## 網上微講座 60mins HR＋

# 713䩾酬計算專題（二） 713案例計算演練 

COURSE CODE：HRLA－MSOO3－2
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## 1． 713 案例計算演練：講述 713 的由來及其有關的終審法院判例

## 1.1 甚麼事情導致《僱傭條例》的工資修訂？

Lisbeth Enterprises Limited v Mandy Luk［2006］ 9 HKCFAR 131 （The Philip Wain Case）
－終審法院須研究「合約傭金」是否應納入假日薪酬及年假薪酬的計算範圍之内：申索人在被告人經營的健美中心任職顧問，申索人有權按合約獲得每月港幣 5，600 元的底薪，以及按月累計及計算的銷售傭金。

- 修訂前的《僱傭條例》第 41 及 41 C 條規定，假日薪酬及年假薪酬應參照工資計算。
- 終審法院認為，「工資」一詞應理解為包括按日累計及計算的合約傭金（其金額每日不同），但不包括按月累計及計算的傭金。因此，申索人未能成功追討額外的法定假日薪酬及年假薪酬。


## 1．2《2007 年僱傭（修訂）條例》實施後僱員可以提出甚麼形式的索償？

LRD Ref．No．： $\qquad$ $11-201^{9} 9-t$

第二部分

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爲方便進行調停，我們會在舉行調停會議前，把本頁的副本交予被追討的一方，以供參考。申索人在下方簽署後，即表示同意本處把本頁的副本交予被追討人。

申索人姓名：Z $\qquad$ （請用正楷）申索人簽署 ： $\qquad$

 RI／RE





中察人姓名：LEv


骶删去不適用者

LD 15（a）（Rev．2015）

## 1.3 修訂後在工資計算上出現甚麼 困難 ？

## Employment（Amendment）Ordinance 2007

－It was gazetted on 14 May 2007 and became effective on 13 July 2007 （except section 16 in relation to the requirement to keep wage and employment records，which became effective on 13 January 2008）．
－There are some changes made to the Amendment Ordinance regarding the calculation of the daily／monthly average wages earned by an employee in determining his statutory entitlements．It is now expressly set out that in calculating the daily／monthly average wages during the period of 12 months or the shorter period：
（a）any period therein for which the employee was not paid his wages or full wages by reason of（i）any maternity leave，rest day，sickness day，holiday or annual leave taken by the employee；（ii）any leave taken by the employee with the agreement of his employer；（iii）his not being provided by his employer with work on any normal working day；or（iv）his absence from work due to temporary incapacity for which compensation is payable under the Employees＇Compensation Ordinance；and （b）any wages paid to him for the period referred to in paragraph（a）， are to be disregarded．
－In addition，if for any reason it is impracticable to calculate the daily／monthly average wages earned by an employee in the manner provided for in the Amendment Ordinance， the amount may be calculated by reference to the wages earned by a person who was employed at the same work by the same employer during the period of 12 months，or if there is no such person，by a person who was employed in the same trade or occupation and at the same work in the same district during the period of 12 months immediately before the specified date．

## a）Calculation of Maternity Leave as an example（1）

Q：I am employed on piece rates and daily wages vary from day to day，how much paid maternity leave I am entitled？
Ans：
－Maternity leave pay is a sum equivalent to four－fifths $(4 / 5)$ of the average daily wages earned by an employee in the 12－month period preceding the first day of the maternity leave
－If an employee is employed for less than 12 months，the calculation shall be based on the shorter period
－In calculating the average daily wages，an employer has to exclude：
（1）the periods for which an employee is not paid her wages or full wages，including rest day，statutory holiday，annual leave，sickness day，maternity leave，sick leave due to work injuries，or leave taken with the agreement of the employer，and any normal working day on which the employee is not provided by the employer with work；
（2）the sum paid to the employee for above mentioned conditions／periods
－Maternity leave pay should be paid on the normal pay day of the employee
b）Calculation of Maternity Leave as an example（2）
Q．If my $1^{\text {st }}$ day of Maternity Leave is $20^{\text {th }}$ November 2013，how is my paid Maternity Leave be calculated？I notice that there is a so call＂Specific Day＂in EO．How is it related to calculation of my PAID Maternity Leave？

Ans：According EAO 2007：
－The specified date is the first day of the maternity leave，i．e． $20^{\text {th }}$ November 2013
－The 12－month average wages，according to law，is calculated on the basis of the wages earned in the period $1^{\text {st }}$ November 2012 and $31^{\text {st }}$ October 2013.


