

# Pro-rata Calculation of Economic Compensation

Author: Yang ZOU, Dong Baohua Office

The computation of economic compensation for leaving employees is one of the day-to-day tasks of the human resources administration department of an enterprise. In view of the enlarged scope of payment of economic compensation and the change of its calculation standard under the Labor Contract Law, pro-rata calculation of economic compensation becomes a difficult task. This article will give a systematic illustration of pro-rata calculation of economic compensation together with cases, and present a detailed summary of statutory status under various circumstances to offer solutions to this difficult task.

## Sample Case (based in Shanghai):

**C**ase 1: Mr. Zhang has served in the company since 1 January 1988 and his labor contract was terminated on 30 April 2009 in accordance with the law upon expiry of medical treatment period. His average monthly salary was RMB 8000.

Case 2: Mr. Zhang has served in the company since 1 January 1988 and his labor contract was terminated on 30 April 2009 in accordance with the law due to his incompetence for the job. His average monthly salary was RMB 8000.

Case 3: Mr. Zhang has served in the company since 1 January 1988 and his labor contract was terminated in accordance

with the law due to economic redundancy. His average monthly salary was RMB 10000.

*Case 4: Mr. Zhang has served in the company since 1 January 1988 and his labor contract was terminated in accordance with the law due to his incompetence for the job. His average monthly salary was RMB 10000.*

*(Note: Three times of the average salary in Shanghai Municipality for 2008 were RMB 9876).*

The above four cases are the most typical yet the most confusing for pro-rata calculation of economic compensation. Each case represents one type. Despite the similarity of basic facts, the calculation results may vary greatly.

The most basic formula for the calculation of economic compensation is: economic compensation = base number × time limit. We can tell that the factors that affect economic compensation include: base number and time limit, while economic compensation is calculated on a pro-rata basis.

## I. Base Number of Economic Compensation

Since the legal provisions in force prior to 1 January 2008 (hereinafter referred to as “previous provisions”) did not set a cap on the base number of economic compensation, while the Labor Contract Law so provides, which means that if the average wages of an employee within a period of 12 months prior to the dissolution or termination of labor contract are more than three times of the average monthly wages of employees in the

municipality for the previous year, economic compensation will be paid on the basis of three times of average monthly wages of employees and the maximum period for payment of economic compensation must not exceed 12 months, in short, “cap on three times and 12 months”. In this regard, the base number of economic compensation will be different under different circumstances:

1. If the average monthly wages of an employee is less than three times of the average monthly wages of employees in the municipality for the previous year, the base number for the calculation of economic compensation will be determined with reference to the average monthly wages of the employee within a period of 12 months prior to dissolution or termination of labor contract.

2. If the average monthly wages of an employee is more than three times of the average monthly wages of employees in the municipality for the previous year, the base number will be determined at a cap of three times of average monthly wages of employees. It must also be noted that the time limit for the calculation of base number of economic compensation must be counted from the date of implementation of the Labor Contract Law, while the period of service prior to the implementation of the Labor Contract Law must be adopted to calculate the base number of economic compensation pursuant to previous provisions.

## II. Time Limit for Economic Compensation

Although it seems that both “previous provisions” and the Labor Contract Law

set a cap of 12 months on the time limit for economic compensation, the difference between them can be great. The “previous provisions” set a cap of 12 months on statutory circumstances, while the Labor Contract Law will only set such a cap if the “base number” meets the capping conditions, which means it is only based on the capping of base number. To be specific, if the Labor Contract Law provides for the payment of economic compensation, which does not fall under the circumstance that “the total economic compensation does not exceed 12 months of wage income of the employee” in previous provisions, the time limit for economic compensation will be calculated from the date of labor use; if the Labor Contract Law provides for the payment of economic compensation, but falls under the circumstance that “the total economic compensation does not exceed 12 months of wage income of the employee”, the time limit for economic compensation prior to the implementation of the Labor Contract Law must be calculated in accordance with previous provisions; and the period of service after 1 January 2008 will be incorporated for calculation in accordance with the Labor Contract Law.

