

Guide for Replacement Payment of Unpaid Wages

Replacement payment of unpaid wages is the system in which the Japan Organization of Occupational Health and Safety pays workers, who have ended their job with unpaid wages from “bankrupt” enterprises, a certain percentage of their unpaid wages on behalf of the business operators.

When replacement payment is made, Japan Organization of Occupational Health and Safety obtains subrogation rights of claims for wages of workers who received replacement payments, and files claims to business operators, etc. for reimbursement of an amount equivalent to the benefits.

Japan Organization of Occupational Health and Safety

Examination Division, Occupational health-Wage and Assistance Department

1-1 Kizukisumiyoshi-cho, Nakahara-ku, Kawasaki-shi, Kanagawa

Japan 211-0021

Telephone number: 044-431-8663

URL <http://www.johas.go.jp>

I Persons Who Can Get a Replacement Payment

Persons who meet the following requirements can get a replacement payment.

Persons who meet the following requirements can get a replacement payment.

1 A person employed as a **Worker*** at a **workplace where Worker's Accident Compensation Insurance applies*** in an enterprise (can be a corporation or individual) that did business activities for one year or more, and along with the enterprise **bankruptcy*** left their job **within a certain time period***, with unpaid wages of 20,000 yen or more remaining.

*** Business where Worker's Accident Compensation Insurance applies**

A business where Worker's Accident Compensation Insurance applies is a business where the Workmen's Accident Compensation Insurance Law applies. This is currently businesses where it is mandatory to apply: all enterprises employing more one or more workers, excluding some agriculture, forestry and fisheries industries.

Further, this is regardless of whether Worker's Accident Compensation Insurance was subscribed to, nor whether the insurance premiums were paid.

*** Worker**

A Worker is a person who was employed in a bankrupted company, and received wages as payment for work. This does not apply to corporate officers who have rights to represent the corporation or rights to perform operations.

*** Bankruptcy**

A "Bankruptcy" covered by the replacement payment system is if any of the following apply to the enterprise in which the worker himself worked.

(1) In case the business owner petitions for commencement of bankruptcy proceeding, commencement of special liquidation proceeding, or commencement of rehabilitation proceedings, and the court decided or ordered for commencement (hereafter, "Bankruptcy").

(2) If bankruptcy proceedings are not done at a small or medium enterprise, but based on the worker's application, the Director of the Labour Standards Inspection Office deems that (1) Actual business activity is stopped (2) There is no expectation of restarting, and (3) It has no ability to pay wages (Hereafter, "De Facto Bankruptcy").

(Notes)

(i) Stopped business activity

Business activity is said to be stopped if the workplace is closed, all the workers laid off, and its original business activities are stopped.

Accordingly, if nothing more than the liquidation activities required to revoke the business are being done, then it is said to be stopped. But even if the business size shrinks, if its original business activities continue, then it is not said to be stopped.

(2) There is no expectation of restarting

Generally, the company is said to have no expectation of restarting if the owner has no intention to restart, and there is no expectation of restarting due to the commencement of liquidation activities, etc.

(3) No ability to pay wages

Generally, if the business owner does not have assets which can be allocated to wages, and if there is no expectation of paying wages by borrowing funds or other means. If it is only that debts exceed assets (called as excessive debts), then this point does not apply.

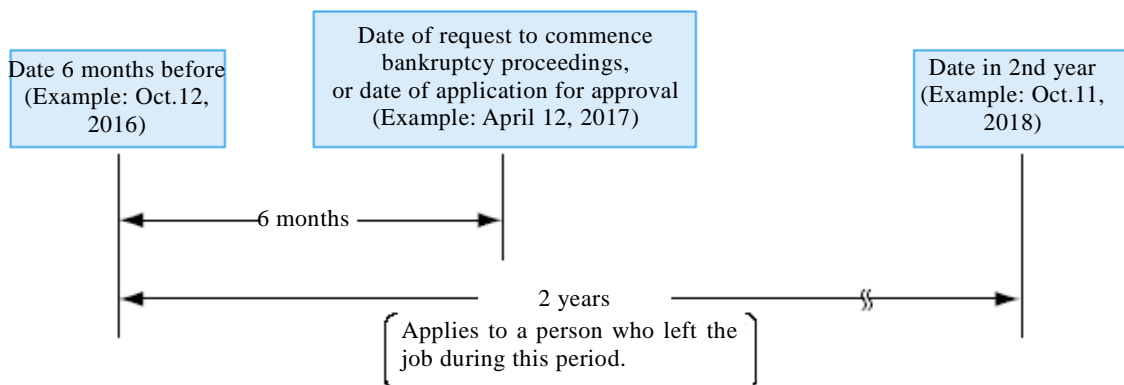
● **Small or medium size enterprise owner**

