in duties, technical equipment or reduction in the number of employees with the aim of securing work efficiency, or on other organisational changes; and employer, that is a temporary employment agency may also give notice to employee if the employee becomes redundant with regard to the termination of temporary secondment, prior to the expiry of the period for which the employment for a definite period of time was agreed;
- a medical opinion states that the employee's health condition has caused the long term loss of his/her ability to perform his/her previous work or if he/she can no longer perform such work as a result of an occupational illness or the risk of such an illness, or if he/she already received the maximum permitted level of exposure in the work place as determined by the decision of a competent public health body;
- the employee:
  - does not meet the preconditions set by legal regulations for the performance of the agreed work;
  - ceases to fulfill the requirements for his/her function (an election as the precondition for executing a certain function, etc.);
  - does not fulfil, not due to the fault of the employer, the requirements for the proper performance of the agreed work determined by special regulation or by the employer in the internal regulations;

– does not satisfactorily fulfil his/her tasks and the employer has in the preceding six months challenged him/her in writing to rectify the insufficiencies and the employee failed to do so within a reasonable period of time;

- there are reasons on the side of the employee for which the employer might immediately terminate the employment relationship with him/her, or by virtue of less grave breaches of labour discipline; for less grave breaches of labour discipline an employee may be given notice if he/she has been cautioned in writing with respect to breach of the labour discipline within the previous six months as to the possibility of notice.

An employer may give a notice to the employee, for a reason other than employee's redundancy with regard to the termination of temporary secondment under Section 58 of the labour code prior to the expiry of the period for which the employment for definite period of time was agreed, and for a reason other than unsatisfactory fulfillment of working tasks, for less serious breach of labour discipline or for reasons for which immediate termination of employment relationship is applicable, only in such case where:

- the employer does not have the possibility to further employ the employee, not even for a reduced working time, in the place that was agreed as the workplace,
- the employee is not willing to shift to other work appropriate to him/her, offered to him/her by the employer at the place of work agreed as the workplace or undertake the necessary training for this other work.

An employer, due to breach of labour discipline or for the reason of immediate termination of employment relationship, may only give notice to an employee within a period of two months (but no later than one year) from the day the employer became acquainted with the reason for notice, and for breach of labour discipline abroad, within two months from the employee's return from abroad, but in all cases no later than one year from the day when the reason for notice occurred. Where, within the period of two months stipulated above, the employee's conduct in which breach of labour discipline may be viewed becomes the subject of proceedings of another body, notice may still be given within two months from the day when the employer became acquainted with the outcome of such proceedings.

If the employer intends to give notice to an employee on grounds of breach of labour discipline, he/she shall be obliged to acquaint the employee with the reason of such a notice and enable him/her to give his/her statement on this.

### Dismissal for serious cause

An employer may immediately terminate an employment relationship only in exceptional cases. This in case the employee:

- was lawfully sentenced for committing an intentional offence; or
- was in serious breach of labour discipline.

An employer may immediately terminate the employment relationship only within a term of two months from the day that he/she became acquainted with the reason for immediate termination; and no later than one year from the day such reason occurred. The law does not stipulate what constitutes serious breach of work discipline but it is defined in case law.

### Termination of employment relationship within the trial period

During the trial period (*skúšobná doba*) (usually three months), both employer and employee may terminate an employment relationship in writing for any reason whatsoever, or without giving a reason. Written notification on the termination of an employment relationship shall be delivered to the other party, as a rule, within the minimum of three days prior to intended termination date of employment.

The employer may terminate the employment of a pregnant woman, a mother who has given birth within the last nine months or a breastfeeding woman within the trial period only in writing, in exceptional cases not relating to her pregnancy or maternal function, giving appropriate reasons in writing. Otherwise the termination shall be invalid.

### 3. Notice periods

Ordinary dismissal given by an employer for organisational reasons (cancellation of a job position, dissolution or relocation of the company):

Seniority	Notice given by employer
< 1 year	1 month
1 – 5 years	2 months
5 years	3 months

Ordinary dismissal given by an employer for other reasons:

Seniority	Notice given by employer
< 1 year	1 month
1 year	2 months

### 4. Form of dismissal

The notice must be done in writing and delivered to the employee. An employer may only give notice to an employee for reasons explicitly stipulated in the labour code. The reason for giving notice must be defined in the notice in terms of fact so that it may not be confused with any different reason; otherwise the notice shall be deemed invalid. The reason for giving notice may not be subsequently amended.

### 5. Further requirements for a valid dismissal

Where the employer gives notice to an employee by virtue of redundancy he/she may not within two months re-create the eliminated work post and employ another employee to the same post.

### 6. Special dismissal protection

An employer may not give notice to an employee during a protected period (*ochranná doba*), i.e.:

- within a period when the employee is acknowledged temporarily incapable for work due to disease or accident, unless deliberately induced or caused under the influence of alcohol, narcotic or psychotropic substances and within the period from submission of a proposal for institutional care or from entry into spa treatment up to the day of termination thereof;
- when the employee performs extraordinary service during a state of crisis as from his/her mobilisation until two weeks after his/her demobilisation; this shall also apply with regard to the performance of alternative service pursuant to special regulations;
- during the period when an employee is released for performance of the voluntary military service;
- during pregnancy, maternity leave, parental leave or when a single employee is taking care of a child under the age of three;
- during the period when an employee is released for the long term performance of a public function;
- within the period when an employee working at night is on grounds of medical opinion acknowledged as being temporarily incapable to perform night work.

An employer may not give notice to a disabled employee without the prior consent of the respective office of labour, social affairs and family; otherwise such a notice shall be invalid. Such consent shall not be required where notice was given to an employee who has reached the age entitling him/her to old-age pension or in case of dissolution or relocation of the employer or breaches of labour discipline.

### 7. Unlawful dismissal and legal means of the employees

The invalidity of the termination of the employment relationship by virtue of notice, immediate termination, and termination in the trial period or agreement may be challenged by the employee no later than two months from the date when the employment relationship was terminated.

If an employer gave an invalid notice to an employee or terminated the employment relationship in an invalid manner with the employee immediately or within a trial period, and if the employee informed the employer that he/she insists on keeping employment with the employer, his/her employment relationship shall not terminate with the exception of a court decision pursuant to which it cannot be equitably required from the employer to further employ the employee. The employer shall be obliged to provide the employee with salary compensation.

The employee shall be entitled to such compensation in the amount of average salary from the day he/ she announced to the employer that he/she insists on keeping employment until a final decision about the invalidity is made. If the overall time for which an employee should be paid salary compensation exceeds 12 months, the court may decide at the employer's request that the employer's obligation to compensate the salary in excess of 12 months will be reduced or cancelled. The employee shall be entitled to salary compensation for at most 36 months.

### 8. Severance pay

An employer shall pay an employee a severance pay (*odstupné*) in case the employment is terminated for the reason of relocation or redundancy or because the employee's health condition has, according to a medical opinion, caused the long term loss of his/her ability to perform his/her present work. The qualifying employee shall be entitled to a severance pay equal to at least his/her average monthly earnings multiplied in accordance with his seniority.

Seniority	Severance pay
< 2 years	0 x Average monthly salary
2 – 5 years	1 x Average monthly salary
5 – 10 years	2 x Average monthly salary
10 – 20 years	3 x Average monthly salary
< 20 years	4 x Average monthly salary

The above severance pay is the minimum required by law.

If an employer terminates an employment contract because the employee must no longer perform his/her work as a result of an occupational accident, occupational disease or the risk of such a disease, or that the employee has already received the maximum permitted level of exposure in the work place as determined by a decision of a competent public health body, the employee shall be entitled to a severance pay equal to at least 10 times his/her monthly earnings, unless the accident was due to the employee's fault by having violated legal regulations or other regulations for ensuring safety and health at work, or if an occupational accident was caused by the employee under the influence of alcohol, narcotic substances or psychotropic substances and the employer could not prevent the occupational accident.

If an employee again takes up his/her employment relationship with the same employer or the employer's legal successor before the end of the period for which severance pay is provided, the employee shall be obliged to return the severance pay or a proportionate part thereof, determined according to the number of days from the return to employment until the expiry of the period covered by the severance payment.

An employee shall not be entitled to a severance pay where rights and duties resulting from labour law relations are transferred to another employer in accordance with the labour code in the event of organisational changes or rationalisation measures.

In case of a conclusion of an agreement on termination of an employment relationship, higher amounts can be agreed, otherwise, minimum of severance pay to be paid to the employee is stipulated by the labour code as stated in the table below.

Seniority	Severance pay
< 2 years	1 x Average monthly salary
2 – 5 years	2 x Average monthly salary
5 – 10 years	3 x Average monthly salary
10 – 20 years	4 x Average monthly salary
< 20 years	5 x Average monthly salary

An employer shall pay to the employee the above stated severance pay if the employment relationship is terminated by agreement in case of dissolution or relocation of the employer or redundancy or because the employee's health condition has, according to a medical opinion, caused the long term loss of his/her ability to perform his/her present work.

### 9. Mentionable aspects/particularities

There are special requirements for collective dismissals.

