Korea Labor Policy Agenda 2020

(English Version)

Korea Labor & Society Institute

KLSI

한국노동사회연구소

FRIEDRICH EBERT STIFTUNG

CONTENTS

FOREWORDS

The year 2020 marks the 50th anniversary of the self-immolation of Tae-il JEON, a labor martyr in Korea. It is also the year the 20th National Assembly is dismissed and the 21st National Assembly convenes. In this meaningful year, the Korea Labor & Society Institute selected the Top 10 Items on the Labor Agenda and more detailed issues that must be resolved in 2020.

The trade union movement in Korea achieved "social citizenship" through the Great Workers' Struggle of 1987, and continued to grow and develop ever since. Wages have risen, and working hours have been reduced thanks to trade unions. Despite the progress in the quality of life for workers, basic labor rights situation and the socio-economic status of workers essentially remain unchanged. The unionization rate in Korea stands at only 11.8%, and most unions are organized on the company level. This creates a blind spot of union protection for workers on non-regular contracts and in micro- and small-sized businesses. The low unionization rate gives a major advantage to the management, and the labor-management relations is riddled with conflict and confrontation, instead of institutionalization. A national social dialog now promoted by the government is stumbling with little achievement.

The labor-management relations also suffers from the dual structure of the labor market. Vulnerable workers are hit harder in the COVID-19 pandemic. In addition, most of these workers are marginalized in the blind spot of social safety nets. Of the 27 million economically active population, as much as 12 million are uninsured with the employment insurance. These include low-paid workers in micro- and small-sized businesses, workers in special types of employment (disguised self-employed workers) such as home-visiting tutors and insurance sales agent, the fast-growing group of platform workers, and the micro-sized self-employed. A key challenge for the labor movement in Korea is to forge solidarity between the organized labor and workers in relatively new types of employment.

This Paper outlines the Top 10 Items on the Labor Agenda and 28 more detailed issues on the development of labor-management relations and creation of a society with respect for labor. The Top 10 items include wage and employment strategies for solidarity in the trade union movement as well as amendment of labor laws for the ratification of international labor standards. The labor movement in Korea has started to move beyond the distribution struggle with a focus on wages to the struggle for economic and social democracy with participation in business management for democracy in workplaces. With this struggle, the labor movement is establishing itself as a meaningful actor in the national economy.

Kwang-pyo ROH
President
Korea Labor & Society Institute

FOREWORDS

South Korea joined the ILO in 1991 but has not ratified four of the eight core conventions regarding freedom of association, collective bargaining and forced labour. Official statistics say that 30-40 percent of the working population are irregular workers, and the gender pay gap is the highest among OECD countries at 32.5 percent. These are some of the facts that describe the current situation in South Korea.

The Covid-19 pandemic has particularly hit the self-employed workers, platform workers and freelancers. Due to the pandemic, the polarization in the Korean labour market between large enterprises and SMEs as well as between regular and irregular workers has received wide public attention and media coverage. Therefore, the current situation may provide new opportunities to address some of the above-mentioned challenges.

The Friedrich-Ebert-Stiftung (FES) Korea Office has been working closely with the Korea Labor & Society Institute (KLSI) since its establishment as a labour think tank in the mid-1990. The focus of our joint projects is on guaranteeing basic labor rights for all workers, strengthening trade unions' representation and promoting gender equality in the labour market.

As a political foundation, FES brings together diverse voices from civil society organisations, trade unions, political parties and academia to jointly develop progressive ideas for advancing socio-economic justice. In the same way, the authors of this paper have selected the top 10 items on the labour agenda for 2020 based on their long-term experience of labour research and discussions with labour interest groups.

Today we are happy to present you with the English version of "Korea Labor Policy Agenda 2020" which the KLSI has published in the beginning of this year as an issue paper in Korean language. We extend our sincere gratitude to the authors of KLSI for sharing their thoughts with the global network of FES. We hope that this is received as a constructive contribution to the discussion on developing policy approaches towards a labor-respecting society in Korea.