A small or medium size enterprise owner is one who meets any one of the following requirements before remarkable troubles occur in the business activities.

| Industry | Number of full time workers or capital amount |
|---|--|
| General | 300 or fewer workers, or 300 million yen or less capital |
| Wholesale | 100 or fewer workers, or 100 million yen or less capital |
| Service | 100 or fewer workers, or 50 million yen or less capital |
| Retail (including restaurants, etc.) | 50 or fewer workers, or 50 million yen or less capital |

* **Person who left the job within a certain time period**

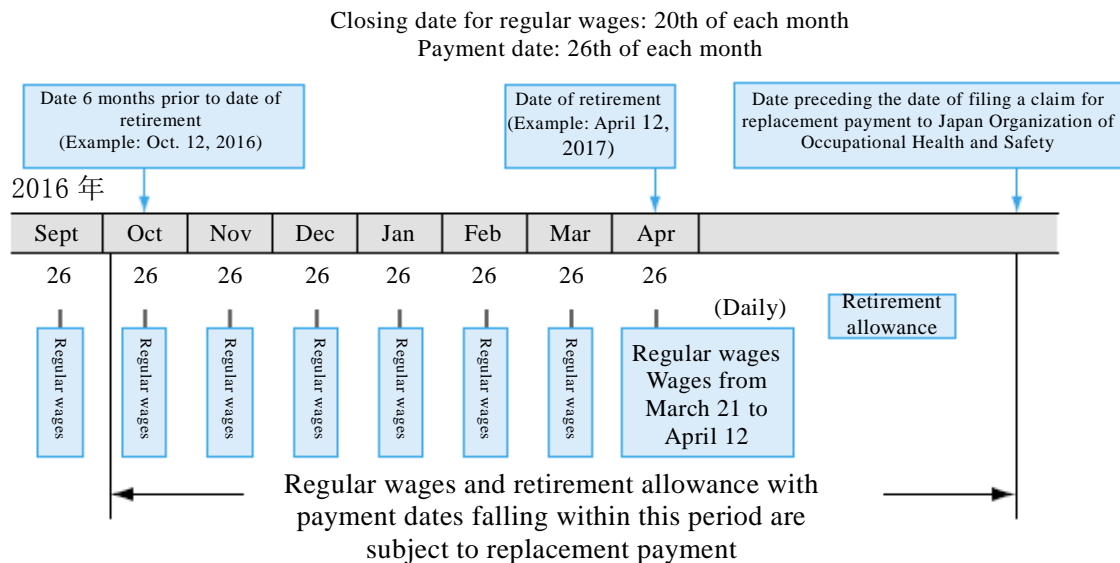
A person who left the company within a certain time period refers to a person who left the company in the 2 year period starting the day 6 months prior to the date of petition for bankruptcy etc. to the court or the date of application for approval of De Facto Bankruptcy to the Director of the Labour Standards Inspection Office.



II Unpaid Wages Subject to Replacement Payment

Unpaid wages subject to replacement payment are the unpaid **“Regular wages”*** and **“Retirement allowance”*** which were due during the period between the day six months prior to the date of retirement and the day preceding the date of filing a claim for replacement payment to the Japan Organization of Occupational Health and Safety (hereafter, “Organization”).

Reference: Example of “unpaid wages” subject to replacement payment (in case the amount is not paid in 6 months)



* Regular wages

These are wages (for example, basic salary, family allowance, commute allowance, officer’s allowance, housing allowance, overtime compensation, etc.) to be paid on a fixed date each month as stipulated in Article 24, paragraph 2 of the Labor Standards Act. It is the amount before deducting legal deductions such as taxes and social insurance premiums.

Further, the following are not covered: items which are essentially not wages (for example, special service bonus, payments named celebratory benefits for welfare payments, travel expenses to be reimbursed, supplies material charges, payment in lieu of notice, interest on late wages, etc.), bonuses, casual wages, etc.