## 1.4 修訂後怎樣計算僱員的法定假期權益 ？

## How to calculate Statutory Holiday Pay？

－The daily rate of holiday pay is a sum equivalent to the average daily wages＊earned by an employee in the 12－month period preceding the specified dates：
（1）If Statutory Holiday is one day，the specific date $=$ day of the statutory holiday
（2）If $S / H$ is more than one day，the specific date $=1^{\text {st }}$ day of the $\mathrm{S} / \mathrm{Hs}$
＊does not include EYP and any other items mentioned in definition of wages in s．2，EO
－If an employee is employed for less than 12 months，the calculation shall be based on the shorter period
－Again，in calculating the average daily wages，an employer has to exclude：
（i）the periods for which an employee is not paid his wages or full wages，including rest day，statutory holiday，annual leave，sickness day，maternity leave，sick leave due to work injuries or leave taken with the agreement of the employer，and any normal working day on which the employee is not provided by the employer with work；together with （ii）the sum paid to the employee for such periods


## 1.5 修訂後對計算代通知金的影響

僱主或僱員終止合約的：

## 1．5．1 通知期以日或星期為單位

a）有預先發出終止合約通知的，代通知金＝
＂通知日期＂前 12 個月內僱員所賺取的每日平均工資 X 通知期内通常須付給僱員工資的日數


12 months Avg．Salary $x$ Notice period in days
b）沒有預先發出終止合約通知，代通知金＝
$\stackrel{\text { No Notice }}{\substack{\text { Last day of service } \\ \leftarrow}}$

## 1．5．2 通知期以月為單位＊

## a）有預先發出終止合約通知 的，代通知金＝

＂通知日期＂前 12 個月内僱員所賺取的每月平均工資 X 通知期的月數
b）沒有預先發出終止合約通知，代通知金＝
＂終止合約的日期＂前 12 個月內僱員所賺取的每月平均工資 $\times$ 通知期的月數
＊s． 6 EO，以通知終止合約的情況 7 of 2001 12／04／2001
－（4）就本條而言，＂月＂（month）指由發出終止僱傭合約通知之日起計，或由僱傭開始之日起計（視屬何情況而定）至下個月份同一日的前一日終結時的一段期間 如下個月份並無同一日，或
－如發出通知或僱傭開始之日為一個月的最後一日，則至下個月份最後一日終結時的一段期間。 （月到月）

## 1．5．3 法例規定須剔除的

在計算平均工資時，須剔除：
（i）未有付給僱員工資或全部工資的期間，包括休息日，法定假日，年假，病假，產假，工傷病假或在僱主同意下放取的假期，以及沒有向僱員提供工作的任何正常工作日；連同
（ii）就該剔除期間已支付的款項

## 1.6 計算年假的演示

入職日期：26／9／2018
離職日期：12／7／2019（按遞信計）
實際離職日期：9／7／2019（提早3日離職）
AL per Year 12 days
月薪：\＄15，000

No．of Days of work in 2019：9／7／2019－1／1／2019＝ 190 days
Pro－rata Annual Leaves：190／365＝ 6.25 days

Average Daily Salary：
Salary in Sept $2018=(30-26+1) / 30 * \$ 15,000=\$ 2500$
Salary from Oct 2018 to Jun $2019=\$ 15,000 \times 9=\$ 135,000$
Calculation Employment Days up to Jun 2019 ＝2019／6／30－2018／9／26＋1＝ 278 days （vs actual 287）

Average Daily Salary $=(\$ 2500+\$ 135000) / 278=\$ 494.6$ per day
$\Rightarrow$ Pro－rata Annual Leaves $=\$ 494.6 \times 6.25$ days $=\$ 3,089.58$

## 2． 713 案例計算演練：僱員在月中離職的時候按照 713 怎麼計算

- 月中工資怎樣計算？
- 僱員提前離職按照什麼準則扣薪水？
- 按比例的年假薪酬怎樣計算？
- 按比例的年終酬金（End of Year Payment／Double Pay）怎樣計算？


## Contract Staff for One Year

入職日期：26／9／2018
離職日期：12／7／2019（按遞信計）
實際離職日期：9／7／2019（提早3日離職）
One Day No Pay：2／7／2019
AL per Year： 12 days
Notice： 1 month
月薪：\＄15，000

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