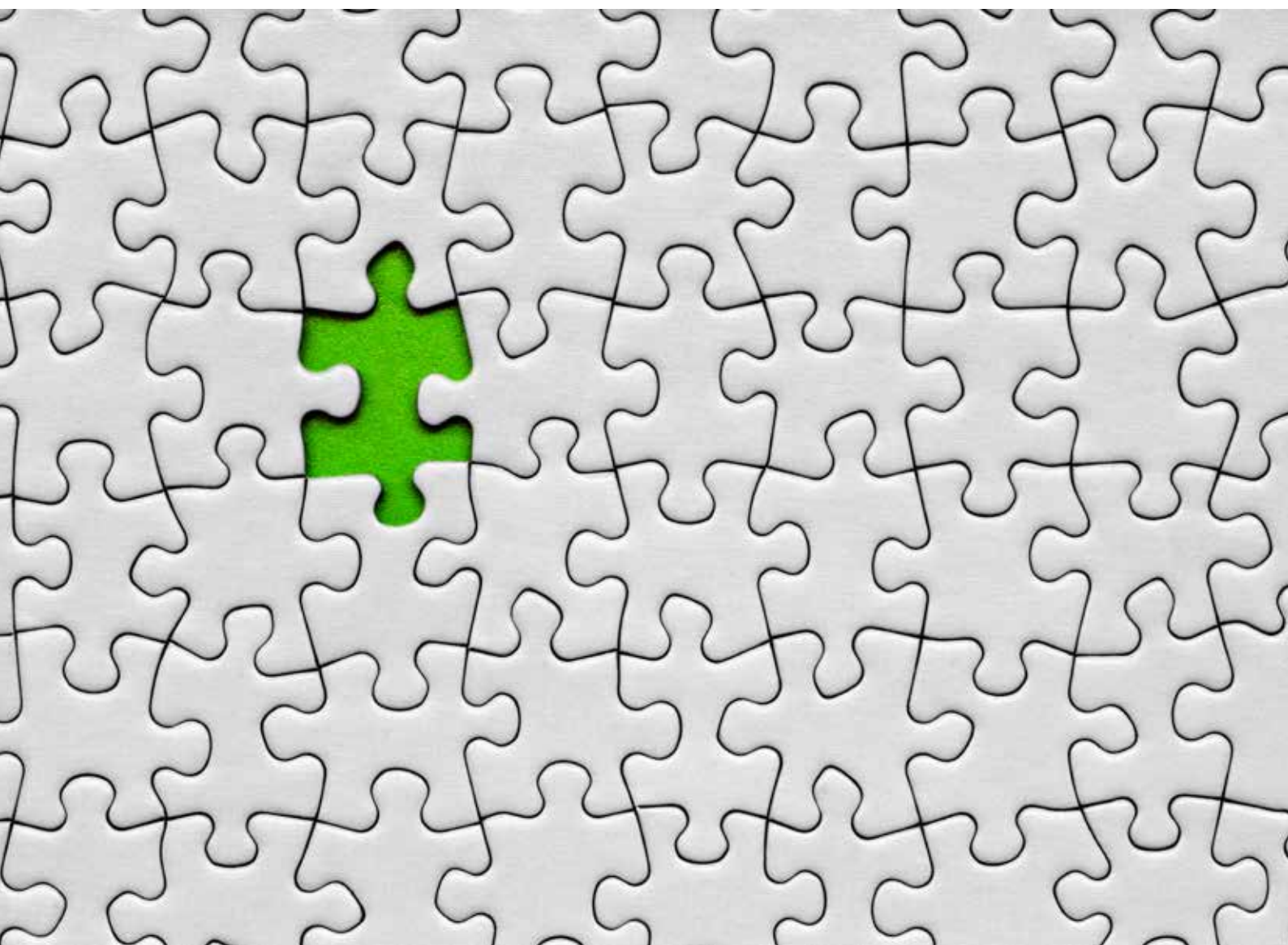




Deloitte Legal Perspectives International Dismissal Survey

May 2015



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This is a study conducted in December 2014 and consequently reflects the legislation of the different countries at that particular time. The figures used in the cost projection date from December 2014 and therefore do not take into account any changes in legislation of a later date with the exception of the Netherlands. Although this study has been performed with the greatest care the material in this guide is only for information purposes on general practices. The authors may not be held responsible in any way for any possible error that might occur or for any use or interpretation that could be made of this information. It is not intended to be used as a legal opinion in any event.

Introduction



The third edition of the International Dismissal Survey comprises the legislation of 31 countries: Austria, Azerbaijan, Belgium, Bulgaria, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Norway, Poland, Portugal, Romania, Russia, Slovakia, Slovenia, Spain, Sweden, Switzerland, the Netherlands and the United Kingdom.

This new edition is more than a refresh as the scope of the study has been broadened in two ways. Firstly, the number of countries covered increased to 31 (compared to 18 in the first edition and 25 in the second edition). Secondly, we have expanded the number of cost projections, providing a comparison in figures for similar dismissals in different countries. The figures reflect the dismissal cost for employers in all participating countries based on three cases with a different seniority and remuneration package, as well as the difference between being dismissed with or without reason, totaling six cost comparisons.

The survey takes into account for each scenario the average cost that an employer has to pay in a particular country to dismiss an employee and reach a final settlement on the dismissal file without court interference.

The survey is drafted from an employer's perspective, which means that only dismissals by the employer (and not by the employee) are taken into account and is based on the following information: i) statistical analysis of the dismissal cost and ii) country reports regarding the applicable dismissal regulations.

The survey reveals that there are many differences in employment protection legislation (and hence cost) between the countries investigated. However all participating countries have employment protection legislation in place. Contrary to the United States of America, where employment contracts can easily be terminated, European legislators generally take the view that employees require legal protection, that, to a certain extent existing jobs need to be protected and job security should be maintained.

The main technique of employment protection legislation is that dismissals need to be justified. The employers have to explain why they have chosen to dismiss a particular employee. The reason for dismissal must be stated in the actual notice or the employer has to submit the reason upon the employee's request. This reason must also be fair and objective and should be substantiated. In some countries, the legislation has limited the reasons that the employer can use to justify a dismissal. If the employer cannot provide a valid reason for dismissal, then an indemnity for unlawful dismissal will be due, or, in some countries, reinstatement may be ordered by the courts by way of sanction.

This study also revealed that some countries have made substantial changes to their dismissal legislation (e.g. Belgium and the Netherlands), either due to court decisions or other external factors.

West-European countries face in general a higher dismissal cost compared to Central-European countries.

Cost projection—Comparison of the dismissal cost in Europe

In order to compare the employer's dismissal cost in the various countries, 3 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 (which elements are taken into account?) and seniority (medium vs. higher).

The following sets of parameters have been 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. Following this approach, the survey includes an overview of the results from a mathematical comparison across 6 different scenarios: i.e.

Scenario 1.1: Dismissal due to objective individual or economic reason in case 1

Scenario 1.2: Dismissal without objective individual or economic reason in case 1

Scenario 2.1: Dismissal due to objective individual or economic reason in case 2

Scenario 2.2: Dismissal without objective individual or economic reason in case 2

Scenario 3.1: Dismissal due to objective individual or economic reason in case 3

Scenario 3.2: Dismissal without objective individual or economic reason in case 3

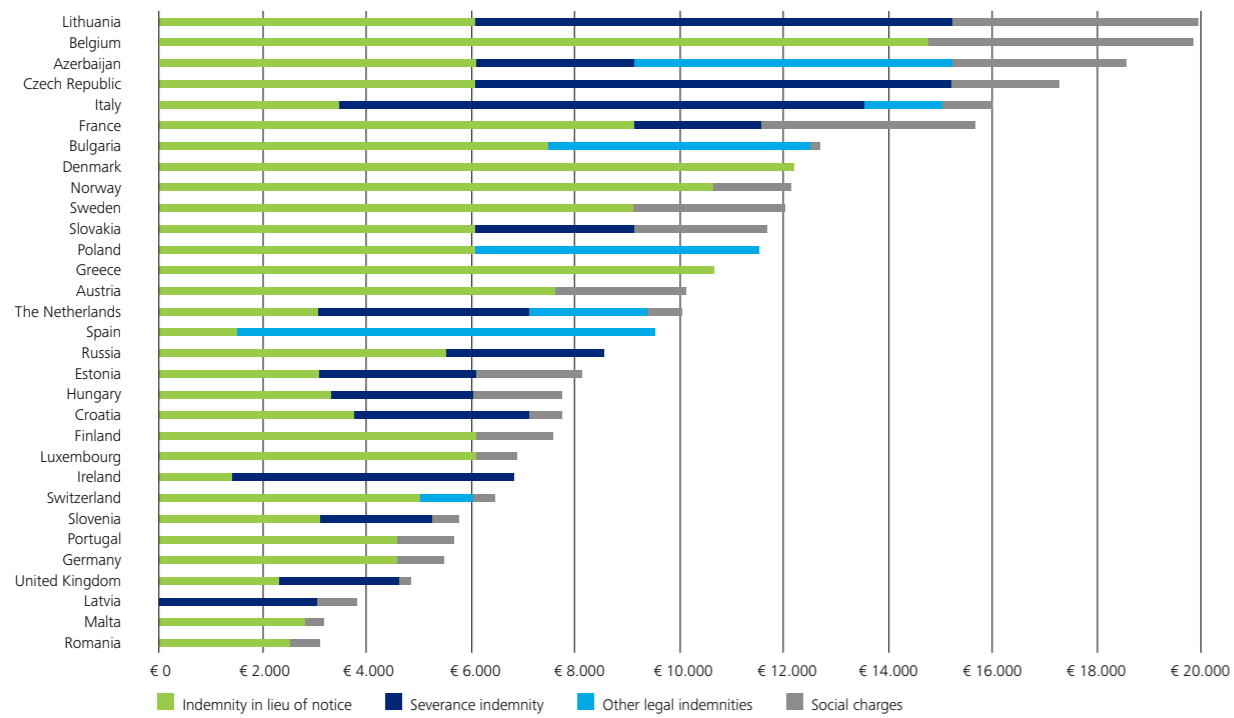
In each case, participating countries have been requested to mention any difference between a dismissal for individual reason (e.g. the employee's behavior or ability) or for economic reason (e.g. shortage of work). When such a difference was reported, this has been considered in the projections for the case of dismissal for economic reason.

For completeness sake, it should be noted that the practical examples have been calculated by the various countries while taking into account the local 'best practice' in reaching an agreement with the employee to settle the dismissal.

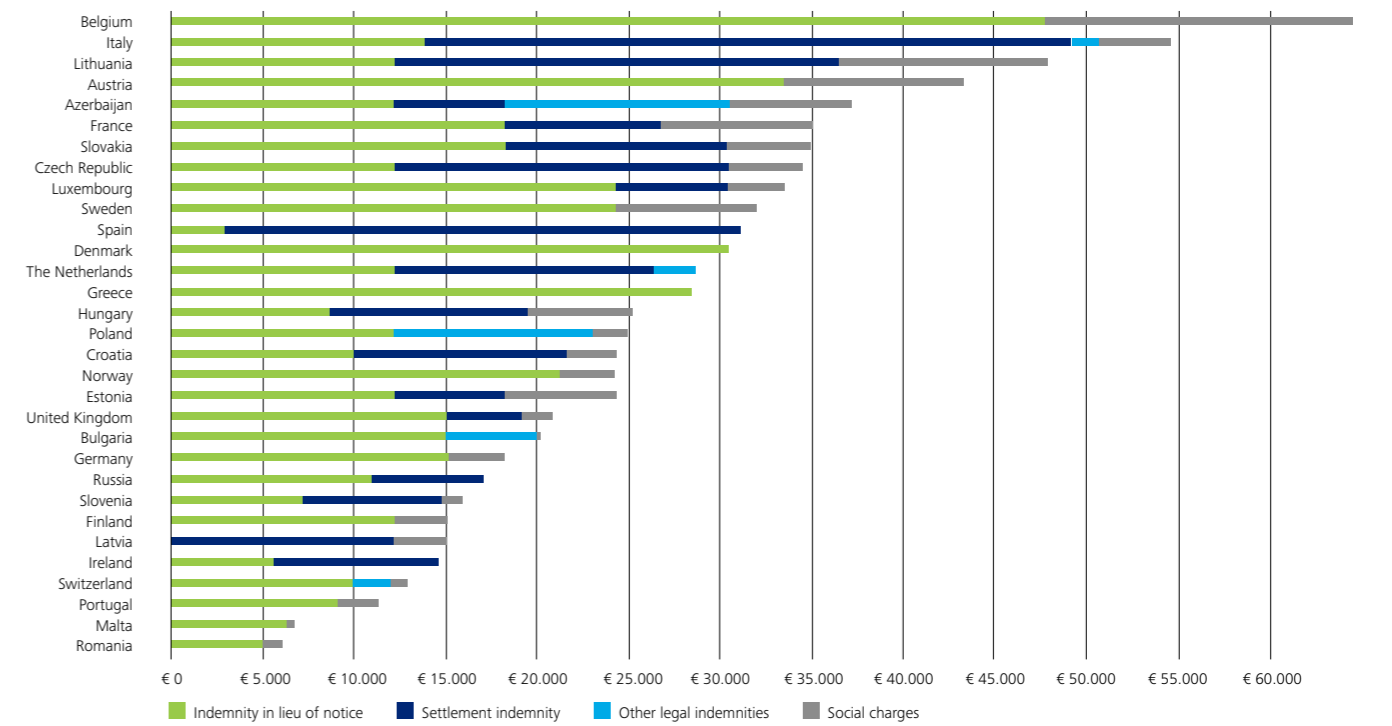
The figures date from December 2014 and do not take into account any legislative updates from a later date (with the exception of Netherlands, where the new legislation applicable as from 1 July 2015, is already taken into consideration). Please note however that such legislative changes have been covered as much as possible in the descriptive part of this survey (i.e. the report on country regulations).

Finally, the study 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 countries have different rules specific to multiple and/or collective dismissals.

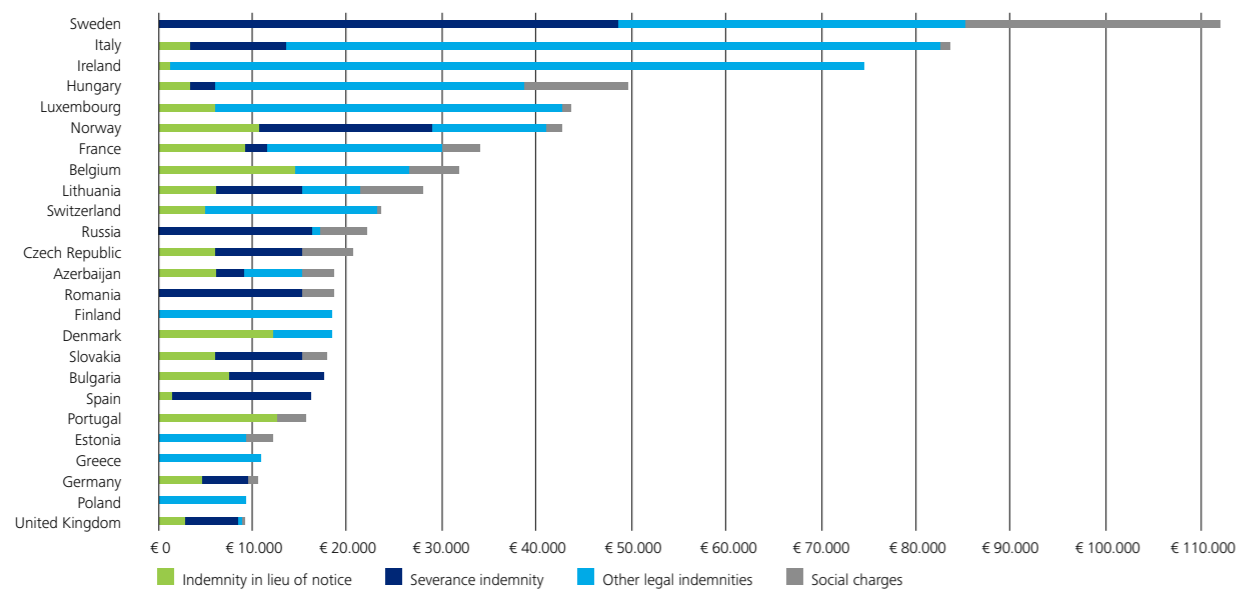
Case 1.1: dismissal due to objective individual or economic reasons



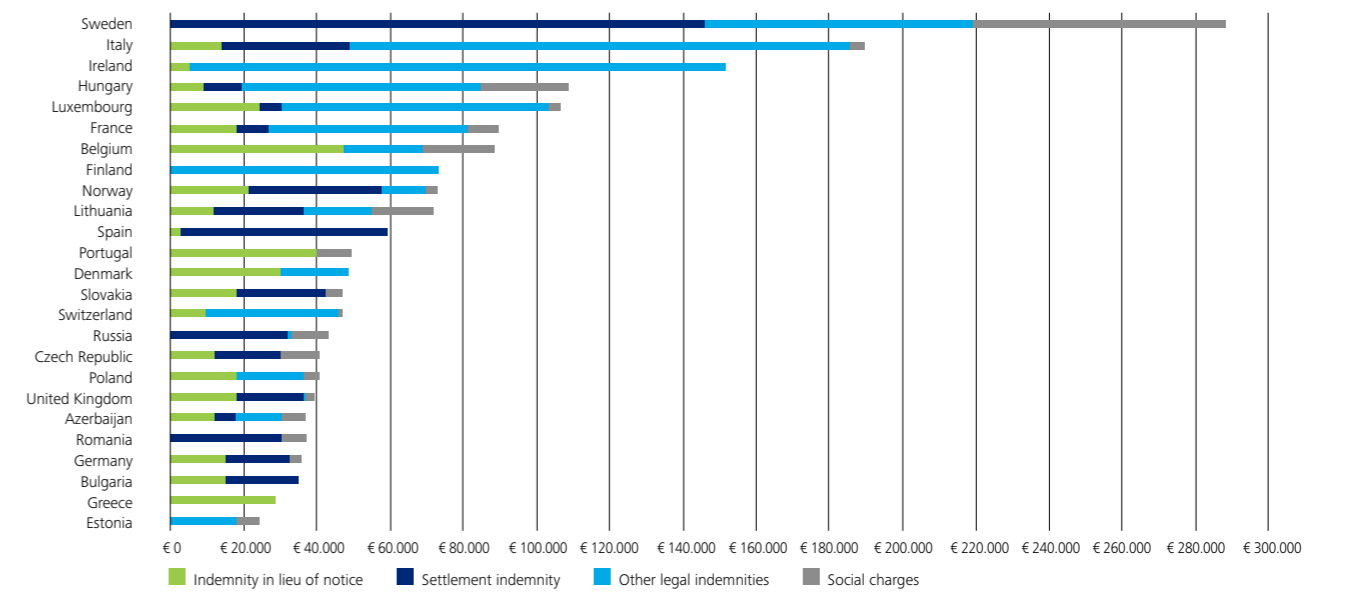
Case 2.1: dismissal due to objective individual or economic reasons