In addition, the specific calculation standards on the time limit for economic compensation in previous and new provisions are not identical, and differences can be seen in view of the different provisions in various localities. Take Shanghai as an example. Prior to 1 January 2008, economic compensation of one month would be granted upon each consecutive year of service by employee; for a period of service for more than six months but less than one year, one year would be counted. After

2008, the Labor Contract Law states that if an employee works for a consecutive period of one year, one month of economic compensation will be granted; for a period of less than six months, half a month of economic compensation will be granted; for a period of more than six months, one year will be counted. To give a simple example, if a particular employee works for a consecutive period of one year and four months, the time limit for calculation of economic compensation will be one year based on old law, but 1.5 years based on new law.

### III. Practical Reasons for Difference in Computation of Economic Compensation

If the true reasons for the difference in calculation of economic compensation are understood, the difficult task of calculation can be tackled with ease. It can be seen that the issue with pro-rata calculation of economic compensation is, prima facie, a transitional problem arising from the implementation of new law, or the differences in calculation standards, but it is actually due to the different concepts of capping of economic compensation under the “previous provisions” and the Labor Contract Law. The previous provisions follow the legislative intent of capping at 12 months under statutory circumstances, while the Labor Contract Law sets a cap on the base number of “three times+12 months”. After this point is clarified, the principle for calculation of economic compensation can be adopted accurately: once there is a cap, irrespective of whether it is on base number or time limit, pro-rata calculation is required based on 1 January 2008. Classification should be made based on the circumstances of

capping. The text below summarizes various types for reference purposes and specific calculation will be made based on different categories to offer a solution to the difficult task.

### IV. Case Analysis:

Detailed analysis will be made to each of the case below.

**Case 1** refers to the situation where the base number and the time limit for economic compensation are not capped. This is the simplest situation in that there is no capping irrespective of old or new laws, and the time limit for economic compensation will be calculated from the date of labor use with reference to the provisions of the Labor Contract Law.

The statutory circumstances under this category mainly include:

1. dissolution upon expiry of medical treatment period;
2. dissolution due to change of objective circumstances;
3. economic redundancy;
4. dissolution due to enterprise bankruptcy

#### Computation of Economic Compensation:

Base number of economic compensation: RMB 8000

Time limit for economic compensation = 1988.1.1-2009.4.30=21 years and 4 months (calculation based on 21.5 months)

Economic compensation: RMB 8000×21.5 months=RMB 172000

**Case 2** refers to the situation where

capping on the time limit is required in accordance with the “previous provisions” but no capping on the base number pursuant to the Labor Contract Law in which the wages of employee do not exceed three times of average monthly wages. Pro-rata calculation is required based on the standards of the old and new laws and sum them up.

The statutory circumstances under this category mainly include:

1. dissolution upon consensus after negotiation;
2. dissolution due to incompetence;
3. special provisions of different localities. Take Shanghai as an example. If (1) labor service is performed by means of violence, threat or illegal restriction of personal freedom; (2) No labor remunerations or conditions of labor services are provided or paid as per agreement, these two circumstances also fall under this category.

#### Computation of Economic Compensation:

Base number of economic compensation: RMB 8000

Time limit for economic compensation: 12 months (prior to 2008) +1.5 months (after 2008) =13.5 months

Economic compensation: RMB 8000×13.5 months=RMB 108000

**Case 3** does not fall under the statutory circumstances of capping in accordance with the “previous provisions” but falls under the circumstance of capping at “three times + 12 months” in accordance with the Labor Contract Law. The statutory circumstances of this category are

similar to those of Case 1 but the condition of capping of employees' wages at three times must be fulfilled at the same time.

#### Computation of Economic Compensation:

Amount of economic compensation prior to 2008: 20 months×RMB 10000 =RMB 200000

Amount of economic compensation after 2008: 1.5 months×RMB 9876=RMB 14814

Total economic compensation:  
RMB 200000+RMB 14814=RMB 214814

**Case 4** refers to the situation where both the statutory circumstance of capping under the "previous provisions" and the capping at three times + 12 months under the Labor Contract Law were fulfilled. The statutory circumstances of this category are similar to those of Case 2 but the condition of capping of employees' wages at three times must be fulfilled at the same time.