Henning Effner
Resident Representative
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I. Right to Not Die at Work

by **Yong-cheol PARK**
Senior Researcher
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Issue 1

Prohibiting the "Outsourcing of Death"

The death toll from industrial accidents in Korea continues to increase every year: 1,777 in 2016, 1,957 in 2017, and 2,142 in 2018. Accordingly, the mortality rate from industrial accidents per 10,000 workers has also increased: 0.96%, 1.05%, and 1.12%, respectively (See Table 1 below).

- While deaths from occupational accidents[1] remain almost the same at 969 in 2016, 964 in 2017, and 971 in 2018, deaths from occupational disease have risen dramatically, from 808 to 993 to 1,171, respectively.

According to the Ministry of Employment and Labor (MOEL), there were 855 deaths from occupational accidents in 2019, down 116 from the previous year. As long as deaths from occupational disease remain the same or increase, however, total deaths from industrial accidents in 2019 will exceed the 2,000 mark.

Table 1. Fatalities in industrial accident by year

Year	No. of employee (thousand)	No. of death from industrial accident			Mortality rate per 10,000 employees (%)		
		Total	Accident	Disease	Total	Accident	Disease
2016	18,432	1,777	969	808	0.96	0.53	0.44
2017	18,560	1,957	964	993	1.05	0.52	0.54
2018	19,073	2,142	971	1,171	1.12	0.51	0.61
2019			855				

*Source: Ministry of Employment and Labor

According to the MOEL's Results of the Employment Type Disclosure System in March 2019, workers in non-regular employment account for 39.4% (approx. 730,000) of the 1,850,000 workers employed in the 402 enterprises affiliated with the top 30 business conglomerates.

- Among those in non-regular employment, 29.6% (approx. 550,000) are indirectly employed through temporary agencies, service contracts, or in-house subcontracting, while 9.7% (approx. 180,000) are directly employed, for example, on fixed-term contracts (Yoo Sun KIM & Gwan-seong PARK 2019).

Of industrial accidents with 3 or more fatalities in the last 6 years, 85% of the fatalities and 89% of the injuries took place among subcontractor employees (Source: National Assemblyman Yong-deuk LEE). Also, between 2011 and 2015, 87% of fatalities and 86% of injuries involving the top 30 businesses took place among subcontractor employees (Source: National Assemblyman Jin-guk MOON).

To stop this "outsourcing of death", outsourcing hazardous and dangerous tasks, and outsourcing of life- and safety-related jobs must be prohibited.

- In-house subcontracting, which is widely abused in manufacturing and other sectors, violates the principle of exclusivity of rights and duties in providing labor (Article 657, the Civil Act), and is mostly illegal.
- The revised Occupational Safety and Health Act restricts subcontracting of hazardous tasks in a detailed manner, but the scope of restriction is too narrow. To ensure workplace safety, subcontracting should be minimized, and prohibited for hazardous and dangerous tasks, and life- and safety-related jobs.

1 Industrial accident is an umbrella term for incidents, including death, injury or disease in the Occupational Safety and Health Act and other labor laws in Korea.

Issue 2

Punishing Corporations according to Law for Serious Accidents

At the end of 2019, the MOEL made public a list of 1,420 places of business where serious accidents took place.

- Among them, 671 had annual accident rates higher than the average rate of businesses of a similar size in the same sector. Of these, 382, or 56.9% were construction companies, including Daewoo E&C, POSCO Engineering, and Hyundai Development Corporation. The manufacturing sector accounted for 44.2% with 169 enterprises, including Kumho Tire, Hyundai Steel Dangjin Plant, and KCC Yeoju Plant.
- Twenty places of business recorded 2 or more deaths from industrial accidents, including Daewoo Shipbuilding and Marine Engineering Corporation, Hyundai Heavy Industries, POSCO/TCC Hanjin, and Korea Railroad Corporation (See Table 2 below).
- Seven places of business, including KMS, PORT-L, and Hanil, were caught concealing industrial accidents from the authorities. Seventy-three businesses, including Korea Railroad Corporation, Samsung Electro-Mechanics Busan Plant, and Seahbesteel, failed to report industrial accidents twice or more times in the previous three years.