Case 1.2: dismissal without objective individual or economic reasons

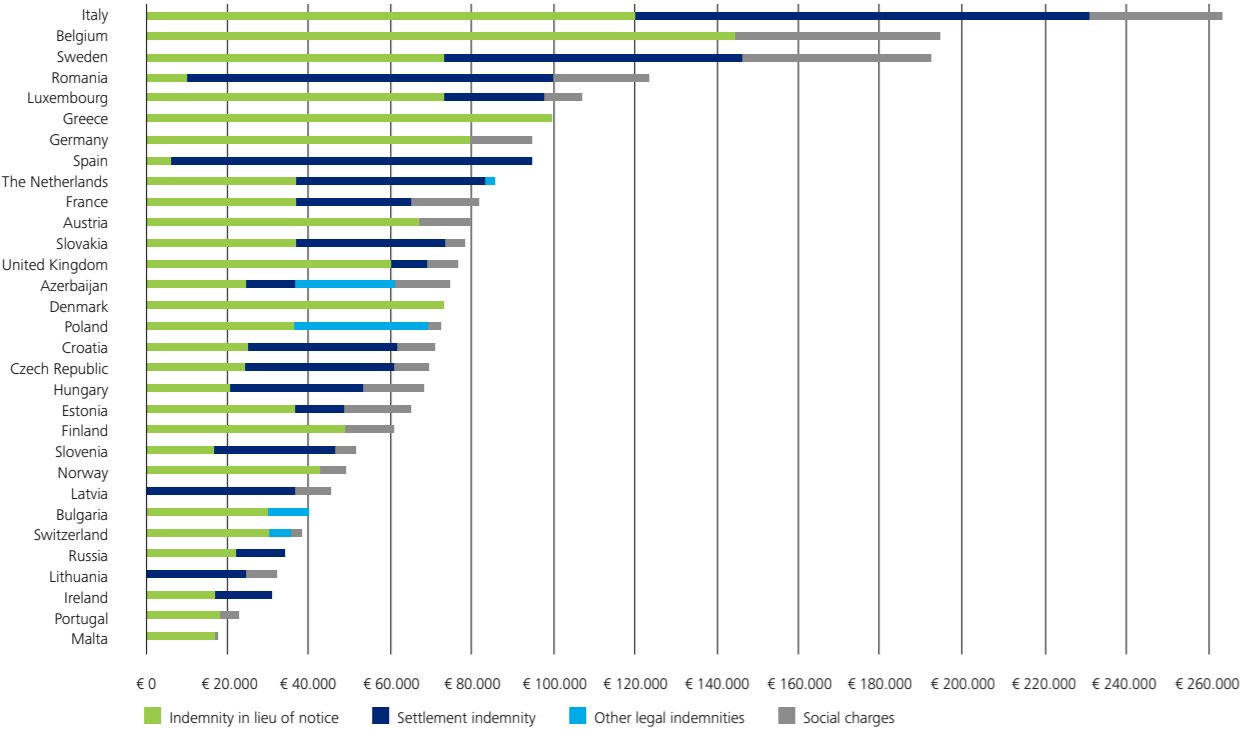


Case 2.2: dismissal without objective individual or economic reasons

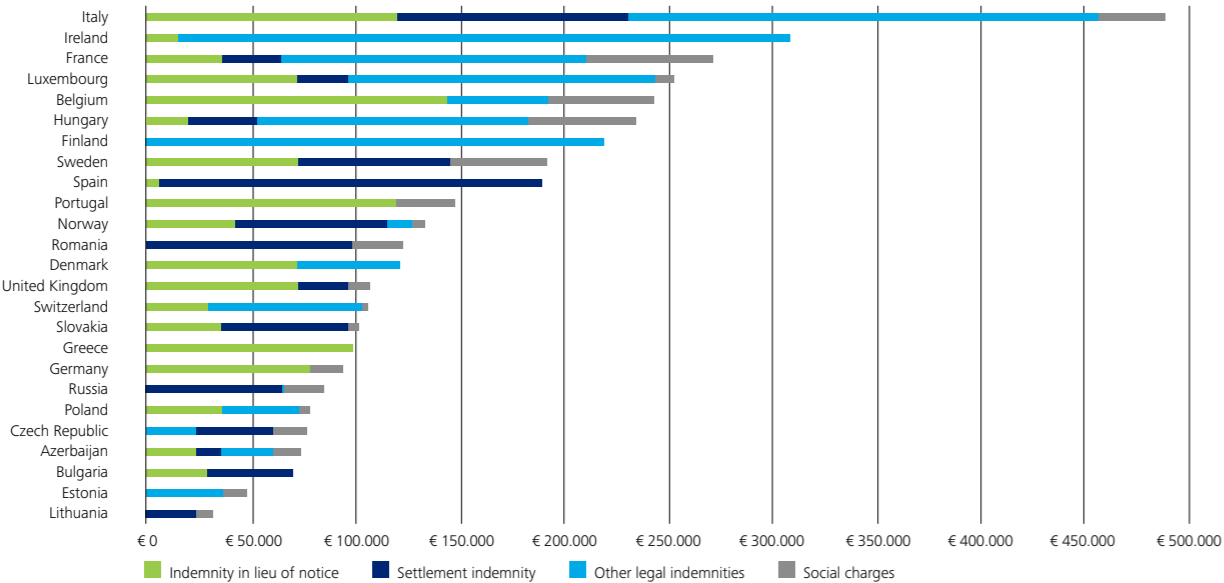


Main conclusions

Case 3.1: dismissal due to objective individual or economic reasons



Case 3.2: dismissal without objective individual or economic reasons



Although the basic dismissal concepts are similar in all surveyed countries such as individual versus collective dismissal, reason versus no reason, dismissal for cause, protected categories, etc. ... legislation in the surveyed countries differs substantially as to the employer's cost associated with some of these concepts, especially notice period, severance indemnity and indemnity for unlawful dismissal.

If we compare all scenarios for dismissal with an objective individual reason or economic reason (case 1), the top 5 of most expensive countries for employers consists of :

- 1) Italy
- 2) Belgium
- 3) Sweden
- 4) Luxembourg
- 5) Greece

If we compare all scenarios for dismissal without any objective reason (case 2), the top 5 of the most expensive countries for employers consists of :

- 1) Italy
- 2) Sweden
- 3) Ireland
- 4) Luxembourg
- 5) France

Overall, the top 6 across all scenarios and cases of the most expensive countries for employers consists of: Italy, Sweden, Belgium, Ireland, Luxembourg, France.

Employers in West-European countries face in general higher dismissal cost compared to employers in Central-European countries.

The highest increase of dismissal cost is triggered by the unlawful dismissal indemnity which is due if an employee is dismissed without a reason. On average, the cost factor associated with such a dismissal is at least two 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 (Czech Republic, Greece or Portugal for instance) do not seem familiar with the concept of unlawful dismissal. In these countries, employers do not incur higher cost in case of dismissal without objective reason. A limited number of countries (Austria, Croatia, Latvia, Malta, Slovenia, The Netherlands) were not in a position to provide

a cost assessment, because they have no experience of the new legislation in place (The Netherlands) or because the cost for the employer may very much vary depending on the Court's decision.

In most countries the legal grounds for employers to dismiss employees are restricted and subject to strict formalities. Belgium is one of the few exceptions to this rule:

Courts/Regulatory body: upfront approval

Netherlands

Most countries for some categories of protected employees (pregnant employee, employee representatives)

Courts: post-dismissal review with possible reinstatement

Austria, Azerbaijan, Bulgaria, Croatia, Czech Republic, Estonia, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Malta, Norway, Poland, Portugal, Romania, Russia, Slovakia, Slovenia, Spain, Sweden

Courts: judge cannot reinstate but only determine indemnity

Belgium, Finland, Switzerland, UK, Denmark, Luxembourg

The computation base for both the indemnity in lieu of notice and the severance indemnity, where applicable, includes in more than 60% of the countries surveyed the total remuneration package (annual base and variable pay as well as benefits in kind). In a limited number of countries only the base annual pay is taken into account for either the indemnity in lieu of notice (Bulgaria, Croatia, Italy, Romania, Switzerland, UK) or the severance indemnity (Bulgaria, Germany, Romania, UK).

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 Bulgaria, Czech Republic, Estonia, Germany, Ireland, Poland and Russia, may show a difference. For these countries, the cost projections are based on an economic reason.

In more than 70% of the surveyed countries, a severance indemnity has to be paid on top of the notice or indemnity in lieu of notice, to reach a final settlement with the dismissed employee (e.g. most Central-European countries, France, Italy, UK, etc.).

In 60% of the surveyed countries, managing directors do not fall under the compulsory labor rules and parties are free to negotiate dismissal arrangements subject to local corporate governance rules, where applicable. Typically, these dismissal arrangement will not require a specific reason. Only a very limited number of countries (Italy, Sweden, Spain) provide derogatory dismissal rules for high level executives in general.

Since our last survey, a limited number of countries have substantially changed their dismissal regulations (Belgium, Italy, The Netherlands). These changes were triggered either by court decisions, for example Belgium was forced to harmonize the dismissal legislation between blue-collar and white-collar since the difference in treatment was considered discriminatory, or for simplification and increase of labor flexibility.

In all surveyed countries, seniority within the company is the key factor in determining the level of dismissal cost for employers. However, over 50% of all surveyed countries have capped the dismissal indemnities. For example:

The Netherlands

Notice period: 1 to 4 months depending on the seniority

- Transition indemnity:
- Applicable only as of 24 months' seniority
 - Capped to nominal amount of 75.000 EUR or if higher, one year annual salary (According to new law as applicable as from 1 July 2015)

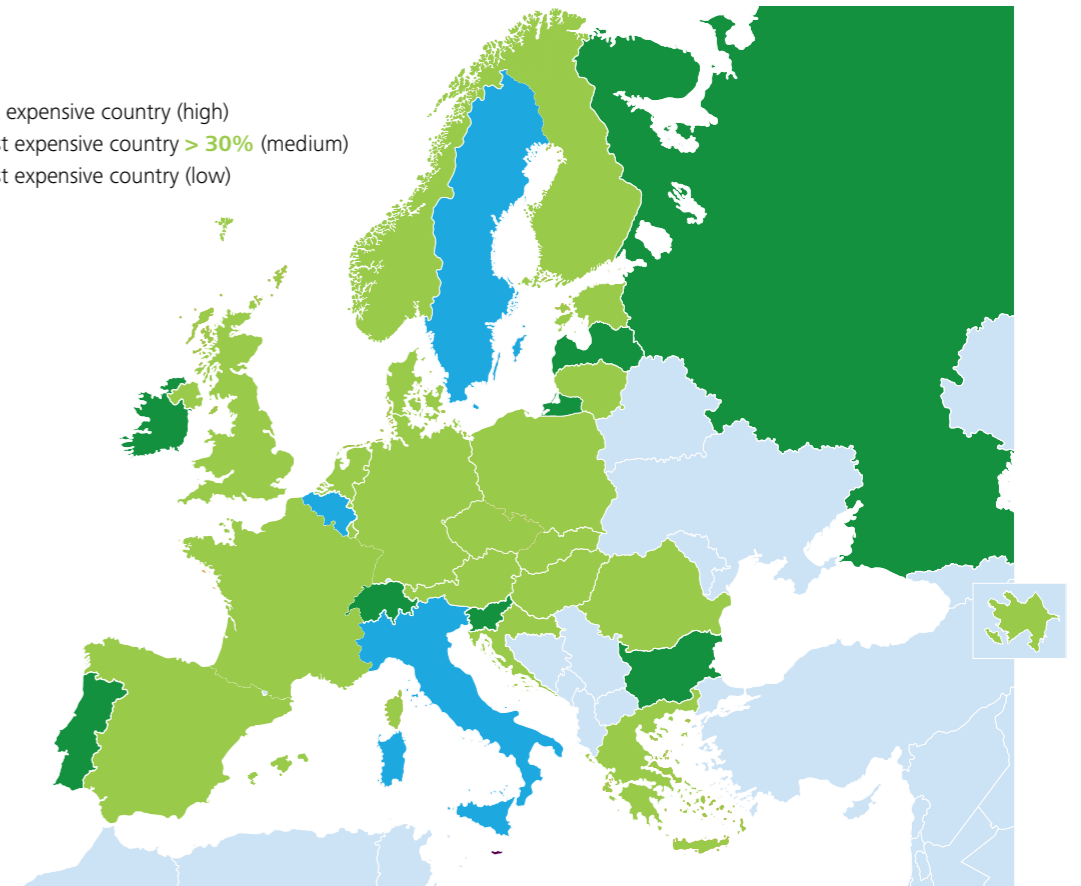
Switzerland

- Notice period:
- 0–1 year employment: 1 month notice period
 - 1–9 years: 2 month
 - >9 years: 3 months

Indemnity for unlawful dismissal: max 6 months

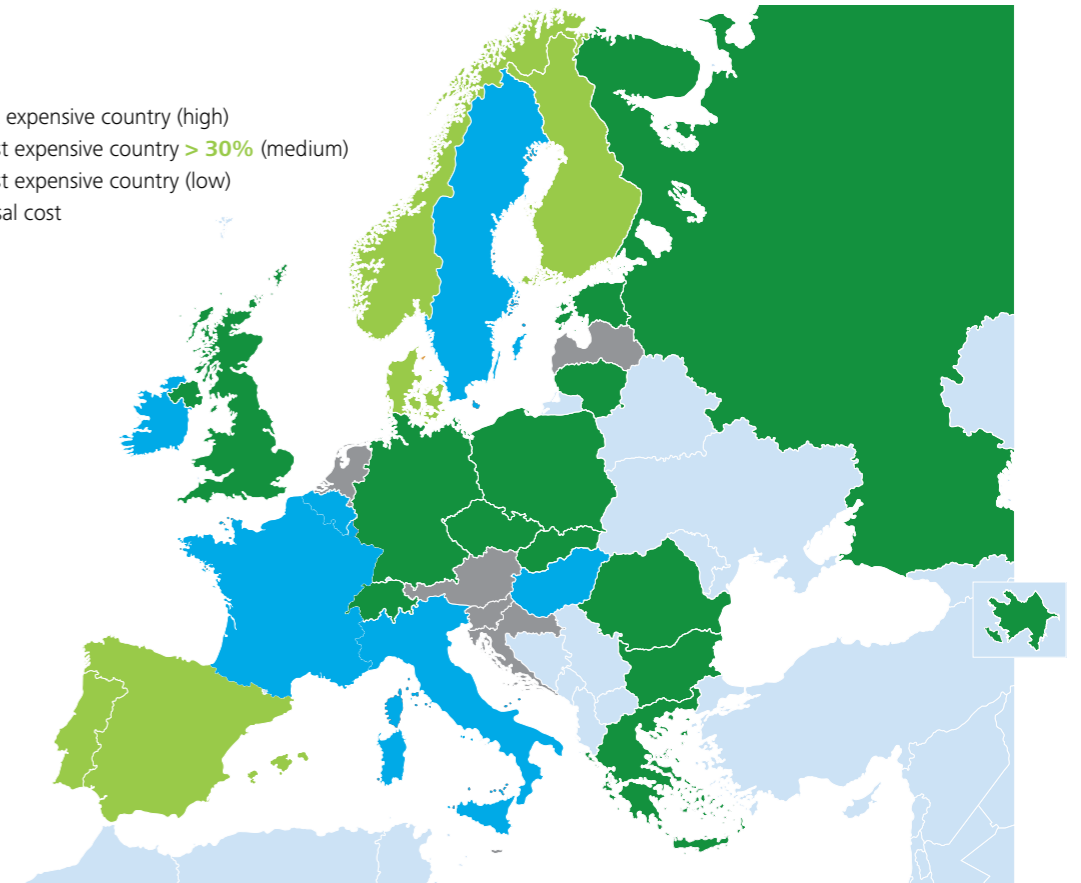
Scenario 1

- > 30% dismissal cost most expensive country (high)
- 30% < dismissal costs most expensive country > 30% (medium)
- < 30% dismissal costs most expensive country (low)



Scenario 2

- > 30% dismissal cost most expensive country (high)
- 30% < dismissal costs most expensive country > 30% (medium)
- < 30% dismissal costs most expensive country (low)
- impossible to assess dismissal cost



Austria

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, dismissal period and dismissal protection.

2. Necessity of reasons for dismissal

An ordinary dismissal does in principle not require any cause but is subject to notice periods. 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 labor court could set aside the dismissal (see below).

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 cause are provided in a binding but not exhaustive way by § 27 of the Austrian Employees Act. 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 notice periods stipulated by the Employees Act, the applicable collective bargaining agreement and the employment contract. Pursuant to the Employees Act the minimum period of notice to be given by the employer is six weeks and increases with the length of service (after two working years: two months; after five working years: three months,...). The applicable collective bargaining agreement may contain additional requirements and may provide, for example, for longer notice periods. The 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 at the last 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 a cause 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 his right to immediately terminate the employment for cause.

