CHILE

Items	Regulations in force on 1 January 2019
1: Notification procedures in the case of individual dismissal of a worker with a regular contract	A written dismissal letter is always mandatory. This letter must state the legal cause of termination and the facts supporting such cause. This letter must be either handed directly to the employee or sent as registered letter to the employee's domicile. A copy of such letter must be sent to the competent Labor Inspection within 3 working days as of the date of termination. The termination letter plays a key role in determining whether a dismissal is or not wrongful. In this regard, the employer is strictly bound by the statements made in the termination letter since, in the case the employee challenges the termination before a court for wrongful dismissal, the employer has the burden of proof of the veracity of the facts stated in the termination letter, not being allowed to claim any different facts supporting his/her dismissal decision. Once the employer submits the dismissal letter, neither the employee nor the employer are allowed to unilaterally change the ground of termination nor the facts described therein. The foregoing can only be changed by mutual agreement of the parties or by resolution issued by a Labour Court. As of a certain number of dismissals (see Item 18): see item 19.
2: Delay involved before notice can start	The notification letter must be either handed directly to the employee or sent as registered letter to the employee's domicile, within within 3 working days as of the date of termination. Calculation (for EPL indicators): average of 1 day for verbal notice and 3 days for registered letter.
3: Length of notice period at different tenure durations (a)	The employee must be given a 30-day notice, or payment in lieu of notice of one month's salary. The last monthly salary on which the payment in lieu of prior notice is based has a statutory cap of 90 "monetary indexed units" (At the end of 2012, about US$ 4,280 - this unit is adjusted daily to inflation by the Chilean government. At the end of 2012 1 monetary indexed unit is equivalent to approximately US$48), except if modified by the parties by mutual agreement. Calculation (for EPL indicators): 0.5 months (average of cases with notice or severance payment).
4: Severance pay at different tenure durations (a)	Employees with at least one year of continuous service shall receive severance pay equivalent to 30 days of employee´s last monthly salary per year of service and fraction higher than six months (Articles 162 and 172 of the Labour Code).. Notwithstanding the latter, this severance is subject to two statutory limits: a.- The last monthly salary on which the severance pay is based is capped at 90 "monetary indexed units" (currently US$ 4,280 approx.). b.- The seniority is capped at 330 days (11 years). However, this limit is not applicable to employees hired before August 14th, 1981. These caps may be modified by the parties by mutual agreement. However, the employer's contribution to the worker's individual unemployment insurance saving account, plus the yield of this account minus all applicable fees, may be deducted from the severance pay. In practice, this implies a deduction of 20% from severance payments due in the case of dismissal. Article 13 of Law N° 19.728 (which establishes the Unemployment Insurance) contains the provision which allows employers to make the aforementioned deduction, which is restricted only to terminations made on the grounds set out in article 161 of the Labour Code (i.e. economic reasons and dismissal at will).

5: Definition of unfair dismissal (b)	The Labor Code permits an employer to dismiss an employee without fault. According to the position held by the employee, the understanding of "termination without fault" could be tailored under two venues: (i) for business necessities or economic redundancy ("necesidades de la empresa") and (ii) dismissal at will ("desahucio escrito del empleador"). Dismissal for personal reasons (i.e. insufficient performance, unsuitability for medical reasons, unsuitability for other reasons) is not allowed under Chilean labour legislation (Articles 159 to 161 of the Labour Code). Firstly, dismissal based on business necessities or economic redundancy is generally applicable to employees in general. It does not mean that the employer is entitled to determine them at his sole discretion, but means that the dismissal must be justified by financial or economic circumstances that make the termination of the employee's contract unavoidable. Furthermore, court practice tends to be more restrictive since courts usually require that the economic justification be based on objective situations that cannot be attributed to the responsibility of the employer and meet a general situation of crisis for the whole company and not for a branch alone. Secondly, dismissal at will is only applicable to employees who bear at least general authority management, such as managers, assistant managers, attorneys and agents, as well as domestic workers. This reason requires the mere written notice of termination. Labour Courts (judges) must interpret evidence provided by the parties and rule according to healthy criticism rules ("sana crítica"). The latter criterion provides judges with a wide degree of freedom for determining whether a dismissal is justified/lawful or not. In this regard, judges can question the operational need of the dismissal (in fact, this is what they often do). In said case, employers will be obliged to prove the soundness of their decision (i.e. that the dismissal was necessary for the stability and continuity of the firm). Considering court practice, when assessing dismissals based on economic reasons (i.e. article 161 Labour Code) the following should be noted: - Immediate employee replacement is often considered 'unjustified' by labour courts. - Collective dismissals may enhance the soundness of the employer's decision, in so far as to provide context to the dismissal. - It is important to have objective information to support the employer's decision.
6: Length of trial period (c)	No trial period is admitted in legislation (except for domestic workers).
7: Compensation following unfair dismissal (d)	In the event of wrongful dismissal of permanent regular workers, the current legal framework envisages two options in challenging such dismissal: 1.- If the dismissal was based by the employer on economic reasons and this was eventually wrongful, the additional compensation the Court can award is a 30%-surcharge over the employee´s severance pay. 2.- If the dismissal was not based on any cause, or was based by the employer on reasons other than economic reasons or redundancy (e.g., employee´s serious breach of the obligations) and this was eventually wrongful, the employee is entitled to a payment in lieu of notice of one monthly salary. Also, the employee is entitled to his/her severance pay, including an additional surcharge varying from 50% to 100% over the employee´s severance pay. Higher compensation is possible if termination is in fact based on discriminatory grounds. Calculation (for EPL indicators): Typical compensation at 20 years of tenure: average of 65% x 11 months' severance pay = 7.2 months.

