



**K&L GATES**

**GLOBAL EMPLOYER GUIDE**

**TERMINATION OF EMPLOYMENT  
READY-REFERENCE**

**2023**

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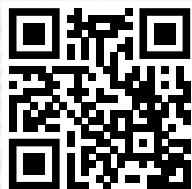
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*Content current as of October 2022.*

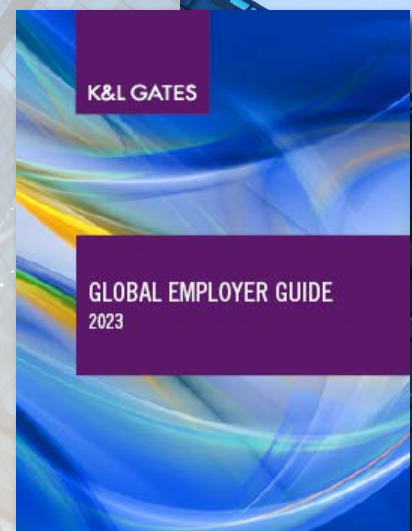
## ACCESS THE FULL GUIDE

The transition from 2022 to 2023 has been met with significant economic challenges, leaving employers to contemplate and prepare for workforce reductions. This guide provides quick access to the Terminations of Employment sections from our 2023 Global Employer Guide where you will find additional employment policies across nearly 20 countries.

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# AUSTRALIA

## GROUNDNS

Termination can be brought about by mutual agreement, upon expiry of a fixed-term contract, termination by the employer with or without notice and termination (or resignation) by the employee.

## MINIMUM ENTITLEMENTS

### Notice

When an employer terminates a full-time or part-time employee's employment for reasons other than serious misconduct, they must provide the following notice:

- Less than one year of service – one week.
- Between one to three years of service – two weeks.
- Between three to five years of service – three weeks.
- Over five years of service – four weeks.

Where an employee is over 45 years of age and has completed at least two continuous years of service, he or she is entitled to another week's notice.

Alternatively, an employer can make a payment in lieu of notice.

Notice does not need to be provided when an employer terminates an employee for serious misconduct.

When an employee resigns, he or she has to provide notice as specified in the relevant registered agreement, award or contract.

### Statutory Entitlements

Payment on termination includes:

- Outstanding wages for hours already worked.
- Accrued annual leave.
- Redundancy pay (if applicable).
- Accrued long service leave (if applicable).

## REDUNDANCY

### Genuine Redundancy

Redundancy is only available in circumstances where an employer no longer needs a full-time or part-time employee's job to be done by anyone.

### Consultation

If the position being made redundant is covered by an award or registered agreement, the consultation provisions in that award or registered agreement should be followed.

### Payment

An employee is entitled to the following redundancy payment (unless an employment contract or registered agreement specifies a higher payment):

- At least one year but less than two years – four weeks.
- At least two years but less than three years – six weeks.
- At least three years but less than four years – seven weeks.
- At least four years but less than five years – eight weeks.

# AUSTRALIA

- At least five years but less than six years – 10 weeks.
- At least six years but less than seven years – 11 weeks.
- At least seven years but less than eight years – 13 weeks.
- At least eight years but less than nine years – 14 weeks.
- At least nine years but less than 10 years – 16 weeks.
- At least 10 years – 12 weeks.

## POST-TERMINATION RESTRAINTS

Those that protect the employee's legitimate business interests can be enforced if reasonable under the circumstances.

### Noncompetes

Typically no longer than 12 months (with some exceptions).

### Customer Nonsolicits

Permissible.

### Employee Nonsolicits

Permissible.

## REMEDIES

### Unfair Dismissal

Eligible employees who have completed six months of service with their employer (or 12 months in the case of a small business employer with fewer than 15 employees) and earn up to the high-income threshold (AU\$162,000 for Fiscal Year (FY) 2022–23) or are covered by a modern award or registered agreement are eligible to make a claim for unfair dismissal.

Remedy can vary and includes reinstatement or an award for compensation (up to six months' salary being a maximum of AU\$81,000 for FY 2022–23).

### Adverse Action

Employers are prohibited from taking "adverse action" (including termination) against employees because an employee has or exercises a "workplace right" or engages in "industrial activity" or because of a protected attribute. Further protections include a prohibition on an employer dismissing an employee because the employee is temporarily absent from work due to injury or illness.

Remedy can vary and includes reinstatement or an award for compensation (with no maximum amount).

## CORPORATION REGULATIONS

### Payment of Benefits/Directors

Company officers or directors are not entitled to termination benefits or an increase in termination benefits if there is a change in shareholding or control of a company.

## STATUTORY REQUIREMENTS

### Transfer of Business

The Fair Work Act contains a number of rules that apply if there has been a "transfer of business".

These rules apply when:

# AUSTRALIA

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- There is a connection between two employers (including the sale of all or part of a business, certain outsourcing and in-sourcing arrangements and where the two employers have associated entities).
- The new employer agrees to employ some or all employees of the old employer.
- An employee begins working for the new employer within three months of ending his or her job with the previous employer.
- The employee's role has not significantly changed.

The main effect of the rules is that a transferable instrument (i.e. a registered agreement) that covers the employee before the transfer will continue to apply after the transfer. The Fair Work Commission can make certain orders altering the effect of the rules if it deems it appropriate.

At common law, employees cannot be transferred from one employer to another without their consent.

There are statutory provisions which require continuity of service when there is a transfer between related entities or where service is recognised by the purchasing employer.

## RESTRUCTURING

### Notification

Awards and registered agreements require employers to notify employees of the likely effects of any restructure and to discuss the change with employees.

### Consultation

If a position that is subject to restructure is covered by an award or registered agreement, the consultation provisions in that award or registered agreement should be followed.

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# BELGIUM

## GROUNDINGS

Termination of the employment contract resulting from a unilateral decision taken by either party usually takes one of the following forms: termination with notice, termination with payment of an indemnity in lieu of notice, or termination for serious cause.

An employer may give notice to, or dismiss, an employee on any grounds as long as the grounds are not prohibited by law (e.g., discrimination) and as long as the dismissal is not considered to be “clearly unjustified” (see “Dismissal Action” below). No administrative or legal approval is needed. There is specific protection against dismissal on the basis of a number of reasons, including, among others:

- Employee representatives in the Works Council and the Committee for Prevention and Protection at Work.
- Nonelected candidates for the Works Council and the Committee for Prevention and Protection at Work.
- Trade union delegates.
- Application for maternity or birth leave.
- Parental leave or adoption leave.
- Being a candidate for a political mandate.
- Redundancy or threatened redundancy due to new technologies.
- Application for paid education leave.
- Application for leave in order to assist a person who is suffering a serious disease.
- Request by a night worker to return to a daytime working schedule.
- The lodging of a claim in relation to violence, harassment, or sexual harassment.
- The lodging of a claim in relation to discrimination.

The employer will have to prove that the grounds of dismissal are not related to the reasons listed above or will have to comply with a strict dismissal procedure before the employee is terminated.

The employer may terminate an employment contract without notice and without paying any compensation in the event of a serious cause, i.e., a fact due to which the relationship between the employer and the employee is immediately and irrevocably damaged beyond repair, provided that the reason is not known by the employer for more than three working days.

## MINIMUM ENTITLEMENTS

### Payments/Notice

An employer wishing to terminate an employment contract does not have to consult or obtain prior approval from the Works Council or any other regulating body or court (unless the employee would have a protected status for which such prior approval is provided).

Notice of termination subject to a notice period by the employer may only be validly given in a written statement, sent by registered mail, or a delivery by bailiff, specifying the starting date and duration of the notice period. For

# BELGIUM

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a termination subject to the payment of an indemnity in lieu of notice, no specific formalities apply. However, it is advisable to send the employee a notice letter as proof of the date of termination.

For employment contracts that became effective before 1 January 2014, notice periods are calculated in two distinct steps. The first part of the notice period is calculated based on the seniority of the employee on 31 December 2013. The second step is calculated based on the seniority acquired after 1 January 2014.