4. Form of dismissal

Basically, there is no certain form required. The dismissal may be declared in written form or orally. Only a few laws contain special regulations stipulating that dismissals have to be in written form. The reasons for the dismissal need not 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 protection against dismissal include procedural rules and provide for the mandatory involvement of the works council. If no works council has 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 five working days. 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 later on the grounds of social unfairness. Generally speaking, a dismissal is held socially unfair if the employee's 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 person or conduct related reasons) or commercial reasons make it difficult not to dismiss the employee (e.g. reorganization or stopping of production, measures of rationalization, drop in orders). Any dismissal of an employee declared in contravention of said information duties vis-à-vis the works council is void.

6. Special dismissal protection

Several groups of employees enjoy special protection against ordinary as well as summary dismissal. The exact scope of the protection varies; however, essentially for all of these employees, even ordinary dismissal requires some good cause, the labor 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.

7. 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 labor 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 an additional week.
- If the works council did not comment on the dismissal within the 5 days period, the employee may file an action within one week 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. Either the dismissal was based on an unlawful motive (e.g. membership in a trade union) or the dismissal is socially unjustified, 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.

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 payment (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 (Mitarbeiter-Vorsorgekasse). On termination, 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 3 years) or to leave the amounts in the fund, into which any new employer will continue to contribute monthly payments. No employer liability for severance payment 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 having been employed for more than 3 years is entitled to a mandatory severance payment when the employment ends. The amount of the severance payment depends on the duration of the employment and ranges between 2 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 of a limited liability company (GmbH) may be regarded - depending on the circumstances - as employees within the meaning of the Employees Act. In this case the mandatory notice periods stipulated in the Employees Act would have to be observed.

Azerbaijan

1. Kinds of dismissal

In accordance with the Labor Code of the Republic of Azerbaijan ("Labor Code") an employment contract can be terminated at the employer's initiative with or without notice, depending on the legal grounds.

2. Necessary reasons for dismissal

Under the Labor Code an employment contract can be terminated by the employer on the following grounds:

- i. liquidation of the entity;
- ii. workforce reduction is carried out in an enterprise;
- iii. there is a relevant decision of the attestation commission - composed of experienced and highly skilled employees of the entity and representatives of trade unions – that the employee does not possess necessary professional skills for the job held;
- iv. an employee does not meet the expectations during the trial period.
- v. an employee does not fulfill his functions and obligations under the contract or is involved in gross misconduct. The Labor Code precisely defines the following (exhaustive) cases which shall be regarded as gross misconduct entitling the employer to immediately dismiss an employee:
 - absence at work for a whole day without an excusable reason;
 - appearance at work under alcoholic, narcotic or other means of intoxication;
 - material damage to the owner due to the culpable acts of an employee;
 - infringement of labor protection rules resulting in damages to the health of fellow employees due to the culpable acts of an employee;
 - failure to fulfill his obligations with regard to confidentiality of production, commercial and state secret;
 - serious damage to the employers', enterprise's or owner's lawful interests resulting from an employee's gross mistakes or breaches of law during the employment activity;
 - repeated failure by an employee to perform his duties without good cause provided that such employee has been disciplined during the last six months;
 - committing administrative or criminal offenses during work time in the workplace.

3. Notice period

There is no notice period when an employment contract is terminated immediately. Notice periods apply only in cases of staff reduction and alteration of working conditions.

The notice periods are stipulated in the Labor Code.

- i. In the event an employment contract is terminated due to staff reduction, the employees must be personally notified of such termination not less than two months prior to the actual termination date.
- ii. In case of any alteration of working conditions the employee must be provided with one month notice. Upon the employee's written consent the employer can terminate the employment contract for the foregoing reasons without the said notification provided that the employee is paid additional compensation in the amount of his average salary for two months.

4. Form of dismissal

In practice the notice of dismissal of an employee is made in written form which is signed and confirmed by the employer, and the employee signs for receipt. The notice or order of dismissal must include the following information:

- Name and legal address of the entity, the number of the notice, date of the document, full name of the employer who signs the notice;
- Employee's full name;
- Position of the employee specified in the labor contract;
- Grounds of terminating the labor contract;
- Reference to the Article of the Labor Code where such grounds are specified;
- Date of termination of the labor contract;
- Documents serving as a ground for termination.

5. Further requirements for a valid dismissal

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

- In case of staff reduction or cases related to a change of owner of an enterprise (for the management of the enterprise) the employer shall offer the employee another position relevant to the employee's qualifications (should there be any suitable vacant positions);
- In cases of dismissals of employees, members of trade union because of staff reduction or breach of labour obligations, the employment contract can be terminated only after prior approval of the termination from the trade union of the enterprise.

6. Special dismissal protection

It is forbidden to dismiss certain employees under certain circumstances:

- pregnant women and women taking care of a child younger than three years old;
- employees raising a child below the 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;
- for being members of trade union or any political party;
- employee taking care of a person of poor health younger than 18 years old.

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. Legal means of the employees

In general, an employee may appeal to the court for resolution of an individual labor dispute within one calendar month from the day when he became aware that his rights have been violated. The Labor Code further entitles an employee to appeal to the court within one year from the day when he became aware that his rights have been violated provided the appeal is related to money and other property claims, as well as to labor disputes emerged as a result of caused damages.



8. Severance pays

Under the Labor Code, an employer has to pay severance pay amounting to:

- one time the employee's average monthly salary in case of dismissal at the initiative of the employer due to staff reduction or liquidation of the organization. Moreover, in these cases of dismissal the employer is also obliged to pay to the employee his average monthly salary for the period of his new job-seeking, but not exceeding 2 months;
- Two times the employee's average monthly salary in case of 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.
- Three times the employee's average monthly salary is paid to the employee's heirs in case of his/her death;
- Three times the employee's average monthly salary in case of dismissal due to change of the owner of the entity.

9. Mentionable aspects/ particularities

As of 01 July 2014 the new system of e-registration of employment relationship is active. As per new rules, hiring, transfer to another position, salary increase or termination of employment must be registered via internet portal of the Ministry of Labor and Social Protection of People of Azerbaijan. Any changes are becoming legally valid only after obtaining of a notification of successful uploading of the relevant information to the said system.

10. Managing Directors

The rules of dismissal of a Managing Director who works for a given company under an employment agreement are the same. The rules of 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, either by paying an indemnity in lieu of notice in which case the contract is terminated with immediate effect.

An employer can also terminate an employment contract without notice nor indemnity in lieu of notice, in the event of 'serious cause' ('dismissal for serious cause').

2. Necessity of reasons for dismissal

As from April 1st, 2014, in principle, dismissed employees have the right to know the concrete reasons that have led to their dismissal. The dismissed employees must therefore submit a request towards their employer. In the event the court decides the dismissal is unfair, the employee will be entitled to additional compensation.

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. A serious cause is a breach that immediately and definitively makes any further cooperation between the employer and the employee impossible (examples: theft, competition, aggression etc..).

3. Notice period

The Unified Status Act introduced new fixed notice periods. As of January, 1st, 2014, the duration of the notice period is exclusively based on the employee's length of service, meaning the period during which the employee was employed by the same company. 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):

| Seniority | Notice by the employer |
|---------------------|----------------------------|
| 0 < 3 months | 2 weeks |
| 3 < 6 months | 4 weeks |
| 6 < 9 months | 6 weeks |
| 9 < 12 months | 7 weeks |
| 12 < 15 months | 8 weeks |
| 15 < 18 months | 9 weeks |
| 18 < 21 months | 10 weeks |
| 21 < 24 months | 11 weeks |
| As of 3rd year | 12 weeks |
| As of 4th year | 13 weeks |
| As of 5th year | 15 weeks |
| As of 6th year | 18 weeks |
| As of 7th year | 21 weeks |
| As of 8th year | 24 weeks |
| As of 9th year | 27 weeks |
| As of 10th year | 30 weeks |
| As of 11th year | 33 weeks |
| As of 12th year | 36 weeks |
| As of 13th year | 39 weeks |
| As of 14th year | 42 weeks |
| As of 15th year | 45 weeks |
| As of 16th year | 48 weeks |
| As of 17th year | 51 weeks |
| As of 18th year | 54 weeks |
| As of 19th year | 57 weeks |
| As of 20th year | 60 weeks |
| As of 21st year | 62 weeks |
| As of 22nd year | 63 weeks |
| As of 23rd year | 64 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 3 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 employment agreements concluded before January 1st, 2014, transitional measures have been introduced in order to safeguard the termination rights built up by the employees until 1 January 2014. For these employees who are already in service, the notice period will be determined in two steps:

1. First, 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 at this date. Therefore, it is important to take a 'snapshot' for the employee, length of service and remuneration package on 31 December 2013.
 - The notice period for employees earning EUR 32,254 gross/year on December 31st, 2013 or more will be limited to one month per started year of seniority, with a minimum of 3 months, unless a sector/company/individual regulation existing at that time, is more advantageous for the employee.
 - For employees whose annual gross salary was equal to or lower than EUR 32,254 on December 31st 2013, the notice period will amount to 3 months per commenced 5-year period of service (unless a more beneficial regime existed).
2. Second, as of 1 January 2014, 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 service 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 steps.

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. In addition, if notice is sent by registered letter, this takes effect 3 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 termination 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. Termination for serious cause should preferably be notified by registered letter. To avoid an invalid dismissal for cause, the employee must also be provided with the reasons for the termination, ultimately within three working days after the termination for cause and 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, it concerns i.a.:

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

These categories of protected workers cannot be dismissed except for reasons unrelated to the grounds on which they are protected. In most cases the employee can claim severance pay equal to 6 months' remuneration on top of normal notice requirements.

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 to 1 to 8 years' remuneration.

7. Legal means of employees

During one year following his or her exit date, an employee can raise claims based on employer's obligations. If a violation of these employer's obligations would be criminally sanctioned, this period increases to 5 years following his or her exit date.

8. Severance pay

With the exception of additional compensation related to insufficient motivation (see point 2) 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 in so far they are bound by an employment agreement. 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 the event the contractual agreed termination modalities will prevail.



Bulgaria

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 notice 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:

- i. Dismissal with a notice:** 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 1 month (unless compensation for a longer period of time is agreed under a collective labor agreement or in a deed of the Council of Ministers). However, in all cases of termination the employer is obliged to pay the employee compensation for unused annual paid leave if any.
- ii. Dismissal without a notice:** disciplinary dismissal (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 disciplinary dismissal the employee shall pay to the employer compensation calculated on the basis of the employment remuneration due for the notice term – in case of indefinite term employment contract, or at the amount of the actual damages suffered by the employer – in case of definite term employment contract.

iii. 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 4 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.

The employer shall pay compensation at a maximum amount of 6 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 6-month remuneration of the dismissed employee.

3. Notice period

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.

- i. Notice period in case of indefinite term contracts:** the notice period the parties could agree on may vary between 30 days and 3 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.

- ii. Notice period in case of definite term contracts:** the notice period is 3 months, but not more than the remaining contractual term.

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 fact 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 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 3 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 labor 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 2 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 3 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 a severance payment amounting to minimum four gross monthly salaries. Furthermore, there exist numerous severance payments 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. Executives (Managing Directors)

The relations between the Executives (Managing Directors) 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 Management Agreement may envisage specific rules for termination, such as notice of termination, compensation in case of terminations, etc.

Croatia



1. Kinds of dismissal

In accordance with the Labor Act there are two kinds of dismissals: ordinary dismissal and dismissal for serious cause.

2. Necessity of reasons for dismissal

In case of an ordinary dismissal an employer may cancel the employment contract in case there is a legitimate reason to do so:

1. In case there is no need for performing certain work due to economic, technological or organizational reasons (cancellation due to business reason)
2. In case the employee is not capable of fulfilling his or her employment related duties because of his/ her permanent characteristics or abilities (cancellation due to the personal reason); or
3. In case the employee violates his/her employment obligations (cancellation 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 cancellation of employment if further violation occurs bearing in mind his/her employment obligations, unless circumstances exist due to which the employer cannot be reasonably expected to do so.
4. In case the employee didn't perform satisfactory during the trial period (cancellation due to unsatisfactory performance during the trial period)

In making a decision about cancellation due to business reasons, the employer must take into account the length of service, age and maintenance obligations lying upon the employee, unless he employs less than 20 employees. In case of cancellation due to the 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, due to an extremely grave violation of an employment obligation or due to another highly important fact, while respecting all circumstances or interests of both contracting parties, continuation of the employment contract is no longer possible. The employment contract can only be terminated by summary dismissal within fifteen days from the day when the employer learned about the fact(s) on which the dismissal for serious cause 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 will not create any legal effects.

3. Notice period

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

- Two weeks, if the employee has continuously worked for the employer for less than one year;
- One month, if the employee has continuously worked for the same employer for at least one year;
- One month and two weeks, if the employee has continuously worked for the employer for at least two years;
- Two months, if the employee has continuously worked for the employer for at least five years;
- Two months and two weeks, if the employee has continuously worked for the employer for at least ten years;
- Three months, if the employee has continuously worked for the employer for at least twenty years.

For the employee who has continuously worked for the employer for more than twenty years, the notice period is increased with two weeks if the employee is above the age of fifty, and with a month if the employee is above the age of fifty five.

If the cancellation is caused by the employee's behavior i.e. violation of employment duties, then the above listed notice periods are half the length of each of the above described ones.

The notice period does not run during pregnancy, maternity leave, leave for taking care for the 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, maximum notice period is established at 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.

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 specific protection exists against dismissal

- No dismissal possible (except during liquidation of the company): pregnant women and persons exercising their rights under special law on right of the parents.
- Prior consent of the works council or trade union required for dismissal
 - employees who are disabled due to work related injuries or professional disease. In this case the employer has to prove 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;
 - employee above the age of sixty;
 - employee's representative in the supervisory board;
 - Trade union representative.

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 adopt such 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

Entitlement to the severance pay – paid on top and after the expiration of the notice period – is prescribed for the employee who has worked for the employer for at least two years, unless the notice is caused by the behavior of the employee whereas no right to severance pay exists. Severance pay cannot be agreed in the amount lower than one-third of the average monthly salary earned by the employee in a period of 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 (Croatian: 'Pravilnik o radu') or employment contract, the total amount of severance pay may not exceed six average monthly salaries earned by the employee in a period of three months preceding the termination of the employment contract.

The non-taxable amount of the severance pay is HRK 6,400 for each year of service with the same employer in case of termination due to business reason and termination due to personal reasons and HRK 8,000 for each year in case of work related injuries or professional disease. To the years of service with the same employer, the years spent with the previous employer are 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 mutual termination agreement), the severance pay is taxable in its full amount.

9. Mentionable aspects/ particularities

None.

10. Managing Directors

Managing Directors (who registered as legal representatives of the company), can (but do not need to) enter into employment contract with the company. If they do enter into employment contract with the company, the provisions of the Labor Act referring to termination of employment, notice period and severance pay do not apply to such contracts. Managing Director and the company can freely agree on manner of termination of the employment

Czech Republic

1. Kinds of dismissal

According to Czech law, there are three types of dismissal: i) termination with notice (can also be understood as ordinary dismissal), ii) dismissal for serious causes, and iii) termination during the trial period (usually 3 months, 6 months in case of executive staff).

2. Necessity of reasons for dismissal

The employer may give termination with notice 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 industrial injury or occupational disease, 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 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" 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 immediate termination) 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 grounds for such notice, but not later than 1 year from the date when such grounds for giving notice arose.

Denmark

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 woman, woman 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 further employed 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 on continuation of employment, 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 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 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.

1. Kinds of dismissal

In Danish labor law, there are two kinds of dismissals, ordinary and dismissals for serious cause. This distinction is of particular interest regarding the reasons for dismissal, the dismissal period and the dismissal protection for the employees.

2. Necessity of reasons for dismissal

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

If the employee has been employed for more than 1 year and a dismissal is considered unfair, the employee can claim compensation for unfair dismissal. The compensation amounts to 1-6 months' salary depending on the employee's age, seniority and circumstances of the matter.

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 behavior, poor performance, breach of internal policies, etc. Pursuant to case law, dismissal will usually only be reasonably justified in 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 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 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 notice periods which must be given by the employer are the following:

- 0-6 months' employment: 1 month's notice
- 6 months - 3 years' employment: 3 months' notice
- 3-6 years' employment: 4 months' notice
- 6-9 years' employment: 5 months' notice
- > 9 years' employment: 6 months' notice

It is possible to agree on a trial period in the beginning of an employment contract. During a trial period of maximum 3 months the notice period is 14 days.

According to the Act, the parties may agree upon a shorter notice period (1 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 twelve consecutive months.

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

Dismissal for serious cause

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

4. Form of dismissal

Dismissals have to be in written form. Although this is not a requirement for validity, it is for reasons of proof, recommended that terminations are made in writing.

Estonia

5. Further requirements for a valid dismissal

None.

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 (see supra).

6. Special dismissal protection

In Danish labor 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 color, religion, political orientation, sexual preferences, age, disability, nationality or social or ethnical origin. The Act also protects employees from being dismissed because of his/her membership to a trade union.

The principles of equal treatment of men and woman within the labor 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 he/she is requesting 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 maximized and may amount to up to 6-12 months' salary.

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 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 or 17 years of employment the salaried employee has a right to be paid respectively 1 or 3 months' salary, including any benefits, as severance pay in connection with dismissal. This only applies in the case of ordinary dismissals only, but both in the event of fair and unfair dismissals.

9. Mentionable aspects/particularities

The questionnaire was answered in relation to salaried employees (white collar employees) and is based on the minimum requirements in the Danish Salaried Employees Act. The answers do not concern conditions for public employees, non-salaried employees (blue collar employees) or employees covered by collective bargaining agreements or individual employment contracts including more favorable terms than the Danish Salaried Employees Act. The answers might need modification especially for non-salaried employees covered by collective bargaining agreements.

10. Managing directors

Managing directors are not comprised by the Danish Salaried Employees Act and their terms of employment and termination (notice periods, reason for dismissal and any severance pay) are governed by their service agreements. In general, the notice periods for managing directors are usually longer than the ones provided in the Danish Salaried Employees Act (e.g. 6 or 12 months), but in return usually dismissal of a managing director does not require a valid reason.

1. Kinds of dismissal

There are two kinds of dismissal in Estonia:

- Dismissal by employer for reasons relating to the employee. This dismissal includes also dismissal by the employer during the trial period as well as a dismissal for serious cause (summary dismissal).
- Dismissal by employer for economic reasons.