8: Reinstatement option for the employee following unfair dismissal (b)	Reinstatement is available to permanent employees who were dismissed without fault while being under medical leave. It also applies to employees who have dismissal protection privilege ("fuero"). Dismissal protection privilege is granted by law to those employees in situations that may imply a vulnerable condition for keeping their employment (e.g. pregnancy, maternity leave, union representation).This privilege means that employer is prevented from dismissing permanent employees bearing such capacity without prior judicial authorization based on employee´s fault. Moreover, the Labour Protection Procedure sets forth the prohibition of termination based o discriminatory grounds (eg. union activity, social extraction, sex). In general, if dismissal is deemed as "seriously discriminatory" by the Court, the employee may choose between either compensation or reinstatement. Similarly, in case of wrongful dismissal based on anti-union practices of employees who do not have dismissal protection privilege in virtue of union activity (e.g. union representatives, employees involved in collective bargaining), the employee may choose between either compensation or his/her reinstatement. In case of wrongful dismissal based on anti-union practices of employees who have dismissal protection privilege in virtue of union activity (e.g. union representatives, employees involved in collective bargaining), reinstatement is the only available remedy. All these alternatives allow employees to claim the amounts the employee did not receive during the period of undue separation.
9: Maximum time period after dismissal up to which an unfair dismissal claim can be made (e)	Employees may lodge a complaint for wrongful dismissal before Labour Courts within 60 working days as of the date of effective termination. If a complaint for wrongful dismissal has been filed before the Labour Inspection prior to the jurisdictional stage, the 60 working days will be increased by the time the complaint is pending before the Labour Inspection. However, this latter increase may not exceed 30 working days.
10: Valid cases for use of standard fixed term contracts	No restrictions.
11: Maximum number of successive standard FTCs (initial contract plus renewals and/or prolongations)	A second renewal of a fixed term contract will be taken to be a contract of indefinite length.
12: Maximum cumulated duration of successive standard FTCs	The duration of a fixed term contract may not exceed one year (two years for managers or persons with a professional or technical degree bestowed upon by a University certified by the State.). A worker who has been employed intermittently under more than two fixed-term contracts for 12 out of a continuous period of 15 months is presumed to be hired under a contract of indefinite length. Exceptions apply for arts and show business employment contracts as well as professional football players and direct assistance staff. Calculation (for EPL indicators): average of the two situations mentioned above.
13: Types of work for which temporary work agency (TWA) employment is legal	TWA workers can be employed in the following circumstances (article 183-Ñ of the Labour Code): (i) to replace workers on leave; (ii) for extraordinary events e.g. exhibitions, conferences; (iii) for new projects or expansion into new markets; (iv) when starting a new business; (v) to cover occasional increases in workload; (vi) for urgent and precise work requiring immediate performance without delay (e.g. conducting repairs). TWA employment is illegal in certain circumstances (article 183-P of the Labour Code). This means the TWA may not place employees at the user firm in the following circumstances: (i) to perform positions entailing the representation of the user firm, such as managers, assistant managers; (ii) to substitute employees of a user firm who have gone legally strike within a collective bargaining process; and (iii) to place the employee at the disposal of a third TWA.
14: Are there restrictions on the number of renewals and/or prolongations of TWA assignments? (f)	No restrictions within the maximum term of cumulated duration as specified in answer to Item 15 below. Additionally, numerous assignments at the user firm of the same TWA employee aimed at hiding a permanent labour relationship with the user firm are illegal. In this case, the user firm shall be considered the employer.
15: Maximum cumulated duration of TWA assignments (f)	TWA assignments for extraordinary events or to cover occasional increases in workload have a maximum duration of 90 days. TWA assignments for new businesses or projects have a maximum duration of 180 days. TWA assignments to (i) replace employees on leave and (ii) for urgent and precise work requiring immediate performance at the user firm can last as long these situations truly exist. Calculation (for EPL indicators): average of 3 months and 6 months = 4.5 months.