The following notice periods apply when an employee is dismissed under an employment contract that became effective on or after 1 January 2014. They also apply to the second step of the calculation for employment contracts that began before 1 January 2014:

- Zero to three months of continuous service – one week.
- Three to four months of continuous service – three weeks.
- Four to five months of continuous service – four weeks.
- Five to six months of continuous service – five weeks.
- Six to nine months of continuous service – six weeks.
- Nine to 12 months of continuous service – seven weeks.
- 12 to 15 months of continuous service – eight weeks.
- 15 to 18 months of continuous service – nine weeks.
- 18 to 21 months of continuous service – 10 weeks.
- 21 to 24 months of continuous service – 11 weeks.
- Two to three years of continuous service – 12 weeks.
- Three to four years of continuous service – 13 weeks.
- Four to five years of continuous service – 15 weeks.
- As of five years – plus three weeks per commenced year of continuous service.
- As of 20 years – plus two weeks per commenced year of continuous service.
- As of 21 years – plus one week per commenced year of continuous service.

The first step for employment contracts that became effective before 1 January 2014, taking into account the seniority of the employee on 31 December 2013, is calculated as follows for white-collar employees:

- If the annual remuneration of the employee was below the amount of €32,254 gross on 31 December 2013, the first part of the notice period amounts to three months per started period of five years of seniority.
- If the annual remuneration exceeded the amount of €32,254 gross on 31 December 2013, the first part of the notice period amounts to one month per started year of seniority, with a minimum of three months.

For blue-collar workers, the first step for contracts that entered into force before 1 January 2014 gives rise to shorter notice periods.

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# BELGIUM

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Where the individual is entitled to an indemnity in lieu of notice, this is calculated on the basis of the gross annual compensation at the time of termination, which includes all benefits earned over the last 12 months of employment. The indemnity in lieu of notice is equal to the salary that would have been due for the full duration or the remaining part of the notice period.

The very recent Labour Deal (approved in Parliament on 28 September 2022) has introduced a so-called “transition path” providing for the option to already have an employee start working for a new employer (known as the “user”) during the employee’s notice period with their employer. Such work will be organized by the temporary work agencies or by the regional employment agencies. An agreement will have to be concluded between the initial employer, the employee, the new employer (known as the “user”), and the temporary work agency or regional employment agency regarding the modalities and the duration of this transition path.

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## **Statutory Entitlements**

During the notice period, the employee is entitled to paid time off to look for new employment: a half-day per week and up to one day per week during the last 26 weeks of the notice period.

All employees who are entitled to a notice period (or an indemnity in lieu of notice) of at least 30 weeks are entitled to outplacement services (general system). If the employment contract is terminated with a notice period, the employee must use this outplacement support during his or her working hours. In case the contract is terminated with an indemnity in lieu of notice, the employer may deduct four weeks’ salary from the indemnity in lieu of notice. Employers are exempt from the obligation to offer outplacement to employees proving their medical incapacity to follow the outplacement support (for example, a terminally ill employee). If the contract is terminated with an indemnity in lieu of notice, the full amount of the indemnity in lieu of notice will in that event be due without deduction of the four weeks’ salary.

Please note that the general system does not apply to companies that are considered companies in “restructuring.” If the employee is not entitled to a notice period (or an indemnity in lieu of notice) of at least 30 weeks but he or she is older than 45, subsidiary rules pertaining to outplacement services apply. Moreover, employers must also make an outplacement offer to employees who were not dismissed but whose employment contract came to an end for medical force majeure invoked by the employer.

Following the recent Labour Deal, employees with a notice period or indemnity in lieu of notice of at least 30 weeks will, from 1 January 2023, be entitled to additional redeployment measures, such as extra outplacement, coaching, or training, with a value equal to the employer’s social security contributions for one-third of their notice period or one-third of their indemnity in lieu of notice minus four weeks’ salary for general outplacement.

Employees will also be entitled to a pro rata end-of-year premium (known as the “13th month”) if provided for in the applicable sectoral CBAs.

An employee will also be entitled to departure holiday pay, which is an anticipated payment of the holiday pay for the year following the year in which the employment relationship came to an end and will, therefore, be deducted from the holiday pay normally due by the new employer of the employee concerned for that year.

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# BELGIUM

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## **Dismissal Action**

Since 1 April 2014, each dismissed employee has the right to know the precise reasons that have led to his or her dismissal and can request a “motivation” or “justification.” Failure to comply with the obligation to provide the reasons for dismissal within the prescribed period can lead to an administrative fine amounting to two weeks’ salary. If the employee is not satisfied with the reasons given by the employer, he or she can bring a claim for “clearly unjustified dismissal” before the Labour Court. If the court accepts that the dismissal was “clearly unjustified,” the employer can be liable to pay damages to the employee amounting to a minimum of three and a maximum of 17 weeks’ salary, according to the “degree of unreasonableness.”

Litigation involving termination disputes is not unusual. Such litigation usually takes between 12 to 15 months after the application is made before being tried before the Labour Tribunal, with an additional year if an appeal is lodged with the Labour Court.

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# BRAZIL

## GROUNDINGS

### ***Termination without cause***

Employees can be dismissed without cause at any time, subject to notice periods and severance pay, except in the case of protected and tenured employees. The employer is not required to formally justify the dismissal.

### ***Termination with just cause***

There are certain circumstances in which the employer has the right to dismiss the employee with cause, including, among other things, gross misconduct or material breach of contract.

Underperformance is not a cause for termination.

### ***Constructive dismissal***

In certain circumstances, the employee is considered to be entitled to resign on the basis of constructive dismissal, for example, if the employee is assigned to tasks outside the scope of the services for which he or she was employed.

### ***Termination by mutual consent***

Both parties mutually agree to terminate the employment contract. This results in the payment of 50% of the prior notice (aviso prévio), FGTS, and full payment of other labor allowances due in a termination without cause.

### ***Employee's resignation***

The employee has the right to receive his or her salary balance, proportional 13th month bonus, vacation plus one-third bonus, and proportional vacation plus one-third bonus.

## MINIMUM ENTITLEMENTS

### **Payments/Notice**

Employees can be dismissed without cause at any time, provided that they receive:

- Termination notice of at least 30 days plus three days for every year worked (the employer can pay in lieu of notice).
- Statutory severance pay.

### **Statutory Entitlements**

Please see information above under "Minimum Employment Rights" of this guide. The referred section displays the statutory rights in the event of termination.

## REDUNDANCY

There is no concept of redundancy in Brazil.

## REMEDIES

### **Dismissal Action**

Written notification must be provided in cases of termination for cause. In the case of dismissal for any other reason (without cause), there is no prescribed procedure, but notice must be certain and is generally written.

Once notice is given, termination becomes effective upon expiration of the respective period of notice. If the employer reconsiders the dismissal

# BRAZIL

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before the end of the notice period, the worker may accept or reject that decision. If the worker accepts the reconsideration or continues to work after the notice period expires, the employment contract will remain valid as if no notice had been given.

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# CHINA

## GROUNDINGS

In the PRC, it is relatively difficult to terminate an employee's employment since PRC labor laws are designed to protect an employee's interests.

Termination must be based on justified causes specified by the PRC Labor Contract Law, including mutual agreement, unilateral termination by the employee, expiry of the employment contract, retirement, and termination by the employer with a legal cause under the PRC Labor Contract Law.

## MINIMUM ENTITLEMENTS

### Payments/Notice

When an employer terminates a full-time employee based on incompetence, non-work-related illness, or substantial change of employment basis, the employer is required to provide 30 days' written notice in advance or one month's salary in lieu of the 30 days' advance notice. The employer also is required to provide severance pay to the employee.

The employer can terminate an employee with immediate effect without giving notice in advance and paying severance if the employment contract is terminated based upon the employee's serious misconduct, serious violation of internal rules and policies, incompetency during the probation period, invalid employment due to the employee's fraud or coercion, criminal liability of the employee, or if the employee takes up a second job harming the first employer.

When an employee unilaterally resigns, the employee is required to give 30 days' written notice in advance or a three-day advance notice during the probation period.