Table 2. Places of business with 2 or more deaths from industrial accident

No.	Place of business and scene of accident	Sector	No. of employee
1	Hyundai Heavy Industries	Shipbuilding and repair	1,000 or more
2	Korea Railroad Corporation	Railroad, track and cable transport	1,000 or more
3	Daewoo Shipbuilding and Marine Engineering (Principal employer) Gwangdo ENG, Segyeong Corporation, Sungsan Corporation (Subcontractor)	Shipbuilding and repair	1,000 or more
4	Hyundai Engineering (Principal employer) Seongjoo Tower (Subcontractor): Multi-family housing construction site, Jingeon District, Namyangju City.	Construction	500-999
5	POSCO (Principal employer) TCC Hanjin (Subcontractor)	Machine tool and non-metal mineral and metal product manufacturing	100-299
6	Yangwoo Engineering and Construction: Construction site, Hwaseong Namyang Newtown Urban Development Project.	Construction	100-299
7	Ssangyong E&C, Kolon Global, Water Resources Engineering Corporation, Art Construction (Principal employer) Well Tech (Subcontractor): Aged water supply pipe regeneration works site, the Geumgang River Regional Water Supply System	Construction	100-299
8	Eni Construction: Plant construction site, Haeseong Precision Corporation	Construction	Fewer than 100
9	SI Tech: Coal handling equipment installation works site, Taean Coal-fired Power Plant No. 9 and 10.	Construction	Fewer than 100
10	Prazium (Sole trader, owned by Gi-wan PARK) (Principal employer) Daewon Construction Corporation (Subcontractor): Construction site, Prazium Apartment Complex No. 7	Construction	Fewer than 100

No.	Place of business and scene of accident	Sector	No. of employee
11	Foosung Precision Industries	Chemical product manufacturing	50-99
12	Woltech Korea	Machine tool and non-metal mineral and metal product manufacturing	Fewer than 50
13	Jeongho Development Corporation (Principal employer) Hong-soo PARK (Sole trader) (Subcontractor): Dojang Bridge reconstruction site.	Construction	Fewer than 50
14	DK E&C (Principal employer) Daewon E&C (Subcontractor): Construction site, complex building in Bangyi-dong.	Construction	Fewer than 50
15	Sooyoung E&C: Drainage works site, 349 Yeongdasan-dong.	Construction	Fewer than 50
16	Cheon-seop YANG (Individual) (Principal employer) Jin-wook KIM (Individual) (Subcontractor): Construction site, multi-family housing in Oncheon-dong.	Construction	Fewer than 50
17	Saebom	Hygiene and related service	Fewer than 50
18	Ramanar Brick Korea	Wholesale, retail and consumer goods repair	Fewer than 50
19	GNS E&C (Principal employer) HY Development Corporation (Subcontractor): Construction site, hospitality industry pavilion.	Construction	50-99
20	Shindongah General Construction, Dongwon E&C(Principal employer) Samsan Steel (Subcontractor): Construction site, Jangyu Culture Center, Gimhae City.	Construction	Fewer than 50

- To prevent serious accidents, enterprises where a serious accident occurs must to be strictly monitored, supervised, and punished when necessary, and principal employers held accountable along with contractors.

- A bill on punishing corporations that are at fault in serious accidents, submitted by National Assemblyman Hoi-chan ROH, stipulates that principal employers shall be held accountable for serious accidents together with contractors, and that corporations shall be punished if they are at fault for serious accidents. Major details of the bill are outlined in Table 3.

