

Japanese Employment Law Update



April 12, 2022

Recent Amendment to the Act on the Protection of Personal Information of Japan

The Amendment to the Act on the Protection of Personal Information of Japan (the “**Amended APPI**”), which was enacted in June 2020, came into effect on April 1, 2022.

In this issue, we focus on steps that employers should take to ensure that they are compliant with the Amended APPI with respect to the transfer of employee personal data to other entities. Prior to this amendment, the APPI regulated (a) the provision of personal data to other entities and (b) the provision of personal data to other entities located outside of Japan. The Amended APPI enhanced existing requirements and granted greater rights to data subjects, thus resulting in larger risk for employers for failing to comply.

1. Identify status of storage and access to employee personal data

As the first step, employers should identify all databases where employee personal data is stored, group entities that control or have access to the databases, external service providers that maintain the databases, the countries where such group entities and services providers are located, and the countries where the servers holding the data are located. Having this information is necessary in order to fulfill the requirements under the Amended APPI.

2. Consider the right approach for provision of personal data to other entities

Employers should review the current status of data sharing with their group entities and service providers, as well as the legal justification for doing so, and consider if any changes need to be made. Common legal justifications for provision of personal data to other entities include the data subject’s consent, entrustment (delegation), and joint use. In this exercise, employers should take into consideration the different requirements that

apply to each of these justifications.

For example, if personal data is provided to third parties based on employee consent, employers have an obligation to maintain records regarding the transfer. The Amended APPI now requires employers to disclose such records promptly if requested by an employee.

3. Consider the right approach for provision of personal data to other entities located outside Japan

Under the APPI before the amendment, any transfer of employee personal data to other entities located outside Japan (unless the entity is located in the EU/EAA or the U.K.), generally needed to be made (i) with employee consent, or (ii) to recipients who have implemented systems for taking appropriate measures to handle personal data in accordance with the APPI on a continuous basis, such as through contracts or group policies (“**Appropriate Measures**”).

Now, with respect to either of these approaches, the Amended APPI imposes the following additional obligations on employers providing personal data to other entities located outside Japan.

(i) Consent

When obtaining consent from employees, employers must now provide the employees with certain relevant information, such as the name of the country to which their personal data will be transferred, information on the data privacy regulations of that foreign country, and the security measures implemented by the third-party recipient. The purpose of this requirement is to enable data subjects to determine whether or not to give consent after knowing the extent of protection their personal information may be afforded in the country where their personal information will be transferred.

While it is not necessary to provide this information to existing employees from whom employers have already obtained consent, employers should provide this information upon obtaining consent from new employees. To assist with this obligation, information on the privacy regulations of major countries is provided on the Personal Information Protection Commission’s website

(<https://www.ppc.go.jp/personalinfo/legal/kaiseihogohou/#gaikoku>) (provided only in Japanese).

(ii) Appropriate Measures

To justify the transfer of data to recipients outside of Japan that have implemented Appropriate Measures, employers must:

- (a) ensure by periodic monitoring that the recipient of data is taking Appropriate Measures on a continuous basis;
- (b) confirm any changes to the data privacy regulations of the country where the recipient is located that may affect the Appropriate Measures to be taken by the recipient, and take necessary measures to resolve any issues, such as requesting the recipient to take corrective measures or suspending the provision of personal data to the recipient; and
- (c) provide information on these measures if requested by an employee.

Employers should take into consideration these requirements and determine which approach would be more suitable for various transfers of employee data to group entities and service providers located outside of Japan. It should be noted that, even if personal data is stored on a server in Japan, it would be considered as a transfer of data outside of Japan if the data is accessible by a foreign entity.

4. Take steps to be compliant

Based on the results of the considerations described above regarding transfers of personal data of their employees, employers should update their privacy policies and revise their employee consent forms, as necessary, to meet the requirements under the Amended APPI.

There are additional amendments to the APPI not covered under this summary. The details should be confirmed by referring to the Amended APPI and its guidelines, and consulting with legal advisors for advice tailored to the issue at hand.

For a more detailed overview of the Amended APPI, please also refer to our firm's blog: [Overview of Amendment to the Act on the Protection of Personal Information of Japan](#)

coming into effect on April 1, 2022 (<https://www.tmi.gr.jp/eyes/blog/2022/13208.html>).

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