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### Statutory Entitlements

Under certain circumstances specified by the PRC Labor Contract Law (e.g., termination by an employee due to the fault of the employer, employee's incompetence for the job, termination by the employer with the consent of the employee, not renewing a contract (unless the employee refuses to renew upon maintained or raised provisions)), an employee is entitled to severance payment upon termination. Severance is based on the length of the employment period, which is one month's salary for each year of service with the employer. An employment period of less than six months entitles an employee to one-half month's salary as severance pay. An employment period of between six and 12 months entitles an employee to one month's salary as severance pay. The salary, adopted on a severance-calculation basis, refers to the employee's 12-month average monthly salary prior to termination. However, where the monthly salary of the employee exceeds three times the average monthly salary in the city where the employer is located, severance pay is capped at three times the local average salary and the employment period for calculation of severance cannot be more than 12 years.

Accrued but untaken annual leave at the total rate of 300% of the average daily wage for each unused leave day (100% has been included in the monthly salary, and therefore, only 200% needs to be additionally paid), overtime, and normal salary should be paid to an employee on termination, which can be offset by any amount an employee owes to the employer.

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# CHINA

## REDUNDANCY

**Genuine Redundancy**

If any of the following circumstances make it necessary to reduce the workforce by 20 persons or more, or less than 20 persons but accounting for 10% or more of the total number of employees of the employer, the employer may conduct economic layoffs:

- Restructuring pursuant to the enterprise bankruptcy law.
- Serious difficulties in production or business operation.
- The enterprise switches production, introduces significant technological innovation, or adjusts its business model and still needs to reduce its workforce after amending the labor contracts.
- A material change in the objective economic conditions relied upon at the time of conclusion of the labor contracts renders it impossible for the parties to perform.

Certain required procedures must be followed, including explaining the situation to the labor union or to all of its employees 30 days in advance, submitting its workforce layoff plan to the labor administrative department, and considering the opinions of the labor union or the employees.

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**Consultation**

Consultation with labor union or all employees is required.

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**Payment**

Employees are entitled to severance pay based on the length of their employment.

## REMEDIES

**Dismissal Action**

An employee is required to first bring employment claims to the employer's local labor arbitration committee (where the employer is registered). After the labor arbitration decision, either the employer or the employee can appeal the case to the district court. Either party can then appeal the case to the municipal court for the final decision if not satisfied by the district court's decision.

An employer can bring counterclaims against an employee, including relating to the return of company property and reimbursement for damages caused by the employee.

In the case of wrongful termination, an employee can choose to request either reinstatement of the employment contract or double severance pay.

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# FRANCE

## GROUNDINGS

Termination can be by mutual agreement, upon expiry of a fixed-term contract, at the employer's initiative, by resignation of the employee, or by judicial resolution:

- If it is based on real grounds that are serious enough to justify the employee's dismissal, such grounds are either "personal" or "economic."
- After following the proper dismissal procedure (in particular, preliminary meeting and minimum waiting periods).

## MINIMUM ENTITLEMENTS

### Payments/Notice

When an employer terminates a full-time or part-time employee's employment for reasons other than gross or willful misconduct, it must comply with a minimum notice period.

The same notice period must be complied with by the employee in case of resignation.

The minimum duration of the notice period is one month for employees having between six months' and two years' seniority and two months for employees with more than two years' seniority. CBAs usually provide for longer notice periods, especially for white-collar workers who usually benefit from a three-month notice period.

Notice does not need to be provided when an employer terminates an employee for gross or willful misconduct.

If an employee resigns, they must comply with the notice period provided in the contract or CBA. The employer can exempt the employee from working out the notice period, which should nevertheless be paid.

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### Entitlements

As a general principle, severance payment includes:

- Outstanding wages for hours already worked.
- Indemnity in lieu of an accrued but untaken paid holiday (*indemnité de congés payés*).
- Indemnity in lieu of notice (if applicable) (*indemnité de préavis*).
- Dismissal indemnity in case of dismissal and termination through mutual agreement (*indemnité de licenciement*).

The statutory minimum dismissal indemnity is based on the employee's length of service, as follows:

- For service of less than 10 years, indemnity cannot be less than one-fourth of monthly gross salary per year of seniority.
- For service of more than 10 years, the additional indemnity cannot be lower than the following amounts:
  - One-fourth of monthly gross salary per year of service for the first 10 years.
  - One-third of monthly gross salary per year of service from the 11th year.

# FRANCE

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Most CBAs provide for higher dismissal indemnities, particularly for white-collar workers.

## REDUNDANCY

### Genuine Redundancy

In the case of redundancy, there are external circumstances (e.g., economic, financial, evolution of information technology, or equipment) that can result in a position no longer being needed. Note that economic grounds for dismissals have changed and cover additional grounds that were already retained by caselaw: The company's reorganization is necessary to safeguard its competitiveness and the termination of the company's activities. These grounds have been added in the new definition of redundancy in the French Labor Code.

Since these reforms, parameters for economic dismissals are more precise. Termination by way of redundancy is subject to very specific rules. The procedure is complex and varies according to whether the company has more than 50 employees and if the dismissal concerns at least 10 employees.

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### Consultation

Information and consultation of staff representatives is mandatory. Staff representatives must give their opinion on the contemplated redundancy before it can be decided and implemented by the company.

The opinion of the staff representatives is not binding.

The labor authorities must be informed when a redundancy is implemented.

In a case where at least 10 employees are dismissed in a company having at least 50 employees, an Employment Protection Plan (PSE) must be negotiated with the union representative, and the PSE must be subject to the staff representatives' opinion and approved by the labor authorities.

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### Payment

Usually, a severance payment in case of redundancy includes:

- Outstanding wages for hours already worked.
- Indemnity in lieu of an accrued but untaken holiday.
- Redundancy indemnity (generally higher than the mere dismissal indemnity).
- Indemnity in lieu of notice (if applicable).
- A one-year specific state training program (*Contrat de Sécurisation Professionnelle*) or redeployment leave if the group has at least 1,000 employees in Europe, by which the French company must pay for a retraining and redeployment plan (*Congé de Reclassement*) that triggers important financial costs, notably because the dismissed employees do not receive state unemployment benefits but keep being paid by the company during a period (between four and 12 months) and benefit from training programs.

In addition, where a PSE applies, companies will also pay additional amounts, such as costs associated with training measures, outplacement counselling, indemnity to help employees setting up a new company, relocation assistance, or a reindustrialization indemnity to the local administration.

# FRANCE

## REMEDIES

### Dismissal Action

Employees may challenge any dismissals in court on the grounds or the procedure of the dismissal, as well as the amount of severance payment provided or overtime hours.

According to the specific procedural labor rules, conciliation is always possible and encouraged before and during the labor court action.

The grounds stated in the dismissal letter should be sufficiently specific to be verifiable.

In order to secure and minimize the risks associated with a labor dispute, since the labor reform of 2017, the amount of damages that can be awarded to an employee by a court are predetermined on the basis of length of service.

Indeed, a specific amount of indemnity, based on a monthly gross salary, is fixed for each year of service.

The French Labor Code specifies minimum and maximum amounts for each year of service as follows:

- For companies with 11 or fewer employees, the damages are calculated as follows:
  - From a minimum of 0.5 months to a maximum of 20 months.
- For companies with more than 11 employees, the damages are calculated as follows:
  - From a minimum of one month to a maximum of 20 months.

Many labor courts had rejected the legitimacy of this new scale. However, on 11 May 2022, the French Supreme Court (*Cour de Cassation*) stated that the scale was valid and in accordance with Article 10 of Convention No. 158 of the International Labor Organization (*Organisation Internationale du Travail*).

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# GERMANY

## GROUNDS

Termination can be brought about by mutual agreement, upon expiry of a fixed-term contract, by the employer with or without notice, or by the employee.

Employees may enjoy statutory dismissal protection under the Dismissal Protection Act if the employer employs more than 10 employees in Germany (in certain rare circumstances, this threshold may be reduced to five employees). Employees only gain protection against dismissal from the Dismissal Protection Act once they have worked for the employer for at least six months.