Table 3. Major Details of a Bill to Punish Corporations At Fault in Serious Accidents, Submitted by National Assemblyman Hoi-chan ROH on April 14, 2017

A. The business owner or business manager shall be obligated to reduce danger so that there will be no loss of life and physical safety will not be harmed in the place of business, a facility used by the public or a public means of transportation owned, operated or managed by a business owner or a legal entity (Article 3).

B. The business owner or business manager shall be obligated to reduce danger so that there will be no loss of life and physical safety will not be harmed due to any raw material or product manufactured, produced, sold or distributed at a place of business (Article 3).

C. When a business owner or legal entity is provided with labor from a third party based on lease, service contract or subcontracting, such business owner or legal entity (the principal employer) and the third party shall be jointly obligated to make arrangements for safety and health as prescribed by Article 3 (Article 4).

D. When a business owner or business manager is at fault for a death or injury by violating these obligations to make arrangements for safety and health as prescribed by this Act, he/she shall receive a criminal penalty (imprisonment up to five years or a fine up to KRW 100 million), and the applicable legal entity shall be fined (up to KRW 1 billion) (Articles 5 and 6).

E. When a civil servant, who is obligated to supervise or authorized to issue permits and approvals to places of business or facilities used by the public under the Acts and subordinate statutes, is at fault in the death or injury to a person due to dereliction of duty, he/she shall be punished by imprisonment for a minimum of one year or a fine no less than KRW 30 million and no more than KRW 300 million (Article 7).

- The Occupational Safety and Health Act stipulates that business owners who conceal the occurrence of an industrial accident shall be punished only by "imprisonment for not more than one year or by a fine not exceeding KRW 10 million". This is never strong enough to prevent concealing of industrial accidents.
  - Concealing of any industrial accident is a serious crime. It is necessary that the Act be revised to effectively prevent and punish any such attempts to conceal by stipulating a more severe punishment, or introducing a fine of 10% of annual sales or revenue of the corporation in question.

II. Right to Unionize

by **Kwang-pyo ROH**
President
Korea Labor & Society Institute

Issue 3

Ratifying ILO Fundamental Conventions

On June 18, 1998, the 86th General Assembly of the ILO adopted the Declaration on Fundamental Principles and Rights at Work, and selected 8 fundamental conventions (Seon-soo KIM 2018).

- According to Article 2 of the Declaration, ILO member states are required to comply with, respect, promote, and realize the principles on basic rights embedded in fundamental conventions, with due diligence based on the ILO Charter, regardless of whether they ratified fundamental conventions or not.
- There are no exceptions to be made to fundamental conventions, such as with "discretionary provisions", "relaxation provisions", or "special country clauses" that appear in technical conventions.
- The ILO mandates its member states to submit annual reports that outline the reasons for failing to ratify certain conventions, and the prospects for their ratification.

The Korean government has ratified only 4 of the 8 fundamental conventions.

- Of the 36 OECD member states, South Korea, the United States and New Zealand have not ratified ILO Convention No. 87, South Korea and the United States have not ratified Conventions No. 98 and 29, and South Korea and Japan have not ratified Convention No. 105 (See Table 4).

Table 4. Ratification of ILO Fundamental Conventions by country

Fundamental Convention			No. of ratification by state		OECD member states that haven't ratified the convention
			ILO (of 187 members)	OECD (of 36 members)	
Discrimi-nation	No. 100	Convention concerning Equal Remuneration for Men and Women Workers for Work of Equal Value (1951)	173	35	United States
	No. 111	Convention concerning Discrimination in Respect of Employment and Occupation (1958)	175	34	United States, Japan
Child labor	No. 138	Convention concerning Minimum Age for Admission to Employment (1973)	171	33	United States, Australia, New Zealand
	No. 182	Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (1999)	184	36	None
Forced labor	No. 29	Convention Concerning Forced or Compulsory Labour (1930)	178	34	Republic of Korea, United States
	No. 105	Convention concerning the Abolition of Forced Labour (1957)	175	34	Republic of Korea, Japan
Freedom of association	No. 87	Convention concerning Freedom of Association and Protection of the Right to Organise (1948)	155	33	Republic of Korea, United States, New Zealand
	No. 98	Convention concerning the Application of the Principles of the Right to Organise and to Bargain Collectively (1949)	166	34	Republic of Korea, United States

*Source: Edited from Hyo-won YOON 2019.