2. Necessity of reasons for dismissal

Principle

An employee can only be dismissed for good reasons as provided in the Estonian Employment Contracts Act.

- *Dismissal based on reasons related to the employee.* An employer can terminate the employment contract for good reasons relating to the employee as a result of which the continuance of the employment relationship cannot be expected. The Employment Contracts Act provides a list of eight reasons, but this list is not exhaustive.

- *Dismissal based on economic reasons.*

An employer can extraordinarily terminate the employment contract if the continuance of the employment relationship on the agreed conditions becomes impossible due to a decrease in work volume, reorganization of work, termination of the activities of the employer or upon declaration of bankruptcy of the employer.

3. Notice period

Existence of a notice period:

In general, an employment contract can only be terminated by respecting a notice period.

An employer can however terminate an employment contract without respecting a notice period, if, considering all circumstances and mutual interests, it cannot be reasonably demanded that the execution of the contract continues during a certain notice period. Usually, this is applicable in case of gross misconduct only.

Duration of notice period:

The employer termination will respect the following notice periods, depending on the seniority of the employee:

1. Less than one year of employment
min. 15 calendar days;
2. One to five years of employment
min. 30 calendar days;
3. Five to ten years of employment
min. 60 calendar days;
4. Ten and more years of employment
min. 90 calendar days.

These terms can be set differently by a collective agreement.

4. Form of dismissal

An employment contract should be terminated by a written declaration of termination including the motivation.

5. Further requirements for a valid dismissal

- *Dismissal based on a reason related to the employee's person*

Before effective termination of the employment contract, the employer shall offer other work to the employee, if possible. If necessary, the employer shall organize the employee's in-service training, adapt his workplace or change his working conditions if these changes do not cause disproportionately high costs for the employer.

If the termination of the employment contract is preceded by a warning given by the employer, the employer can terminate the employment contract due to the employee's breach of obligation or decrease in his capacity of work, termination. A prior warning is however not a prerequisite for termination if the employee cannot expect it from the employer due to the severity of the breach of the obligation or for another reason pursuant to the principle of good faith.

The employer can only terminate the employment contract within a reasonable time after he got to know or should have known the circumstances serving as a basis for the termination

- *Dismissal based on economic reasons*

Before termination of the employment contract due to economic reasons, the employer shall, where possible, offer other work to the employee. The employer shall, if necessary, also organize the employee's in-service training or change the employee's working conditions, unless these changes cause disproportionately high costs for the employer.



Finland

6. Special dismissal protection

Special dismissal protection applies to the following categories of employees:

- Pregnant women
- Women who have the right to pregnancy and maternity leave
- Persons who are on child care leave or adoptive parent leave
- Employees' representatives

An employer cannot terminate the employment contract of a pregnant woman or a woman who has the right to pregnancy and maternity leave, or a person who is on child care leave or adoptive parent leave due to economic reasons or due to the decrease in their capacity of work, except upon termination of the activities of the employer or declaration of the employer's bankruptcy if the activities of the employer cease.

Upon termination of an employment contract due to economic reasons, the employees' representative and employees raising children under three years have the preferential right to keep their job.

Before termination of the employment contract with the employees' representative the employer shall seek the opinion of the employees who elected the person to represent them or the trade union about the termination of the employment contract. The employees who elected the person to represent them or the trade union shall give their opinion within ten working days as of being asked for it. The employer shall take the opinion of the employees into account to a reasonable extent. The employer shall justify disregard for the opinion of the employees.

7. Legal means of the employees

The termination of an employment contract without legal basis or in conflict with the law is void.

The employee can file an action before court or a labor dispute committee to establish the nullity of the termination. This should be done within 30 calendar days as from the receipt of the declaration of termination.

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

If a court or labour dispute committee establishes the nullity of the termination of the employment contract, the employment contract shall be considered not to be terminated. In this case, the court or labour dispute committee shall, at the request of the employer or the employee, terminate the employment contract as from the moment it would have expired if the termination was valid.

In that case, the employer will have to pay the employee a employer shall pay compensation of three months' salary. The court or labour dispute committee can adapt the amount of the compensation.

An employee who is pregnant, or has the right to pregnancy and maternity leave or who has been elected as employees' representative, will be entitled to a compensation of six months' salary.)

The court or labour dispute committee shall not terminate the employment contract if, at the time of the termination, the employee is pregnant or has the right to pregnancy or maternity leave or has been elected as employees' representative, unless it is reasonably not possible, considering mutual interests.

8. Severance pay

- *Dismissal based on economic reasons*

Upon termination of an employment contract due to economic reasons (lay-off), the employer shall pay the employee an additional compensation of one month salary.

If the employer gives notice later than provided by law or a collective agreement, the employee is entitled to an additional compensation to the extent to which he or she would have been entitled to upon adhering to the term for advance notice.

Special provisions:

Upon termination of an employment contract entered into for a specified term for economic reasons (except in case of bankruptcy), the employer shall pay the employee a compensation to the extent that corresponds to the wages that the employee would have been entitled to until the expiry of the contract term. No compensation shall be paid if the employment contract is terminated due to force majeure.

9. Managing Directors

No specific dismissal rules apply for Managing Directors.

1. Kinds of dismissal

In accordance with the Finnish Employment Contracts Act two kinds of dismissal exist

- Ordinary dismissal and
- Dismissal for serious cause

The distinction between the ordinary dismissal and dismissal for serious cause include a) grounds for termination b) notice period and c) notice protection.

2. Necessity of reasons for dismissal

Principal rule

The termination of employment requires objective and justifiable reasons.

The employer shall not terminate an indefinitely valid employment contract without proper and weighty reason.

A fixed-term employment contract cannot be terminated during its term if the parties have not agreed on a trial period. It may however be rescinded for serious breaches.

Grounds for termination

1. Termination related to the employee's person

Serious breach or negligence of obligations arising from the employment contract or the law, having essential impact on the employment relationship as well as essential changes in the conditions necessary for working related to the employee's person.

2. Financial and production related grounds

If the work to be offered has diminished substantially and permanently for financial or production related reasons or for reasons arising from reorganization of the employer's obligations.

3. Dismissal for serious cause

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).

4. Dismissal during trial period

The employer and the employee may agree on a trial period of a maximum of four months starting from the beginning of the work. During the trial period, the employment may generally be cancelled 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.

Notice period

Are stipulated in contracts, applicable collective bargaining agreements or the law; the longer period precedes.

However, pursuant to the Finnish Employment Contracts Act the agreed notice period may not exceed six months.

Notice periods for terminations by the employer set forth in the law are dependent on the duration of the employment relationship as follows:

Termination by employer

1. 14 days, if the employment relationship has continued for up to one year;
2. One month, if the employment relationship has continued for more than one year but no more than four years;
3. Two months, if the employment relationship has continued for more than four years but no more than eight years;
4. Four months, if the employment relationship has continued for more than eight years but no more than 12 years;
5. Six months, if the employment relationship has continued for more than 12 years.



4. Form of dismissal

The form of dismissal is not stipulated in the Employment Contracts Act. For reasons of proof, a written form is highly recommended. Termination grounds must be notified on 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. The employer must also consider if the employee could be transferred to other duties.

Act on Co-operation within Undertakings

In case the employer employs normally at least 20 persons, the Act on Co-operation within Undertakings shall be applicable. The co-operation procedure may lead to either a single dismissal, a collective dismissal or temporary layoffs of one or several employees.

The objective is to collectively develop operations of an undertaking and the employees' opportunities to exercise influence in the decisions made within the undertaking relating to their work, their working conditions and their position in the undertaking.

Parties

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

Proposal for commencement

The employer shall issue a written proposal for negotiations in order to commence the co-operation negotiations and employment measures at the latest five days prior the commencement of the negotiations.

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 or her right to family leave.

Shop steward and elected representative

The employer shall be entitled to terminate the employment contract of a shop steward elected on the basis of a collective agreement or of an elected representative on grounds related to the employee's person only if a majority of the employees whom the shop steward or the elected representative represents agree. The employer shall be entitled to terminate the employment contract of a shop steward or an elected representative on financial and production related grounds or if termination is in connection with a reorganization procedure or if the employer is declared bankrupt. The employer shall be entitled to terminate the employment contract of a shop steward or an elected representative on the aforementioned grounds, if the work of the shop steward or the elected representative ceases completely and the employer is unable to arrange work that corresponds to the person's professional skills or is otherwise suitable, or to train the person for some other work.

7. Legal means of the employees

Employment Contracts Act

Hearing the employee and the employer

Before the employer terminates/cancels an employment contract the employer shall provide the employee with an opportunity to be heard concerning the grounds for termination.

Employer's duty to explain

Before the employer terminates an employment contract on the financial and production related grounds or on reorganization procedure grounds, the employer must as early as possible explain to the employee to be given notice the grounds for and alternatives to termination, and the employment services available from the employment office.

If the employer intentionally or through negligence commits a breach against obligations arising from the employment relationship or the Employment Contracts Act, he shall be liable for the loss thus caused to the employee. If the employer has terminated an employment contract contrary to the grounds laid down in the Employment Contracts Act, he 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 or a maximum of 24 months (a maximum of 30 months to shop stewards).

Act on Co-operation within Undertakings

An employer who has deliberately or negligently failed to observe the co-operation provisions in respect of an employee whose contract has been terminated or reduced to a part-time contract, or who has been laid off, shall be liable to pay to the employee an indemnification amount of max. 30 000 euros.

8. Severance pay

There is no severance pay in Finland (stipulated by law or collective bargaining agreements) in addition to the salary and other employment benefits payable during the duration of the notice period described above in clause 3). Pursuant to the Finnish Employment Contracts Act, the employment shall continue throughout the dismissal period. Thus, the employee is entitled to the employment benefits established during the course of employment.

9. Mentionable aspects/ particularities

None.

10. Managing Directors

The Finnish Employment Contracts Act is not directly applicable to Managing Directors so the parties have more freedom to agree on the rules relating to the dismissal of a Managing Director. It is commonplace that the employer has the right to terminate a Managing Director's contract without cause. In return a Managing Director's contract usually entitles the Managing Director to a lump sum compensation for the termination unless caused by the managing director's breach of contract.

France

1. Kinds of dismissal

There are two kinds of dismissal in France:

- Dismissal based on a reason related to the employee's person ("licenciement personnel") which is for example a dismissal for misconduct or professional insufficiency;
- Dismissal based on economic reasons, defined in the French Labor Code (Article L.1233-3) as a dismissal for reasons, not related to the person, that result from a termination, a transformation or a substantial change in the employment contracts, due, in particular to economic difficulties or technological transfers.

2. Necessity of reasons for dismissal

Principle

Any kind of dismissal has to be based on a real and serious ground.

In order to be considered as based on a real and serious ground, the facts raised by the employer have to be exact, precise, objective and serious.

Examples of admissible reasons:

- *Dismissal based on a reason related to the employee's person*
French case law notably considers as admissible, dismissals based on gross or serious misconduct or professional insufficiency.

For information, a serious misconduct ("faute grave") is constituted when the termination of the employment contract must occur immediately considering that the employee cannot remain within the company. A gross misconduct ("faute lourde") is constituted when the employee behaved maliciously.

- *Dismissal based on economic reasons*
A dismissal based on economic reasons has real and serious grounds if the breach of the contract results from a termination, transformation or a substantial change in the employment contract, due, in particular to economic difficulties or technological transfers

French case law also allows the employer to dismiss employees for economic reasons when, in the absence of financial difficulties the dismissals are motivated by the reorganization necessary to save the group's competitive position in its business area.

3. Notice period

Existence of a notice period:

As a principle, if a permanent employment contract is breached, a notice period must be observed.

However, as an exception, French law provides that no notice period is to be observed when a dismissal is based on a gross or a serious misconduct (summary dismissal).

Duration of notice period:

French law provides that:

- 1 month notice period must be applied shall the employee have between 6 months and 2 years of seniority;
- 2 month notice period must be applied shall the employee have at least two years of seniority.

Different notice period durations can also be provided by a Collective Bargaining Agreement, the employee's contract of employment, or the company's custom. For information, the duration of notice periods provided 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 by the law is then the one to be applied, unless another of the sources listed above provides for duration more favorable to the employee.



4. Form of dismissal

All dismissals have to be in written form to be valid.

The dismissal letter must expose on which grounds the dismissal is based and must be notified to the employee by registered letter with acknowledgement of receipt.

5. Further requirements for a valid dismissal

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

For information, the procedure to dismiss an employee based on reasons related to the employee's person is the following:

The employee to be dismissed has to be invited by the employer to a preliminary meeting. A period of 5 working days has to be respected between the receipt of the letter sent by registered letter with return receipt requested to the employee or the date the employee takes the letter in hand and the date of the meeting.

The convocation letter must inform the employee that he/she can be assisted by an employee of the company during the preliminary meeting. Shall the company not have any staff representatives, the employee can also be assisted by a person of his/her choice registered in a specific list established in this purpose by the "Préfet".

During the preliminary meeting, the employer must clearly inform the employee that his/her dismissal is considered.

The dismissal must then be notified to the employee by registered letter with acknowledgement of receipt. A period of time of 2 working days has to be respected between the preliminary meeting and the sending of the letter notifying the dismissal.

All justifications of the grounds on which the dismissal is based must be compiled on a file, in order, for the employer, to be able to demonstrate that the dismissal is based on a real and serious ground.

6. Special dismissal protection

According to French law, a specific dismissal protection is mainly provided for the following employee (main examples, but more 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 out of the company (judges to the Labor Court, Assistants of employees to preliminary meetings prior to dismissals, social security organizations administrators)
- Pregnant women
- Disabled employees
- Employees elected to local, national or EU elections

7. Legal means of the employees

Should an employee consider that his/her dismissal to be not valid, French law provides that a judge can only annul a dismissal in the situations expressly provided by the law or if a fundamental freedom ("liberté fondamentale") is breached.

A dismissal can notably be annulled should it be based on the employee's pregnancy, the employee's status of staff representative, the employee's participation to a strike or a discriminatory decision.

Should the employee's dismissal be considered as null and void, the employee can be reintegrated. If the employee's reintegration within the company is not possible or if the employee does not wish to return to his/her working place, he/she is entitled to an important indemnity, in order to compensate the harm suffered.

Germany

8. Severance pay

Existence of a severance pay:

As a principle, and according to a recent French law dated 25 June 2008, a minimum severance pay is due by law, to employees who have at least one year of seniority. A severance pay can also be provided by a Collective Bargaining Agreement or the employee's contract of employment.

However, as an exception, French law provides that no severance pay is due for employees dismissed based on gross or serious misconduct.

Amount of a severance pay:

The law provides that severance pay amounts 1/5 month of salary for each year of seniority, to which must be added 2/15 month of salary for each year of seniority over 10 years.

If a different severance pay is stipulated by the applicable Collective Bargaining agreement or the employment contract, the one to be paid is the most favorable to the employee.

However, the provisions of the law (recently modified) are most of the time the most favorable one to the employee.

9. Mentionable aspects/ particularities

None.

10. Managing Directors

No specific dismissal rules apply for managing directors. However sometimes managing directors are corporate officers and not employee, in which case they are not subject to labour law but to corporate law.

1. Kinds of dismissal

In German labor law, there are two kinds of dismissals, ordinary dismissals and dismissals for serious cause. These two kinds differ in reason for dismissal, dismissal period and dismissal protection.

2. Necessity of reasons for dismissal

A summary dismissal can be declared if there is a "good cause" for terminating the employment agreement or the agreement with a managing director. A good cause means that circumstances are present which, taking the entire situation of the individual case into account and weighing the interests of both parties, render it unacceptable to expect the terminating party to continue the employment relationship until the termination period has elapsed or – in fixed term relationships – until the term has ended. Such good cause may be constituted e.g. by repeated tardiness, persistent refusal to work, concrete perturbation of the order in the works, offences against the employer or superiors.

An ordinary dismissal of an employee basically is valid if a certain dismissal period is observed. This principle however is mostly restricted in practice. In works with more than ten employees and after duration of the employment for longer than six months, a dismissal has to be "socially justified", which means there has to be a specific reason for the dismissal. It has to be declared for operational, for person-related or for conduct-related reasons.

Urgent operational reasons that can justify a dismissal exist if the employer is not able or does not want to continue his company in the previous way and if jobs cease to exist because of this development. Internal (e.g. reorganization or termination of production, measures of rationalization) or external circumstances (e.g. drop in orders because of macroeconomic recession) can be admissible reasons therefore. The underlying entrepreneurial decision, as a consequence of which the different labor requirements apply, is free from legal restrictions as long as it is not apparently un-objective or arbitrary. Operational requirements must have caused a dilemma for the employer that has made the dismissal inescapable. For example, the employee concerned may not be transferred to another workplace in the company (not only the works!) or the employee concerned may not be employed on a free workplace after a reasonable advanced training or re-training.



Person-related reasons can justify a dismissal if they make it impossible for the employee to perform the work as owed. It is irrelevant if the employee is responsible for the inability or not. The employer has to take all possible and reasonable measures to prevent the dismissal before he may declare it. For example he has to try to transfer the employee to another workplace in the works or company, to offer the necessary advanced training or re-training or to create a workplace adjusted to the employee's physical restrictions if applicable. Possible reasons for a person-related dismissal include a long-standing illness (but only under three quite strict prerequisites: a negative prognosis, a serious detriment to business interests and weighing of interests in favor of the employer), frequent short-term illnesses, loss of efficiency due to illness, alcoholism, custody.

A conduct-related dismissal is possible if the employee breaches his contractual duties and this behavior makes, weighing both sides' interests, the dismissal appears justified and appropriate. But also in this case a dismissal is only allowed if the employer cannot take measures impacting the employee less, such as a transfer or the employment under different conditions, and the employee has to receive at least one prior warning. Possible reasons for a conduct-related dismissal are for example repeated absence without excuse, repeated delays, unauthorized abandoning of the workplace, bad or missing work performance.

If the contract with a managing director shall be ended the above mentioned reasons need not to be given as the protective regulations of the Employment Protection Act are not applicable for managing directors.

3. Notice period

A valid summary dismissal takes in all cases immediate effect without a notice period.

