

Japanese Employment Law Update



December 27, 2022

On November 28, 2022, an amendment to the Ordinance for Enforcement of the Labor Standards Act (the “Amended Ordinance”) introducing the digital payment of wages was promulgated. Under the Amended Ordinance, employers may pay wages to an account at a Funds Transfer Services Provider (*Shikin-ido-gyosha*: businesses other than banks that are engaged in remittance transactions) designated by each employee (“Digital Payment of Wages”). Funds Transfer Services Providers who wish to handle Digital Payment of Wages can apply for designation by the Minister of Health, Labour and Welfare beginning April 1, 2023, and undergo examination to determine whether they meet the requirements under the Amended Ordinance. Examinations are expected to take a few months. Once the Funds Transfer Services Providers receive their designations, employers may utilize Digital Payment of Wages by obtaining the employee’s consent and taking certain necessary steps.

In this issue, we provide a brief overview of Digital Payment of Wages and its potential impact on business operations.

1. Background on Introduction of Digital Payment of Wages

Digital Payment of Wages was introduced in response to the recent trend in Japan where cashless payments are becoming increasingly common. Employees more often wish to receive wages through accounts at Funds Transfer Services Providers because it saves them the trouble of having to transfer their wages from their bank accounts to their accounts at Funds Transfer Services Providers. Digital Payment of Wages also makes it easier for foreign employees to send funds to their home countries.

2. The Current System

In principle, under the Labor Standards Act, employers are required to pay employees wages “in currency” (i.e., by banknotes), which is considered the safest, fastest and easiest way to pay wages essential for the employees’ livelihoods. According to this legal principle, even paying wages by cashier’s checks is prohibited because it would expose

employees to inconvenience and risk. As an exception to this rule, employers are allowed to pay wages by transfer to a bank account or brokerage account designated by employees after obtaining employee consent. This is the most common way of paying wages in Japanese business practice.

3. Overview of Digital Payment of Wages

With each employee's consent, employers will be able to pay all or a part of the employee's wages (including regular wages, bonuses and retirement allowances) by transferring them into the employee's designated account at a Funds Transfer Services Provider.

(1) Starting Digital Payment of Wages

In order to start Digital Payment of Wages, employers are required to follow certain procedures under the Amended Ordinance and administrative guidance of the Ministry of Health, Labour and Welfare (MHLW) which can be summarized as follows.

- a. Executing a labor management agreement with a labor union or employee representative representing a majority of the employees at the workplace, stipulating the scope of employees to which Digital Payment of Wages shall be applied, the Funds Transfer Services Providers to be used, etc.
- b. (i) Explaining certain necessary information regarding Digital Payment of Wages to employees, (ii) offering them the options of the traditional methods of payment (i.e., transmitting to a bank account) or Digital Payment of Wages, and (iii) obtaining each employee's consent to Digital Payment of Wages.
- c. Paying wages to the employee's account at the Funds Transfer Services Provider in accordance with the Funds Transfer Service Provider's payment process which varies depending on their business model.

The MHLW's administrative guidance provides for additional detailed procedures to be followed by employers.

(2) Funds Transfer Services Providers

Funds Transfer Services Providers who can handle Digital Payment of Wages are to be designated among enterprises that are registered as "Type II Funds Transfer Services Providers (*Dai-nishyu Shikin-ido-gyosha*)" defined under the Payment Services Act. Type

II Funds Transfer Services Providers provide exchange transaction services for transactions of one million JPY or less. As of October 31, 2022, 85 companies (e.g., NTT DOCOMO, INC., LINE Pay K.K., and PayPay K.K.) including two foreign companies (PayPal Pte. Ltd. and WorldRemit Ltd.) are registered as a Type II Funds Transfer Services Provider.

In addition, in order to be designated as a Funds Transfer Services Provider which can handle Digital Payment of Wages, it is necessary to meet certain requirements such as having the technological capability to provide Digital Payment of Wages appropriately and reliably.

4. Advantages and Disadvantages of Digital Payment of Wages

Digital Payment of Wages could be chosen by workers who routinely use cashless payment and wish to omit the process of topping up their Funds Transfer Services Provider accounts, or by foreign workers who are able to open accounts at Funds Transfer Services Providers more easily than bank accounts in Japan. Use of Digital Payment of Wages may help attract such workers. Furthermore, depending on the business model of the Funds Transfer Services Provider, employers may be able to trim costs and workload related to the payment of wages.

On the other hand, even if Digital Payment of Wages is chosen by employees, any amount over one million JPY (the maximum amount that can be transmitted through an account at a Type II Funds Transfer Services Provider), or any part of wages which the employee does not desire to receive by Digital Payment of Wages would need to be paid by the traditional method. In addition, it is unlikely that all employees would agree to Digital Payment of Wages. Thus, the employer will likely need to pay wages by two different methods which increases burden.

5. Notes for Employers Who Use Digital Payment of Wages

- (1) Employers are required to explain a wide range of information to its employees before obtaining their consent, including the system by which the employee's balance shall be quickly repaid in full in case of bankruptcy of the Funds Transfer Services Provider. It is advisable to refer to the consent form issued by the MHLW which includes the list of such information to be explained by employers.
- (2) When obtaining employees' consent for Digital Payment of Wages, employers should ensure that its employees are giving consent on a fully voluntary basis. For this purpose, the employer should explain the difference between Digital Payment

of Wages and payment to bank accounts, and clearly offer the option to choose bank account payments.

- (3) The Funds Transfer Services Providers which are available for Digital Payment of Wages are planned to be listed on the MHLW website¹. Since the designation of Funds Transfer Services Providers could be cancelled or declined in the future, employers should routinely confirm the updated information.

How Digital Payment of Wages will operate is still unclear, and there is no certain information on which Funds Transfer Services Providers will apply for designation. Also, as stated above, the process of paying wages will differ from provider to provider which may complicate operations for employers.

Employers who are interested in this new system are recommended to check the latest information, including the leaflet which is planned to be issued by the MHLW in the near future.

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¹https://www.mhlw.go.jp/stf/seisakunitsuite/bunya/koyou_roudou/roudoukijun/zigyonusi/shienijigyou/03_00028.html