Also in case of a salary system (including complete salary system where leave is given with full pay), if a person resigns during the wages calculation period, the monetary amount according to number of days at work will be the unpaid wages subject to replacement payment.

● Daily calculation method

For the daily calculation method, the calculation is done based on the specific method determined by the work rules, etc. Otherwise, the calculation is done according to the number of days at work. **Unpaid amount of that month’s salary** = Monthly salary (Monthly fixed amount to be paid as basic salary and various allowances) × actual number days worked ÷ fixed number of working days

Further, if fixed number of working days differ according to the month, use the average number of fixed working days calculated from the annual fixed number of working days divided by 12 months. (Commute allowance is also subject to daily calculation)

* Retirement allowance

Retirement allowance is the amount to be paid based on the retirement allowance rules, etc.

III Replacement Payment Amount

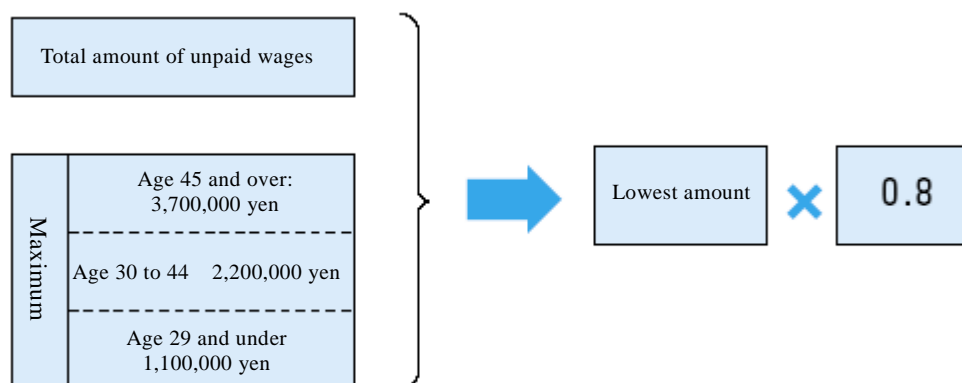
The actual replacement payment amount is 80% of the “Total amount of unpaid wages”

However, there is a maximum amount of the total amount of unpaid wages according to the **Age as of the date of retirement***, and if the total amount of unpaid wages exceed this maximum amount, then this amount will be the actual replacement payment.

Moreover, deductions that are planned to be deducted from the corresponding wages based on the credit of the business owner, such as company housing charges, goods procurement expenses, and loan repayment amount, are deducted from the total amount of unpaid wages.

Maximum amount of the total amount of unpaid wages

| Age as of the date of retirement | Maximum amount of the total amount of unpaid wages | Replacement payment cap (80% of maximum amount) |
|----------------------------------|--|---|
| Age 45 and over | 3,700,000 yen | 2,960,000 yen |
| Age 30 to 44 | 2,200,000 yen | 1,760,000 yen |
| Age 29 and under | 1,100,000 yen | 880,000 yen |



Example 1 If the retirement age is 32 and total amount of unpaid wages are 1,700,000 yen (regular wages 500,000 yen, retirement allowance 1,200,000 yen)

Total amount of unpaid wages are 1,700,000 yen, and the maximum amount for age 30 to 44 is 2,200,000 yen, thus the replacement payment amount = 1,700,000 yen x 0.8 = 1,360,000 yen.

Example 2 If retirement age is 48 and total amount of unpaid wages are 4,700,000 yen (regular wages 1,500,000 yen, retirement allowance 3,200,000 yen)

Total amount of unpaid wages are 4,700,000 yen, and the maximum amount for age 45 and over is 3,700,000 yen, thus the replacement payment amount is the maximum amount of replacement payment of 2,960,000 yen.

IV Replacement Payment Claim Procedure

The following procedure shall be followed to receive replacement payment.

Please note that this procedure is different for “Bankruptcy” and “De Facto Bankruptcy.”

The Labour Standards Inspection Office shall provide the forms required for the claim procedure. Moreover, the necessary forms (claim form/certificate for replacement payment of unpaid wages) in case of “Bankruptcy” can be downloaded from the web page of the Organization.