### 10. Managing directors

No specific dismissal rules apply for managing directors (*Generálni riaditelia*).

# Slovenia

## 1. Kinds of dismissal

According to Slovenian labour law, there are two kinds of terminations: ordinary dismissal (*redna odpoved*) and dismissal for serious cause (*izredna odpoved*). These two kinds differ in notice periods (*odpovedni rok*) and reasons for dismissal.

## 2. Necessity of reasons for dismissal

An ordinary dismissal is a dismissal or termination of an employment contract, by one of the contracting parties, with a notice period. In case the employer terminates the employment contract, he/she must have a valid reason for the dismissal. The employer can terminate the employment contract due to business reasons, reasons of incapacity, reasons of culpability or reasons of inability to carry out the work under the conditions set out in the employment contract owing to disability, and for the reason of unsuccessful completion of the trial period (*poskusno delo*).

Unlawful reasons for termination of an employment contract include e.g.: race, ethnicity or ethnic origin, skin colour, sex, age, disability, marital status, family obligations, pregnancy, religious and political beliefs, national or social origin, temporary absence from work due to diseases or injuries or care for family members, trade union membership, participation in trade union activities, candidacy for the function of a worker's representative or the current or past performance of this function, filing an action or participating in proceedings against the employer and so forth.

A dismissal for serious cause is a termination of an employment contract with immediate effect and without a notice period. The contracting parties (the employee or the employer) can terminate the employment contract in this manner if, taking into account all circumstances and the interests of both parties, reasons exist due to which it is no longer possible to continue the employment relationship until the expiration of the notice period or until the expiration of the period for which the employment contract was concluded.

The employer may give a dismissal for serious cause if the worker:

- violates a contractual or any other obligation,
- as a candidate in selection procedure submits false information or evidence of his qualifications,
- does not come to work for five consecutive days,
- is prohibited to work due to some sort of measure or final decision of the court
- or is imprisoned, etc.

## 3. Notice periods

An ordinary dismissal is subject to notice periods stipulated by the Employment Relationship Act. If the employment contract is terminated through an ordinary procedure by the employer, the notice period shall be 15 to 60 days, depending on the seniority with the employer. The seniority with the employer shall also include the years of service with the employer's legal predecessors.

Seniority	Severance pay
0 < 1 year	15 days
1 < 2 years	30 days
As of 2 years	2 extra days per year (max 60 days)
As of 25 years	80 days

In case of 25 years of seniority the notice period is 80 days or less if so prescribed by a collective bargaining agreement, but in no circumstances less than 60 days.

However, if the employment contract is terminated by the employer for reasons of culpability of the worker, the notice period shall be 15 days.

The employee and employer can agree on shortening the notice period in exchange for an indemnity in lieu of notice.

A dismissal for serious cause does not require a notice period and is immediately effective. This kind of termination of the employment contract has to be executed no later than within 30 days of identifying the reasons for summary dismissal and no later than six months from the occurrence of the reason.

## 4. Form of dismissal

Ordinary dismissal and dismissal for serious cause have to be in writing. In the notice of termination of the employment contract, the employer must explain the reason for dismissal as well as call the employee's attention to legal actions and rights arising from unemployment insurance that are available to him/her.

There is a special procedure to be followed by the employer both in case of ordinary dismissal and in case of dismissal for serious cause.



## 5. Further requirements for a valid dismissal

The employer must, if the employee is a member of a trade union at the time of the introduction of the procedure and requests so, inform in writing the trade union about the intended ordinary dismissal or dismissal for serious cause of the employment contract. The trade union may give its opinion within six days, however, a potential negative opinion of the trade union will not influence the dismissal procedure.

The ordinary or dismissal for serious cause needs to be served to the contractual party whose employment contract is being terminated in person. Special rules need to be observed in this respect.

## 6. Special dismissal protection

Several groups of employees, such as: workers' representatives, workers before retirement, parents, in particular female workers during the period of pregnancy and during the period of breastfeeding, parents in the period when they are on parental leave in the form of a full absence from work and for another month after taking such leave, disabled persons and persons on sick leave enjoy special legal protection against terminations. The exact scope of the protection varies, however, for all of these groups, a good reason is required and in certain cases the dismissal must be approved (by a labour court, the trade union or a labour inspector).

## 7. Legal means of the employees

If the dismissal, or any other method of termination of the employment contract, is found to be unlawful, the employee may, within 30 days from the day of the dismissal or the day when he/she learned about the violation of the right, request for judicial protection.

In the event of circumstances on both sides of the employment contract, that make continuation of the employment relationship impossible, each party may propose to the court that it finds the employment relationship terminated and determines an adequate reimbursement instead of employee's reintegration to the workplace.

## 8. Severance pay

Severance pay (*odpravnina*) is paid when it is assumed that the employee has no fault in the termination (i.e. in case of ordinary dismissal by the employer and dismissal for serious cause by the employee), i.e. irrespective of the right to notice period. However, a minimum seniority of at least one year is required. If the employee is entitled to a notice period as well as the right to severance pay, he/she works during the notice period (and therefore receives salary) and on top of that receives the severance pay.

As the basis for the calculation of the severance pay, the average monthly wage which was received by the employee, or which would have been received by the employee if working, in the last three months before the termination shall be taken into account.

# South Korea

The employee shall be entitled to a severance pay amounting to 1/5-1/3 of the base remuneration (calculated on a monthly basis) for each year of employment with the employer, depending on the seniority. However, the amount of the severance pay may not exceed a tenfold of the basis amount, unless otherwise stipulated by the industry collective bargaining agreement.

## 9. Mentionable aspects/particularities

Under Slovenian labour law the employees enjoy a fair amount of protection and the courts also tend to rule in favour of the employees, therefore, it is difficult to process and finalise any type of termination.

Special provisions apply for manager contracts (*pogodba o zaposlitvi s poslovodno osebo ali prokuristom*), i.e. employee's rights can be defined differently as provided by the law in this case. An employee, whose employment contract was terminated by the employer, is entitled to paid absence during the notice period of

two hours per week (to search for new employment). Nevertheless, if the employment contract was terminated for business reasons or reason of incompetence and the employee was not offered a new employment contract at the same or some other employer, he/she is entitled to paid absence of one day per week (to integrate into the labour market in accordance with labour market regulations).

If upon the termination the employer offers to the employee other adequate employment at his/her premises or at some other employer, the worker is not entitled to severance pay if he/she refuses the offered employment.

Special requirements should be observed for collective dismissals.

## 10. Managing directors

No specific dismissal rules apply for managing directors (*izvršni direktorji*).

## 1. Kinds of dismissal

There are three kinds of dismissals in South Korea:

- individual dismissals (which can also be understood as ordinary dismissals),
- collective dismissals
- dismissals for serious cause. These three kinds differ in the reason for dismissal and the process of dismissal.

## 2. Necessity of reasons for dismissal

### General principle

According to the Labour Standard Act of Korea, an employer cannot dismiss an employee without a justifiable reason.

The court decides on whether there is 'a justifiable reason' to dismiss (that is, whether the labour relationship cannot be maintained from the perspectives of 'generally accepted norms in the society') case by case, considering several factors in entirety including employer's management authority, nature of the employment agreement, reasons attributable to employee, necessity to protect employee, and conditions of labour market.

### Individual dismissal (ordinary dismissal)

Individual dismissal occurs when an employer dismisses an employee for the reason that the employee cannot fulfil his/her obligation under an employment agreement to provide labour. This dismissal commonly incurred when

- an employee cannot provide (adequate) work due to injury, disease or other health conditions;
- an employee cannot work due to criminal prosecution (including restraint), conviction (imprisonment or imprisonment without labour) or others;
- an employee lacks the capacity to provide the necessary work or is assessed to have low work performance.

When an employer dismisses an employee by the reason of physical impairment, loss of qualification or similar reasons, it should be decided whether the reason of dismissal is serious enough to terminate the employment agreement.

Especially, when the dismissal is made for the reason of the lack of capacity or low performance, the legitimacy of the dismissal is admitted only when the lack of capacity or low performance is too serious to maintain the labour relationship from the perspectives of generally-accepted norms of the society. Whether the lack of capacity or low performance is serious enough to meet the above standard shall be decided based on the rules provided under the collective agreement or the rules of employment as well as considering following factors in entirety:





- whether the performance is fairly evaluated based on objective and reasonable standards;
- whether the employee has been given an opportunity to improve his/her performance by educational training, changes in location or similar others;
- whether there is a considerable obstacle in the performance and the possibility of improvement when the capacity, the period of low performance, and the results of educational training are considered in entirety.