Korea has not ratified 4 fundamental conventions, including Convention No. 87 on Freedom of Association. Moreover, existing laws restrict a wide range of workers from unionizing or joining unions.

- When it comes to civil servants, fire officers, correctional officers, civil servants of class V or higher, and civil servants of class VI or lower who exercise general control or direction and supervision over official duties are not allowed to join unions.[2]
- The right to organize is also denied to occupations other than civil service, including professors of private universities (Article 55, Private School Act, and Article 2, Teachers' Union Act), registered security guards (Article 11, Registered Security Guard Act), and workers in special employment relations (Seong-tae KANG 2018).

The MOON Jae-in Administration pledged to ratify ILO fundamental conventions to create "a labor-respecting society", which is No. 63 of its 100 priority agenda items.

- The administration took the approach of introducing domestic legislation before ratifying the conventions, and made efforts to reach social consensus in the Economic and Social Development Commission. However, the tripartite dialogue body failed to reach a consensus.

The administration requested the National Assembly to agree to ratification of 3 fundamental conventions (Conventions No. 29, 87 and 98) on October 7, 2019. It also submitted 4 bills to the National Assembly to revise the Trade Union and Labor Relations Adjustment Act, the Act on the Establishment, Operation, etc. of Public Officials' Trade Unions, the Act on the Establishment, Operation, etc. of Teachers' Unions, and the Military Service Act, on December 6, 2019 (See Table 5).

Table 5. Proposed revisions to the Trade Union and Labor Relations Adjustment Act, the Act on Establishment, Operation, etc. of Public Officials' Trade Unions, and the Act on Establishment, Operation, etc. of Teachers' Unions, submitted by the government

Classification		Current law	Proposed revision
Trade Union and Labor Relations Adjustment Act	Subscription of trade union membership by the unemployed or dismissed workers	The unemployed or dismissed workers are allowed to join unions beyond company level, but not company-level unions.	The unemployed or dismissed workers are allowed to join unions regardless of union type. However, it was supplemented to ensure that union activities inside a workplace by the union members who are not the employees of the company are in compliance with the internal regulations regarding access to the workplace or the applicable labor-management agreement process.
	Eligibility for trade union executive positions	Union executives must be elected among its members.	The eligibility for union executive positions shall be determined freely by the union regulations. However, in case of company-level union, the eligibility for executive positions, including delegates, shall be limited to current employees.
	Time-off system	Payment of wage to full-time officer is prohibited. Trade union activities are allowed without any loss of wage within the time-off limit.	The provision that prohibits payment of wage to full-time officer is deleted. Employer can pay wage to full-time officer within the time-off limit.