1 Procedure in Case of Bankruptcy

(1) Get the following “certificate” certifying the total amount of unpaid wages from a “Certifier” listed below according to the bankruptcy classification or from a court. **(A worker cannot create the certificate for claim on his own.)**

List of Certifiers According to Bankruptcy Classification

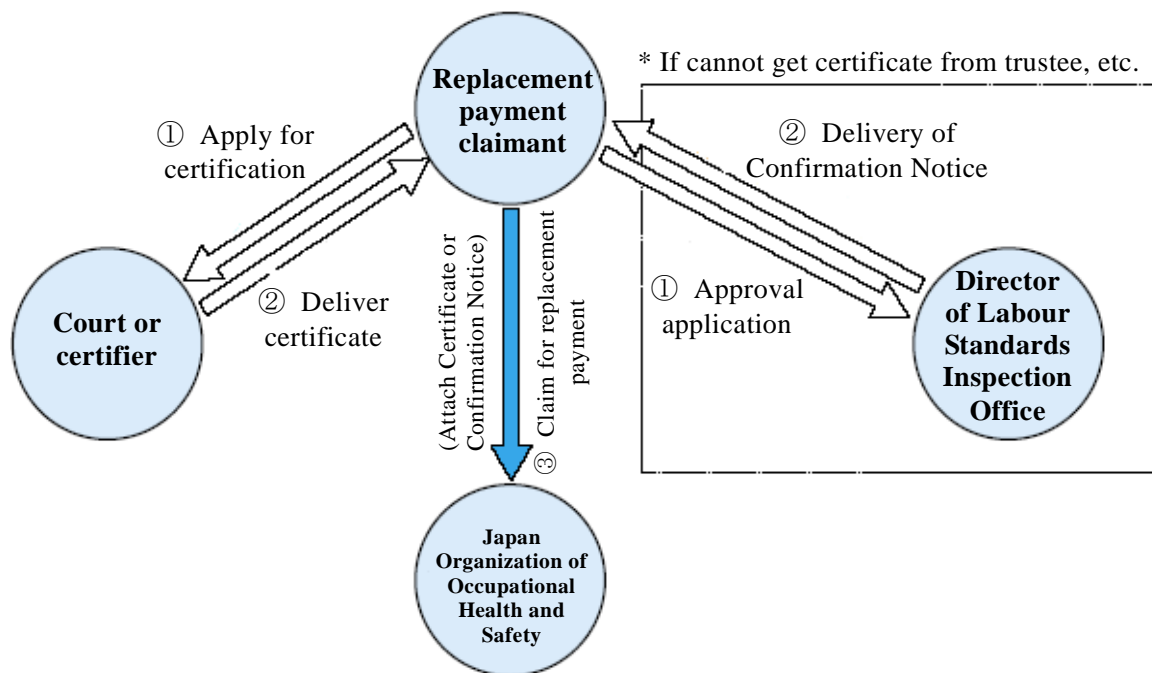
| Bankruptcy classification | Certificate |
|---|--|
| In case of bankruptcy or corporate reorganization | Trustee |
| In case of special liquidation | Liquidator |
| In case of civil rehabilitation | Rehabilitation debtor (Trustee if trustee is appointed) |

If a certifier does not certify all or part of the items required for claiming the replacement payment, depending on the details, approval can be obtained from the Director of the Labour Standards Inspection Office. The procedure is according to the approval procedure “in case of De Facto Bankruptcy,” and you can consult the Labour Standards Inspection Office for the details.

In this case, please bring the certificate provided by the certifier and go to the Labour Standards Inspection Office for consultation.

(2) If a certifier provides the certificate for the amount of unpaid wages etc., enter the necessary items in the “Claim Form for Replacement Payment of Unpaid Wages” (hereafter called as “Claim Form”): claimant’s full name and address, requested replacement payment amount, bank for receiving the replacement payment amount, etc. Also enter the necessary items in “**Return Form Relating to Retirement Income Earners / Return Form of Retirement Income**”* (hereafter, “Return Form of Retirement Income”). Submit them together with the certificate to the Organization.

Further, for writing information in the Claim Form and the Return Form of Retirement Income, refer to other pamphlets (Entry and submission of “Claim Form for Replacement Payment for Unpaid Wages,” “Return Form Relating to Retirement Income Earners / Return Form of Retirement Income”), or refer to the Organization’s web page: “Navigate to Filling Out Claim Form for Replacement Payment / Return Form of Retirement Income.”