For ordinary dismissal of an employee, minimum notice periods are regulated by law and increase in favor of the employee with increasing seniority. Many collective bargaining agreements and individual contracts contain longer notice periods. Notice periods shorter than the statutory ones may only be agreed in collective bargaining agreements or – severely restricted – in individual contracts. During the optional but customary probation period of (usually) six months the statutory dismissal notice period is two weeks. Up to a seniority of two years the dismissal period is four weeks counting back from the 15th or the last day of a calendar month. It increases in irregular intervals up to seven months for 20 years' seniority. If these periods are longer than those agreed upon in the employment contract, they prevail.

The notice periods regulated by law and bargaining agreements are not applicable for managing directors. Regularly contractual notice periods of at least six months are agreed.

4. Form of dismissal

All dismissals of employees have to be in written form to be valid. The reasons for the dismissal need not be stated in the notice.

If a works council exists, it has to be informed and may give a statement before an employee is dismissed. If the works council is not informed properly the dismissal is invalid.

The dismissal of a managing director does not need to meet a legally statutory form but often in the contract a certain form is agreed.

5. Further requirements for a valid dismissal

An important requirement for the validity of a summary or an ordinary conduct-related dismissal of an employee is that the employee has been warned because of his behavior and that he has offended against his duties again in similar fashion (exception: offences affecting the mutual trust between employer and employee, especially serious criminal offences against the employer's assets). The warning must make the employee's deviance clear to him, show him how to conduct properly in future and what consequences the employer envisages otherwise. The dismissal is only valid if the employee violates his duties again in the same way after such a warning. In case of a person-related dismissal or in case of operational reasons for dismissal a warning is not required.

Furthermore, a summary dismissal of an employee or a managing director has to be declared within a two weeks period after the employer has obtained knowledge of the facts relevant to the dismissal. Otherwise the dismissal is invalid.

6. Special dismissal protection

Besides the particularities mentioned above, certain groups of employees but not managing directors enjoy special protection against dismissal. The dismissal of women during a pregnancy, of persons with disabilities, of employees during parental leave, works council members or other officers under the Work Constitution Act is difficult or even impossible.

7. Legal means of the employees

The employee may appeal against the dismissal at court within three weeks after its notification and claim that the dismissal is not valid. In this case, the employer has to demonstrate and prove that the applicable requirements of the dismissal were fulfilled upon its delivery. The labor court has to decide whether the prerequisites for an effective dismissal were fulfilled. If this was not the case the employment agreement continues and the employee has the right to return to his working place.

A managing director can sue against his dismissal at civil court. He does not have to keep a certain period.

8. Severance pay

The court procedures concerning the validity of a dismissal of an employee often last for a long time and the outcome is tricky to predict due to various imponderabilities. Therefore the vast majority of cases end with a court settlement terminating the employment agreement against payment of a severance pay. In practice, the severance pay mostly is calculated by the formula: half a monthly pay for every year of seniority. The conclusion of such a court settlement is voluntary for both sides. As the underlying principle of German dismissal protection law is "in or out", the judge can only terminate the court procedure by a judgment over a severance pay under special circumstances, especially when a continuation of the employment is unacceptable for the employee.

As the Employment Protection Act is not applicable for managing directors the employer's risk in case of court procedure is not relevant. So regularly no severance pay is paid to managing directors in case of a dismissal. A severance pay is only usual if the contract shall be determined before the end of the contractual notice period.

9. Mentionable aspects/ particularities

There are special requirements for collective dismissals.

10. Managing Directors

The Employment Protection Act does not apply for managing directors. Hence, giving ordinary notice to a managing director does not require a specific reason under said Act. There are only few exceptions to this principle, e.g. in case the managing director's service contract provides for a wording according to which the Employment Protection Act has to be observed.

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 of time can be terminated by the employer at any time, by paying lump sum compensation and/ or serving notice. The notice period, as well as the compensation level, depends on the duration of the employment relationship (the compensation 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 notice or lump sum compensation.
- For blue-collar workers, an employment contract for an indefinite period of time can be terminated by the employer at any time by paying lump sum compensation. 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 behavior 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 of time, regardless the distinction between white and blue collar workers, can be terminated without notice, 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.

2. Necessity of reasons for dismissal

In case of an employment contract for an indefinite period of time, 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.

In case of an employment contract for a definite period of time, the existence of a serious cause for termination is necessary for the termination before the defined date to be valid. However, given the fact that a dismissal for a 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 blue collar workers, no notice period needs to be observed in case of a termination of an employment contract for an indefinite period of time, as already mentioned above.

For white collar workers, an employment contract for an indefinite period of time 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 lump sum compensation that he is obliged to pay in the opposite case (see below point 8). The notice period set by the labor 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

For an employment contract for an indefinite period of time, the dismissal has to be in written form to be valid.

For an employment contract for a definite period of time, the dismissal (which is valid only for a serious cause) does not have to be in written form.

5. Further requirements for a valid dismissal

In case of an employment contract for an indefinite period of time, except for the requirement regarding the written form (as mentioned above), which is constitutive of the dismissal's validity, the relative legal provisions also require the payment of a lump sum compensation (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 of time, 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.

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 lump sum compensation have to be lodged within a peremptory time limit of six months. In this context, the employee may claim wages 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 of time, a minimum severance indemnity is due to employees, whose working relationship at the same employer has lasted 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 2 months' salary.

In the situation where the dismissals are to be effected immediately – which is the most common scenario according to the Greek praxis – the employee is entitled to compensation of a specified number of monthly wages according to their length of service following the below table:

| Seniority | Minimum statutory severance indemnity |
|--------------------------------------|---------------------------------------|
| 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 |

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 indemnity.

In case of an employment contract for a definite period of time, a compensation 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 labor law (Hungarian Labor Code, entered into force on 1 July 2012), there are two kinds of dismissal: dismissal and summary dismissal. These two kinds differ in the reason for dismissal as well as the dismissal period. Besides, the parties of the employment agreement are free to terminate the employment at any time by mutual consent. Furthermore, they may agree that for a period of up to one year the employment relationship may not be terminated by dismissal of either party.

2. Necessity of reasons for dismissal

In accordance with the Hungarian Labor 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 or her behavior 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 rationalization) or external circumstances (e.g. decrease of orders because of economic crisis), but always have to result in the cease 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.

Definite-term employment contracts 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 summary dismissal in the event that the employee, on purpose or by gross negligence, commits a serious violation of any substantive obligations arising from the employment relationship, or otherwise the employee's behavior renders the employment relationship impossible. The rules on justification and possible causes of dismissal shall also apply to summary dismissal.

3. Notice periods

The statutory notice period for dismissal by the employer shall be at least 30 days and its maximum is 90 days, depending on the length of the terminated employment (seniority of the employee). The notice period in case of dismissal by the employee is 30 days and it may not be extended. The employer and the employee may agree in a longer notice period in the employment agreement not exceeding six months. There is no statutory notice period stipulated by the Labor Code for summary dismissal, it may have immediate effect.

4. Form of dismissal

Pursuant to the Hungarian Labor Code, employers shall provide the dismissal in a written form, executed by the person duly authorized to exercise the employer's rights.

The right of summary dismissal shall be exercised within a period of 15 days starting on the day on which the employer takes knowledge of the grounds thereof, but not later than within 1 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 Labor Code requires that the dismissal contains the notification on the possibility of legal remedy against it.

6. Special dismissal protection

The Labor Code protects two categories of workers' representatives in case of a dismissal: i) the president of the works council and ii) 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 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.



At the same time, the Labor 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 the purpose of 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 in 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:

- a. reinstate the employee at work (only if e.g. 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, allowances for the period when the employee was not employed and pay other damages of the employee; or
- b. instead of reinstatement, pay compensation to the employee for the damages caused by the unlawful termination, as follows:
 - i. compensation for the unpaid salary up to max. 12 months' absentee fee¹ of the employee, and severance payment if (i) the unlawfulness of the dismissal meant the exclusion of a formal notice or (ii) if the employee was not entitled to severance payment because the reasons for the unlawful termination were related to his behavior or non-health related abilities; or
 - ii. in addition to what is due by law, absentee fee for the notice period and severance payment on the conditions described above; and
 - iii. compensation for other damages of the employee.

8. Severance pay

In the event of dismissal, the employee is entitled to a severance payment (végkielégítés), if the employment relationship exceeded 3 years before the termination of the employment. The amount of severance payment is between 1 and 6 months' absentee fee of the employee, depending on the length of the terminated employment. In case of a dismissal executed within 5 years of entitlement to pension, the amount of the severance payment increases with 1 to 3 months' absentee fee. The severance payment does not need to be paid in case of summary dismissal. Severance payment is not required if (i) the grounds for dismissal were the behavior nor if they were non-health related abilities of the employee, or if (ii) the employee was a pensioner at the time of the dismissal.

9. Mentionable aspects / particularities

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

10. Managing Directors

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

Accordingly, no reasoning is required in case of dismissal by the employer and his severance payment may be retained in the amount exceeding 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.

¹ The absentee fee is a sort of average salary to be applied when the employee is entitled to remuneration in lack of performing work.



1. Kinds of dismissal

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

In Ireland, the Unfair Dismissals Acts 1977-2007 (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 (i) had reasonable grounds for carrying out the dismissal; and (ii) 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 summarily dismissed in circumstances which do not justify summary dismissal 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 1973-2005 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:

| Period of Continuous Service | Notice 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 in lieu of all or part of his or 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 on grounds 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 1967-2011, 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, Carer's Leave and the Minimum Wage Acts; and
- unfair selection for redundancy.

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, Adoptive, Carer's Leave and Minimum Wage Acts.

The dismissed employee must lodge their unfair dismissal claim with the Rights Commissioner or the Employment Appeals Tribunal within six months of the dismissal or 'in exceptional circumstances' which 'prevented the giving of the notice', within twelve months.¹ The Commissioner or Tribunal 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.

1. Where a complaint of unfair dismissal is made to the Rights Commissioner, an employer may object to the claim being heard by the Rights Commissioner and the claim will be re-directed to the Employment Appeals Tribunal.

In order to take a claim for damages for wrongful dismissal, in circumstances where the employee is owed his or 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.

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 2 elements to redundancy pay in Ireland – (i) the required statutory lump sum payment; and (ii) the optional enhanced ex gratia payment.

An eligible employee with 2 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 EUR 600. 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 Tribunal'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 Equality Tribunal by an employee, regardless of their length of service, in circumstances where an employee considers his or her dismissal is based on one of the nine grounds of discrimination set out in the Employment Equality Acts 1998-2012, those being: gender, marital status, family status, member of the traveler 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.

Italy

1. Kinds of dismissal

According to the Italian Labor Law, there are various kinds of dismissal, depending on the different prerequisites requested by the Law. More in particular:

- Individual dismissal or individual plural-dismissals for justified objective grounds, based on objective grounds linked to the employer's activity (e.g. production reasons or business management reasons);
- Summary dismissal, i.e. based on subjective grounds linked to the employee's behavior/conduct. In case the misconduct of the employee is so severe/serious that it cannot consent to continue the employment relationship; the employee can be dismissed without notice, provided that the employer is able to demonstrate the existence of a justified ground depending on the employee's conduct;
- Individual dismissal based on a justified subjective ground, i.e. due to a considerable breach of the contractual duties of the employee, but not serious enough to justify a summary dismissal. 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, as provided by Article 2118 of the Italian Civil Code (except, e.g., the termination by mutual consent or, as said above, when the dismissal of the employee or his resignation takes place for just cause).

The Italian Law assigns the duration of the notice period to the National Collective Labor Contracts' provisions; in fact in the majority of cases the minimum duration of the notice period is fixed by the National Collective Labor Contracts (hereinafter "NCLA") and could be different depending on the professional category of the employees (blue collar workers, white collar workers, cadre or managers), the ranking, the seniority, and depending if we are dealing with a case of dismissal or 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 pain 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 dismissal for justified objective grounds and if the employer employs more than 15 employees, the dismissal must be preceded by a communication to the employee and to the Local Labor 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 Labor Law, in case of individual dismissal based on justified subjective ground (as described above) or summary dismissal, the employer has to follow a particular procedure to dismiss the employee. To comply with the Law's provisions, the employer is obliged to observe several duties, among which the following 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 NCLA applicable to the sector of the employer's activity);
- to make the Disciplinary 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 NCLA), 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 could not be dismissed before 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

According to the Italian Labor 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. Under Italian Labor Law there are some mandatory provisions that prohibit the dismissal in case of (i) pregnancy and maternity leave, (ii) sickness leave, (iii) marriage leave.

If the employee is dismissed as in the above mentioned cases, the dismissal shall be considered void and in breach of law.

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 NCLA concerning the employment relationships are not valid. The action challenging such waivers and settlement can be sued within 6 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 reached under the terms of Articles 185, 410 and 411 of the Civil Procedure Code (settlements undersigned before a Labor Court, the Local Labor Office or 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 (i) the lack of cause or justified grounds, (ii) the breach of the disciplinary procedure, (iii) the discriminatory or unlawful grounds (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 Labor 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 4 different sanction regimes, 2 implying reinstatement, 2 implying only compensation:

- i. Reinstatement of the employee plus full compensation in an amount equal to the salary accrued between the dismissal and the reinstatement, for a minimum of 5 months' salary, plus social security contributions and with a deduction of all amounts received for other working activities.

This applies, regardless the dimension of the employer and even to executives, in the event of:

- verbal dismissal;
- dismissal for discriminatory reasons;
- dismissal for unlawful determining reasons;
- dismissal for reasons of marriage or in violation of maternity or paternity's protection;
- other cases of null or void dismissals provided by the law.

- ii. Reinstatement and compensation capped at 12 months' salary, with some deductions. The employer shall also be ordered to make payment of social security contributions, minus any amounts covered by other employment contributions possibly made in the meantime.

This applies only in 2 cases:

- the subjective reason does not exist;
- the reason represents conduct punishable with a lesser sanction according to applicable collective bargaining agreements or disciplinary codes.

- iii. A comprehensive indemnity, ranging between 12 and 24 months' salary in consideration of the seniority of the worker, the number of employees, the size of the undertaking, the parties' conduct and conditions. Employment relationship shall be declared terminated from the date of dismissal.

This sanction applies outside the cases mentioned in (ii), if the Court finds that a justified subjective reason or just cause does not exist. For example, when the conduct exists, but is not ruled by the disciplinary code and the Court considers dismissal as an excessive sanction.

- iv. A more limited indemnity (between 6 and 12 months' salary). Employment relationship shall be declared terminated from the date of dismissal.

This sanction applies in case of formal violations, if the dismissal is declared ineffective due to the violation of the required written specification of reasons or lack of procedural requirements (disciplinary procedure or conciliation procedure), according to the seriousness of the violation.

However, if the Court finds out not only a formal violation but also no justification at all for the dismissal, the relevant consequences as described above will apply.

We point out that in any case of reinstatement, the worker will be entitled to choose a substitutive indemnity in place of reinstatement, equal to 15 months' salary.

Finally, with regard to dismissal for economic reasons. Companies with more than 15 employees are subject to a conciliation procedure. As a matter of fact, the dismissal must be preceded by notice to the Local Labor Office, with copy to the employee, indicating the will to dismiss, the relevant reasons and the possible reallocation measures. The parties' conduct in the context of conciliation procedure will be assessed by the Court while determining the compensatory indemnity.

If a Court finds that a justified objective reason does not exist, it will award the employee reinstatement in addition to compensation capped at 12 months' salary (ii) only when the objective justified reason for dismissal is patently non-existent.

In all the other cases, the Court will award the indemnity ranging from 12 to 24 months' salary (iii).

7. Severance pay

In every case of termination of an employment relationship, the employee who has been dismissed is entitled to receive: 1) the end of service allowance (so-called "TFR") which is equivalent to one year's salary divided by 13.5 for every year of employee's service, plus the monetary revaluation; 2) the indemnity in lieu of notice, whose amount depends on the employee's level and seniority, except for the dismissal due to misconduct of the employee as described above and when the worked notice period has been granted to the employee. 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

According to legislation recently enforced, for employees hired starting from March 7, 2015 a new regime applies for the case of unfair dismissal. The new regime determines relevant changes, limiting the cases of reinstatements and changing the indemnification rules. It can be applied also to collective dismissals.

9. Managing Directors Executives

Specific rules on individual dismissal are not applied to employees qualified as executives ("dirigenti", e.g. managers).

The rules for executives' dismissal are set out in the Italian Civil Code and in the applicable NCLAs (e.g. Industry, Tertiary etc.). NCLAs generally state that the dismissal has to be communicated in writing, on pain of ineffectiveness, and has to be justified.

The notion of "justifiable" elaborated by the Italian jurisprudence for the executives' dismissal is different and wider than "cause" and "justified subjective grounds" used for the ordinary employee dismissal. Therefore, facts or conducts unqualifiable as "cause" or "justified subjective ground" for ordinary employees dismissal can be considered as "justifiable" for the executives one by the competent Labor Court (e.g. executive's incompetence related to the employer's expectations or an executive's inappropriate behavior out of work able to damage the company's image).

In case the competent Labor Court consider the dismissal unlawful, the employer could be condemned to pay to the executive an additional compensation according to the applicable NCLAs (e.g. in the Industry NCLA it is an amount between a minimum equal to the advance notice's compensation plus two more monthly salaries and a maximum amount equal to No. 20 monthly pay).

Additional rules are established by different NCLAs 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.

Managing Directors

In Italy, members of the Board of Directors (e.g. CEOs) are not employees, in fact they are appointed by the shareholders' meeting and do not stipulate any employment relationship with the company because of their office. In the S.p.A., according to Art. 2383 of the Italian Civil Code, members of the Board of Directors are appointed for three years 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 labor 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 ground but the labor relation as executive will stay valid and safeguarded by the more protective rules above said for the executives.



1. Kinds of dismissal

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

1. Due to circumstances related to his/her behavior and activities;
2. Due to economical, organizational or technological measures taken by the company; or due to long term illness of the employee;
3. 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 Employment law, the reasons for dismissal are the following:

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

Continuously more than six months; or, one year during a term of three years. 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 or she has a good cause (summary dismissal).

3. Notice periods

The notice period for the Employer is subject to the Latvian Labor Law. However, Parties may also agree on other dismissal periods by concluding an Employment Agreement or Collective Agreement.