2 The civil service of South Korea has 9 classes, with class I being the highest, and class IX the lowest.

Classification			Current law	Proposed revision
Trade Union and Labor Relations Adjustment Act	Time-off system		A union that engages in a strike demanding payment of wage to full-time officer or payment in excess of the time-off limit is punished.	The aforementioned punishment provisions are deleted. However, a newly established provision invalidates any collective agreement or employer's consent that exceeds the time-off limit.
			The Time-Off System Deliberation Committee is established in the Ministry of Employment and Labor.	Establishes the Time-Off System Deliberation Committee within the Economic, Social & Labor Council to strengthen the autonomy of the labor and the management.
	Simplification of bargaining windows	Individual bargaining	Individual bargaining is allowed when the employer agrees.	When individual bargaining is carried out based on the employer's agreement, the employer is obligated to negotiate with all unions in good faith without discrimination.
		Bargaining unit	Only has a provision on separation of bargaining units.	Adds a provision on integration of bargaining units.
			N/A	The state and local governments shall make efforts to allow the labor and the management to autonomously select their bargaining levels (company, industry, or category of business).
	Occupation of place of business		Occupation of facilities related to manufacturing and other important tasks is prohibited.	Prohibits industrial actions that hinder business operation by physically excluding the employer from place of business, and occupation of any part of the facilities related to manufacturing and other important tasks in the place of business.
	Validity of collective bargaining		Maximum 2 years	Maximum 3 years
	Application of decision of unconstitutionality	Joint penal provision	Found unconstitutional (on April 11, 2019)	Adds an exemption from punishment for a legal entity that does not have responsibility of its own.
		Financial support for operation	Found unconstitutional (To be amended by Dec. 31, 2019).	Adds a provision that excludes from punishment financial support for the union operation that does not infringe on its independence.
Act on Establishment, Operation, etc. of Public Officials' Trade Unions		Membership	Only the public officials currently employed are allowed to join unions.	Retired public officials are allowed to join (Eligibility to be determined by union regulations).
		Expansion of membership	Grade 5 or higher and fire-fighting public officials are restricted from joining unions.	Deletes the grade rule and allows fire-fighting public officials to join.

Classification		Current law	Proposed revision
Act on Establishment, Operation, etc. of Teachers' Unions	Member -ship	Only the teachers currently employed are allowed to join unions.	Retired teachers are allowed to join (Eligibility to be determined by union regulations).
	Expan -sion of member -ship	University faculty members are restricted from establishing or joining unions.	University faculty members are allowed to establish and join unions.
	Bargain -ing	Simplification of bargaining windows was invalidated.	Stipulates the process of simplification of bargaining windows.

- Ratification of ILO fundamental conventions and guaranteeing basic labor rights by law cannot be delayed any longer.
  - Several provisions in the administration's revision bills are not directly related to ILO fundamental conventions, including extension of the term of validity for collective agreements to 3 years, prohibition against occupation of places of business, etc.
  - ILO fundamental conventions and relevant bills must be passed immediately. Bills not directly related to ILO fundamental conventions require separate discussions on revising labor laws.
  - Ratification of ILO fundamental conventions is not a matter of political bargaining, but an ILO member state duty.

III. Right to Health at Work

by **Yoo Sun KIM**
Chairperson
Korea Labor & Society Institute

Issue 4

Applying the Labor Standards Act to Business with Fewer than 5 Employees

Article 11 (2) of the Labor Standards Act stipulates, "With respect to a business or workplace in which not more than four employees are regularly employed, some provisions of this Act may apply as prescribed by Presidential Decree". Table 1 of the Enforcement Decree to the Act lists the provisions applied.

Table 6 below lists the provisions of the Labor Standards Act not applied to workplaces with fewer than 5 employees according to Table 1 of the Enforcement Decree to the Act. It shows that workers at workplaces with fewer than 5 employees are not covered by the main provisions of the Act, including restrictions on layoffs and work hours, shutdown allowances, protection of female workers, prohibition against workplace harassment, etc.

Table 6. Articles in the Labor Standards Act not applicable to businesses with fewer than 5 employees