Generally, the employer can only validly dismiss an employee under the Dismissal Protection Act if there is a sufficient reason relating to:

- The employee, such as inability to perform contractual duties (for example, because of long-term illness).
- A breach of contract, such as misconduct.
- A restructuring of the business resulting in redundancy.

Special additional rules on the dismissal procedure apply if the employees have established a Works Council. Furthermore, certain employees enjoy additional dismissal protection. This includes employees on maternity or parental leave, employees who are severely disabled, and employees who are members of the Works Council.

## MINIMUM ENTITLEMENTS

### Payments/Notice

When an employer terminates an employee’s employment for reasons other than for good cause, it must provide the notice as described under the “Entitlements” section of this Germany guide.

An employer can dismiss without notice for good cause. However, where a termination is based on breach of contract, a prior written warning is almost always required before the employment relationship may be terminated. Short and strict deadlines apply for such a termination without notice.

Employees must observe a notice period of at least four weeks (two weeks during a probationary period). However, in practice, it is generally agreed that the employee has to observe the same notice periods as the employer, as described under the “Entitlements” section of this Germany guide.

### Statutory Entitlements

Payment on termination includes:

- Outstanding wages for hours already worked, including working time accounts.
- Continued remuneration until the end of the notice period.
- Accrued annual leave.

## REDUNDANCY

### Genuine Redundancy

A redundancy will only justify a dismissal pursuant to the Dismissal Protection Act if the employer can prove that the job reduction is a result of the implementation of an entrepreneurial decision (such as restructure) and the following preconditions are met:

# GERMANY

- There is a lack of positions available in the company to transfer the employee to.
- The affected employee has to be chosen under observation of the social selection criteria (e.g., length of service, age, family obligations, and whether the employee is handicapped).

For the social selection process, the general rule is that if there are (company-wide) employees comparable to those whose positions have ceased to exist, employees with the lower “social data” have to be made redundant first.

## FORMAL REQUIREMENTS

### Consultation

If a Works Council has been established at the business, it has to be consulted before every termination. Furthermore, approval by a state authority must be granted in cases where the employee is pregnant, severely disabled, or on parental leave.

Notice of termination must be in writing (with an original signature of authorized person(s) included).

## REMEDIES

### Dismissal Action

#### *Unfair dismissal*

Employees may bring an unfair dismissal claim against their former employer.

If the employer has sufficient reasons, the dismissal is valid and the employer will not be obliged to pay severance. If the employer does not have sufficient reasons, the dismissal will be found to be invalid and the employment relationship must be continued. Again, no severance needs to be paid. Reinstatement is the only remedy. There are no other alternatives, such as granting compensatory awards.

In spite of the rules in the Dismissal Protection Act, most claims for dismissal protection end with a settlement providing for the termination of the employment relationship and severance for the employee.

As there are no rules on severance, it is a matter of negotiation. A “typical” severance would be one-half of the employee’s monthly salary per year of employment with the employer.

#### *Adverse action*

Employers are prohibited from taking “adverse action” (including termination) against employees who exercise their rights (e.g., joining a trade union or demanding minimum working entitlements) or because of a protected attribute (see the “Discrimination” section in this Germany guide below).

Such adverse action is null and void. It may further result in affected employees being able to claim damages.

# HONG KONG

## GROUNDNS

Termination can be brought about by mutual agreement, upon expiry of a fixed-term contract, termination by the employer with or without notice, or termination (or resignation) by the employee. There is no concept of “unfair dismissal” in Hong Kong. The contract may also come to an end by operation of the law (e.g., in the case of frustration, death, dissolution, or winding up of the business).

## MINIMUM ENTITLEMENTS

**Payments and Notice**

The length of notice required to terminate a contract will depend on the type of contract involved. Where the contract is deemed to renew from month to month but does not specify the length of notice, the notice period is not less than one month. Where the contract specifies a notice period, then the length of notice will be the agreed period, but it cannot be less than seven days.

Both the employer and employee may terminate the employment by making payment in lieu of notice. It is also permissible to have a combination of part notice and part payment.

In the case of serious misconduct, disobedience, or incompetence warranting summary dismissal, the employer may terminate the contract immediately without notice to the employee.

The following payments may be payable to the employee upon termination:

- Payment in lieu of notice
- Accrued wages
- Accrued annual leave
- Outstanding holiday pay
- Accrued end-of-year payment (and pro rata portion)
- Severance pay, if applicable
- Long service pay, if applicable
- Any other contractual entitlements

**Statutory Entitlements**

See above. Employers are required to pay the employee’s final entitlement as soon as practicable but in any event not later than seven days after the date of termination.

## REDUNDANCY

**Genuine Redundancy**

Eligible employees who have been made redundant or subjected to a layoff are entitled to a statutory severance payment. To be eligible, the employee must have been employed under a continuous contract for not less than two years.

**Consultation**

Not applicable in Hong Kong.

**Payment**

The payment is calculated on the basis of either two-thirds of the employee’s monthly average wage or HK\$15,000, whichever is the lesser,

# HONG KONG

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for each year of service (pro rata for an incomplete year). The amount is subject to a maximum cap of HK\$390,000.

## REMEDIES

### Dismissal Action

#### *Constructive dismissal*

A constructive dismissal occurs when an employer has acted or engaged in conduct that amounts to a significant breach of the employment contract or shows that the employer no longer intends to be bound by the contract. In such situations, the employer is said to have repudiated the contract. The employee ceases to have any further obligations under the contract (including any post-employment restraints) and is entitled to leave the employment with or without notice.

As noted above, there is no concept of unfair dismissal in Hong Kong. However, the employee may be able to bring a claim against the employer on the basis of breach of the implied duties of good faith, mutual trust, and confidence.

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# ITALY

## GROUNDINGS

The employer may dismiss employees due to disciplinary reasons or for redundancy.

Termination can be served by the employer with or without notice. The employee can terminate the employment relationship through resignation. Furthermore, the employment relationship may cease upon mutual agreement or upon expiration of the term of a fixed-term contract. Different provisions apply to dismissals by the employer depending on whether there are more or less than 15 employees employed within the same local unit and on whether termination refers to an individual or to five or more employees within a period of 120 days.

## MINIMUM ENTITLEMENTS

### Payments/Notice

Where the employer terminates an employee for reasons other than just cause (i.e., very serious misconduct by the employee implying an immediate termination), a notice period must be given or the relevant indemnity in lieu of the notice period must be paid.

Where an employee resigns, the employer must be given the relevant notice period unless the employee resigns due to just cause attributable to the employer. If the employee fails to do so, the employer will deduct the relevant indemnity in lieu of the notice period from the employee's final payslip.

### Statutory Entitlements

In any case of termination of the employment relationship, the employee is entitled to TFR, as per the "Entitlements" section above.

## REDUNDANCY

### Genuine Redundancy

The employer is entitled to lawfully dismiss an employee due to redundancy where there are no alternatives to the employee's job cancellation, as determined by productive and organizational reasons, and the redundant employee cannot be otherwise reemployed within the employer's organization.

If the employer needs to dismiss due to redundancy five or more employees within a 120-day period, a special procedure for collective dismissal must be started.

### Consultation

In the event that a procedure for collective dismissal has to be initiated, a number of information and consultation sessions with trade unions must be carried out.

### Payment

The employee dismissed due to redundancy is entitled to receive the indemnity in lieu of the notice period, the TFR, and other mandatory sums to be paid out upon the termination of the employment relationship (such as holidays accrued but not taken, supplementary monthly installments accrued pro rata, and temporary leaves not enjoyed).

## REMEDIES

### Dismissal Action

#### *Unlawful dismissal*

Where a dismissal is declared unlawful by the competent labor court, remedies and sanctions applicable vary depending on the company's size and on the reason for dismissal.

Where the company employs more than 15 employees, under certain circumstances, the competent labor court may order reinstatement of the employee unlawfully dismissed due to disciplinary reasons or for discrimination/retaliation; in such an event, the employee may opt for an indemnity in lieu of reinstatement equal to 15 monthly salaries.

The employer will also be sentenced to pay to the employee a further indemnity of not less than five monthly salaries.