#### Dismissal for serious cause

Dismissal for serious cause occurs when an employer dismisses an employee as a way of disciplinary measure for the employee's misconduct violating the company's order of conduct. This dismissal generally happens when there is

- a violation of business mandates
- bad work attitude
- considerable obstacles to the company's business attributable to the employee
- defamation or credit loss of the company attributable to the employee

When an employer dismisses an employee for the employee's misconduct, such misconduct must be too serious to continue the employment agreement from the perspectives of generally accepted norms of society. Whether an employee's misconduct is serious enough to discontinue the employment agreement shall be decided by considering following factors in entirety:

- purpose and nature of the employer's business
- conditions of workplace
- position and responsibility of the employee
- motivation and development of the misconduct
- effect of the misconduct on the order of the company such as a risk of deteriorating the hierarchy of the company
- performance in the past and existence of repentance

#### 3. Notice period

##### Obligation of an employer to notice dismissal

When an employer intends to dismiss an employee, 30 days prior notice of dismissal should be made. Otherwise, the employer should pay to the employee an 'indemnity in lieu of notice', which is equal to or more than 30 days of salary.

#### Exceptions to the notice requirement

An employer can dismiss an employee without notice or payment of the indemnity in lieu of notice when there is a natural disaster or other contingencies which make the business impossible to be continued or when the employee intentionally caused a considerable obstacle to the business or incurred pecuniary damages to the business. Also, when there is very little expectation from the employee regarding the continuity of the labour relationship (e.g. employees hired under a two-month fixed term contract or an employee within trial period), the employer can dismiss the employee without notice or payment of the indemnity.

#### Effect of the notice requirement

When an employer dismisses an employee without 30-day prior notice or payment of the indemnity in lieu of notice, the employer can be criminally punished for wrongful dismissal. Also, even when an employer has given a proper notice of dismissal to the employee, if the dismissal was made without justifiable reason, such dismissal shall be void.

#### 4. Forms of dismissal

In order to make a careful decision of dismissal and to ease the post dismissal dispute resolution, the expression of will to dismiss an employee should be made in writing. This also helps the employee to react properly to the dismissal. When the expression of will of dismissal is not made in writing, such dismissal shall be void.

The cause of dismissal and the time of dismissal should be expressed in writing, and when the prior notice of dismissal explicitly states the cause of dismissal and the time of dismissal, such notice of dismissal shall be regarded as an expression of will to dismiss in writing.

When the cause of dismissal is noticed in writing, it should be delivered in a way that allows the employee to know the cause in detail. Also, when the dismissal is made for a serious cause, detailed explanation of the facts or the misconduct which directly led to the dismissal should be stated in writing.

#### 5. Further requirements for dismissal

When any regulations related to the notice period or the dismissal process are provided in the collective agreement or the rules of employment besides the mandatory rules under the Labour Standards Act, such regulations are normally regarded as requirements that must be met for the validity of dismissal. Accordingly, the Supreme Court of Korea generally takes a position that dismissal is void when an employer dismisses an employee without satisfying such regulations even if there are appropriate reasons for dismissal.

#### 6. Special dismissal protection

##### Period when dismissal is prohibited

An employer cannot dismiss an employee during the period when the employee takes leaves due to an injury incurred at work or for a treatment of illness and within thirty days after the end of such leaves or during the period when a female employee who is before or after a childbirth takes leaves from work in accordance with the Labour Standards Act and within 30 days after the end of such leaves.

##### Exceptions

- An employer may not be limited by the period prohibiting dismissal
- when the employer has paid a compensation for disaster to the employee who has suffered an injury incurred at work or who has taken a treatment of illness or
  - when the employer cannot continue his/her business.

##### Effect of the period prohibiting dismissal

In cases where an employer dismisses an employee during the period when the dismissal is prohibited, such dismissal shall be void even though the dismissal was made with justifiable reasons as explained above. Also, when an employer dismisses an employee during the prohibited period, the employer may be criminally punished even if the employee has agreed with such dismissal.

#### 7. Legal means of employees

An employee may seek a remedy from an unlawful dismissal by either requesting a remedy to the Labour Relations Commission or by bringing a civil action before the court such as a litigation for the confirmation of the nullity of dismissal. Since these two methods are separate and independent ways to seek a remedy, the employee may take either one of them or simultaneously take both of them.

##### Request remedy through the Labour Relations Commission

When an employee wants to request a remedy against an unlawful dismissal to the Labour Relations Commission, he/she must apply for the remedy to the Commission within three months after the date of dismissal. When the Commission judges that the dismissal was unlawful, it may order the reinstatement of the original labour relationship and the payment of the salary which the dismissed employee should have received if not dismissed.

#### Judicial remedy through the court

An employee may bring an action before the court for confirmation of the nullity of dismissal. Unlike the remedy through the Commission, there is no exclusion period (statute of limitation) for such remedy through the court.

#### 8. Severance pay

Severance is paid when an employee who has been continuously employed for a year or more resigns. In such case, the employer must pay the amount which is equal to or more than 30 days' average of the salary during the last three months of the continuous employment times the number of years of continuous employment (seniority) and the payment of the severance must be made in principle within 14 days after the date when the cause of the severance payment was incurred.

#### 9. Managing directors

The courts of Korea have held that regardless of the form of the contract entered with the company, a managing director is considered as an employee under the Labour Standards Act, if it is concluded that the managing director is in substance providing labour to the company in subordinate relationship for the purpose of receiving wages, taking into account whether company actually takes control or supervision of the managing director or whether the company subjects the managing director to fixed work time and place. When the company wants to dismiss a managing director who is deemed as an employee, the requirements for the dismissal such as cause, notice, and procedures explained above must be satisfied.

# Spain



## 1. Kinds of dismissal

According to Spanish labour law, the decision to dismiss an employee requires always a specific reason, and based upon that reason, the labour legislation distinguishes two types of dismissals: dismissal for economic or individual reasons and dismissal for serious cause (*despido disciplinario*). These two types of dismissals (apart from the reason) differ both in

- procedure and formal requirements as well as in
- the severance payments that the employer is obliged to pay.

## 2. Necessity of reasons for dismissal

A dismissal for economic or individual reasons can be given when objective reasons exist for the employer (such as economic, organisational, production or technical reasons). The latter reasons can justify the termination of the employment contract by the employer. Economic reasons are understood to arise when

the company is in a negative economic situation with actual or predictable losses or with persistent decrease of incomes or sales. Losses are considered to be 'persistent' if during three consecutive quarters the company has losses compared to the same three quarters of the previous year.

Dismissal for economic or individual reasons also includes termination of the employment contract based on the ineptness of the employee, failure of the employee to adapt to technological changes, and absences from work (even in case of being justified) reaching 20% of working days in two continuous months, as long as the absences from the previous 12 months reach a 5%, or 25% threshold within four non-continuous months, within a window period of 12 months.

Dismissal for serious cause corresponds to the measure taken by the employer in case of a breach of contract or serious violation of the employment obligations by the employee. In both cases (disciplinary or objective), if the reasons are duly justified and proved, the dismissal might be considered to be a fair dismissal (*despido procedente*).

When the reasons alleged by the company are not proven, not found to be true, or are not enough to justify the dismissal, the dismissal is considered as an unfair dismissal (*despido improcedente*). In this case, the company may choose to either reinstate the employee in his/her former post or to terminate the employment contract by paying the compensation mentioned below (except in case of employees' legal representatives who have the right to opt by themselves).

## 3. Notice periods

In case of a dismissal for economic or individual reasons, it is necessary to observe a prior notice period (*preaviso*) of 15 days between the termination letter and the effective termination of the employee. During this period, the employee has the right to a paid leave of six hours per week to seek for a new job. However, the employer can choose to pay an indemnity in lieu of notice (*indemnización por falta de preaviso*), equal to the salary of those 15 days.

For example, if the employee's dismissal is notified five days before the termination of his/her contract, the employer will have the obligation to pay the corresponding indemnity in lieu of notice plus 10 days of salary in the final settlement agreement.

In case of a dismissal for serious cause, a notice period is not mandatory.

## 4. Form of dismissal

According to Spanish labour law, dismissals must be notified in writing by delivering a letter to the employee, stating the reason of the dismissal and the date of its effect. Not fulfilling these formal requirements implies the unfairness of the dismissal. Also, in case of subsequent claim on the part of the employee, the employer cannot in court produce other reasons than those included in the dismissal letter.

## 5. Further requirements for a valid dismissal

In case of a dismissal for economic or individual reasons, the employer is obliged to offer, simultaneously to the delivery of the dismissal letter, a severance payment (indemnity) equivalent to 20 days of salary per each year worked, up to a maximum of 12 monthly payments. Not to offer such compensation on that moment implies the unfairness of the dismissal, except if the employer proves not to be able to pay based on economic grounds and this circumstance is mentioned in the dismissal letter as well. If an employee is a legal representative or member of a trade union, work council or union representatives must be informed on the dismissal, and employee must be given audience to contest on the reasons of the dismissal. Collective bargaining agreements can also extend this protection to other employees (not only legal representatives) and/or establish other formal requirements to dismiss.

## 6. Special dismissal protection

The employee is protected in cases where the dismissal is connected with any discriminatory reason (due to gender, age, race, sexual orientation, religion, creed, politic opinions, social status, trade union affiliation or any other discriminatory reason). In these cases the dismissal is considered to be void/null. The consequence of a void/null dismissal is the reinstatement of the employee in his/her former post (there is no option to terminate the employment contract by paying a severance payment).