According to the Latvian Labor Law, the duration of the notice period may vary from 10 days to 1 month.

The notice period 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 labor protection regulations and has jeopardized the safety and health of other persons;
- the employee is unable to perform the contracted work due to his or her state of health and such state is certified with a doctor's opinion;
- the employee didn't 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 notice period 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.

However if the employee, when performing work, has acted illegally or is under the influence of alcohol, narcotic or toxic substances, the employer may have rights to dismiss the employee immediately (summary dismissal).

During the probation time of maximum 3 months the notice period is 3 days.

4. Form of dismissal

According to the Labor Law, the dismissal of the employee has to be in a written form. This is a requirement for validity. For reasons of proof, termination arrangements should always be made in writing.

5. Further requirements for a valid dismissal

According to Labor 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 due to the circumstances related to the employees' behavior and activities, 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 due to economic, organizational, technological reasons or due to long term illness of the employee, if the employer can not employ the employee with his or 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 an employee trade union.

Lithuania



6. Special dismissal protection

Latvian Labor law prevents discrimination including dismissal due to race, skin color, 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 not longer than the day when a child reaches the age of 2 years.

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' behavior and activities.

The employer is prohibited to terminate an employment contract of an employee during a period of temporary incapacity of the employee.

In case the employee does not perform work due to temporary incapacity for a long time period (specified above) 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 probation time; 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, organizational, 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 in the company for less than 5 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 6 months).
- In case the employee has been employed in the company for a time period of 5-10 years, the severance pay shall be paid in the amount of average earnings for two months.
- In case the employee has been employed in the company 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 in the company 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.

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.

1. Kinds of dismissal

Following Lithuanian labor law, the dismissals can be divided in two types: dismissal on the initiative of the employer with a notice of termination (ordinary dismissal) and dismissal without notice of termination. These two types of dismissal differ with regard to the reasons for dismissal, the dismissal period, protection and legal means 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 related to:

- the employee – the reasons may be related to the qualification, professional skills or conduct of an employee;
- the employer – in the latter case, these are the economic or technological reasons, or due to the restructuring of the workplace, as well as the other similar valid reasons.

It should be noted that a legitimate reason to terminate employment cannot be: (i) membership in a trade union or involvement in the activities of a trade union beyond the working time or, with the consent of the employer, also during working time; (ii) performance of the functions of an employees' representative at present or in the past; (iii) participation in the proceedings against the employer charged with violations of laws, other regulatory acts or the collective agreement, as well as application to administrative bodies; (iv) gender, sexual orientation, race, nationality, language, origin, citizenship and social status, belief, marital and family status, convictions or views, membership in political parties and public organizations; (v) age; (vi) absence from work when an employee is performing military or other duties and obligations of the citizen of the Republic of Lithuania in the cases established by laws.

Dismissal without notice of termination is allowed:

1. upon an effective court decision or in cases when a court judgment whereby an employee is imposed a sentence, which prevents him from continuing his work, becomes effective;
2. when an employee is deprived of special rights to perform certain work in accordance with the procedure prescribed by laws;
3. upon the demand of bodies or officials authorized by laws;
4. when an employee is unable to perform his duties or work according to a medical conclusion or a conclusion of the Disability and Working Capacity Assessment Office under the Ministry of Social Security and Labor;

5. when an employee of fourteen to sixteen years old, one of his parents, or the child's statutory representative, or his attending pediatrician, or the child's school demand that the employment contract is terminated;
6. upon the liquidation of an employer, if under laws his labor obligations were not placed on another person;
7. upon an employee's incapacity to work due to illness if he is absent from work due to temporary loss of functional capacity for 120 or more successive days or for 140 or more days within the last 12 months;
8. when the employee performs his duties negligently or commits other violations of labor discipline provided that disciplinary sanctions were imposed on him at least once during the last 12 months;
9. when the employee commits single gross breach of duties, in particular:
 - absence from work throughout the working day without valid reasons;
 - appearance at work under alcoholic, narcotic or other toxic intoxication;
 - disclosure of state, professional, commercial or technological secrets or communication of them to a rival enterprise;
 - violation of equal rights for women and men or sexual harassment of colleagues, subordinates or customers;
 - involvement in activities which, pursuant to the provisions of laws, other regulatory acts, work regulations, collective agreements or employment contracts, are incompatible with job functions;
 - abuse of one's position seeking to receive illegal income for oneself or other persons or for any other personal reasons, also self-willed behavior or bureaucracy, etc.

Dismissal without notice of termination is conducted on the basis of the order of employer which also should state the reasons for the dismissal.

It should be noted that the dismissal without notice of termination on the grounds indicated above in 8) and 9) must be executed following the procedure of imposing the disciplinary sanctions.

3. Notice periods

A valid dismissal without notice of termination takes immediate effect without a notice period. In case the dismissal is executed following the rules of imposing disciplinary sanctions, before imposing a disciplinary sanction the employer must request the employee in writing to provide an explanation in writing about the breach of labor duties, within the period set by the employer (usually, not exceeding several working days). After the expiry of said period, the employer is entitled to impose a disciplinary sanction by an order/instruction of the employer or the administration, and the employee must be served a notice of it against his signature. The dismissal however has to be issued within a month period after the employer has obtained knowledge of the facts relevant to the dismissal, but not later than 6 months from the date of the breach of his duties by the employee. Otherwise the dismissal is invalid.

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 status of employee. The employer must inform the employee about the termination of the employment contract within 2 months (as a general rule) or 4 months (in certain cases) in advance in writing. The termination notice with the longer (i.e. 4 months) term must be delivered to the employees who will be entitled to the full old-age pension in not more than five years, persons under eighteen years of age, disabled persons and employees raising children under fourteen years of age. During the termination notice period the dismissed employees are entitled to be absent up to 10% of their working time from the work schedule in order to look for a new job without affecting their entitlement to salary and other rights. The period of notice is extended for the period of the employee's sickness or vacations.

In case of collective redundancies, prior to giving notification of the termination of the employment contract to the employees, an employer must notify a local labor exchange office in writing of any projected redundancies and only after having organized the consultations with employees' representatives.

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 grounds of the dismissal, the date the dismissal takes effect. In case of dismissal for breach of duties – the dismissal decision also should contain (i) the description of the employee's disciplinary departure(s);

(ii) the provisions of the laws, the employer's internal regulation, collective agreement or other similar documents in relation to which the employee's non-compliance or breach was established; (iii) the reasons for which the employee's defense during the prior disciplinary investigation was overruled; (iv) the legal reasons based on which the disciplinary sanction has been established.

5. Further requirements for a valid dismissal

At least on the last day of employment (if not agreed in written otherwise by the parties or established by laws) the employer must prepare and sign documents related to termination of the employment contract as well as settle all accounts with the employee in full, including the compensation for the unused vacation and, if applicable, the severance pay. At the request of the employee the employer must issue him a certificate about his work indicating his functions (duties), the dates of its commencement and end, and the amount of his wage and performance assessment (character reference). The employer shall inform the State Social Insurance Fund Board on the termination of employment within 3 days after the date of termination of employment contract. The employer shall also inform the Lithuanian Work Exchange on the termination of employment with the citizen of non-EU country within 3 working days after the date of termination of employment contract.

6. Special dismissal protection

The dismissal at the employer's initiative (ordinary dismissal) is not allowed (except for the case of the liquidation of the company) during the period of the employee's temporary disability (sick leave) and during the period of the employee's vacation. Employees, who have lost their capacity to work as a result of injury at work or occupational disease, shall retain their position and duties until they recover their capacity to work or a disability is established. Employees, who have temporarily lost their functional capacity for other reasons, shall retain their position and duties if they are absent from work due to temporary loss of functional capacity for not more than 120 successive days or for not more than 140 days within the last 12 months.

In case of ordinary dismissals, the dismissal of an employee is only allowed if the employee cannot, with his consent, be transferred by the employer to another work. Besides the particularities mentioned above, a special protection against dismissal exists for certain groups of employees. In the event of staff reduction due to economic or technological reasons the following equally skilled employees shall have the priority right to retain employment:

- those who sustained an injury or contracted an occupational disease at that workplace;
- who are alone raising children (adopted children) under sixteen years old, or care for other family members who have been established a severe or moderate disability level or whose capacity to work has been rated below 55% or family members who have reached old-age retirement age, who have been assessed in accordance with the procedure established by legal acts as having high or moderate special needs;
- whose continuous length of service at that workplace is at least ten years, with the exception of employees, who have become entitled to the full old age pension or are in receipt thereof;
- who will be entitled to the old-age pension in not more than three years;
- to whom such a right is granted in the collective agreement;
- who are elected to the employee representative bodies.

Employment contracts with pregnant women cannot be terminated in any cases other than the ones as listed above for dismissal without a notice of termination (though, except for cases of breach of labor duties) and in case of expiry of the short-term employment contract term. Employment contracts with employees having children under 3 years old cannot be terminated at the employer's initiative (ordinary dismissal).

The employer who wishes to dismiss at employer's initiative (ordinary dismissal) the employee who is elected to the bodies of a trade union organization is obliged to obtain a prior written consent from such trade union organization prior to making the final decision regarding dismissal. The collective agreements may establish that such procedure should be implemented for the ordinary dismissal of other employees as well.

7. Legal means of the employees

The employee may appeal against the dismissal at court within 1 month after its delivery and claim that the dismissal is not valid. In this case, the employer has to substantiate and prove that he fully observed and fulfilled the order for a particular case of dismissal and obligatory prerequisites (i.e. notification period) as well as the legal and factual grounds for the dismissal. The court has to decide whether the prerequisites for an effective dismissal were fulfilled and the legal and factual grounds for the dismissal are sound. If this was not the case the employment agreement continues and the employee has the right to return to his working

place and is entitled to receive his average monthly salary for the period of forced absence at work.

Alternatively, where the court establishes that the employee may not be reinstated in his previous work due to economic, technological, organizational or similar reasons, or because he may be put in unfavorable conditions for work, it may take a decision to recognize the termination of the employment contract as unlawful and award him a severance pay in amounts corresponding his employment seniority following Lithuanian labor law as well as his average monthly salary for the period of forced absence at work.

8. Severance pay

Upon ordinary dismissal and dismissal upon employer's liquidation (when a notice of termination is not required), the dismissed employee is entitled to receive a severance pay which depends on the length of his service in the company, i.e.:

1. up to 12 months – 1 monthly average salary;
2. 12 to 36 months – 2 monthly average salaries;
3. 36 to 60 months – 3 monthly average salaries;
4. 60 to 120 months – 4 monthly average salaries;
5. 120 to 240 months – 5 monthly average salaries;
6. over 240 months – 6 monthly average salaries.

In other cases (e.g., dismissal due to employee's illness or disability, termination initiated by the employee due to employer's fault, etc.) when there is no fault on the part of the employee, an employee shall be paid a severance pay in the amount of 2 monthly average salaries unless otherwise provided for in the laws or collective agreements.

9. Mentionable aspects/ particularities

None

10. Managing Directors

As it regards the dismissal of the head of the company, Lithuanian labor law and Lithuanian company law establish the right for the governing body in the company, which has the right to appoint the Managing Director of the company, to revoke him from this position at any time. 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 2 of his average monthly salaries.

Luxembourg

1. Kinds of dismissal

There are two kinds of dismissal in Luxembourg: dismissal with prior notice for a real and serious reason and dismissal with immediate effect for serious cause.

In principle, the employer may only dismiss with notice 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 reasons that prevent the continuation of the working relationship. The reasons for justifying a dismissal with notice can be:

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

A dismissal for serious cause is only justified in case the employee's gross misconduct makes immediately and definitively impossible the continuation of the working relationship. (Examples: theft, unfair competition, aggression, etc.).

3. Notice periods

An employer who dismisses an employee for a reason other than serious cause must serve notice.

The duration of the notice period depends on the employee's length of service at the time of the dismissal notification.

| Employee's length of service | Notice period to comply with |
|------------------------------|------------------------------|
| less than 5 years | 2 months |
| from 5 to 10 years | 4 months |
| 10 years and more | 6 months |

Subject to specific conditions, the employee may be exempt from working during the notice period ("garden leave").

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

Until 31 December 2015, 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 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 state that it is a dismissal with notice. The following information shall also be added in the notification:

- the notice period which the employee is entitled to in accordance with his length of service in the company;
- exemption from work, 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;
- 1st day of the following month, if the letter of dismissal was notified to the employee between the 15th 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 sending of the 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 can request this information:

- by registered letter;
- within one month from the day on which he 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 received the request from the employee;
- by giving a detailed description of the reasons for dismissal;
- 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 at the earliest one day after the preliminary interview, where applicable) of his dismissal in writing:
 - by registered letter;
 - 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 dismissal.

- Or place the employee on leave ("garden leave") and dismiss him at a later date. During the leave, the employer must continue paying the employee's salary as well as any other benefits he has is entitled to, until the day he is informed of his dismissal.

The dismissal notification should be given minimum 1 to maximum 8 days after the start of the garden leave. This 8-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 dismissal is envisaged, to explain the reasons and to give him the opportunity to explain himself.

Informing the Conjunction Committee of a dismissal

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

Any company with 15 or more employees must send a notification to the Conjunction Committee for each dismissal not related to employee behavior. The notification to the Conjunction Committee must take place at the latest when the employee is informed of his dismissal with notice.

6. Special dismissal protection

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

- on a fixed-term employment contract;
- on sickness leave
- on maternity leave;
- on parental leave;
- who is staff representative (staff delegate or Joint Work Council member).

The employer who terminates a fixed-term employment contract 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 a permanent employment contract.

7. Legal means of the employees

Dismissal is regarded as unfair if:

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

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, he 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 a severance pay if the employee has a seniority of 5 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 company, 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 his choice in the letter of dismissal.

| 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 |

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

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

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

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 Master, MBA, ...).

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

10. Managing Directors

No specific dismissal rules apply for Managing Directors.

Malta

1. Kinds of dismissal

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

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 notice to the employee, on grounds of redundancy (i.e. economic, organizational or technical reasons entailing changes in the workforce).

2. Necessity of Reasons for Dismissal

The employer may dismiss an employee, without giving notice 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:

1. the termination by the employer of an employment contract for an indefinite period (other than during the probation period) being a termination which is not made solely on the grounds of redundancy or for a good and sufficient cause, or the failure by the employer to re-employ such employee;
2. 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, or the failure by the employer to re-employ such employee;
3. which, though made on grounds of redundancy or for a good and sufficient cause, is discriminatory, or the failure by the employer to re-employ such employee; or
4. 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, nor 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 working day next 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 period of notice expires, or to require the employer to pay him a sum equal to 50% of the wages that would be payable in respect of the unexpired period of notice.

6. Special Dismissal Protection

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

1. 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
2. except in the case of a private domestic employee, that the employee no longer enjoys the employer confidence of the employer; or
3. that the employee contracts marriage; or
4. that the employee is pregnant or is absent from work during maternity leave; or



5. 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;
6. 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
7. 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 twelve 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 for 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 complainant has requested to be reinstated or re-engaged, the Tribunal may order the re-instatement or re-engagement of the complainant if it would be practicable and in accordance with equity. In situations where the complainant 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 or re-engagement of the complainant; nevertheless where the complainant was appointed or selected to such post by fellow employees, the Tribunal may order reinstatement or re-engagement in the post held before such appointment or selection.

Should the complainant have made no specific request for reinstatement or re-engagement, or the Tribunal decides not to make an order for reinstatement or re-engagement, the Tribunal shall make an award of compensation, to be paid by the employer to the complainant, 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 unjustly dismissed, as well as other circumstances that may affect the employment potential of the said employee, including age and skills.

8. Severance Pay

No obligation for the payment of severance pay is contemplated under the Act except in such circumstances in which 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, organizational 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.

Norway



1. Kinds of dismissal

In accordance with the Norwegian Labor law there are two kinds of dismissals; ordinary dismissals and dismissals for serious cause. These two kinds differ substantially, both in relation to the grounds for dismissal, the dismissal period 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. An employee's underperformance or disloyalty etc. may also be considered as valid and justified reasons for dismissal.

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

For an ordinary dismissal, the minimum notice period regulated by the Working Environment Act (WEA) is one month. The notice period may be longer based on seniority and age. The notice period is 2 months for an employee with 5 years seniority, and 3 months after 10 years seniority. An employee with 10 years seniority is entitled to minimum 4 months' notice if the employee is aged 50 or older, 5 months' notice if at the age is 55 or older, and 6 months' notice if at the age of 60 or older.

The notice period runs from the first day of the month following the month in which notice is given.

One may agree upon a probation period of up to six months. The agreement must be in writing. During the probation period, the notice period is in general 14 days.

During the notice period the employee is entitled to ordinary remuneration. 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 grounds 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 (cf.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 grounds 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 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 within eight weeks after the dismissal is given in case he or she is of the opinion that the dismissal is unfair and not valid. 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.

In the event of a dispute or legal proceedings concerning the termination of the employment contract, the employee may 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 remuneration during the period of notice.

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 remuneration 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 probation 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 of the undertaking if he/she has waived the application 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.

Poland

1. Kinds of dismissal

According to Polish labor law, there are two kinds of dismissal, ordinary dismissal (i.e. with notice of termination) and summary dismissal (i.e. without notice of termination). These two kinds differ as regards to reasons for dismissal, dismissal 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. The requirements regarding the reasons for dismissals are less stringent in case of an employee fulfilling managerial functions (e.g. the reason may be the loss of confidence in the employee). Reasons justifying termination of contract may be related to the employee or the employer (in the latter case, for instance, economical, technological, organizational or operational reasons).

Summary dismissal is allowed when:

- the employee seriously violates his basic duties or within the period of validity of the contract of employment commits an offence, which is making his further employment on the occupied post impossible (the offence must be evident or established by a valid judgment), or
- the employee - due to his own fault – loses qualifications necessary for the performance of duties connected to his post.

Additional reasons justifying the summary dismissal are:

- the employee's incapacity to work due to illness if: (i) the incapacity lasted for more than 3 months (if the employee has been employed for less than 6 months), or (ii) 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 3 months of receiving the rehabilitation benefits), (if the employee has been employed for

at least 6 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 1 month.

Dismissal without notice of termination must be accompanied by a statement of reasons.