Should a company employing more than 15 employees dismiss an employee due to redundancy and the relevant dismissal be found unlawful by the competent labor court, reinstatement is rarely applied, and the employer may instead be sentenced to pay to the affected employee an indemnity ranging from 12 to 24 monthly salaries.

In light of a reformation of Italian labor law, reinstatement is basically excluded—even in case of unlawful disciplinary dismissal—for those employees hired after 7 March 2015, unless dismissal is based on discrimination or retaliation.

Reinstatement is excluded if the employee dismissed belongs to a company employing 15 or less employees, unless dismissal is based on discrimination or retaliation.

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# JAPAN

## GROUND

Termination can be effected (i) by mutual agreement, (ii) upon expiry of a fixed-term contract, (iii) by termination by the employer with or without notice (i.e., dismissal), and (iv) by termination by the employee (i.e., resignation).

### **Dismissal**

Under Japanese law, Japanese employers generally have the right to dismiss employees. However, there are numerous restrictions on this right, as set out below. Additionally, there are substantive and procedural requirements for certain types of dismissals.

Below are the basic rules in relation to dismissal.

### **Explicit reasons for dismissal**

The employer must specify the situation or grounds that allow the employer to dismiss its employees and should specify the details of the procedure for dismissal in the employment agreement or Rules of Employment.

### **Legal grounds for dismissal**

Even if an employer finds that an employee falls under the situation or grounds for dismissal, this is not sufficient to justify dismissal. Article 16 of the Labor Contracts Act states that any dismissal that lacks reasonable grounds and is against good social "appropriateness" is regarded as an abuse of the employer's right and is accordingly null and void. Consequently, it is difficult for employers in Japan to dismiss an employee without careful precaution and consideration. Court precedents demonstrate that the following instances constitute "an objectively reasonable and socially appropriate reason":

- Physical or mental disability.
- Infringement of the internal disciplinary rules in the workplace.
- Redundancy due to economic circumstances, provided that four established criteria are satisfied (see "Redundancy" below).

Lack of ability or poor performance is difficult to prove in court unless it has been well documented that the dismissed employee's performance was substantially sub-standard.

### **Practical approach**

Given the substantive and procedural difficulties involved in dismissing an employee and the difficulty of convincing a Japanese court of legitimate grounds for dismissal, it is typical in Japan for an employer to try to obtain an employee's voluntary resignation.

## MINIMUM ENTITLEMENTS

### **Payments/Notice**

When an employer terminates or dismisses an employee, they are required to provide at least 30 days' notice of the termination date. Employers may dismiss an employee with immediate effect if the employee is paid an amount equal to 30 days' average salary.

### **Restrictions on the dismissal of employees**

Employers may not dismiss an employee during either of the following periods:

- Absence from work for medical treatment for injuries or illnesses

# JAPAN

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suffered during the course of employment or within 30 days thereafter.

- Before and after childbirth for female employees or within 30 days thereafter.

The employee may resign at any time by serving 14 days' notice.

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## Statutory Entitlements

Payment on termination includes:

- Outstanding wages for days and hours already worked.
- (If applicable) 30 days' average salary in lieu of 30 days' notice.

Employers are not required to pay out any accrued but not taken annual paid leave.

## REDUNDANCY

### Genuine Redundancy

Redundancy is available only if the following four criteria are met:

- There is a quite strong necessity to decrease the number of employees and no other alternatives are available but for decreasing the headcount.
- Reasonable measures in order to avoid dismissal have been fully explored.
- Employees whose employment contracts are to be terminated have been selected pursuant to reasonable criteria.
- Due process has been ensured, including genuine dialogue with employees or labor unions.

As it is often difficult to meet the above-mentioned criteria for redundancy, employers in Japan often solicit a resignation from employees by offering a severance package (including payment of severance amount and other benefits).

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### Consultation

See above under "Genuine Redundancy" of this Japan guide.

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### Payment

An employee is only entitled to receive retirement wages in accordance with the retirement wage rules or the Rules of Employment (if any).

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## REMEDIES

### Dismissal Action

#### *Unfair dismissal*

Employees may bring an unfair dismissal claim against a former employer and seek reinstatement as well as back pay plus interest. The claim may be by way of formal lawsuit or labor tribunal process.

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# KOREA

## GROUNDNS

Terminations are often implemented through mutual agreements.

Under Article 23 of the Labor Standards Act, an employee cannot be dismissed without justifiable reasons. However, while justifiable reasons are not defined in the act, the courts have generally held that such reasons exist only in limited circumstances and can include continuous unsatisfactory performance on the part of the employee, criminal acts, and grave misconduct, as well as improper relationships with other employees. Employees on sick leave due to employment-related illnesses or injuries or employees on maternity leave cannot be dismissed during their period of absence or within 30 days after their return to work.

## MINIMUM ENTITLEMENTS

### Payments/Notice

An employer must give 30 days' advance notice of dismissal to an employee or provide the employee with 30 days' ordinary wages in lieu of notice in specific instances.

Notice of termination of employment must be given in writing and specify the reason for the termination and the effective date.

A termination will be invalid if the employee has not been given the opportunity to defend himself or herself, no matter how serious the employee's conduct has been.

Under Article 26 of the Labor Standards Act, advance notice of dismissal is not required in specific circumstances, such as a worker employed for less than three consecutive months; an employer being unable to continue with its business operations due to natural disaster, war, or other unavoidable circumstances; or certain cases in which a worker has intentionally caused a substantial interference with, or loss of, the employer's business or assets.

### Statutory Entitlements

The statutory severance pay system entitles employees who have been employed for at least one year a severance payment of 30 days' average wages for each year of continuous service. This applies to those employees who are terminated for any reason, including an employee's decision to resign.

## REDUNDANCY

### Genuine Redundancy

Redundancies are permitted under Article 24 of the Labor Standards Act. Redundancies are permitted during times of urgent managerial necessity subject to certain procedural requirements.

An employer must make every effort to avoid redundancies. The Korean courts have interpreted this requirement to include the exhaustion of other options, such as early retirement packages, a hiring or wage freeze, the reduction of work hours, transferring employees to other departments, and any other reasonable measures according to the circumstances. An employer must establish rational and fair criteria for dismissing employees.

An employer must file a report with the Minister of Employment and Labor at least 30 days before the effective date of redundancy where more than 10% of the total number of employees are being dismissed. If the employer decides to reinstate the same job from which an employee was dismissed within three years of the dismissal, the employer must first offer the job to

# KOREA

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the previously dismissed employee before hiring a new employee for the role.

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## **Payment**

The employer must pay statutory separation pay to departing employees who have worked in the company for at least a year, irrespective of whether their departure was voluntary or involuntary. The employer is obligated to pay the employee 30 days' "average wage" for each consecutive year of service. "Average wage" includes all wages paid by the employer to the employee for the three-month period before the redundancy divided by the total number of working days in the three-month period.

The statutory separation pay must be paid to the employee within 14 days of the employee's redundancy.

No other benefits are required to be provided an employee who is made redundant; however, as a matter of practice, additional payments are often made in exchange for the employee's resignation.

## REMEDIES

### **Dismissal Action**

If an employer dismisses an employee unfairly, the worker may apply for remedy to the Regional Labor Relations Commission. The commission will conduct the necessary investigations and is governed by the Labor Relations Commission Act. The commission may offer reinstatement with back pay, or a lump-sum payment may be granted where the employee does not wish to be reinstated.

When an employee is dismissed without cause, he or she may initiate civil proceedings in the district court.

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# NEW ZEALAND

## GROUNDS

Employers considering termination of ongoing employment are required to undertake a procedurally fair process when making a decision and establish that they had a valid cause for doing so.

Termination can be brought about by mutual agreement or when a fixed-term contract expires, provided the statutory requirements have been met.

Termination may be initiated by the employer, with or without notice, or by the employee (resignation).

## MINIMUM ENTITLEMENTS

**Payments/Notice**

When an employer terminates a full-time or part-time employee’s employment for reasons other than serious misconduct, they must provide the contractual notice or payment in lieu of notice.