Employees also have a special dismissal protection in all circumstances related to maternity and paternity: pregnant women, during the period of suspension of the employment contract for maternity reasons or when the employees are enjoying or have asked for enjoying special conditions of employment due to maternity (paid leave for legal guard of a child, reduction of working time to take care of a child, etc.).

In the latter cases (mentioned in the paragraph above), dismissal is considered to be void/null and has the effects mentioned above, except when the company is able to prove the existence of reasons

to justify a fair dismissal. Therefore, for these groups of employees dismissal can only be fair or null/void, and there is no possibility of declaring the dismissal to be unfair and to terminate the employment relationship by paying relevant compensation.

Employees have special protection when they are legal or union representatives. This protection also includes employees who ceased to execute their function during the year before the date of the dismissal. In these cases, when the dismissal is considered to be unfair, the employee has the choice to either be reinstated or paid a compensation. In case of reinstatement, the employees are also entitled to the salary accrued during the proceedings before court

## 7. Legal means of the employees

Employees who are dismissed based on any reason could file a claim in front of the labour authorities. In the labour procedure, it is mandatory to have a conciliation hearing before the administrative body competent in each province or city. The labour authority summons the parties so that some kind of agreement may be reached. The outcome shall be among the following:

- Agreement: the agreement shall be binding (reinstatement to the job or payment of a compensation).
- No agreement: the employee can lodge a complaint at the labour court within 20 working days, having deducted the days counted from the dismissal date to the date the reconciliation proceedings were filed.

The period for claiming at the labour court is 20 working days from the date of dismissal. However, once the application for reconciliation proceedings has been filed, the period of 20 days is suspended and starts to run again once the conciliation act is held. However, the suspension will not take longer than 15 working days. That is, after 30 days, even if the conciliation act has not been held the period starts running again.

### 8. Severance pay

Fair dismissal for serious cause: No compensation payable.

Fair dismissal for economic or individual reasons: 20 days of salary per each year worked, up to a maximum of 12 monthly payments.

Unfair dismissal for serious cause or unfair dismissal for economic or individual reasons: Since 12 February 2012 an unfair dismissal indemnity (*indemnización por despido improcedente*) amounts to 33 days of salary per each year worked up to a maximum of 24 monthly payments, instead of 45 days per each year worked up to a maximum of 42 monthly payments as foreseen in the previous regulation. However, for employment contracts dated before 12 February 2012, the indemnity will be 45 days per each year worked until 11 February 2012 and 33 days per each year worked from 12 February 2012 until the dismissal date. Nonetheless, the total compensation is capped at 24 months except if the employee has accrued a higher compensation before 12 February 2012.

If the employee is not a legal representative, the employer may choose between the compensation abovementioned or reinstatement and payment of the salaries accrued since the dismissal. However, if the employee is a legal representative, he/she may choose between the abovementioned compensation with proceeding salaries or reinstatement and payment of the salaries accrued since the dismissal.

Null objective or disciplinary dismissal: Reinstatement and payment of the salaries accrued.

### 9. Mentionable aspects/particularities

A dismissal is considered to be a collective dismissal (*redundancies*) when it affects within a period of 90 days 10 employees in companies employing less than 100 employees, 10% of the employees in companies employing between 100 and 300 employees, or 30 employees in companies employing more than 300 employees. A dismissal will also be considered to be collective when the entire company workforce is dismissed and the activity of the company disappear, if the number of employees dismissed are, as minimum, five employees. Collective dismissals as well as the company closure have a special procedure and rules, different from that mentioned above.

### 10. Managing directors

Top executives (*altos directivos*) are entitled to receive an indemnity in case of an extinction of the contract as a consequence of an unilateral decision of the company equivalent to seven days of salary in cash per each year worked up to a maximum of six monthly payments (in case the top executive contract does not foresee anything). Please note that the indemnity received by the top executives is subject to social security contributions and tax withholdings.

In case of unfair dismissal equivalent the top executive would be entitled to receive an indemnity to 20 days of salary in cash per each year worked up to a maximum of 12 monthly payments (in case that in the top executive contract both parties would not have agreed anything different regarding such issue). Please note that the indemnity received by the top executives is subject to social security contributions and tax withholdings.

# Sweden



### 1. Kinds of dismissal

In Swedish labour law there are two kinds of dismissal, ordinary dismissal with due notice ( *uppsägning*) and dismissal for serious cause without notice (*avskedande*). The two kinds of dismissal differ in required reason/ground for dismissal and dismissal protection.

### 2. Necessity of reasons for dismissal

An ordinary dismissal must be based on an objective reason. Such an objective reason is either linked to circumstances relating to the 'employee personally' or to 'other circumstances'.

Circumstances linked to the employee personally that may render ordinary dismissal are for instance repeated negligence at work, theft, violent acts at work or in connection to work, disloyalty, and severe cooperation problems.

The most commonly invoked circumstance upon which most ordinary dismissals are based is, however, shortage of work, also referred to as redundancy (*Uppsägning på grund av arbetsbrist*). This type of circumstance falls outside the scope of circumstances linked to the employee personally and hence into the category of other circumstances. When an employer needs to dismiss employees by reason of shortage of work/redundancy the employer is furthermore required to follow the rule of last in, first out (*Sist in först ut*), meaning in general that the last employee hired shall be the first one to leave. Even though the rule might seem easy enough to follow it is actually part of a quite complicated structure involving collective bargaining agreements, exceptions and special regulations.

A dismissal for serious cause can be executed if the employee has grossly neglected his/her obligations towards the employer. Examples of such gross misconduct are violent acts or threat of violent acts at work or in connection to work, theft, and grave disloyalty towards the employer which e.g. might be to initiate or carry on business which is competitive to the employer's.

An ordinary dismissal without an objective reason and/or a dismissal for serious cause without gross negligence from the employee can be nullified in court. An ordinary dismissal is furthermore not admissible if the employer reasonably can be expected to provide the employee with other work.

### 3. Notice periods

A dismissal for serious cause does not require the employer to serve a notice period. As this type of dismissal only applies when the employee has grossly neglected his/her obligations to the employer, the employment contract is generally terminated when the employer has communicated the dismissal. However, the employer is required to inform the employee one week in advance that it intends to dismiss for serious cause the employee. The dismissal for serious cause furthermore has to be executed within a two months period after the employer has obtained knowledge of the facts upon which it bases the dismissal. Otherwise the dismissal is invalid.

Notice periods for ordinary dismissal are regulated by law and sometimes in collective bargaining agreements. The periods increase in length in favor of the employee depending upon the seniority. Agreements contrary to what the law stipulates may only be made in collective bargaining agreements. During the trial period (*provanställning*) of usually six months, the notice period is two weeks in practice.

Seniority	The employee is entitled to the following notice of termination
0 < 2 years	1 month
2 < 4 years	2 months
4 < 6 years	3 months
6 < 8 years	4 months
8 < 10 years	5 months
At least 10 years	6 months

After the end of a trial period until the seniority of two years the dismissal period is one month. The notice period is further increased in length up to six months for 10 years' or more seniority. Once the employee has been notified of the dismissal the notice period starts.

#### 4. Form of dismissal

All dismissals have to be in writing. The circumstances upon which the dismissal is based do not need to be stated in the notice, but need to be communicated in writing to the employee upon his/her request. The notice must include information about what the employee shall do if he/she wants to have the dismissal nullified and/or claim damages. The employer is furthermore required to state whether the employee is entitled to reinstatement and what the employee needs to do in order to execute his/her reinstatement rights.

#### 5. Further requirements for a valid dismissal

One important requirement for the validity of an ordinary dismissal based on circumstances relating to the employee personally is that the employee must have been warned that his/her behaviour is unacceptable. The warning must be clear to the employee, show him/her how to conduct him/herself in future and what consequences it may lead to otherwise. A dismissal risks being nullified by court if the employer has not given the employee proper warning.

#### 6. Special dismissal protection

Besides the particularities mentioned above, special protection against dismissal exists for certain groups of employees and/or in certain situations. For instance, a person that has been given a certain work task with reference to his/her disabilities are normally entitled to continue to work regardless of the rule last in, first out in case of dismissals due to shortage of work/redundancy. The same principle applies to union representatives. Pregnant women and employees on parental leave do not enjoy any special employment protection but objective grounds are of course required in order for the dismissal to be valid. In the case of dismissal of an employee on parental leave based on shortage of work, the notice period will not start until the employee's leave has ended.

#### 7. Legal means of the employees

In both the case of dismissal for serious cause and ordinary dismissal, the employee is protected by the requirements of such relevant type of dismissal. If the requirements are not met the dismissal might be nullified in court and the employee may be entitled to damages. Furthermore, in some cases a warning is necessary (see above).

The employee may also be entitled to damages, even if the dismissal as such has been based on justified objective reasons. This might for instance be the case if the employer breaks the rule of last in first out, or if the employer does not meet the formal requirements of the dismissal notice.