3. Notice periods

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 duration of contract of employment and kind of contract of employment.

The notice period in case of a contract of employment for indefinite period of time is:

- 2 weeks (if the employee was employed for less than 6 months),
- 1 month (if the employee was employed for at least 6 months) and
- 3 months (if the employee was employed for at least 3 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 3-month notice period to 1 month with employee's right to compensation for the reduction of the notice period.

In practice, the employee may be withdrawn by the employer from the obligation to perform work with the right to receive a regular remuneration. Such withdrawal may concern the whole notice period or only a part of it. In many cases such withdrawal is made upon the mutual consent of the parties, unless the circumstances arise when the employer loses the confidence in the employee or it is justified by the fair interests of the employer (in those cases, the withdrawal may take place upon the employer's decision).

Specific rules apply in case of fixed term contracts and trial period employment contracts.

In case of summary dismissal, there is no notice period to be served. 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 in written form. In case of dismissal of an employee who was employed on the basis of a contract of employment concluded for an indefinite period of time and in case of a summary dismissal, 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, liquidation of a work post).

5. Further requirements for a valid dismissal

Additional requirement for the validity of dismissal is that the information on the employee's right to appeal to a labor court must be included in the document dismissing the employee.

In case of termination of a contract of employment concluded for an indefinite period of time, the employer shall inform in writing the trade union organization representing the employee about his intention to dismiss the employee together with the underlying reasons.

In case of summary dismissal, the employer has the right to dismiss the employee without notice due to the fault of this employee, within 1 month from the moment on which the employer obtains information about the circumstances justifying the summary dismissal. In addition, the employer who wishes to dismiss the employee without notice of termination due to the employee's fault is obliged to obtain an opinion from the establishment's trade union organization representing the employee, prior to making the final decision regarding dismissal.



6. Special dismissal protection

In accordance with Polish labor 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 fulfill.

The first group of protected employees covers in particular those who will reach retirement age in no more than 4 years, if the 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. point 2), female 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 specific procedure).

Portugal

7. Legal means of the employees

In case of ordinary dismissal the employee may appeal against it to a labor court, within 7 days from the delivery of the notice of termination. As a result, if it is determined that notice of termination is unjustified or that it is contrary to the provisions on termination of contracts of employment (unlawful ordinary dismissal), the labor court, according to the request of the employee, will declare the notice of termination ineffective, and if the contract has already been terminated the court shall order that the employee will be reinstated in his/her work on former conditions or order 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, for definite period or for a period of completion of particular task.

In case of summary dismissal executed in violation of the provisions on terminating contracts of employment (unlawful summary dismissal), the employees are entitled to claim reinstatement in work on previous conditions or compensation which shall be ordered by labor court.

However, when the employee, who was employed on the basis of a contract of employment concluded for a definite period or for a period of completion of a specific task, is dismissed in violation of the provisions on terminating contracts of employment without notice and the period of the contract has lapsed or the reinstatement in the job 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 (summary dismissal). In both cases, the labor court may decide on rejecting the employee's request to order the dismissal ineffective or reinstatement in work, if it determines that such claim is impossible or without purpose. In such situation the labor court shall award compensation.

8. Severance pay

In some cases the employer shall pay severance to the employee who was dismissed. The circumstances in which such obligation arises are regulated by the Act on specific rules of terminating contracts of employment for the reasons which do not concern employees. The amount of severance depends on the number of years the employee was employed in the employer's establishment according to the basic rule that the longer the employee was employed the higher the severance.

Under the referred Act the statutory severance shall be paid to the employees in individual cases when the employer who terminates the employment contracts hires at least 20 employees, the dismissals are justified solely by the operational reasons and they encompass less than 10 employees within a 30-day window.

9. Mentionable aspects/ particularities

Special rules apply in case of collective redundancies (i.e. collective dismissals).

10. Managing Directors

No specific dismissal rules apply for Managing Directors, except as mentioned under point 2 that the requirements regarding the reasons are less stringent.

1. Kinds of dismissal

According to the Portuguese Law an employment agreement 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:

- a. For serious cause; or
- b. Unfit for the role; or
- c. Extinction of the role.

2. Necessity of reasons for dismissal

Reasons for dismissal of an employee are those provided by the Portuguese Labor 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;
- 5 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

This type of dismissal is 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 reorganization of the company or substitution of dominant products), and technological changes (new production methods, including automation and/or robotization 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 served 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 labor agreement:

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.
- 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 a year, provided that the contract has not terminated.

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:

- The employer must notify the employee in writing and identifying the reasons for the dismissal, once all relevant parties have presented their arguments, the employer will have 5 days to decide. And the decision must be communicated 15 to 75 days of the end of the contract. The number of days depends 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 5 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 the 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 5 days after receiving the arguments for no dismissal to issue his final decision.

Extinction of the role:

- Dismissal can only occur when it is impossible to maintain the labor agreement; and
- There are no workers with fixed term labor 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 Labor Code is not valid and be contested in court.

8. Severance pay

The rules pertaining to the severance indemnity 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, applicable to contracts signed as of October 1, 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 amount of 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.

Severance rules applicable to contracts signed before October 1, 2013 have a different set of rules for the number of days to be considered when computing the total severance amount to be paid by the company.

9. Mentionable aspects/particularities

Personal income tax will only be due on the part of the severance indemnity 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 5 years, a severance payment due to another dismissal, either fully or partially exempt from taxation.

However social security contributions are due on the part that exceeds the amount foreseen by the rules set by law. The severance payment is not liable to social security contributions if (irrespective of the amount paid) it arises from:

- Extinction of job function; or
- Unfitness to the job; or
- Collective dismissal.

Given the legislation applicable, dismissal with or without cause almost never occurs in practice. In fact, most of dismissal cases are settled through mutual agreement between parties and severance rules do not apply. In these cases the severance payment varies between 1 and 1,5 base salaries for each year of seniority.

10. Managing Directors

No specific dismissal rules apply for Managing Directors.

Romania

1. Kinds of dismissal

According to the Romanian Labor Code, there are two kinds of dismissal:

1. dismissal for reasons related to the employee;
2. dismissal for reasons not related to the employee.

2. Necessity of reasons for dismissal

Dismissal may only be given in the following cases:

1. dismissal for reasons related to the employee:

- a. disciplinary dismissal: i.e. due to the employee's violation of disciplinary rules, rules set forth in the individual employment agreement, applicable collective bargaining agreement(s) or internal regulations;
- b. imprisonment exceeding 30 days under the terms of the Romanian Criminal Procedure Code;
- c. physical and/or mental inaptitude ascertained through decision of the medical expertise competent bodies, preventing the employee from fulfilling his/ her job;
- d. professional incomppliance: i.e. the employee's lack of professional skills for the job position held.

2. dismissal for reasons not related to the employee (i.e. suppression of the job position):

In order to ground a dismissal decision on this reason, the suppression of the job position shall (i) be effective, i.e. the respective job position is suppressed from the company's organization chart, and (ii) 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, the dismissals for reasons not related to the employee can be either individual or collective.

3. Termination notice periods

In case of dismissal the employer has the obligation to grant a notice period to the dismissed employee of at least 20 working days. By way of exception, such a notice is not mandatory in case of disciplinary dismissal, dismissal in case of imprisonment exceeding 30 days and dismissal for professional incomppliance ascertained during the probation period.

In addition, the employer may any time terminate the employment agreement, with no termination notice, during probation period. However, such termination would not occur through a dismissal, but through a notice, issued without motivation. Otherwise, the rules of dismissal become applicable.

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:

- a. in all cases: (i) the legal and factual grounds of the dismissal; (ii) the duration of the termination notice period, if applicable and (iii) the term in which the dismissal decision may be challenged and the court of law in front of which it shall be challenged;
- b. in case of dismissals for (i) physical and/or mental inaptitude and (ii) professional incomppliance: 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.
- c. in case of disciplinary dismissal: (i) the description of the employee's disciplinary departure(s); (ii) the provisions of the employer's internal regulations, individual employment agreement, applicable collective bargaining agreement violated by the employee; (iii) the reasons for which the employee's defense during the prior disciplinary investigation was overruled, or the reasons for which the said investigation was not performed; (iv) 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:

a. 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 defense and offer all the evidence and motivations he/she deems appropriate;
- 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 agreement.

The dismissal decision shall be issued within 30 calendar days from the date of taking note of the employee's disciplinary departure, but not later than 6 months from the date the respective deed was committed.

b. in case of an employee's professional incomppliance, 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.

c. in case of collective dismissals, a specific, distinctly regulated procedure shall be followed.

6. Special dismissal protection

Employers should take into account the following permanent interdictions, i.e. cases in which the employees' dismissal can never be decided:

1. on grounds of gender, sexual orientation, genetic characteristics, age, national origin, race, color, ethnicity, religion, political option, social origin, disability, family status or responsibility, trade union membership or activity;
2. on the ground of the employee exercising, in accordance with the law, his/her right to strike and trade union rights.

Temporary interdictions, i.e. cases in which dismissal is not allowed during a specific period, are the following:

- a. during temporary work incapacity, ascertained through a medical certificate;
- b. during the suspension of the activity, following the initiation of quarantine;
- c. during pregnancy, as long as the employer took note of this fact before the issuance of the dismissal decision;
- d. during the maternity leave;
- e. during the leave for raising a child up to the age of 2 or, in case of a disabled child, up to the age of 3;
- f. during the leave for looking after a sick child up to the age of 7 or, in case of a disabled child, for successive illnesses, until the age of 18;
- g. during the exercise of an eligible position in a trade union body, except when the dismissal is decided for a serious disciplinary departure, or for repeated disciplinary departures, committed by that employee;
- h. during the rest leave.

Russia

7. Employees' legal means

The employee is entitled to challenge the employer's dismissal decision within 30 calendar days from its communication date. Should the dismissal decision be established as illegally issued, the court shall order its cancellation and oblige the employer to pay damages to the employee, representing up-to-date salaries, as well as other rights the employee would have been entitled to under the employment agreement.

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. Additionally, following a recourse to the interest of the law filed by the General Public Prosecutor, in 2013 the High Court of Cassation and Justice ruled that the court may also change the sanction applied by the employer in a disciplinary action. Therefore, the decision regarding application of dismissal as a disciplinary sanction must be well weighted before being applied.

8. Severance pay

Under Romanian Labor Law there is no minimum level of mandatory severance payment 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 incapacity, the employer has the obligation to grant the dismissed employee a severance payment under the conditions as set forth in the individual employment agreement or the applicable collective bargaining agreement.

The employees dismissed for reasons not related to them benefit from active measures for combatting unemployment and can benefit from severance payments under the conditions as set forth in the law and the applicable collective bargaining agreement. The severance payment 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

1. Kinds of dismissal

In accordance with the Russian labor 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 of the employer and the employee
- Termination of the employment contract under 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

Reasons for dismissal are the following:

1. liquidation of the company;
2. staff reduction;
3. 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).
4. change of the company's owner (only applicable to the head of the company, deputy heads of the company, and to the chief accountant);
5. repeated failure by the employee to perform his/her duties without good cause, provided that such employee has been disciplined;
6. single gross violation by the employee of his/her duties, such as, in particular:
 - absence at work without good cause for over 4 consecutive hours within a working day;
 - appearance at work under alcoholic, narcotic, or other toxic intoxication;
 - 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 labor responsibilities, including the divulgence of personal data of another employee;

- the commission at the place of work of the theft (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 authorized to examine administrative offence cases which has entered into legal force;
- a violation of labor protection requirements by the employee which has been established by a labor protection commission or a labor 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;

7. culpable acts committed by an employee directly in charge for funds or goods, if these actions provide grounds for the employer to lose confidence in such employee;

7.1. 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;



8. commission of an immoral offense incompatible with the labor duties, if performed by an employee performing educational functions;
9. 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;
10. single gross violation committed by the head of the Branch or his/her deputies of their labor responsibilities;
11. presentation of false documents or information known to be false to the employer at the conclusion of the employment contract;
12. in instances envisaged by the employment agreement with the director of an organization and members of a collective management body of an organization;
13. in other cases stipulated by the Labor Code and other Federal Laws.

3. Notice periods

The effective Russian legislation stipulates different notice periods 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 2 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 2 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 2 months is terminated at the employer's initiative, the employer should notify the employee of the contract's termination 3 days prior to the termination.
- During the probation period the employment contract can be terminated at the employer's initiative for reasons of unsatisfactory employee's performance with a 3-day written notice to the employee, specifying the reasons of unsatisfactory results during the probation period.

4. Form of dismissal

The notice of dismissal of an employee is valid only if it is made in written form, and the employee was acquainted with it against his/her signature. However, the effective Russian legislation does not contain any particular requirements for such document (i.e. no special form is prescribed by the law). The termination of an employment contract (dismissal) shall be formalized by an order (instruction) of the employer. On the day of dismissal the employer shall be 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 dismissal. Some of them are stated below.

- 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 2 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 period of the employee's temporary disability (sick leave) and during the period of 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 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, which is the main source of their means of subsistence);
- the only independent earners in the families;
- employees who sustained severe labor injury or professional disease in the company;
- people disabled during the Second World War or in State defense 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 3 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 effective 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 Labor 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 to court within a period of 1 month from the date of dismissal and claim that the dismissal was not valid. In this case, the employer has to expose and prove that all obligatory requirements of the dismissal have been performed in compliance with the legislative requirements when explaining the dismissal. In case the prerequisites were not fulfilled, the employment contract shall be recovered and the employee has the right to reinstatement of employment. 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 effective Russian legislation the employer has to pay severance pay in the amount of 1 average monthly salary in case of dismissal at the initiative of the employer due to staff reduction or liquidation of the company. Please note more than 1 month average salary can be established in the employment contract. Moreover, in these cases of dismissal the employer is also obliged to pay to the employee his average monthly salary for the period of his/her new job-seeking, but not exceeding 2 months.

9. Mentionable aspects/ particularities

Besides what is mentioned above, the employment contract with the head of the company (i.e. general director) may be also terminated due to the following:

- dismissal of the head of a company – debtor in accordance with legislation on insolvency (bankruptcy);
- decision on termination of an employment contract with the head of the company taken by an authorized body of a company or the owner of property of the company;
- 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 authorized 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 due the change of the company's owner, a compensation in the amount of not less than three monthly salaries should be paid to them.

In case of termination of the employment contract with the head of the company (in the absence of his culpable actions) under the decision of the authorized body of the company, the employer will have to pay to such employee a compensation in the amount set by the employment contract, but in any case not less than his/her three average monthly salaries.



1. Kinds of dismissal

An employment relationship may be terminated by the employer in one of the following ways:

1. By serving notice (ordinary dismissal)
2. For serious cause (immediate termination/summary dismissal)
3. Termination within a probationary period

An employment agreement can also be terminated by mutual consent.

2. Necessity of reasons for dismissal

The necessity to provide for 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 reasons provided in § 63 of the Labor Code as follows:

2.1 If:

- a. the company of the employer or a part thereof is dissolved or relocated,
- b. 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 organizational changes,
- c. 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,

d. an employee:

- does not meet the preconditions set by legal regulations for the performance of the agreed work,
- ceases to fulfill the requirements pursuant to § 42 paragraph 2 of the Labor Code /an election as the precondition for executing a certain function.../,
- does not fulfill, 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 fulfill his/her tasks and the employer has in the preceding 6 (six) months challenged him in writing to rectify the insufficiencies and the employee failed to do so within a reasonable period of time,

e. 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 labor discipline; for less grave breaches of labor discipline may an employee be given a notice if he/she has been cautioned in writing with respect to breach of the labor discipline within the previous six months as to the possibility of notice.

2.2 An employer may give a notice to the employee, unless it is a notice given on grounds of unsatisfactory fulfillment of working tasks, for less serious breach of labor discipline or for reasons for which immediate termination of employment relationship is applicable, only in such case where:

- a. 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,
- b. the employee is not willing to shift to other work appropriate to him, 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.

2.3 Conditions under which an employer is obliged to offer his/her employee appropriate work, or conditions when an employer has no obligations to offer appropriate work, may be agreed in a collective agreement.

2.4 An employer, due to breach of labor discipline or for the reason of immediate termination of employment relationship, may only give notice to an employee within a period of two months from the day the employer

became acquainted with the reason for notice, and breaching of labor discipline in abroad, within two months from the employee's return from abroad, this always within one year from the day when the reason for notice occurred.

2.5 Where, within the period of two months stipulated in paragraph 2.4, the employee's conduct in which breach of labor discipline may be witnessed 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.

2.6 If the employer intends to give a notice to an employee on grounds of breach of labor 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.

Termination for serious cause

An employer may immediately terminate an employment relationship in exceptional cases only. This in case the employee:

- a. was lawfully sentenced for committing a willful crime,
- b. was in serious breach of labor 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; however with a maximum of one year from the day such reason occurred. The law does not stipulate what constitutes serious breach of work discipline but it is defined based case law.

Termination of employment relationship within the probationary period

Within the probationary period (usually 3 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 the day the employment relationship is to terminate.

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 probationary 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 organizational reasons (cancellation of a job position, dissolution or relocation of the company):

| Duration of employment | Notice period |
|------------------------|---------------|
| < 1 year | 1 month |
| 1 – 5 years | 2 months |
| > 5 years | 3 months |

Ordinary dismissal given by an employer for other reasons:

| Duration of employment | Notice period |
|------------------------|---------------|
| < 1 year | 1 month |
| > 1 year | 2 months |

4. Form of dismissal

The notice shall have certain essentials:

- it must be written and delivered;
- an employer may only give notice to an employee for reasons explicitly stipulated in the Labor 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 § 63 paragraph 1, letter b) of Labor Code (see section 2.1 b) – an employee becomes redundant - he/she may not within 2 months re-create the eliminated work post and employ another employee to the same post.

See also section 2.2 b) – the obligation to offer other suitable work.

See also section 2.1 d) 4.– written challenge provided to an employee in the past 6 (six) months.