****“Return Form Relating to Retirement Income Earners / Return Form of Retirement Income”**

In principle, the amount a worker receives paid by the replacement payment system is considered as retirement income, regardless of whether it is for regular wages or retirement allowance (Act on Special Measures Concerning Taxation, Article 29 - 6). Retirement deductions are allowed, therefore necessary items must be written in the Return Form of Retirement Income and submitted. If declared, retirement income deductions can be allowed, and in most case the income becomes tax free which is a tax benefit. **If it is not entered, 20% of the amount paid will be withheld at the source.**

Further, if retirement allowance is received from a Trust Bank or Organization for Workers' Retirement Allowance Mutual Aid etc. during the retirement year or during the 4 years before the retirement year, it is not possible to declare through the “Return Form of Retirement Income” in a box below on the “Claim Form.” In that case, fill out and stamp the official “Return Form of Retirement Income” provided by Tax Office, attach the “Withholding Record of Retirement Income” issued by the trust bank etc., and submit together with the “Claim Form.”

2 Procedure in Case of De Facto Bankruptcy

(1) In case of De Facto Bankruptcy, first, approval must be obtained from the Director of the Labour Standards Inspection Office that business activities of the enterprise stopped, there is no expectation of restarting, and there is no ability to pay wages.

Moreover, application for approval concerning De Facto Bankruptcy must be submitted within 6 months from day after the date of retirement. Replacement payment of unpaid wages shall not be paid if the application is submitted after 6 months.

(2) When applying for approval, the application for approval is to be submitted to the Director of the Labour Standards Inspection Office with jurisdiction over the location (i.e. location of head office) of the business owner, through the Director of the Labour Standards Inspection Office (hereafter called as relevant Director of the Labour Standards Inspection Office) with jurisdiction over the location of the workplace retired from.

(If there is material clarifying items related to the status of the business owner’s business activity, then attach it to the application.)

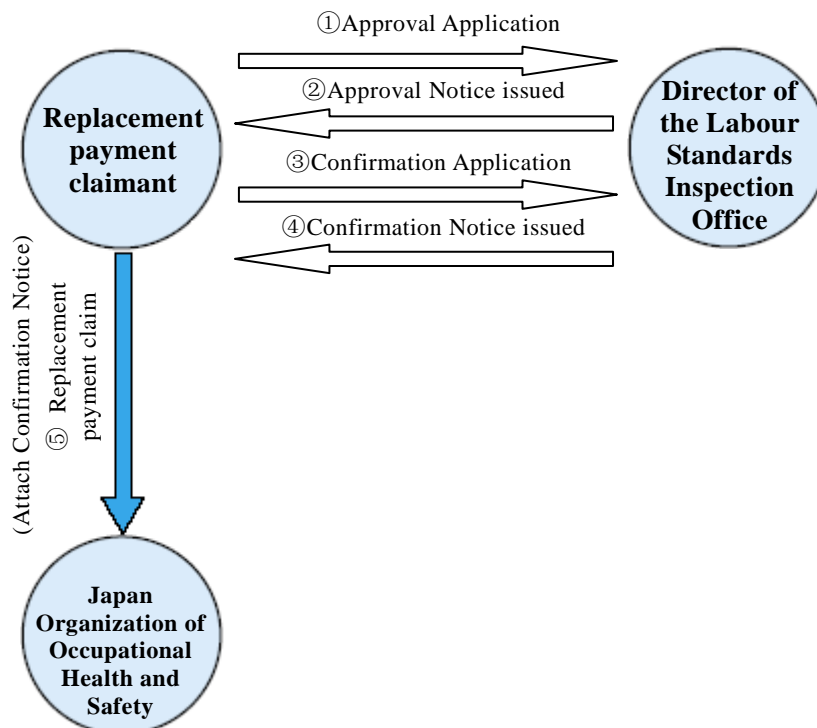
Further, approval of an application concerning De Facto Bankruptcy can be made by a single retired worker, and need not be applied for by everyone who wants to receive the replacement payment. When approval for De Facto Bankruptcy is obtained, it will be valid for all the retired workers.

(3) The Director of the Labour Standards Inspection Office makes the decision of approval or disapproval, and issues a notice which clearly states its details to the applicant.