If the employee wants to challenge the dismissal, he/she shall notify the employer of his/her intentions within two weeks after having received notice of the dismissal. The employee, furthermore, has to file his/her claim in court no later than two weeks after the expiration of the notification period. As stated in section 4 the dismissal note must contain information about the employee's rights in this aspect. If the dismissal note does not contain the required information the employee is entitled to claim annulment for as long as up to one month after the termination of employment. The period under which the employee must file his/her claim in court is however the same, i.e. within two weeks of the expiration of the notification period. If the employee wants to claim damages in connection to the dismissal he/she shall notify the employer of his/her intentions within four months after the date on which the action giving rise to the damages was taken. In case the dismissal note does not meet the formal requirements the termination of the employment is considered as starting point for the expiration period for damages. Proceedings shall be commenced within four months of the expiry of the notification period.

It is the responsibility of the employer to prove that the reasons upon which the employer bases the dismissal really are at hand and that they in all aspects are sufficient for the intended dismissal. The court decides whether the requirements are met. If the requirements are not met, the employment continues and the employee has the right to return to his working place.

#### 8. Severance pay

In case of an ordinary dismissal the employer must continue to pay the employee his/her salary and other regular benefits during the notice period. If an ordinary dismissal is challenged in court the general rule is that the employer must continue to provide the employee with his/her salary and other benefits until the conflict is finally solved. The same type of obligation might be laid by the court upon the employer in situations of dismissal for serious cause, even though this is not as common.

Severance pay (*Avgångsvederlag*) can only come into play if both parties agree to a settlement outside of court. Usually such a settlement means that the employee revokes his/her right to continued employment and/or reassignment against a lump sum of money. The size of such a severance pay is dependent on many different and individual factors and it is therefore difficult to say anything in general about the size of it, but severance pay amounting to six to 15 monthly salaries are not uncommon. However, each particular case requires an individual evaluation of its surrounding circumstances before anything can be estimated. Estimates can be given regarding reasonable size of a severance pay.

#### 9. Mentionable aspects/particularities

None

#### 10. Managing directors

Employees, such as managing director (*verkställande director*), whose duties and conditions of employment are such that they may be deemed to occupy a managerial or comparable position are excluded from the application of the Employment Protection Act which regulates dismissal conditions. Therefore, a lawful dismissal can occur without the requirement of just cause (dismissal without objective and demonstrable individual/economic reasons). Notice period and settlement indemnity will be determined by contractual and general rules of unfairness. According to practice, an employee with a managerial or comparable position should have a notice period and settlement indemnity equal to minimum 12 months' salary (for example six month notice period and six month settlement indemnity). A notice period and settlement indemnity equal less than 12 months will likely be regarded as unfair.

# Switzerland

## 1. Kinds of dismissal

In Swiss labour law, there are two kinds of dismissals: ordinary dismissal and dismissal for serious cause (*licenciement immédiat pour justes motifs*).

## 2. Necessity of reasons for dismissal

An ordinary dismissal is valid, if a certain notice period (*délai de congé*) is observed. In this case, no special reason is necessary. However, the party terminating the contract shall, upon request of the other party, state in writing the reasons for having terminated the contract. In practice, reasons to terminate an employment relationship are not difficult to find. Unlike when the termination is deemed to be abusive, the employee is only entitled to his/her ordinary salary up to the duration of the notice period provided for in the employment contract.

A notice of termination is notably abusive if a party gives it because of a quality inherent in the personality of the other, unless such quality relates to the employment relationship or significantly impairs cooperation within the enterprise or because the other party asserts in good faith claims arising out of the employment relationship.

A dismissal for serious cause can be given if there is a valid reason. For valid reasons, the employer, as well the employee, may at any time terminate the employment relationship without notice. A valid reason is considered to be, in particular, any circumstance under which, if existing, the terminating party can in good faith not be expected to continue the employment relationship. The party which abusively gives notice of termination of the employment relationship has to pay an indemnity to the other party. The indemnity is determined by the judge considering all circumstances. It cannot however exceed the employee's wages for six months.

## 3. Notice periods

In case of ordinary dismissal, the following notice periods must be respected:

Seniority	Notice given by employer
0 < 1 year	1 month*
1 < 10 years	2 months
As of 10 years	3 months

\* During the probation period (max. three months), if any, the employment relationship may be terminated at any time with a notice period of seven days.



These periods may be altered by written agreement, standard employment contract or collective bargaining agreement. They shall, however, be reduced to less than one month only by collective bargaining agreement and only for the first year of seniority.

The dismissal for serious cause does not require the employer to serve any notice period.

## 4. Form of dismissal

Except if the employment contract provides for a special form, the termination of an employment contract does not require a particular form. However, the party giving notice shall, upon the request of the other party, state the reasons for giving of notice in writing. In order to avoid any dispute and to have a proof, it is recommended to give the dismissal in writing.

## 5. Further requirements for a valid dismissal

Particular requirements exist in case of dismissal for serious cause. Indeed, such dismissal may occur only if the deviant behaviour of the employee is serious. If the behaviour is less serious, a dismissal for serious cause can be made only after having first warned the employee. The warning must make the employee's deviance recognisable to him/her and indicate what consequences may arise in case the behaviour is repeated. The dismissal is only valid if the employee violates his/her duties again. A dismissal without notice implies that it is not possible anymore to expect from the employer that he/she respects the ordinary notice period.

## 6. Special dismissal protection

According to Swiss labour law, upon expiration of the trial period (if any), the employer shall not terminate the relationship:

- during the other party's performance of compulsory Swiss military or protection service, or civil service, in case such a service lasts more than eleven days, during the four weeks prior to and after the service;
- during the period that the employee is prevented from performing his/her work fully or partially by no fault of his own due to illness or accident for 30 days in the first year of service, for 90 days as of the second year of service until and with the fifth year of service, and for 180 days as of the sixth year of service;
- during the pregnancy and during the 16 weeks following giving birth of an employee;
- during the employee's participation with the agreement of the employer at a foreign aid service assignment abroad ordered by the competent federal authority.

Notice given during one of the above-mentioned forbidden periods is null and void. If the notice is given prior to the beginning of such period and if the notice period has not expired prior to such a period, the expiration is suspended and shall continue only after termination of the forbidden period.

## 7. Legal means of the employees

If the dismissal can be considered as abusive, the employee has to file a written objection against the dismissal no later than by the end of the notice period. If the objection is validly made and if the parties cannot agree on a continuation of the employment relationship, the party who has received notice of termination may assert his/her claim for indemnity. This claim is forfeited if no legal action is taken within 180 days after the employment relationship has ended.

## 8. Severance pay

In case of ordinary dismissal, no mandatory severance pay (*indemnité de licenciement*) has to be paid, except if it is provided for by the contract concluded between employer and employee. The employee is only entitled to receive his/her ordinary salary during the notice period.

However, if the dismissal is considered as abusive, an indemnity is due (cf. below).

In case of dismissal for serious cause (i.e. without notice), severance pay is due only if the dismissal is not justified. In the absence of valid reason, the employee shall have a claim for compensation of what he/she would have earned if the employment relationship had been terminated by observing the ordinary notice period or until the expiration of the fixed agreement period. The judge may decide, in his/her own discretion and taking into account all circumstances that the employer has to pay an indemnity to the employee. Such indemnity may not, however, exceed the employee's salary for six months.

## 9. Mentionable aspects/particularities

Particular requirements and procedures exist in case of collective dismissal. According to Swiss law, collective dismissals are deemed to be notices of terminations given by the employer within 30 days for reasons unrelated to the person of the employee and which affect at least 10 employees in enterprises usually employing more than 20 and less than 100 persons, at least 10% of all employees in enterprises usually employing more than 100 and less than 300 persons, or at least 30 employees in enterprises usually employing at least 300 persons.

Since 1 January 2014, the Swiss legislator has introduced the duty for companies employing at least 250 employees to negotiate with the employees and, provided that the conditions set by the law are met, to settle a social plan when they intend to make at least 30 employees redundant within 30 days for reasons without any connection with their persons.

If, at the end of the negotiations, the parties have not agreed on a social plan, an arbitral tribunal must be appointed and will then issue a social plan in a binding arbitral award.

## 10. Managing directors

No specific dismissal rules apply for managing directors [*directeur exécutif*].

# Thailand



## 1. Kinds of dismissal

In Thailand, an employment contract can be terminated either by dismissal for (serious) cause and without cause e.g. redundancy. In case of termination where the reasons are not attributable to the employee, severance pay will be due at the rate prescribed by law. In case of dismissal without cause, regardless of severance being paid, the employee may bring a court case against the employer for 'unfair dismissal'.

An employment contract for an indefinite period can be terminated by the employer by providing a notice of termination (การบอกกล่าวการเลิกจ้าง) or providing payment in lieu of advance notice to the employee for the termination to take immediate effect. For employment contract for a definite period, no notice is required and the contract will be terminated upon expiration of the term.

## 2. Necessity of reasons for dismissal

The law allows an employer to dismiss an employee for the following reasons without the necessity to pay severance pay:

- Performs his/her duties dishonestly or intentionally commits a criminal act against the employer;
- Intentionally causes the employer to suffer losses;
- Commits an act of negligence which causes the employer to suffer severe losses;
- Violates the employer's work rules and regulations or orders which are legal and fair, and which the employer has provided a written warning, except in serious situations for which the employer is not required to give a warning;
- Being absent from his/her duties for a period of three consecutive work days without a reasonable cause, whether or not there is a holiday intervening in such period; and/or
- Being sentenced to imprisonment by a final court judgement.