16: Does the set-up of a TWA require authorisation or reporting obligations?	No prior authorization is required. However, TWA can operate only if they are enrolled in a special registry run by the Labor Directorate and pay a money deposit guarantee. Hence, if no registration exists, no operation is allowed. This registration is conditional and exposed to cancellation by the labor authority upon the following situations: a.- When the TWA has an ownership relationship with the user firm; b.- When the TWA commits repeated and serious labor offences. This will be understood in the case of (i) 3 or more labor infringements within one year or (ii) infringements having significant impact against the protection of child labor, maternity and remunerations. The Labor Directorate may take the autonomous initiative to verify the existence of these offences.
17: Do regulations ensure equal treatment of regular workers and agency workers at the user firm?	No requirement for equal treatment.
18: Definition of collective dismissal (b)	No requirements in legislation.
19: Additional notification requirements in cases of collective dismissal (g)	No requirements in legislation.
20: Additional delays involved in cases of collective dismissal (h)	No requirements in legislation.
21: Other special costs to employers in case of collective dismissals (i)	No requirements in legislation.
22: The worker alone has the burden of proof when filing a complaint for unfair dismissal	No
23: Ex-ante validation of the dismissal limiting the scope of unfair dismissal complaints	No
24: Pre-termination resolution mechanisms granting unemployment benefits	Resignation grant access to unemployment benefits provided that the employee is affiliated to the unemployment insurance (mandatory for employees' hired after October, 2002). There is no sanction nor waiting period as compared to a dismissal. There is no additional statutory benefits following a resignation.

Legend: d: days; w: weeks; m: months; y: years. For example "1m < 3y" means "1 month of notice (or severance) pay is required when length of service is below 3 years".

Notes:
a) Three tenure durations (9 months, 4 years, 20 years). Case of a regular employee with tenure beyond any trial period, dismissed on personal grounds or economic redundancy, but without fault (where relevant, calculations of scores to compute OECD EPL indicators assume that the worker was 35 years old at the start of employment). Averages are taken where different situations apply – e.g. blue collar and white collar; dismissals for personal reasons and for redundancy.
b) Based also on case law, if court practice tends to be more (or less) restrictive than what specified in legislation.
c) Initial period within which regular contracts are not fully covered by employment protection provisions and unfair dismissal claims cannot usually be made.
d) Typical compensation at 20 years of tenure, including back pay and other compensation (e.g. for future lost earnings in lieu of reinstatement or psychological injury), but excluding ordinary severance pay and pay in lieu of notice. Where relevant, calculations of scores to compute OECD EPL indicators assume that the worker was 35 years old at the start of employment and that a court case takes 6 months on average. Description based also on case law.
e) Maximum time period after dismissal up to which an unfair dismissal claim can be made.
f) Description based on both regulations on number and duration of the contract(s) between the temporary work agency and the employee and regulations on the number and duration of the assignment(s) with the same user firm.
g) Notification requirements to works councils (or employee representatives), and to government authorities such as public employment offices. Only requirements on top of those requirements applying to individual redundancy dismissal count for the OECD EPL indicators Versions 1 to 3 (cf. Item 1).
h) Additional delays and notice periods in the case of collective dismissal (only delays on top of those required for individual dismissals – as reported in Items 2 and 3 – count for the OECD EPL indicators).
i) This refers to whether there are additional severance pay requirements and whether social compensation plans (detailing measures of reemployment, retraining, outplacement, etc.) are obligatory or common practice.