When an employee resigns, he or she has to provide the notice specified in the relevant employment contract.

“Reasonable” notice must be given where the contract is silent regarding notice.

**Statutory Entitlements**

Payment on termination includes:

- Outstanding wages/salary for hours already worked.
- Accrued annual leave and any alternative holidays not taken.

Employers are not required by statute to pay out accrued sick leave.

## REDUNDANCY

**Genuine Redundancy**

Redundancy is only available in circumstances where an employer no longer needs a full-time or part-time employee’s job to be done by anyone.

**Consultation**

If an employee’s position is being made redundant, statutory good faith obligations regarding consultation must be followed prior to the decision being made that an employee’s position is redundant.

**Payment**

An employee is entitled to redundancy pay only if it is provided for in his or her contract.

## REMEDIES

**Dismissal Action**

***Unjustified dismissal***

Unless a small business employee (in a business with 19 or less employees) is employed on a 90-day trial period as statutorily specified and dismissed during that trial period, he or she is eligible to bring a personal grievance claim against a former employer alleging unjustified dismissal. Personal grievances must be raised within 90 days of the date that the alleged action occurred or came to the employee’s attention, whichever is later.

Remedies can vary and may include reinstatement, payment for lost wages (generally not more than three months) and an award for compensation for

# NEW ZEALAND

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injury to feelings. A successful party will also receive a contribution to their legal costs.

## ***Unjustifiable action***

Employers are prohibited from taking “unjustifiable action” or subjecting an employee to an “unjustified disadvantage”. This occurs where an employee’s employment or conditions of employment are affected to the employee’s disadvantage due to an unjustified action of the employer. As noted above, a personal grievance must be raised within the statutory time frame, subject to exceptions.

Remedies for unjustifiable action can vary and may include an award for compensation (with no maximum amount) and a contribution to legal costs.

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# QATAR

## GROUNDS

### ***Unlimited-term contract***

Can be terminated by mutual agreement of the parties. Either party may also unilaterally terminate the contract by giving written notice (or payment in lieu) to the other party.

### ***Fixed-term contract***

Employment terminated either by mutual agreement or at the expiry of the agreed term.

### ***Dismissal for cause***

An employer may terminate the employment without providing any notice, any termination entitlement (such as end-of-service gratuity payment), or compensation in the event of serious misconduct, including, but not limited to:

- If the employee commits a violation of the employer's disciplinary procedures (that have previously been approved by the Labor Department) and such violation permits dismissal for cause.
- If the employee assumes a false identity or nationality or submits false certificates or documents.
- If the employee commits an act that causes gross financial loss to the employer. The Labor Department needs to be notified of the incident within 24 hours of it taking place.
- If, on more than one occasion, the employee violates the employer's policies on the safety of the employees and the workplace despite being notified in writing. Policies must be posted in a conspicuous place.
- If, on more than one occasion, the employee fails to carry out his or her essential duties under the service contract or Qatari Labor Law despite being notified in writing.
- If the employee discloses the secrets of his employer.
- If, during working hours, the employee is drunk or under the influence of drugs or commits an assault.

## MINIMUM ENTITLEMENTS

### **Payments/Notice**

In the case of an unlimited-term contract (and where the employee receives his or her salary on a monthly or yearly basis), the minimum notice period must be at least one month during the first and second year of employment.

Where the employee has been employed for more than two years, the minimum notice period must be at least two months.

The employer and employee may also terminate the employment contract during the probation period by serving notice as below:

- An employer may dismiss an employee during the probation period if such person is unfit to carry out his or her duties, provided that notice of at least one month is provided.
- In the case of an employee:

# QATAR

- If he or she has secured alternative employment in Qatar, he or she must serve at least one month's notice to the employer. The new employer is under an obligation to compensate the previous employer a portion of the recruitment fees and air ticket incurred, if any, provided that such amount does not exceed two months of the employee's basic salary.
- If he or she intends to leave the country, an employee must serve notice in accordance with the period agreed between the parties, provided that such notice does not exceed two months.

If a party fails to comply with the above-mentioned notice periods, it may be liable to compensate the other party for an amount equivalent to the employee's basic salary for the notice period.

In both cases, the employer can choose to terminate the contract immediately by paying the employee in lieu of notice.

For fixed-term contracts, there are no prescribed statutory minimum notice periods for termination by either party.

Employees remain entitled to their contractual rights during the notice period, provided that they continue to perform their duties during such period.

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## Statutory Entitlements

Accrued but unused vacation.

Accrued salary and allowances up to the date of employment.

### ***End-of-service gratuity payment***

Upon completion of one year of continuous employment with the same employer, the employee is entitled to an end-of-service gratuity calculated (pro rata) on the basis of three weeks' basic salary (excluding all allowances and discretionary payments) for each year of service. This is a nonwaivable entitlement of the employee payable on or around the date of termination of the employment contract. The only way employers can avoid paying an end-of-service gratuity is if they offer an equivalent or better end-of-service benefit than the one prescribed by the Qatari Labor Law.

## REDUNDANCY

### **Genuine Redundancy**

The Qatari Labor Law does not contain detailed provisions on redundancy and, at law, employers are generally allowed to terminate the employment contract (subject to its terms) without providing a reason for doing so.

Recent changes, however, were made to the Qatari Labor Law that permit an employer to terminate employment contracts due to economic or restructuring reasons, provided that it serves 15 days' prior notice to MoL that details: (i) the supporting reasons for the employer's decision, (ii) the number of employees likely to be affected by such decision, and (iii) the time frame for carrying out such exercise.

## REMEDIES

### **Dismissal Action**

All disputes must be referred to the Labor Department. If the dispute does not settle, the matter may be transferred to the labor courts.

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# SINGAPORE

## GROUNDS

Termination can be brought about by mutual agreement, upon expiry of a fixed-term contract, termination by the employer with or without notice, or termination (or resignation) by the employee.

## MINIMUM ENTITLEMENTS

**Notice**

Under the Act, when either party terminates the employment for reasons other than a wilful breach of a condition of service by the other, they must provide the requisite notice of termination (see “Notice of termination” section above).

Notice does not need to be provided when a party terminates the contract for wilful breach of a condition of the contract of service by the other party.

Where an employer intends to dismiss an employee without notice on the grounds of misconduct (misconduct being a failure to fulfill the conditions of employment in the contract of service), the employer should conduct an inquiry before deciding whether to dismiss the employee or to take other forms of disciplinary action. If, however, the obligation is to make “due inquiry” (whether under the employment contract or by operation of the Act), the employee must be accorded an opportunity to present his or her case and defend himself or herself. Further, the more informal the process, the greater the risk that “due inquiry” may be viewed as not having been sufficiently undertaken.

## REDUNDANCY

**Payment**

Under the Act, employees who have more than two years’ continual service and are covered under Part 4 of the Act are entitled to retrenchment benefits on their dismissal on the ground of redundancy or by reason of any reorganization of the employer’s profession, business, trade, or work.

Where the employee is entitled to retrenchment benefits, the amount of compensation is not fixed by law. It will have to be negotiated between employee and employer.

**Notification**

For retrenchment exercises taking place on or after 1 November 2021, employers who employ at least 10 employees must notify the Ministry of Manpower of all retrenchments, regardless of the number of employees affected. Failure to provide the notification may result in a fine of up to S\$2,000 per contravention.

## REMEDIES

**Claims, Complaints, and Investigations**

Effective from 1 April 2019, the Employment Claims Tribunal (ECT) can hear the following types of claims:

For employees:

- Statutory salary-related claims from all employees covered under the Act, the Retirement and Re-employment Act 1993, and the CDCSA.
- Contractual salary-related claims by all employees covered by the Act.

# SINGAPORE

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- Wrongful dismissal claims from all employees covered by the Act and the CDCSA.

For employers:

- Claims for salary in lieu of notice.

Parties with any dispute should first register their claims with the Tripartite Alliance for Dispute Management, which will provide advisory and mediation services. Claims that cannot be resolved through mediation will then be referred to the ECT.