## 3. Notice period

The employer must provide an advance notice on or before the date of payment, for the termination to take effect the following payment date. However, such notice does not need to be more than three months. In case the employer wishes to terminate the employment contract immediately, an indemnity in lieu of notice (จ่ายเงินแทนการบอกกล่าวล่วงหน้า) will be due to the employee.

## 4. Forms of dismissal

Notice can be given in both writing or verbal but preferably in writing as evidence, and in the notice of such dismissal from the employer should specify the exact effective date of termination of employment agreement to the employee.

In case of dismissal for serious cause (การเลิกจ้างกรณีร้ายแรง) as set out under section 2, the employer should include the reason/facts giving rise to the termination of employment in the letter of termination of the employment contract. If not, the employer may not raise such cause afterwards in case the employee takes a court action towards afterwards.

## 5. Further requirements for dismissal

In case the employee commits an act or violation of the employer's work rules, regulations or orders which are legal and fair (but not a serious case), the employer may issue a written warning to the employee detailing such acts/violations and such warning shall be effective for a period of one year from such date. If the employee commits such act/violation again within the year, the employer may dismiss such employee and severance pay is not required.

## 6. Special dismissal protection

Not applicable.

## 7. Legal means of employees

The employees can submit an indictment at the labour court in Thailand against the employer for any claims in relation to their employment and/or dismissal. Claims regarding wage payment, overtime payment and holiday payment must be entered within two years. Other claims can be filed within 10 years. There is no charge for court fees.

## 8. Severance pay

The employer who terminates the employment of an employee without cause attributable to the employee is obligated to pay severance pay to the employee, in correlation with his seniority:

Seniority	Severance pay (wage equivalent)
< 120 days	None
120 days < 1 year	30 days
1 year < 3 years	90 days
3 years < 6 years	180 days
6 years < 10 years	240 days
As of 10 years	300 days

Severance pay is calculated based on the employee's wage: remuneration received in return for work done (e.g., allowances paid monthly in a fixed amount is considered as 'wage' for calculation of severance pay) and includes holiday pay remuneration for other periods of absence (e.g., weekly holiday, annual leave and traditional holiday etc.), but excluding other benefits or welfare obtained from the employer such as, transportation fee and child allowance.

Upon the employee's retirement (60 years of age or earlier, as agreed or provided in the company's work rules), the employee will also be entitled to severance pay at the rate prescribed.

## 9. Managing directors

There is no specific dismissal regulation for managing directors (กรรมการ). Therefore, managing directors will be subject to the labour law same as other employees.

# The Netherlands

## 1. Kinds of dismissal

In the Netherlands different kinds of dismissals exist. The first one is a dismissal by giving notice. In case of dismissal for economic reasons or because the employee has been sick for two years, the employer must request the UWV (an administrative body) prior approval to give notice.

In other individual situations, the employer must turn to the sub district court (*kantonrechter*) with a petition in which it requests dissolution of the employment contract based on a reasonable ground. The following exhaustive list summarises these reasonable grounds:

- Frequent sickness;
- Non-performance;
- Culpable behaviour or omission;
- Conscientious objections;
- Disrupted employment relation;
- Other reasons.

An employment contract can also be terminated with immediate effect during the trial period (*proeftijd*). The reason must not be discriminatory. Trial periods must be concluded in writing and are only possible in employment contracts of which the term is longer than six months. If the employment contract is shorter than two years, the trial period cannot be longer than one month. If the term of the contract is longer than two years, the trial period cannot exceed two months.

In case of urgent reasons (*dringende redenen*) an employee can be dismissed with immediate effect (*ontslag op staande voet*). Dutch law then requires that, in all reasonableness, it cannot be expected from the employer that the employment contract continues any longer. If that is the case, prior approval of the UWV or the court is not required and the notice period does not apply. The employer must inform the employee of its decision without any delay (max. two to three days or longer if further investigation is required), mentioning the reasons for the dismissal with immediate effect. Deciding on a dismissal with immediate effect requires a very diligent decision making process and could lead to court procedures.

Besides these four kinds of unilateral dismissals, parties can also terminate the employment contract with mutual consent. They will have to negotiate the terms and conditions, which will have to be laid down in a settlement agreement. Although the legal consequences are slightly different than in case of a termination with mutual consent, another but similar way to terminate the agreement is that the employer gives notice with the employee's approval. In both situations the employee has a two week period to reconsider his consent or approval. This will be three weeks if the employer does not inform the employee of his reconsideration rights in writing.



## 2. Necessary reasons for dismissal

The UWV and/or the sub district court will have to assess whether all the requirements for dismissal on the requested reasonable ground are met. If this is not the case the employment agreement cannot be terminated. It is not possible to terminate an employment contract based on two 'half' reasonable grounds.<sup>4</sup> Building a good file will therefore be very important.

Also in case of dismissal with immediate effect, the reasons must be clear and solid.

A termination with mutual consent does in principle not require a specific ground, but if there is no reasonable ground an employee would most likely not be willing to cooperate.

## 3. Notice periods

The statutory notice period for the employee is one month.

The statutory notice period for employer depends on the continuous length of employment (seniority):

Seniority	Notice by the employer
0 < 5 years	1 month
5 < 10 years	2 months
10 < 15 years	3 months
As of 15 years	4 months

Parties can agree in writing to a longer notice period for the employee, provided that the notice period for the employee cannot exceed six months and the notice period for employer must then be at least twice the length of the notice period of the employee. Collective bargaining agreements may, however, deviate from the statutory or contractual notice period.

Giving notice is only possible after the UWV has given its prior approval. If the employer turns to the sub district court with a request to dissolve the employment contract, the court will also have to take into account the notice period. In both cases the procedural time can be deducted from the notice period. There will always remain a minimum notice period of one month.

\* Proposed changes in Dutch employment law

In October 2017 the new Dutch Government announced certain changes in Dutch employment law. These changes include amongst others the following:

- 4 The dismissal legislation will be less strict. Sometimes, an employer has multiple grounds for wanting to dismiss an employee, but for none of these grounds the criteria have been fully met. At the moment, it is then not possible to unilaterally dismiss an employee. The new Government now announced that unilateral dismissal will be possible on a cumulation of circumstances (grounds).

## 4. Form of dismissal

The form in which notice is to be given after approval of the UWV is not prescribed by law. However, it is strongly advised to give notice in writing, so that the employer has proof.

In case the sub district court dissolves the employment contract, its formal decision will dissolve the employment contract. No further action by the employer is required.

The form of a termination during the trial period is not prescribed by law, but it is strongly recommended to do so in writing. In any event, upon the employee's request, the employer will have to inform the employee in writing about the reason(s) for the dismissal.

Also in case of a termination because of urgent reasons, Dutch law does not prescribe that this must be done in writing, but again it is strongly advised to do so. If not, this will seriously weaken the position of the employer and is likely to lead to an invalid dismissal.

A termination with mutual consent must always be agreed upon in writing.

## 5. Further requirements for a valid dismissal

Not only must the requirements for dismissal be fully met (see section above), the employer must also – prior to a dismissal and within a reasonable period – try to reassign the employee in another position, if necessary by offering education. This obligation does not apply in case of culpable behaviour by the employee.

## 6. Special dismissal protection

Several types of employees have special dismissal protection. This includes:

- Sick employees (during the first 104 weeks of sickness);
- Pregnant employees (pre-maternity);
- Employees on post-maternity leave (including a period of at least six weeks after pregnancy leave);
- Members of an employee representation body;
- Trade union members;
- Employees using their rights to special leave.

Some exceptions apply to this prohibition to terminate these employees with special dismissal protection.

### 7. Legal means of the employees

If the employer receives approval from the UWV and subsequently gives notice of dismissal, the employee can – depending on the specific situation – request the sub district court a) to nullify the notice, b) reinstatement or c) a reasonable compensation (*billijke vergoeding*), which comes on top of the statutory transition compensation (see section 8).

The employee must do so within two months after the date on which the employment agreement ends. After this procedure before the sub district court, appeal before the Court of Appeal and cassation before the Supreme Court are possible.

If the sub district court dissolves the employment contract upon the employer's request, appeal and cassation are possible.

The employee can also request the sub district court to dissolve the employment contract, after which appeal and cassation are possible.

### 8. Severance payment: transition compensation

Every employee that is employed for at least 24 months<sup>5</sup>, has a statutory right to the transition compensation (*transitievergoeding*). This must be paid if the employer gives notice, after dissolution by the sub district court and if a contract for a definite period of time is not extended. The transition compensation must also be paid if the employment contract is terminated on the employee's initiative because of culpable behaviour by the employer.

The transition compensation equals the sum of 1/6 of the monthly salary for each period of six months during the first ten years of service (1/3 month per year) and 1/4 of the monthly salary for each period of six months thereafter (1/2 month per year).<sup>6</sup> 'Monthly salary' means the employee's base fixed salary, increased with pro-rata holiday pay, fixed end year payments (13th month), bonus and variable pay and any other fixed payments. Over the year 2018, the payment is maximised to EUR79,000 gross or to an annual salary if that is more than this amount.

