

LABOR LAW

CHANGES TO LABOR LAW

LAW 27/2014, OF MAY 8, ALTERS ARTICLES 368 AND 375, ON THE REQUISITES FOR THE DISMISSAL BY REASON OF THE EXTINCTION OF THE EMPLOYMENT POST AND BY UN- ADAPTATION.

On June 1, 2014 a new amendment of the Labor Code will come into force.

Law 27/2014, of May 8, alters articles 368 and 375, on the requisites for the dismissal by reason of the extinction of the employment post and by unadaptation.

In the dismissal by reason of the extinction of the employment post, the change regards the criteria to be observed on election of the employee to be dismissed whenever there are various likewise employment posts with identical functional content. The employer has to observe the following criteria in a nondiscriminatory manner:

- a) Lesser valuation of performance in line with criteria previously known to the employee;
- b) Higher cost in the maintenance of the employee;
- c) Experience;
- d) Seniority.

This change implies that the ability to dismiss the employee who may come to be elected according to the foregoing criteria is directly conditioned on the absence, in the employer of any alternative employment post, compatible with the professional capacity of the employee to be dismissed.

This alteration represents a material change given the reintroduction of the preexisting regime, which was reinstated by reason of the annulment with unconstitutionality of the amendments introduced by Law 23/2012, decreed by the Decision of the Constitutional Court 602/2013 of October 24.

The following outline envisages an illustration of the scope of the changes regarding the criteria to be observed on termination of the employment post:

Article 368 nr 2 of the Labor Code

<p>Wording under Law 23/2012 of June 25 (which came to be declared unconstitutional)</p> <p><i>"(...) There existing in the section or equivalent structure, a variety of employment posts with identical functional content, in the election of the employment post to be terminated, it is up to the employee to define, with reference to the respective employees, <u>the relevant non-discriminatory criteria in line with the objectives inherent to the termination of the employment post (...)</u>"</i></p>	<p>Wording reinstated with the decreeing of the unconstitutionality of Law 23/2012 (Law 12/2009 of February 12)</p> <p><i>"(...) There existing in the section or equivalent structure, a variety of employment posts with identical functional content, in the execution of the employment post to be extinguished, <u>the employer must observe, by reference to the respective employees, the following order of criteria:</u></i></p> <ul style="list-style-type: none"> <i>a) Less seniority in the employment post;</i> <i>b) Less seniority in the professional category;</i> <i>c) Less professional rank within the same professional category;</i> <i>d) Less seniority in the company."</i> 	<p>Wording arising from the amendment in comment: (Law 27/2014 of May 8)</p> <p><i>""(...) There existing in the section or equivalent structure, a variety of employment posts with identical functional content, in the election of the employment post to be terminated, <u>the employer must observe, by reference to the respective employees, the following order of relevant and non-discriminatory criteria:</u></i></p> <ul style="list-style-type: none"> <i>a) Lower performance within the criteria previously known to the employee;</i> <i>b) Lower academic and professional qualification;</i> <i>c) Higher cost in the maintenance of the employment post by the company;</i> <i>d) Lesser experience in the function;</i> <i>e) Lesser seniority in the company (...)</i>
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The change in the regime of the dismissal by reason of unadaptation, is limited to the reintroduction, as criteria, of the requisite of absence, within the employer, of any other employment post available and compatible with the employee's professional category.

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