(4) Once the approval notice is issued by the Director of the Labour Standards Inspection Office, submit an approval application concerning total amount of unpaid wages etc. to the relevant Director of the Labour Standards Inspection Office, for each worker seeking replacement payment of unpaid wages and receive the approval. When submitting the approval application, attach the materials if any proving the amount of unpaid wages etc.

(5) Once the approval notice regarding unpaid wages amount etc. is issued by the relevant Director of the Labour Standards Inspection Office, write the necessary information in the “Claim Form” and the “Return Form of Retirement Income,” attach the approval notice and send them all together to the Organization.

Further, the same details marked with * in “1. Procedure in Case of Bankruptcy” should be entered in the Return Form of Retirement Income.



3 Other Procedures

(1) Procedure if claimant's name, address or payee financial institution is changed

Quickly submit a written notice to the Organization if there is a change in the name, address, financial institution branch name, account number, etc. which was written in the claim form already submitted. (Shall not be accepted by phone or email.)

There is no specific format defined for the change notice, but you can use the sample change notice posted on the Organization's web page.

You can also download it from the Organization's web page.

Further, a name change due to marriage etc. is also done according to the above, but in this case, attach a copy of the family register or extract of family register for identity verification.

(2) Procedure in the event of death of a retired worker

In case of death of a retired worker, the inheritor of the dead worker becomes the claimant. Thus enter the inheritor's name, date of birth, address, payee financial institution name, etc. in the claimant boxes of the claim form for replacement payment, and in the payee financial instruction name, etc. In this case, it is not required to fill out the Retirement Income Declaration.

Further, if there is more than one inheritor, a representative should be appointed to do the claim procedure. The representative appointment notice form is available in the Labour Standards Inspection Office, and it can also be downloaded from the Organization's web page.

In addition to the representative appointment notice, the following documents are required.

- (i) A document stating the death of the retired worker (copy of death certificate, etc.)
- (ii) A document proving that the claimant is the inheritor (copy of family register, etc.)

(3) Procedure if overseas remittance is desired

If overseas remittance is desired, the "Application Form for Overseas Remittance" is required. Enter the necessary information in the "Application Form for Overseas Remittance" in English, and submit it to the Organization along with a document enabling identification (copy of Alien Registration Certificate or Passport), and a copy of the remittance bank passbook (if you don't have a passbook then a document proving that the account was opened).

In case of overseas remittance, additional remittance fees shall be charged.

Please contact the Organization if you have questions regarding overseas remittance.

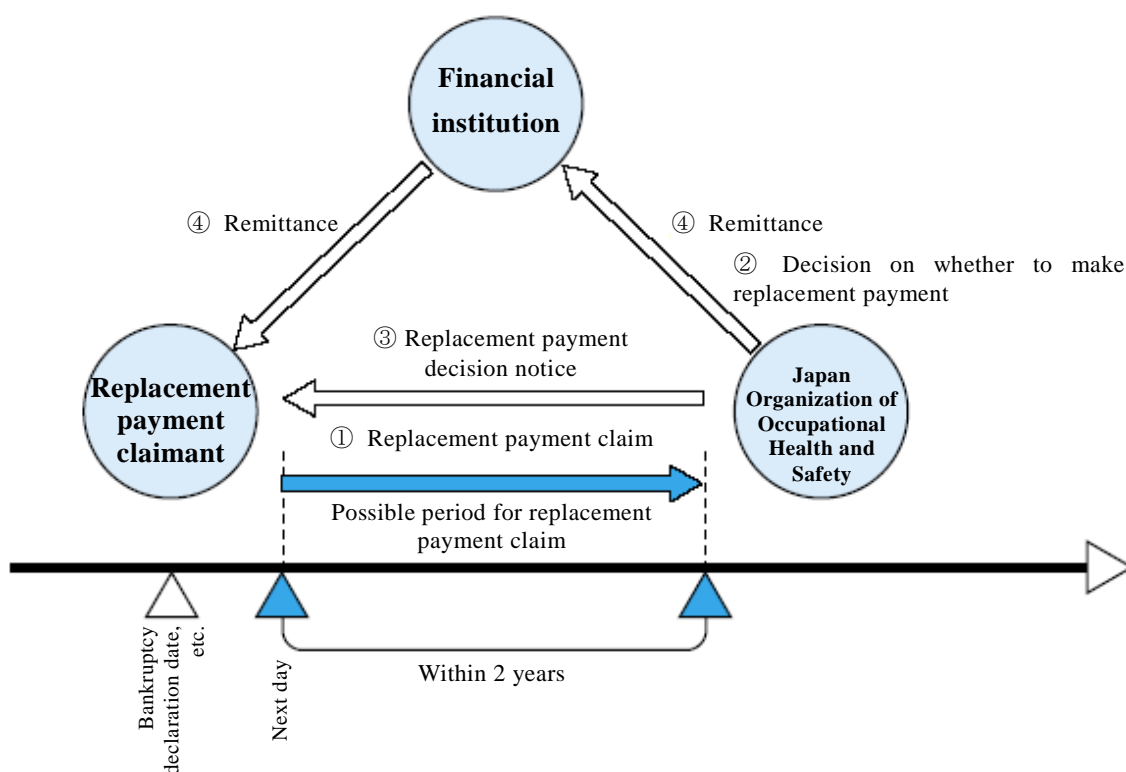
V. Replacement Payment Claiming Deadline and Payment