In some cases the transition compensation does not have to be paid, such as to the retiring employee, if the employee is

terminated for culpable behaviour, in case the collective bargaining agreement has an equal arrangement or in case of bankruptcy of the employer. Specific temporary arrangements apply to older employees (> 50 years; > 10 years of employment) and small enterprises (less than 25 employees). The transition compensation must also be paid to an employee who is dismissed after two years of sickness.<sup>7</sup>

Certain education and outplacement costs may be deducted from the transition compensation, provided that specific and strict conditions are met.<sup>8</sup>

Parties can, to the benefit of the employee, agree on a contractual severance payment that deviates from the statutory rules. Nevertheless, this possibility may be limited in case of top-ranking employees working for financial institutions or certain institutions financed by public funds.

### 9. Mentionable aspects/particularities

If the employee reaches the state pension age, the employer does not need to have prior approval for dismissal.

The same applies for an employment contract for a definite period of time: this normally ends automatically without notice being required. Nevertheless, in case of an agreement for six months or more, the employer must notify the employee ultimately one month before the end date whether the employment contract will be extended or not. If the employer does not notify, he will have to pay a one-month penalty (or pro-rata if he notifies too late).

Employers can offer three employment contracts for a definite period of time in a maximum period of two years<sup>9</sup>. Any following contract will be for an indefinite period of time, unless the interval between two contracts has been longer than six months. Collective bargaining agreements may contain deviations to these rules.

The employer does not need to request prior approval for the dismissal of the employment contracts of a managing director (*statutair bestuurder*) of a B.V. or N.V., who is appointed on the basis of the company's articles of incorporation. The rules with regard to the transitional compensation equally apply to the managing director.

5 Employees will be entitled to the statutory transition compensation from the start of their employment contract instead of after the current two years of employment.

6 For each year of employment, the transition compensation will be a third monthly salary. This also applies to contract periods longer than ten years (for which half a monthly salary applies at the moment).

7 Small employers (< 25 employees) will be compensated for having to pay the statutory transition compensation when dismissing an employee who has been sick in the last two years before dismissal.

8 The possibilities for deducting training costs on the transition compensation are widened.

9 Employers can offer three employment contracts for a definite period of time in a maximum period of three years.

The bills containing the above changes will all have to pass parliament before taking effect. Therefore, these plans could still change and are not yet implemented in Dutch legislation.

# The United Kingdom



### 1. Types of dismissal

In the UK there are three types of dismissal: fair, unfair and wrongful dismissal.

There are five fair reasons for dismissal which are set out below and these are governed by legislation.

An unfair dismissal takes place when one of the fair reasons does not apply to the dismissal and/or the employer's procedure and/or decision to dismiss was not reasonable. This may be a discriminatory reason, for example, based on race, religion, disability, age, sex or sexual orientation. Where an employee resigns in response to an employer's breach of contract, this is known as constructive unfair dismissal.

A wrongful dismissal is a dismissal in breach of contract; this takes place where the employee is not provided with the appropriate notice prior to the termination of the employment, or is not compensated for his/her notice period. Notice periods are determined by the employee's employment contract or by statute (which implies minimum notice periods into employment contracts).

### 2. Necessary reasons for dismissal

The five fair reasons for dismissal are: redundancy, conduct, capability (performance or ill-health), illegality (for example no work permit) or 'some other substantial reason'.

An example of a 'some other substantial reason' dismissal is a breakdown in trust and confidence between the parties, but examples of what could constitute 'some other substantial reason' are wide and varied.

Prior notice of a potential termination is usually required for a fair dismissal. This prior notice may take the form of, for example:

- redundancy consultation with the employee
- a warning or warnings in relation to the employee's conduct/attendance
- a performance improvement plan in relation to the employee's performance or
- an opportunity to ensure any illegality is rectified.

It is also fair to terminate an employee's employment immediately if the employee has acted in a manner which amounts to gross misconduct. In the case of gross misconduct no notice period or indemnity in lieu of notice needs to be provided to the employee.



### 3. Notice periods

As noted above, notice periods are usually set out in the employee's employment contract, or set by statute.

Contractual notice periods must not be less than statutory requirements. Statute provides that provided an employee has more than one month's seniority an employee must be given at least one week's notice, and after two years' seniority an employee must be given at least one week's notice for each full year of continuous seniority, up to a maximum of a 12 week notice period after 12 or more years of continuous seniority.

Contractual notice periods may be in excess of the statutory minimum. They will be agreed between the employee and the employer and will be influenced by factors such as the employee's seniority, experience, role or the employer's practice. For example company directors would typically have notice periods of six to 12 months.

Employees can be asked to work during their notice period. Depending on the terms of the contract employees can be placed on garden leave (similar to suspension of duties), or paid in lieu of their notice period.

### 4. Form of dismissal

The employee's employment contract may specify that notice of termination must be in writing. If the contract is silent on this matter, verbal termination is permissible. Written notice is always recommended.

For collective dismissals (i.e. when 20 or more employees are to be made redundant), prior notice to the Department for Business, Energy & Industrial Strategy must be provided before notice of termination is provided to the employees.

### 5. Special dismissal protection

Several categories of employees are provided with special dismissal protection in order to protect employees against discrimination by their employer.

Special dismissal protection applies to employees who are pregnant or on maternity leave, those returning from maternity leave, disabled employees, employees making a protected disclosure, employees who are taking part in trade union or works council activities, employees who have raised health and safety concerns and employees involved in military service. Employees who are absent from work due to a long term illness may also have special protection from dismissal particularly where the employee has the benefit of permanent health insurance provided by his/her employer. In these situations, employers are not prevented from dismissing the employees but additional considerations do apply.

### 6. Legal means of the employees

If an employee believes that he/she has been unfairly dismissed, then they must, unless an exemption applies, make an early conciliation notification to Acas (a publicly funded conciliation service). If early conciliation fails or a party does not agree to participate, Acas will issue a certificate which then allows the individual to lodge a claim to an employment tribunal. A claim must usually be lodged within three months from the date of termination of employment, although time limits are extended to allow for early conciliation via Acas.

Until very recently, fees were payable in respect of a claim presented to the employment tribunal. Following a decision of the United Kingdom Supreme Court dated 26 July 2017, such fees are no longer payable.

The employment tribunal will consider the reasons for the termination of employment, whether a fair reason applied to that termination and whether a proper process was followed.

If the employment tribunal decides that the termination of employment was unfair, it may provide the individual with compensation. Compensation is based on

- a statutory formula and
- loss of earnings. The individual has a duty to mitigate financial losses by seeking new employment.

An employee can also apply to the civil courts or the employment tribunal for damages if the employee is owed, and has not been paid, his/her notice period.

### 7. Severance pay

For redundancy dismissals, an employee who has more than two years' seniority with the employer will be entitled to severance pay (a redundancy payment). This is calculated on the basis of a fixed weekly salary (capped at GBP479 per week, for redundancies made before 6 April 2017, and capped at GBP489 per week, for redundancies on or after this date) and multiplied by the full years of seniority (capped at 20 years of seniority). The multiplier is increased when the employee reaches the age of 41. The maximum amount of such severance pay available to an employee is GBP14,370 for redundancies made before 6 April 2017, and GBP14,670 for redundancies made on or after this date. This is paid in addition to an employee's notice period.

For fair dismissals, not by reason of redundancy, only the indemnity in lieu of notice (payable if the employee does not remain in employment during their notice period) must be provided to the employee, together with any other sums due under contract (except where there is gross misconduct).

For unfair dismissals, the employee can seek a basic award, which is calculated in the same way as the severance pay (redundancy payment) described above, together with a compensation award which is compensation based on loss of earnings to the date of the tribunal hearing and future loss of earnings in certain circumstances. The compensation must be just and equitable. There is a cap on the compensation for loss of earnings of GBP78,962 for employees who have been dismissed before 6 April 2017 and a cap of GBP80,541 for employees dismissed on or after this date. In such cases, where an employee's annual gross salary is less than the cap of GBP80,541, any compensatory award made for unfair dismissal would be capped at one year's gross salary. These caps apply regardless of an employee's position or seniority.

Where an employee has been unfairly dismissed and subjected to discrimination, the employee can also seek a further payment for injury to feelings arising from the discrimination. Compensation for loss of earnings for discrimination is uncapped.

### 8. Mentionable aspects/particularities

In most circumstances, an individual requires two years' continuous seniority with their employer before they have the right to bring an unfair dismissal claim.

Discrimination claims do not require an individual to have achieved any length of continuous seniority with their employer; they can be brought at any time.

For collective dismissals, individual and collective consultation periods must be complied with prior to notice of dismissal being issued.

### 9. Managing directors

No specific dismissal rules apply for managing directors.