The maximum claim amount for disputes before the ECT is S\$20,000, or up to S\$30,000 if relevant parties go through the Tripartite Mediation Framework or mediation assisted by their recognized unions under the Industrial Relations Act 1960.

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# TAIWAN

## GROUNDINGS

Termination of employment by an employer must comply with Articles 11, 12, and 13 of the LSA.

Termination of employment by an employee (resignation) can be solely "at will" subject to prior notice as required by Taiwanese labor law.

Termination by mutual consent of the parties is permitted.

## MINIMUM ENTITLEMENTS

### Payments/Notice

Employers are not responsible for any payments when a fixed-term employment agreement expires.

In the event of termination of a non-fixed-term employment agreement, an employer will pay redundancy based on the employee's length of service.

### Statutory Entitlements

Employees are entitled to be given a certificate for their services from their employer after termination of the employment agreement.

## REDUNDANCY

### Genuine Redundancy

Redundancy can be on the circumstances listed in Article 11 of the LSA or by mutual consent.

### Consultation

Within 10 days from the date of submission of the mass redundancy plan, the employees and the employer will enter into a consultation process.

### Payment

Payment for redundancy will be calculated and paid based on an employee's length of service.

- Employees who were employed before 30 June 2005:
  - If the employees continue to work for a business entity owned by the same employer, the severance pay will be equal to one month's average wage for each year of service.
  - The severance pay for the months remaining after calculation in accordance with the preceding subparagraph, or for workers who have been employed for less than one year, will be calculated proportionally; any period of employment less than a month will be calculated as one month.
- Employees who were employed after 1 July 2005:
  - Employees will have their severance pay paid by the employer based on their seniority. The payment will be half a month of average wages for every full year of employment and prorated for periods of employment less than one full year.

## REMEDIES

### Dismissal Action

In Taiwan, an unfair dismissal constitutes an illegal termination of the employment agreement, and the employee may claim compensation. Courts are able to grant provisional injunction orders for continuous monthly payments to an employee during any relevant litigation period.

### ***Unlimited term contract***

Unlimited term contracts are no longer permissible under the New Labor Law.

### ***Fixed-term contract***

The New Labor Law provides a list of events that would terminate an employment contract. These include (without limitation):

- The mutual written agreement of the parties.
- Expiration of the term of the contract (unless it is renewed or extended).
- Upon the decision of either party subject to the requirements relating to termination and notice periods.
- If the employee is convicted by a final order to a custodial penalty for a term of not less than three months.
- The permanent closure of the establishment or if the employer becomes bankrupt, insolvent, or unable to continue the business for any economic or exceptional reasons. These reasons are to be considered in accordance with the conditions, controls, and procedures set by the Executive Regulations and applicable legislation in force at the time.

Either party may terminate the employment contract for a legitimate reason by giving the other a prior written notice, provided that such notice is not less than 30 days and not more than 90 days.

The New Labor Law also provides that parties to an unlimited term employment contract that was entered into before the New Labor Law came into effect may terminate such contract for a legitimate reason by giving the other:

- Thirty days' written notice if the period of services is less than five years.
- Sixty days' written notice if the period of service exceeds five years.
- Ninety days' written notice if the period of service exceeds 10 years.

### ***Dismissal for cause***

The New Labor Law provides the following list of events that would terminate an employment contract:

- By mutual written agreement of the parties.
- The expiration of the term of the contract, unless it is extended or renewed pursuant to the provisions hereof.
- Upon the will of either party, subject to the provisions of the New Labor Law in relation to termination of employment contract and notice period agreed upon in the contract.
- Upon employer's death if the subject of the contract is connected with their person.

- Upon employee's death or permanent total disability, as evidenced by a certificate from a licensed medical institution.
- If the employee is convicted by a final order to a custodial penalty for a term of not less than three months.
- The permanent closure of the establishment, pursuant to the legislation in force in the UAE.
- If the employer becomes bankrupt, insolvent, or unable to continue in business for any economical or exceptional reasons, in accordance with the conditions, controls, and procedures set by the Executive Regulations and the legislation in force in the UAE.
- If the employee does not meet the conditions for renewal of the work permit for any reason outside the control of the employer.

An employer may terminate the employment without providing notice in certain serious circumstances. The New Labor Law provides a similar list of termination without notice events that were present in the Previous Law with some variations. These are listed below:

- If the employee assumes a false identity or submits false certificates or documents.
  - If the employee commits an error resulting in gross material losses to the employer, or deliberately causes harm to the property of the employer, and admits the same, provided that the employer notifies the Ministry of the incident within seven working days of being aware of the occurrence thereof.
  - If the employee violates the policies in relation to work and employees' safety in the workplace, provided that such instructions are in writing and posted in a visible place and the employee has been advised thereof.
  - If the employee fails to perform his or her main duties in accordance with the employment contract, and he or she fails to remedy such failure despite a written investigation with him or her on the matter and two warnings that he or she will be dismissed in case of recidivism.
  - If the employee divulges the business secrets in relation to industrial or intellectual property, which results in losses to the employer or loss of opportunity or a personal benefit for the employee.
  - If the employee is found during the working hours in a state of drunkenness or under the influence of a narcotic or psychotic substance or commits any act against morals at the workplace.
  - If the employee commits a verbal, physical, or other form of assault punishable by legislation in force in the UAE against the employer, the responsible manager, their supervisor, or co-employee.
  - If the employee is absent from work without legal cause or justification acceptable to the employer for more than 20 interrupted days in a year or more than seven consecutive days.
  - If the employee abuses his or her position with the aim to obtain personal gains and profits.
  - If the employee joins another employer without complying with the
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controls and procedures prescribed in this regard.

An employee may resign without notice in the event that the employer breaches its obligations towards the employee, as set out in the contract or the law. The New Labor Law provides the following list of events where an employee can resign without providing notice:

- If the employer commits a breach of its obligations to the employee stated in the employment contract or in the New Labor Law or its implementing resolutions, provided that the Ministry is notified by the employee 14 working days before the date of leaving work, and the employer fails to remedy the breach even though being notified by the Ministry.
- If the employee is subject to assault, violence, or harassment at the workplace by the employer, or its legal representative, provided that the employee reports such acts to the concerned authorities and the Ministry within five working days from the date on which he or she is able to report.
- If the workplace poses a serious threat to the safety or health of the employee, provided that the employer is aware thereof and has not taken the actions necessary to eliminate such threat. The Executive Regulations determine the requirements for serious threats.
- If the employer entrusts the employee with work that is substantially different from the work agreed upon in the employment contract without the written consent of the employee, except in cases stated in Article 12 of the law.

### ***Arbitrary termination***

Following the termination of employment, employees in the UAE may pursue claims for arbitrary dismissal under the UAE Labor Law. Whether an employee will be successful with any such claim will depend on the reason for the termination and the process the employer undertook prior to terminating the employment.

An employee's employment will be deemed to have been arbitrarily terminated if the reason for the termination was "irrelevant to the work."

The maximum compensation that can be awarded to an employee pursuant to an arbitrary dismissal claim is three months' pay, calculated based on the last pay received by the employee prior to dismissal.

## MINIMUM ENTITLEMENTS

### **Payments/Notice**

The New Labor Law allows employees to be paid in currencies other than UAE dirhams (AED) by agreement between the employer and the employee.

At least 30 days and no more than three months' notice (or payment in lieu).

The New Labor Law provides that parties to an unlimited term employment contract that was entered into before the New Labor Law comes into effect may terminate such contract for a legitimate reason by giving the other:

- 30 days' written notice if the period of services is less than five years.

- 60 days' written notice if the period of service exceeds five years.
- 90 days' written notice if the period of service exceeds 10 years.

Under the Previous Law, an employer was able to terminate an employee during the probation period without giving any notice. The New Labor Law introduces a notice period of 14 days' prior written notice for terminating an employment contract by the employer during the probation period (which is capped at six months).

In addition, the New Labor Law provides that an employee who wants to move on to another employer in the UAE during the probationary period shall notify his or her current employer in writing at least one month before the date on which he or she intends to terminate the contract, and unless agreed otherwise, the new employer shall compensate the first employer for recruitment or contract costs.

