

II Wages

1 Principles of Payment of Wages

In the Labor Standards Law, “wage” means the wage, salary, allowance, bonus and every other payment to the employee from the employer as remuneration for labor, regardless of the name by which such payment may be called (Article 11).

In concluding a labor contract, the employer is required to provide the employees with written details of wages. (Article 15).

The Law also stipulates the principle of payment of wages in order to ensure that the wages are handed to the employee as follows (Article 24);

- ① Wages must be paid in cash except in cases provided for by law or ordinance, or by collective agreement
- ② Wages must be paid directly to the employees themselves
- ③ Wages must be paid in full. Partial deduction may not be permitted with the exception of taxes, social insurance premiums and others according to the written agreement
- ④ Wages must be paid at least once a month on a definite date, except extraordinary wages such as a bonus, etc.

2 Guarantee of Wages and Minimum Wages

As wages are the most important matter for employees’ life, the Labor Standards Law stipulates guaranteed payment as follows;

- ① In the event of suspension of business for reasons attributable to the employer, the employer should pay an allowance equal to or more than 60% of the employee’s average wage (Article 26).

Ⅱ 賃金

1 賃金支払いの原則

労働基準法では、賃金とは、賃金、給料、手当、賞与その他名称の如何を問わず労働の対償として使用者が労働者に支払うすべてのものをいいます（第 11 条）。

使用者は、労働契約の締結の際に、労働者に対して賃金に関する事項は書面に記載して渡す必要があります（第 15 条）。

そして、賃金が労働者の手に確実に渡るように、賃金の支払いについての原則を次のように定めています（第 24 条）。

- ① 法令や労働協約で定めがある場合を除いて、通貨で支払わなければならない。
- ② 直接本人に支払わなければならない。
- ③ 全額を支払わなければならない。税金や社会保険料、労使協定を結んでいるもの以外は控除できない。
- ④ 賞与など臨時のもの以外は、毎月 1 回以上、決まった日に支払わなければならない。

2 賃金の保障と最低賃金

賃金は労働者の生活にとって最も重要なものですから、労働基準法では賃金の保障について次のようなことを定めています。

- ① 使用者の都合で休業した場合は、平均賃金の 6 割以上の休業手当を支払わなければならない（第 26 条）。

- ② With respect to employees employed under a piece-work system or other sub-contracting system, the employer should guarantee wages at a fixed amount proportionate to hours of work (Article 27).
- ③ In the event an employee requests the payment of wages to cover emergency expenses for illness, accident or other emergency circumstances, an employer should pay accrued wages prior to the normal pay day (Article 25).
- ④ No employer can hire an employee for less than the legal minimum wage (Article 28, Minimum Wage Act). The minimum hourly wage is set by region and that for Tokyo is ¥1,072 as of Oct. 1, 2022. Higher rates are set for certain industries by region as well.
- ⑤ Claims for wages will lapse if not made within 3 years; and claims for retirement allowances will lapse if not made within 5 years (Article 115, Supplementary Provisions Article 143).

3 Decreases in Wages as Sanctions

A company may “decrease wages as a sanction,” in order to maintain discipline at the firm. This is different from deducting wages which amount is according to the hours of lateness or absence. The company should state the details about decreases as sanctions in the rules of employment.

In the event the rules of employment provide for a decrease in wages as a sanction, ①the amount of a decrease for a single deduction shall not exceed 50% of the daily average wage, and ② the total amount of decrease shall not exceed 10% of the total wages for a single pay period (Article 91).

- ② 出来高払制、請負制の場合は、労働時間に応じて一定額の賃金を保障しなければならない（第 27 条）。
- ③ 労働者が、病気、災害など非常の場合の費用に充てるために請求した場合は、支払い期日前であっても、働いた分の賃金を支払わなければならない（第 25 条）。
- ④ 最低賃金法の定める最低賃金未満では労働者を使用することはできない（第 28 条）。

2022 年 10 月 1 日以降の東京都の最低賃金は、（時間額）1,072 円です。

この他に、産業別最低賃金が定められています。
- ⑤ 賃金の請求権は 3 年間、退職手当の請求権は 5 年間行わない場合においては時効によって消滅する（第 115 条、附則第 143 条）。

3 減給の制裁

遅刻や欠勤をした時間分の賃金を差し引くのと違って、会社が職場の秩序を守るために「制裁として減給する」ことがあります。

このような場合、会社は減給の制裁について就業規則に定めておく必要があります。

減給の制裁を就業規則で定める場合は、減給できる限度額が次のように定められています（第 91 条）。

- ① 1 回の額が平均賃金の 1 日分の 2 分の 1
- ② 総額が 1 賃金支払期における賃金総額の 10 分の 1

4 If a Company Goes Bankrupt and Wages Haven't Been Paid

In an event that a company goes bankrupt and it fails to pay wage to its employees, there is the system in which the government advances the employees' wage on behalf of the company. This is based on the Security of Wage Payment Law ("CHINKAKU-HO").