# Vietnam



### 1. Kinds of dismissal

An employment contract can be terminated by the employer only in cases stipulated by the labour code by giving a prior notice which satisfies the notice period (*Thời hạn thông báo trước*) to the employee or otherwise as required by the labour code. In other words, dismissal without reason would be deemed an unlawful dismissal (*Chấm dứt hợp đồng trái pháp luật*).

An employer can also terminate an employment contract without prior notice to the employee during the trial period and after that in the event of:

- 'serious cause' (dismissal for serious cause) (*Sa thâi*), or
- dismissal with reason, including that for restructuring, a change of technology or for economic reasons; upon corporate merger, consolidation, division or separation; on corporate transfer of ownership or right to use assets (hereinafter collectively called 'dismissal for economic reasons'), where the contract is terminated with immediate effect.

### 2. Necessity of reasons for dismissal

During the trial period, the employer can terminate such probation or employment without indemnity if the employee's probationary work does not satisfy the requirements of the employer.

After passing the trial period, employees will be dismissed only for concrete reasons stipulated by the labour code and detailed in the company's internal working rules that have led to their dismissal. In the event the court decides that the dismissal is illegal, the employer must reinstate the employee and must pay back-pay including social insurance, health and unemployment insurance, plus at least two months' wages. In case the employee does not wish to continue to work, the employer must pay, in addition to the said compensation, the severance allowance. If the employer does not wish to reinstate the employee, the two parties may agree on additional compensation to terminate the employment.

The employer may unilaterally terminate an employment contract in any of the following circumstances, subject to notices and/or other procedures (such as consulting with the trade union):

- The employee repeatedly failed to perform the work provided in the employment contract. The employer is required to specify the criteria for assessing the work completion under the corporate regulations and/or collective bargaining agreement as a basis for such assessment;
- The employee is ill or injured and remains unable to work after having received treatment for 12 consecutive months in the case of employment contract for an indefinite period, or six consecutive months in the case of employment contract for a definite period, or more than half the duration of the contract in the case of a seasonal or specific job contract with a period of less than 12 months;
- Where as a result of a natural disaster, fire or for any other reason of force majeure as prescribed by laws, the employer needs to reduce the number of jobs;
- The employee failed to attend the workplace within 15 days from expiry of the suspension of performance of the employment contract as permitted by laws.

The employer may unilaterally terminate an employment contract in any of the following circumstances, without prior notice but other procedures are required:

- restructuring or a change of technology,
- economic reasons,
- corporate merger, consolidation, division or separation, or
- corporate transfer of ownership or right to use assets.

There are some forms of disciplinary measures for breaches of labour rules, subject to the seriousness of the breach, in which dismissal for serious cause is the most severe one. For example, the employer is permitted to apply dismissal for serious cause in the following cases:

- an employee commits an act of theft, embezzlement, gambling, deliberate violence causing injury, uses drugs at the workplace, discloses technology or business secrets or infringes intellectual property rights of the employer, or is guilty of conduct causing serious loss and damage or which threatens to cause extremely serious loss and damage to property or interests of the employer;
- an employee of his/her own accord takes an aggregate of five days off in one month or an aggregate 20 days off in one year without proper reasons; etc.

### 3. Notice period

In case of dismissal not for serious cause, the labour code provides for fixed notice periods. The notice period is exclusively based on the kind of employment contract and the specific circumstances wherein the employee is dismissed. The notice periods are:

While in case of collective dismissals or dismissal for serious cause, no prior notice period is required.

If there was a breach of the notice period (*Thời hạn báo trước*) from the employer, the employer must reinstate the employee. The indemnity for unlawful dismissal include wages and compulsory insurances, plus at least two months' wages and payment in lieu of notice.

Kind of employment contract	Notice by the employer
Employment contract for seasonal or specific job with a term of < 12 months	
• The employee is ill or injured and remains unable to work after having received treatment for more than half the duration of the contract:	At least 3 working days
• Other cases:	At least 3 working days
Employment contract for a definite period with a term of 12 < 36 months	
• The employee is ill or injured and remains unable to work after having received treatment for a period of 6 consecutive months	At least 3 working days
• Other cases:	At least 30 days
Employment contract for an indefinite period	
• The employee is ill or injured and remains unable to work after having received treatment for a period of 12 consecutive months	At least 3 working days
• Other cases:	At least 45 days

**4. Forms of dismissal**

Notice must be given in writing, but no mandatory language and effectiveness time requirements are applicable to such notice in Vietnam but typically it will have the date and the notice period.

In case of dismissal for serious cause, there are specific formalities:

**Step 1: Holding a meeting to consider the discipline measure (reflected via the discipline minutes)**

**Notice on the disciplinary meeting**

This is to make sure that the employee knows about the meeting and the purpose thereof. The legal representative (*Người đại diện theo pháp luật*) (similar to managing director) shall give a written notice on the meeting (to notify time, date, venue and purpose of this disciplinary appraisal meeting) to the employee and the trade union at least five working days before the meeting.

If the employee does not show up, the employer needs to give two more written notices. If the employee still fails to attend the meeting after the third one, the employer may hold the meeting without his/her attendance.

**Participants:**

- The representative of the trade union;
- Representative of the employer who shall preside over the meeting;
- The employee and his/her lawyer (if any);
- Witnesses and other people in relation to the employee's case, if possible.

**Process of the meeting: is specified quite strictly by the laws, failure to such may lead to unlawful dismissal.**

**The minutes of the meeting's contents:**

The minutes must contain all compulsory content and be signed by all participants and the who person made it. In case any participant's signature is missing, the reason for this must be expressly stated.

**Step 2: Issuing a written decision on dismissal for serious cause**

The employer's legal representative (similar to managing director) shall produce a written decision on dismissal for serious cause of the employee. This is sent to the employee, the trade union and concerned departments, units and officers within the corporate to organise the implementation of this decision.

**5. Special dismissal protection**

Some categories of employees enjoy dismissal protection, even in case of dismissal for serious cause. Specifically:

- Some employees may not be terminated during the following periods:
  - During his/her treatment by decision of a competent medical establishment, the employee who suffered an injury caused by a work-related accident or occupational disease;
  - An employee who is on annual leave, personal leave, or any other types of leave agreed by the employer,
  - A female employee who is nursing a child under 12 months due to her marriage, pregnancy or maternity leave;
  - Employees on parental leave as prescribed in the law on social insurance.

These protected categories of workers cannot be dismissed except for the cases where the employee is ill or injured and remains unable to work as mentioned in section 3 above or other cases provided by laws.

- An employer is also not permitted to dismiss for serious cause a female employee due to her marriage, during pregnancy, while on statutory maternity leave; or an employee who is a parent or lawfully adoptive parent nursing or rearing a child under 12 months
- Trade union officers are particularly protected. When the employer wishes to dismiss, even dismiss for serious cause a part-time trade union officer, the employer must obtain written agreement from the trade union. If the parties are unable to reach agreement, then the two parties must report to the competent labour authority. The employer only has the right to make such decision after 30 days as from the notification to the competent labour authority.

**6. Legal means of employees**

During six months or one year following his/her exit date, an employee can raise claims with a labour conciliator or a court respectively based on employer's obligations. The employee may seek for criminal sanction by way of sending letter to relevant authorities.

**7. Severance pay**

Additional severance pay is due on top of the notice period or compensation for unilaterally terminating employment contract as mentioned in section 2 and payment in lieu of notice as mentioned in section 3 above, if any.

Within seven days from the termination of employment, the employer is required to pay the employee the following amounts:

- Outstanding salaries and allowances;
- Wages for annual leave not taken (on a pro rata basis);
- Severance pay, which shall be named severance allowance in case of dismissal (except for dismissal for serious cause) or job loss allowance in case of collective dismissal; and
- Other payable financial obligations.

Besides, the employer is responsible to complete social insurance book confirmation procedures and return the social insurance book as well as other documents to the employee.

According to article 48 of the labour code, the severance allowance is calculated as follows:

Severance allowance (SA)	=	Working time duration for allowance calculation (WT)	X	0.5 Salary used as basis for allowance calculation (S)
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Of which:

- **WT** is the total period of employment **excluding** the period for which the employee has taken the unemployment insurance and period for which the employer paid them severance allowance. **WT** shall be rounded off in accordance with the following principle:
  - A period of less than one month is deemed zero;
  - A period of one to less than six months is deemed a half-year;
  - A period of six to 12 months is deemed one year.
- **S** is the average monthly salary of the six months preceding the termination of the employment contract, including the base salary, plus certain applicable salary-linked allowances<sup>10</sup> (if any).

**8. Managing directors**

No specific dismissal rules apply for legal representatives (*Người đại diện theo pháp luật*) (similar to managing directors) as they are also bound by employment relationship, even in the case there is no employment contract. In case a substantial part of managing directors is bound to the company with an appointment decision and/or hiring service contract, in which case the managing directors shall be appointed or removed by the respective corporate competent bodies. Rights and obligations of managing directors shall be stipulated in the charter of the company.

<sup>10</sup> Applicable salary-linked allowances include (i) the allowances to compensate for the working conditions, the complexity of jobs, the living conditions, and the employee attraction level; and (ii) extra payments which are fixed and paid regularly in each period of salary payment.

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