The New Labor Law also states that a foreign worker wishing to terminate the employment contract during the probationary period in order to leave the UAE shall notify his or her employer in writing at least 14 days prior to the date determined for termination of the contract. If the employee wants to return to the UAE and obtains a new work permit within three months from the date of his or her departure, the new employer shall pay the compensation mentioned above, unless agreed otherwise by the employee and the original employer.

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## Statutory Entitlements

An employee shall be entitled to be paid for his or her days of leave if he or she leaves work before the use, irrespective of the length, of such leave. The employee shall be entitled to the leave pay for the fractions of the year in proportion to the period of service, and the same is calculated on the basis of the basic pay.

### ***Gratuity payment***

The New Labor Law clarifies that a foreign worker who completes at least one year of continuous service will be entitled to gratuity pay, which is calculated on the basis of his or her basic pay. The New Labor Law expressly provides that the basic pay excludes any other allowances or benefits.

Upon termination of employment, for every year of service, the employee is entitled to 21 working days' basic pay for the first five years of service and 30 working days' pay for each additional year of service. The total severance pay must not exceed two years' pay (which includes the basic pay plus any allowances or benefits).

Employees summarily dismissed now retain their entitlement to their gratuity pay, and no reductions apply where an employee resigns.

The gratuity pay together with all other termination payments must be made within 14 days of the termination date.

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## REDUNDANCY

### **Genuine Redundancy**

In the event that the employment is terminated for reasons not related to the work, the employee is entitled to compensation of up to three months' wages, depending on seniority and length of service, as compensation for arbitrary termination. However, the courts may find that a genuine redundancy (whereby the duties are not undertaken by another employee) is a valid reason for the termination and the employer is not required to pay compensation.

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## REMEDIES

### **Dismissal Actions**

All disputes must first be referred to the Ministry of Human Resources & Emiratisation (MoHRE). If the dispute is not settled, the matter may be transferred to the UAE labor courts.

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# UNITED KINGDOM

## GROUNDNS

An employee's employment may be terminated by notice being given by either the employer or the employee, by the employer without notice in cases of gross misconduct, mutual agreement, frustration or the end of a fixed-term contract.

## MINIMUM ENTITLEMENTS

### Payments/Notice

When an employer terminates an employee's employment for reasons other than serious misconduct, it must give the employee his or her contractual notice period or the statutory minimum (calculated as described in the "Entitlements" section of this UK guide) if greater. Employers may be able to pay the employee in lieu of notice if the contract provides for this.

Notice does not need to be provided when an employer terminates an employee for gross misconduct. When an employee resigns, he or she has to give the contractual notice period.

## REDUNDANCY

### Statutory Entitlements

Payment on termination includes:

- Outstanding wages for hours already worked.
- Accrued but untaken annual leave.
- Payments in lieu of notice and payments in respect of any contractual entitlements that would have been payable during the notice period (if applicable).
- Redundancy pay (if applicable).

### Genuine Redundancy

Once an employee has completed two years' continuous employment, he or she is entitled to a statutory redundancy payment if dismissed "by reason of redundancy". A genuine redundancy situation will arise where:

- An employer has stopped, or intends to stop, carrying on the business either altogether or in the place where the employee is employed.
- There is no longer a requirement for an employee or employees to carry out work of a particular kind.

### Consultation

Employers must follow a fair procedure and consult with their employees before making them redundant. The scope of employers' consultation duties depends on the size of the business, and employers who are considering making more than 20 employees redundant have more onerous consultation obligations. Further details of employers' consultation rights are provided in the "Restructuring" section of this UK guide.

### Payment

The amount of the statutory redundancy payment is calculated in the same way as the basic award for unfair dismissal (see the "Dismissal Actions" section of this UK guide). An employee's weekly pay, up to the statutory limit currently capped at £571, and a maximum of 20 years' service can be taken into account when calculating the statutory redundancy payment, which as at 6 April 2022 is capped at a maximum of £17,130.

# UNITED KINGDOM

## REMEDIES

### Dismissal Actions

Employees with two years' service can challenge the fairness of their dismissal by bringing a claim against their employer for unfair dismissal in an employment tribunal. In order to successfully defend such a claim, the employer has to demonstrate that it has a fair reason for dismissal and that it has followed a fair procedure.

There are five potentially fair reasons:

- Redundancy.
  - Misconduct.
  - Capability (including performance or illness).
  - Potential breach of a legislative requirement if the employer were to continue to employ the employee (for example, if he or she did not have a visa).
  - Some other substantial reason that justifies dismissal.
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# UNITED STATES

## GROUND

In the typical at-will employment situation, an employee may be terminated for any reason, with or without notice, although employers may not terminate employees for any illegal reason. Statutes typically govern what constitutes an “illegal” reason. For example, Title VII prohibits employers from terminating employees on the basis of their race and gender (among other things). State public policies and common law often create other exceptions. For example, employees typically cannot be terminated for failing to perform an illegal act.

Employment contracts may limit the grounds for termination and require that a certain amount of notice be provided.

## MINIMUM ENTITLEMENTS

### Payments/Notice

Employers typically are not required by law to provide payments to terminated employees. However, some employers voluntarily provide severance benefits to departing employees in certain situations, such as reductions in force or in exchange for a release of potential claims the employee may have against the employer. Federal (such as the Age Discrimination in Employment Act (ADEA)) and state laws may impose specific requirements related to timing, notice, and revocation periods on employers entering into release agreements with employees.

### Statutory Entitlements

Employers must pay all owed compensation to a terminated employee. State laws typically require that it be paid within a certain number of days from the date of termination. Some state laws require that certain vested or accrued benefits (such as vacation pay) are part of owed compensation and must be paid on or after termination.

Federal law requires employers meeting certain minimum size requirements to provide information to employees about how to temporarily continue their insurance benefits following employment (at the employee’s cost but under the employer’s plan). Certain states have similar laws (typically lowering the minimum size threshold).

## REDUNDANCY

### Layoff/Downsizing Notices

An employer may eliminate/consolidate positions and engage in reductions in workforce at its discretion.

The Worker Adjustment and Retraining Notification Act (WARN Act) requires covered employers to provide 60 days’ advance notice of a mass layoff or a plant closing (as those terms are defined by the WARN Act), as well as for certain layoffs. State laws may expand the notice requirements in other situations.

### Payment

Employers typically are not required by law to make payments to employees selected for a reduction in workforce or a layoff. However, some employers voluntarily provide a severance package to laid-off employees, usually in exchange for a release of potential claims the employee may have against the employer. Federal (such as the ADEA) and state laws may impose specific requirements related to timing, notice, and revocation periods on employers entering into release agreements with employees.

# UNITED STATES

## REMEDIES

### Dismissal Action

Since employment is generally “at will” in the absence of an employment contract, a claim for wrongful termination typically must be based on an argument that the employment contract was breached or that the employer terminated the employee due to a protected trait (such as gender, pregnancy, religion, color, race, national origin, veteran status, age, disability, or genetic information). State and federal claims also include actions based on a retaliation theory, i.e., the employer retaliated against the employee for opposing discrimination or harassment in the workplace, complaining about the employer’s failure to pay minimum wage or overtime, exercising FMLA rights, or exercising an NLRA right to participate in a protected concerted activity.

State laws often prohibit retaliation against employees who apply for benefits related to a workplace injury or who are forced to take leave because of a workplace injury.

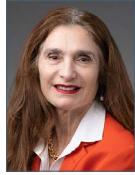
State laws may provide for claims in circumstances where the employer terminated the employee for refusing to commit a criminal act or where the employer has breached the covenant of good faith and fair dealing.

Both federal and state laws also provide protections to certain categories of whistleblowers, including those who report financial misconduct of a company or its employees.

For many unlawful termination claims, there is a federal or state agency dedicated to investigating and resolving such claims. Plaintiffs are also typically able to bring their claims in court (sometimes providing they have exhausted their remedies at an agency level first).

Successful plaintiffs in such actions can be awarded a variety of damages, including back pay, front pay, compensatory damages, punitive/exemplary damages, liquidated damages, attorneys’ fees, court costs, and interest.

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