#### Computation of Economic Compensation:

Amount of economic compensation prior to 2008: 12 months×RMB 10000=RMB 120000

Amount of economic compensation after 2008: 1.5 months×RMB 9876=RMB 14814

Total economic compensation:  
RMB 120000+RMB 14814=RMB 134814

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# 经济补偿金的分段计算

○文 董保华工作室 邹洋

作为企业的人力资源管理部门，计算离职员工的经济补偿金是日常必需的工作之一。由于《劳动合同法》扩大了经济补偿金的支付范围并改变了它的计算标准，经济补偿金的分段计算成为了一个难题。本文将结合案例，围绕经济补偿金的分段计算进行系统的阐述，同时详细总结各种情况下的法定情形，力求帮助大家厘清这一工作难题。

## 模拟案例（以上海为例）

**案**例1：张某1988年1月1日进入单位，2009年4月30日因医疗期满被依法解除劳动合同，其平均月工资为8000元。

案例2：张某1988年1月1日进入单位，2009年4月30日因不能胜任被依法解除劳动合同，其平均月工资为8000元。

案例3：张某1988年1月1日进入单位，2009年4月30日因经济性裁员被依法解除劳动合同，其月平均工资为10000元。

案例4：张某1988年1月1日进入单位，2009年4月30日因不能胜任被

依法解除劳动合同，其月平均工资为10000元。

（注：2008年上海市职工月平均工资的3倍为9876元）

以上是四个经济补偿金分段计算的最典型，也是最容易混淆的案例，每一个案例都是一种类型的代表，尽管案情基本相似，但是计算的结果却相差很大。

计算经济补偿金最基本的公式为：经济补偿金=基数×年限。可见，影响经济补偿金的因素有二：基数和年限，而经济补偿金的计算亦是据此进行分段的。

### 一、经济补偿金的基数

由于2008年1月1日之前施

行的相关法律法规的规定（以下简称“以前规定”）并未对经济补偿金的基数进行封顶限制，而《劳动合同法》则对基数进行封顶，即如果劳动者在劳动合同解除或者终止前十二个月的平均工资高于上年度职工月平均工资三倍的，向其支付经济补偿的标准按职工月平均工资三倍的数额支付，向其支付经济补偿的年限最高不超过十二年，简而言之为“3倍+12月封顶”。因此，在不同情况下经济补偿金的基数有所不同：

1、如果劳动者的月平均工资不高于上年度本市职工月平均工资三倍，经济补偿金的计算基数按劳动者在劳动合同解除或终止前十二个月的月平均工资确定。

2、如果劳动者月平均工资高于上年度本市职工月平均工资三倍的，则按职工月平均工资三倍进行封顶来确定基数，同时要注意的是，实施封顶计算经济补偿金基数的年限应自《劳动合同法》施行之日起计算，《劳动合同法》施行之前的工作年限仍按以前规定的标准计算经济补偿金基数。

## 二、经济补偿金的年限

“以前规定”和《劳动合同法》都对经济补偿金的年限进行封顶限制，尽管看上去都是进行12个月的封顶，但是其中差别却很大。“以前规定”对法定情形进行12个月的年限封顶，而《劳动合同法》只有在“基数”符合封顶条件时才对“年限”进行12月封顶，所以只需看基数封顶情况即可。具体的讲，如果《劳动合同法》规定应当支付经济补偿金，同时也不属于以前规定中“经济补偿金总额不超过劳动者十二个月的工资收入”情形的，经济补偿年限自用工之日起计算；但如果《劳动合同法》规定应当支付经济补偿金，但属于以前规定中“经济补偿金总额不超过劳动者十二个月的工资收入”情形时，

