

CUATRECASAS, GONÇALVES PEREIRA



LEGAL FLASH | EMPLOYMENT

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Judgement of the Constitutional Court Nr 602/2013 of September 20

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JUDGEMENT OF THE CONSTITUTIONAL COURT NR 602/2013 OF SEPTEMBER 20

Judgement of the Constitutional Court Nr 602/2013 of September 20 was announced today and declares the unconstitutionality with general binding force of the following rules:

Rule	Matter
Article 368.º, nr 2, of the Labour Code, approved by Law nr 7/2009, of February 12, with the wording established by Law nr. 23/2012, of June 25	Legal criteria for the selection of job position that will be made redundant when there are multiple job positions with identical functions, in what concerns dismissal by job extinction –Allows the employer to define relevant and non discriminatory criteria.
Article 368.º, nr 4, of the Labour Code, approved by Law nr 7/2009, of February 12, with the wording established by Law nr. 23/2012, of June 25	Assumption necessary for the verification of the impossibility of maintenance of the employment relation, in what concerns dismissal by job extinction – Elimination of the assumption of inexistence of job position compatible with the employee’s category.
Article 9.º, nr 2, of Law nr 23/2012, of June 25 in what concerns the revocation of section d) of the nr 1 of article 375.º of the Labour Code, approved by Law nr 7/2009, of February 12	Dismissal by inadaptability requirements – Elimination of the requirement of inexistence of available job position compatible with the employee’s professional qualification.
Article 7.º, nr 2, of Law nr 23/2012, of June 25	Revocation of Collective Bargaining Agreements (CBA) ruling on compensatory rests as result of overtime work rendered in business day, compensatory resting day or holiday.
Article 7.º, nr 3, of Law nr 23/2012, of June 25	Reduction of the increase of the annual vacation period established by CBA.
Article 7.º, nr 5, of Law nr 23/2012, of June 25	Automatic reduction of CBA’s rules concerning increased overtime payments and remuneration for regular work rendered on holidays or complementary rests days resulting from such work, when such rules are not changed after the two years suspension period established by the nr. 4 of Law nr 23/2012 of June 25.

The declaration of unconstitutionality or illegality with general binding force will be effective from the date of coming to force of the rule declared unconstitutional or illegal and determines the revalidation of the rule that has been revoked by the unconstitutional or illegal rule, except for cases that have already been tried (*res judicata*) that shall stand.

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