The period in which you can file a claim for replacement payment is given below. **You must apply during this period or you will not be able to receive replacement payment.**

The Organization reviews the submitted claim form for replacement payment to decide whether to make the replacement payment and to determine the replacement payment amount, issues to the claimant the replacement payment decision notice (includes the Withholding Record of Retirement Income) stating the details, and transfers the payment to the financial institution specified by the claimant.

| Bankruptcy classification | | Period in which replacement payment application possible |
|---------------------------|--------------------------|--|
| Bankruptcy, etc. | Bankruptcy | Within 2 years from the day after the date of decision to commence bankruptcy proceedings |
| | Special liquidation | Within 2 years from the day after the date of order to commence special liquidation |
| | Civil rehabilitation | Within 2 years from the day after the date of decision to commence civil rehabilitation |
| | Corporate reorganization | Within 2 years from the day after the date of decision to commence corporate reorganization |
| De Facto Bankruptcy | | Within 2 years from the day after the date of approval by the Director of the Labour Standards Inspection Office |

Example: If the date of decision to commence bankruptcy proceedings etc. or date of approval of bankruptcy by the Director of the Labour Standards Inspection Office is August 10, 2016, then the application must reach the Organization between the next day August 11, 2016 and August 10, 2018.



VI Replacement Payment Benefit Claim

When replacement payment is made, the Organization obtains approval from workers who received replacement payment for the amount equivalent to replacement payment benefit according to article 499 of the Civil Code, and obtains subrogation rights of claim for wages.

In order to obtain subrogation rights of claim for wages, the following is exercised based on laws related to management of receivables of the country.

1 In case of legal bankruptcy

(1) In case of bankruptcy / corporate reorganization

(a) Send notice to bankruptcy trustee or trustee, that subrogation rights were obtained for wage receivables

(b) Send the receivable notice and name change notice to the court, and participate in the court proceedings

(2) In case of civil rehabilitation / special liquidation

(a) Send notice to the regenerated debtor or liquidator that subrogation rights were obtained for wage receivables, and make claim for payment

(b) Request submission of debt approval document and settlement plan document

2 In case of De Facto Bankruptcy

(a) Notify business owners of subrogation rights obtained for replacement payment of wages

(b) Request submission of debt approval document and settlement plan document

The subrogation rights of claim for wages obtained by this Organization and worker's rights to claim wages have the same properties, therefore if the settlement amount is less than the debt amount at the time of settlement, then settlement shall be done by proportional distribution based on the respective debt amounts.

VII Punishment of Fraud Beneficiaries

If replacement payment benefit was obtained through forgery or other illegal means, or if a business owner is involved in illegal acts, and replacement payment is made because of a fake report or evidence, a criminal complaint shall be filed against the persons receiving such replacement payment benefit and persons involved in it. (Refer to Article 246 of the Penal Code)

Also, persons receiving replacement payment benefit by forgery or other illegal means and business owners involved in it shall be ordered to return the money paid by the country and also to pay its equivalent amount.

○ Penal Code (Act No. 45 of 1907)

Article 246 A person who defrauds another of property shall be punished by imprisonment for not more than 10 years.