(1) Person eligible to receive replacement payment

- ① When a company which has been engaged in business activities for a year or more goes bankrupt, and its employee has been laid off from the company without being paid, one is eligible for reimbursement of unpaid wages. However, this system is not applicable to an employee whose total amount of unpaid wage is less than ¥20,000.
- ② Employees who have retired from the company on a day within a period from 6 months before the bankruptcy to 2 years thereafter as counted from the day when bankruptcy was filed with the court, or the day for application as a bankruptcy in fact to the Labor Standards Inspection Office (in the case of "de facto bankruptcy").

"De facto bankruptcy" is only applicable to small and medium-sized companies, wherein the Labor Standards Inspection Office recognizes that a business has become defunct with no chance of reestablishment and is unable to pay wages, even though bankruptcy has not yet been filed.

(2) Unpaid wages subject to replacement payment

- ① Subject to replacement payment is the unpaid sum of the regular wages and the retirement allowance which should be paid during the period from the date 6 months before the resignation to the day before the claim date. Extraordinary wages or discharge notice allowance shall not be subject to the payment.

4 会社が倒産し賃金が支払われないとき

会社が倒産したため労働者の賃金が未払いになったとき、国が立替払いをする制度があります。「賃金の支払の確保等に関する法律（賃確法）」です。

(1) 立替払いを受けることができる人

① 1年以上営業してきた企業に労働者として雇用されてきて、倒産に伴い退職し、未払賃金がある人。ただし、未払賃金の総額が2万円未満の場合は、立替払いを受けられません。

② 裁判所に対する破産等の申立日（「破産等の場合」）、又は、労働基準監督署長に対する倒産の事実についての認定申請日（「事実上の倒産の場合」）の6か月前の日から2年の間に退職した人。

「事実上の倒産」とは、破産等の手続きはとられていないが、事実上、営業が停止していて、再開の見込みがなく、賃金支払い能力がないと労働基準監督署長が認定した場合で、中小企業のみが対象になります。

(2) 立替払いの対象となる未払賃金

① 退職日の6か月前の日から、立替払い請求日の前日までに支払い期日が到来している未払いの賃金、退職金が対象となります。賞与、解雇予告手当は対象になりません。

- ② The maximum of replacement payment is 80% of the total unpaid wages and the ceiling is shown in the following table:

Age at Date of Resignation	Maximum of Unpaid Wages	Maximum of Replacement Payment
45 or over	¥3,700,000	¥2,960,000
Between 30 and 44	¥2,200,000	¥1,760,000
Under 30	¥1,100,000	¥880,000

Please contact the Labor Standards Inspection Office on procedures regarding payments made on behalf of failed companies.

5 Annual Salary System

The annual salary system is the pay system in which a company decides the annual lump payment of its employee(s) by evaluating as a whole the ability, work achievements, potential, and so on, of the subject employee.

Companies are also to pay overtime pay to employees in this system. Even if a given amount of overtime pay is already included in an annual salary, unless the breakdown of that salary is stated (e.g. annual salary of X yen; extra pay of X yen, etc.), an employer is obliged to remunerate overtime work separately. Also, if an employee has worked more hours than pre-designated, the employer must compensate the difference.

- ② 立替払いの限度額は、未払賃金の額の80%で、次のとおり上限があります。

退職日の年齢	未払賃金の上限額	立替払いの上限額
45歳以上	370万円	296万円
30歳以上45歳未満	220万円	176万円
30歳未満	110万円	88万円

立替払いの請求手続については、労働基準監督署に問い合わせてください。

5 年俸制

年俸制とは、会社が、労働者の能力や仕事の成果、将来への期待などを総合的に評価して、1年間の総賃金を取り決める賃金制度です。

年俸制でも、残業代は支払わなければなりません。一定の金額を割増賃金分として含んだ年俸額であるならば、その内訳（年俸〇〇円、割増賃金分××円など）を明示していなければ、使用者は、別途、支払う義務が生じます。また、労働者が、実際に働いた結果、事前に決められた割増賃金分を超えて働いた場合には、使用者は、割増賃金の不足分を追加して支払わなければなりません。