《劳动合同法》施行前的经济补偿年限要按照以前的规定计算；2008年1月1日后的工作年限按照《劳动合同法》的规定并入计算。

此外，新法旧法对经济补偿金年限的具体计算标准也不尽相同，并且根据以前各地的规定不同而有所差异。以上海为例，2008年1月1日以前，劳动者连续工作每满一年给予一个月经济补偿金，满六个月不满一年的，按一年计算；2008年以后，《劳动合同法》规定，劳动者连续工作每满一年给予劳动者本人一个月的经济补偿金，不满六个月给半个月的经济补偿金，满6个月的按一年计算。举一个简单的例子，某员工连续工作1年4个月，按照旧法计算经济补偿金的年限应当为1，而按照新法则是1.5。

## 三、经济补偿金计算差异的实质原因

其实，如果能够理解产生经济补偿金计算差异的实质原因，计算难题便可顺利解决。可以看到，之所以会产生经济补偿金的分段计算的问题，表面原因是由于新法实施引起的过渡性问题，也有人将其归结为计算标准的不同，实际上是因为“以前规定”和《劳动合同法》对经济补偿金的封顶理念不同所致。“以前规定”采用了对年限在法定情形下进行12月封顶的立法思路，而《劳动合同法》则是对基数进行3倍+12月封顶。明确了这一点，就可以准确把握计算经济补偿金总的原则：凡遇到有封顶的，不论是对基数还是对年限，都要以2008年1月1日为分界点进行分段计算，在计算时先根据封顶情况进行分类，以本文下面为大家总结的各种类型作为参考，再根据不同类别进行具体计算，这一难题也就迎刃而解了。

## 四、案例解析：

下面我们就每个案例进行详细分

析。

（一）案例1属于经济补偿金的基数和年限均未遇到封顶的情况。这是一种最为简单的情况，即无论根据新法还是旧法均未遇到封顶情形，此时经济补偿金的计算年限自用工之日起开始起算，其标准参照《劳动合同法》的规定。

这一类型包括的法定情形主要有：

1、医疗期满解除；2、客观情况变化解除；3、经济性裁员；4企业破产解散

### 经济补偿金的计算：

经济补偿金的基数：8000元

经济补偿金年限=1988.1.1-2009.4.30=21年4个月（按21.5个月计算）

经济补偿金：8000元×21.5个月=17.2万元

（二）案例2属于按照“以前规定”要进行年限封顶，而按照《劳动合同法》规定由于劳动者工资未超过职工月平均工资的3倍，因此对基数不封顶的情形。此时，按照新法、旧法的标准分段计算，然后两者相加即可。

这一类型包括的法定情形主要有：

1、协商一致解除；2、不能胜任解除；3、各地的特别规定。以上海为例，如（1）以暴力、威胁或者非法限制人身自由的手段强迫劳动，（2）未按照约定支付劳动报酬或者提供劳动条件，这两种情况也属于这一类型。

### 经济补偿金的计算：

经济补偿金基数：8000元

经济补偿金年限：12个月（2008前）+1.5个月（2008后）=13.5个月

经济补偿金=8000元×13.5=10.8万元

(三) 案例3属于尽管不符合“以前规定”封顶的法定情形,但符合《劳动合同法》3倍+12月封顶的情况。这一类型与案例1的法定情形类似,但要同时满足劳动者工资符合3倍封顶的条件。

**经济补偿金的计算:**

2008年前经济补偿金数额: 20个月  $\times$  10000元=20万元

2008年后经济补偿金数额: 1.5个月  $\times$  9876元=1.4814万元

经济补偿金总额=20万+1.4814万=20.4814万元

(四) 案例4属于既符合“以前规定”封顶的法定情形,又符合《劳动合同法》3倍+12月封顶的情况。这一类型包括的法定情形与案例二相似,但要同时满足劳动者工资符合3倍封顶的条件。

**经济补偿金的计算:**

2008年前经济补偿金数额: 12个月  $\times$  10000元=12万元

2008年后经济补偿金数额: 1.5个月  $\times$  9876元=1.4814万元

经济补偿金总额=12万+1.4814万=13.4814万元 **CEW**