6. Special dismissal protection

An employer may not give notice to an employee within a protected period, that means:

- a. 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.
- b. in the event of a call up to perform extraordinary service during a state of crisis, from the date when the employee is called up to perform extraordinary service, from the date of delivery of the call-up order or when called up to start extraordinary service by mobilization order or mobilization notice or if the employee has been ordered to perform extraordinary service, until the expiry of two weeks from his/her demobilization; this shall also apply with regard to the performance of alternative service pursuant to special regulations.
- c. within the period of an employee's pregnancy, when an employee is on maternity leave, female or male employee is on parental leave or when an unmarried employee is taking care of a child under the age of three.
- d. during the period when an employee is released for the long term performance of a public function.
- e. within the period when an employee working at night is on grounds of medical opinion acknowledged as being temporarily incapable to perform night work.
- f. An employer may not give notice to a disabled employee without the prior consent of the respective office of labor, 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 for reasons stipulated in § 63 paragraph 1, letters a, e of the Labor Code /cfr. section 2.1, letters a, e/.

7. Legal means of the employees

The invalidity of the termination of the employment relationship by virtue of notice, immediate termination, and termination in the probationary period or agreement may be challenged by the employee not later than 2 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 probationary 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 that it cannot be justly required of the employer to further employ the employee. The employer shall be obliged to provide the employee with wage compensation.

The employee shall be entitled to such compensation in the amount of average earnings 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 wage compensation is greater than twelve months, the employee shall be entitled to wage compensation only for the period of 36 months.

8. Severance pay

An employer shall pay an employee a severance pay if the employment relationship is terminated by serving notice for the reasons set out in § 63 paragraph (1) letter (a) or (b) /cfr. section 2.1, a/, b/ 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 allowance equal to at least his/her average monthly earnings multiplied by the number of months as indicated in the table below.

| Duration of employment | Severance allowance |
|------------------------|----------------------------|
| < 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 |

If an employer terminates an employee's employment relationship by notice or by agreement on the reasons that 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 allowance equal to at least 10 (ten) times his/her monthly earnings. This shall not apply if an occupational accident was caused by the employee breaching, through his/her own fault, legal regulations or other regulations for ensuring occupational safety and health or instructions for ensuring occupational safety and health, despite having been duly and demonstrably familiarized with them and knowledge and compliance with them is systematically required and checked, 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, after the termination of the employment relationship, 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 a severance allowance is provided, the employee shall be obliged to return the severance allowance or a proportionate part thereof if the employer and employee do not agree otherwise. A proportionate part of the severance allowance shall be determined according to the number of days from the return to employment until the expiry of the period resulting from the provided severance allowance.

An employee shall not be entitled to a severance allowance where rights and duties resulting from labor-law relations are transferred to another employer in accordance with Labor Act in the event of organizational changes or rationalization measures.

An employer shall pay a severance allowance on the first pay day set by the employer for payment of wages after the termination of employment, unless the employer and employee agree otherwise.

The above severance is the minimum required by law. In case of a conclusion of an agreement on termination of an employment relationship, higher amounts can be agreed.

9. Mentionable aspects/ particularities

There are special requirements for collective dismissals.

10. Managing Directors

No specific dismissal rules apply for Managing Directors.

Slovenia

1. Kinds of dismissal

According to the Slovenian labor law, there are two kinds of terminations: ordinary dismissal and summary dismissal. These two kinds differ in notice periods 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 probationary period.

Unfounded 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 summary dismissal is a termination of an employment contract without a notice period and with immediate effect. The contracting parties (the worker or the employer) can terminate the employment contract in this manner if reasons exist and if, by taking into account all circumstances and interests of both contractual parties, it is not 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 summary dismissal 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 period of notice shall be 15-60 days, depending on the period of employment with the employer.

In case of 25 years of service the period of notice is 80 days or less if so prescribed by a branch collective 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 period of notice shall be 15 days.

The period of employment with the employer shall also include the years of service with the employer's legal predecessors. The employee and employer can agree on shortening the notice period in exchange for a cash payment.

A summary dismissal 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 and summary dismissal of the employment contract has 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 worker's attention to legal actions and rights arising from unemployment insurance that are available to him.

There is a special procedure to be followed by the employer both in case of ordinary dismissal and in case of summary dismissal.

5. Further requirements for a valid dismissal

The employer must, if the worker 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 or summary dismissal of the employment contract. The trade union may give its opinion within 8 days, however, a potential negative opinion of the trade union will not influence the dismissal procedure.

The ordinary or summary dismissal of the employment contract 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 cause is required and sometimes the labor court or trade union or a labor inspector must approve the dismissal.

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 worker may, within 30 days from the day of the dismissal or the day when he 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 worker's reintegration to the workplace.

8. Severance pay

Severance payment is paid when it is assumed that the employee is at no fault to the termination (i.e. in case of ordinary dismissal by the employer and summary dismissal 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 payment, he works during the notice period (and therefore receives salary) and on top of that receives the severance payment.

As the basis for the calculation of the severance pay, the average monthly wage which was received by the worker, or which would have been received by the worker if working, in the last three months before the termination shall be taken into account.

The worker shall be entitled to a severance pay amounting to 1/5-1/3 of the basis for each year of employment with the employer, depending on the period of employment. However, the amount of the severance pay may not exceed a tenfold of the basis amount, unless otherwise stipulated by the industry collective agreement.



9. Mentionable aspects/ particularities

Under Slovenian labor 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 finalize any type of termination.

Special provisions apply for manager contracts, i.e. employee's rights can be defined differently as provided by the law in this case.

A worker, whose employment contract was terminated by the employer, is entitled to paid absence during the notice period of 2 hours per week. Nevertheless, if the employment contract was terminated for business reasons or reason of incompetence and the worker was not offered a new employment contract at the same or some other employer, he is entitled to paid absence of 1 day per week.

If upon the termination employer offers to the worker other adequate employment at his premises or at some other employer, the worker is not entitled to severance pay if he refuses the offered employment.

Special requirements should be observed for collective dismissals.

10. Managing Directors

No specific dismissal rules apply for Managing Directors.

Spain

1. Kinds of dismissal

According to Spanish Labor Law, the decision to dismiss an employee requires always a specific cause, and based upon that cause, the Labor Legislation distinguishes two types of dismissals: Objective Dismissal and Disciplinary Dismissal (summary dismissal). These two types of dismissals (apart from the cause) differ both in (i) procedure and formal requirements as well as in (ii) the severance payments that the Employer is obliged to pay.

2. Necessity of reasons for dismissal

An Objective Dismissal can be given when objective causes exist for the Employer (such as economic, organizational, 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. As from 6th July 2012, 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.

An Objective Dismissal also includes termination of the employment contract based on ineptness of the employee, failure of the employee to get adapted 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% within 4 non-continuous months, within a window period of 12 months.

A Disciplinary Dismissal corresponds to the measure taken by the Employer when it is based upon 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.

When the grounds alleged by the Company are not proved, not found to be true, or are considered not to be strong enough to justify the dismissal, the dismissal is considered as an "unfair dismissal". In this case, the Company may choose between reinstating the employee in his former post or 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 an individual Objective Dismissal, it is necessary to observe a prior notice period 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 6 hours per week to seek for a new job. However, if the employer wishes to pay compensation in lieu of the prior notice of 15 days, the employee must be paid compensation equal to the salary for that period.

For example, if the employee's dismissal is notified 5 days before the termination of his or her contract, the employer will have the obligation to pay the corresponding severance plus 10 days of salary in the final settlement agreement.

In case of Disciplinary Dismissal a notice period is not mandatory.

4. Form of dismissal

According to Spanish Labor Law, dismissals must be notified in writing by delivering a letter to the employee, stating the cause 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, Employer could not allege on the court process other reasons than those included in the dismissal letter.

5. Further requirements for a valid dismissal

In case of an Objective Dismissal, 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 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, it corresponds to the employee (not to the Company) to choose between being reinstated or paid with the compensation. Also, in case of reinstatement, they are entitled to salaries accrued during the Court proceeding.

7. Legal actions of the employees

Employees who are dismissed based on any ground could file a claim in front of the Labour Authorities. In the labor procedure, it is mandatory to have a conciliation hearing before the Administrative Body competent in each province or city. The Labor 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 Labor 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 Labor 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 Disciplinary Dismissal: No compensation payable.

Fair Objective Dismissal: 20 days of salary per each year worked, up to a maximum of 12 monthly payments.

Unfair Disciplinary or Objective Dismissal: Since 12th February 2012 an unfair dismissal indemnity 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 12th February 2012, the indemnity will be 45 days per each year worked until 11th February 2012 and 33 days per each year worked from 12th February 2012 until the dismissal date. Nonetheless, total compensation will be capped at 24 months except if the employee has accrued a higher compensation before 12th 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 or 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 workers. 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

According to Royal Decree 1382/1985, which governs the special relationship of Top Executives in Spain, the Top Executive would be 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 7 days of salary in cash per each year worked up to a maximum of 6 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.

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.



1. Kinds of dismissal

In Swedish labor law there are two kinds of dismissal, ordinary dismissal with due notice (so called " uppsägning ") and summary dismissal without notice (so called " 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 ground. Such an objective ground 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. 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 on the ground of shortage of work/ redundancy the employer is furthermore required to follow the rule of "last in first out", 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 summary dismissal 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 ground and/ or a summary dismissal 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 summary dismissal 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 summarily dismiss the employee. The summary dismissal 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 duration of the employment agreement. Agreements contrary to what the law stipulates may only be made in collective bargaining agreements. During the probation period of usually six months the notice period is two weeks in practice. After the end of a probation 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 written form. The circumstances upon which the dismissal is based do not need to be stated in the notice, but need to be communicated in writing with the employee upon 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 reassignment and what the employee needs to do in order to execute his/her reassignment 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 has been warned that his/her behavior is unacceptable. The warning must be clear to the employee, show him/her how to conduct in future and what consequences it may lead to otherwise. A dismissal risks becoming 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 summary dismissal 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 grounds. 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 the answer to question 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 grounds 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 benefits until the conflict is finally solved. The same type of obligation might be laid by the court upon the employer in situations of summary dismissals, even though it is not as common.

Severance pay 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 6 – 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, 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 gaged 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 6 month notice period and 6 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 labor law, there are two kinds of dismissals: ordinary dismissal and summary dismissal.

2. Necessity of reasons for dismissal

An ordinary dismissal is valid, if a certain notice period 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 grounds for having terminated the contract. In practice, grounds 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 summary dismissal 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 employment relationship may be terminated, at the end of a month, during the first year of service with a notice period of one month, in the second year and up to and including the ninth year of service with a notice period of two months, and thereafter with a notice period of three months. These periods may be altered by written agreement, standard employment contract or collective employment contract. They shall, however, be reduced to less than one month only by collective employment contract and only for the first year of service.

The summary dismissal 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 summary dismissal. Indeed, such dismissal may occur only if the deviant behavior of the employee is serious. If the behavior is less serious, a summary dismissal can be made only after having first warned the employee. The warning must make the employee's deviance recognizable to him/her and indicate what consequences may arise in case the behavior is repeated. The dismissal is only valid if the employee violates his duties again. A dismissal without notice implies that it is not possible anymore to expect from the employer that he respects the ordinary dismissal period.

6. Special dismissal protection

According to Swiss labor law, upon expiration of the probation 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 payment 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 summary dismissal (i.e. without notice), severance payment 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 wages 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 January 1st, 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.

The Netherlands

This overview relates to the new rules for dismissal that will apply as per 1 July 2015. Please be referred to the Deloitte International Dismissal Survey of 2012 for an overview of the rules for dismissal that apply until 1 July 2015.

1. Kinds of dismissal

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), for approval to give notice.

In other situations the employer must turn to the sub district court with a petition in which it requests the employment agreement to be dissolved. The following exhaustive list summarizes these other situations:

- Frequent sickness;
- Non-performance;
- Culpable behavior or omission;
- Conscientious objections;
- Disrupted employment relation;
- Other reasons.

Parties can also terminate the employment agreement with mutual consent. They will have to negotiate the terms and conditions, which preferably will result 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.

An employment agreement can also be terminated with immediate effect during a trial period. The reason must not be discriminatory. Trial periods are only possible in employment agreements of which the term is longer than six months. If the employment agreement is shorter than two years, the trial period cannot be longer than one month. If the term of the agreement is longer than two years, the trial period cannot exceed two months.

In case of urgent reasons an employee can be dismissed

with immediate effect. Dutch law requires that, in all reasonableness, it cannot be expected from the employer that the employment agreement continues any longer. 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 2/3 days or longer if further investigation is required), mentioning the reasons for the instant dismissal. Preferably this is done in writing. Deciding on a dismissal with immediate effect requires a very diligent decision making process.

2. Necessary reasons for dismissal

The UWV and the sub district court will have to assess whether the requirements for dismissal on the requested ground are met. These requirements will be further elaborated in a specific regulation. All the requirements for the specific dismissal ground must be met; if this is not the case the employment agreement cannot be terminated. It is not possible to terminate an employee based on two "half" grounds. Building a good file will therefore be very important.

3. Notice periods

The statutory notice period for the employee is one month.

The statutory notice period for employer depends on the duration of the employment agreement:

- if it has lasted less than 5 years, the notice period is 1 month
- if it has lasted between 5-10 years, the notice period is 2 months
- if it has lasted between 10-15 years, the notice period is 3 months
- if it has lasted more than 15 years, the notice period is 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 be at least twice the length of the notice period of the employee. Beware of any possible exceptions in a collective labour agreement. These may deviate from the statutory or contractual notice period.

Giving notice is only possible after the UWV or the employee gave prior approval. If the employer turns to the sub district court with a request to dissolve the employment agreement, the court will also have to take into account the notice period. The procedural time of the UWV or court procedure can be deducted from the notice period. There will always remain a minimum notice period of one month.

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 advised to do so in writing, so that the employer has proof. Upon the employee's request, the employer will have to inform the employee in writing about the reason(s) for the dismissal.

In case the sub district court dissolves the employment agreement, its formal decision will dissolve the employment agreement. No further action by the employer is required.

The form of a termination with mutual consent, during the trial period or with immediate effect because of urgent reasons is not prescribed by law, but it is strongly recommended to always do so in writing.

5. Further requirements for a valid dismissal

Not only must the requirements for dismissal be fully met (see point 2 above), the employer must also – 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 behavior 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;
- Employees on pregnancy leave;
- Members of an employee representation body;
- Trade union members;
- Employees using their rights to special leave.

Some exceptions apply to the 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, which comes on top of the transition compensation (see point 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 agreement upon the employer's request, appeal and cassation are possible.

The employee can also request the sub district court to terminate, after which appeal and cassation are possible.

8. Transition compensation

Every employee that is employed for at least 24 months, has a statutory right to the transition compensation. 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 agreement is terminated on the employee's initiative because of culpable behavior by the employer.

The United Kingdom

The transition compensation equals the sum of 1/6 of the monthly salary for each period of 6 months during the first ten years of service (1/3 month per year) and 1/4 of the monthly salary for each period of 6 months thereafter (1/2 month per year). "Monthly salary" means the employee's base salary, increased with pro-rata holiday pay, fixed end year payments (13th month), bonus and variable pay and any other fixed payments. The payment is maximized to € 75,000 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 behavior, in case the collective labour 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).

Certain education and outplacement costs may be deducted from the transition compensation, provided that specific conditions are met.

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 certain institutions financed by public funds.

Arrangement for early retirement ('RVU'): if the severance payment qualifies as a RVU, an additional tax burden of 52% is due by the employer
Excessive severance payments: if the taxable wages of the employee is at least € 535.000 (2015), an additional tax burden of 75% is due by the employer if – roughly speaking – the severance payment is more than one time the annual taxable wages of the employee.

9. Mentionable aspects/particularities

If the employee reaches the state pension age, the employer does not need to have prior approval to give notice.

The same applies for an employment agreement for a definite period of time: this normally ends automatically without notice being required. However, in case of an agreement for six months or more, the employer must notify the employee ultimately one month in advance whether the employment agreement 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 agreements for a definite period of time in a maximum period of two years. Any following agreement will be for an indefinite period of time, unless the interval between two agreements has been longer than six months.

10. Managing Directors

The employer does not need to request prior approval for the dismissal of the employment agreement of a managing director, 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 who has an employment agreement.

1. Kinds 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 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 or her notice period. Notice periods are determined by statute or by the employee's contract of employment.

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: (i) redundancy consultation with the employee (ii) a warning or warnings in relation to the employee's conduct/attendance (iii) a performance improvement plan in relation to the employee's performance or (iv) 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 or payment in lieu of notice needs to be provided to the employee.



3. Notice periods

Notice periods are usually set out in the employee's contract of employment, 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 service an employee must be given at least one week's notice for each full year of continuous employment, up to a maximum of 12 weeks' notice after 12 or more continuous years of employment.

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, role or the employer's practice. For example Company Directors would typically have notice periods of 6-12 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 contract of employment 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 redundancies (i.e. when 20 or more employees are to be made redundant), prior notice to the Department for Business Innovation and Skills must be provided before notice of termination is provided to the employees.

5. Special dismissal protection

Several groups 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 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 or 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 3 months from the date of termination of employment, although time limits are extended to allow for early conciliation via Acas.

Fees of £250 are payable in respect of a claim presented to the Employment Tribunal. If the claim proceeds to a hearing, the individual must pay a further hearing fee of £950.

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 (i) a statutory formula and (ii) 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 or her notice period.

7. Severance pay

For redundancy dismissals, an employee who has more than 2 years' continuous employment with the employer, will be entitled to a redundancy payment. This is calculated on the basis of a fixed weekly salary (capped at £450 per week, for redundancies made before 6 April 2014, and capped at £464 per week, for redundancies on or after this date) and multiplied by the full years of employment (capped at 20 years of employment). The multiplier is increased when the employee reaches the age of 41. The maximum redundancy payment available to an employee is £13,500 for redundancies made before 6 April 2014, and £13,920 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 notice pay (or any other sums due under contract) must be provided to the employee (except where there is gross misconduct).

For unfair dismissals, the employee can seek 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 of £74,200 for employees who have been dismissed before 6 April 2014 and a cap of £76,574 for employees dismissed on or after this date. In such cases, where an employee's annual gross salary is less than the cap of £76,574, 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 discrimination is uncapped.

8. Mentionable aspects/particularities

In most circumstances, an individual requires 2 years' continuous employment 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 employment with their employer; they can be brought at any time. For collective redundancies, 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.

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