Chapter	Articles not applicable
I. General provisions	Article 14 (Publicity of Purport, etc. of Statutes)
II. Labor contracts	Article 16 (Term of Contract) * Act on the Protection, etc. of Fixed-term and Part-time Employees Article 19 (2) on damage claim with the Labor Relations Commission, and travel expenses Article 23 (1) on Restriction on Dismissal, etc. Article 24 (Restrictions on Dismissal for Managerial Reasons) Article 25 (Preferential Reemployment, etc.) Article 27 (Written Notice of Grounds, etc. for Dismissal) Articles 28-33 on Request for Remedy from Unfair Dismissal, etc. Article 34 (Retirement Allowance System) * Act on the Guarantee of Employees' Retirement Benefits is applied to all places of business.
III. Wages	Article 46 (Shutdown Allowances)
IV. Work hours and recess	Article 50 (Work Hours) Article 51 (Flexible Work Hours System) Article 52 (Selective Work Hours System) Article 53 (Restrictions on Extended Work) Article 55 (2) on paid holidays prescribed by Presidential Decree Article 56 (Extended, Night or Holiday Work) Article 57 (Compensatory Leave System) Article 58 (Special Cases for Calculation of Work Hours) Article 59 (Special Cases concerning Work Hours and Recess Hours) Articles 60-62 on Annual Paid Leave
V. Women and minors	Article 65 (2) on Prohibition of Employment Article 70 (1) on Restrictions on Night Work and Holiday Work Article 73 (Monthly Menstrual Leave) Article 74-2 (Permission, etc. for Time for Medical Examination of Unborn Child) Article 75 (Nursing Hours)
VI. Safety and health	
VI-2. Prohibition against workplace harassment	*All (Articles 76-2 and 76-3)
VII. Apprenticeship	*All (Article 77)
VIII. Accident compensation	

Chapter	Articles not applicable
IX. Rules of employment	*All (Articles 93-97)
X. Dormitory	*All (Articles 98-100 and Article 100-2)
XI. Labor inspector, etc.	
XII. Penalty provisions	

- Main provisions of the Labor Standards Act, including restrictions on layoffs and work hours, were excluded from Table 1 of the Enforcement Decree to the Act in 1998 in order to ease the burden on small business owners.
  - This motivated employers to divide up businesses into smaller units. Twenty-two years after revision, 3.97 million workers employed in businesses with fewer than 5 employees are still not covered by the main provisions of the Labor Standards Act.

- There are few reasonable grounds for not applying the main provisions of the Act to businesses with fewer than 5 employees, based on statistics on working days, working hours and turnover rate.
  - According to the MOEL's Survey Report on Labor Conditions by Employment Type 2018, businesses with fewer than 5 employees have 19.0 working days and 140.4 working hours per month, which are much shorter than businesses with 5 or more employees. Businesses with fewer than 5 employees also show the smallest share of employees working longer than 52 hours per week (See Table 7 below).

Table 7. Working days and hours per month, and share of employees working longer than 52 hours per week by size of business (2018)

No. of employee	Working days per month	Working hours per month	Employees working longer than 52 hours per week	
			No. (thousand)	Share (%)
Fewer than 5	19.0	140.4	150	3.8
5-29	19.5	156.7	288	5.7
30-299	20.0	167.6	401	9.5
300 or more	19.5	162.7	97	4.4
All	19.5	156.4	936	6.1

*Source: Calculated from the raw data for Survey Report on Labor Conditions by Employment Type 2018, Ministry of Employment and Labor.

- According to the Yearly Statistics of Employment Insurance 2016, published by the Ministry of Employment and Labor and the Korea Employment Information Service, businesses with fewer than 5 employees had a turnover rate of 61.1%, slightly higher than businesses with 5-9 employees (58.4%).
  - Businesses with fewer than 5 employees had a voluntary turnover rate of 39.1%, almost the same as businesses with 5-9 employees (38.4%).
  - Meanwhile, businesses with fewer than 5 employees had an involuntary turnover rate of 22.0%, 2.1%p higher than businesses with 5-9 employees (19.9%). But this gap comes from "business conditions". There is little difference in "other factors" between businesses with fewer than 5 employees and those with 5-9 employees (See Table 8).

Table 8. Turnover rate and number of case by size of business (2016)

No. of employee	No. (thousand)		Share (%)					
	No. of the insured	No. of turnover case	Turnover rate	Voluntary turnover rate	Involuntary turnover rate			
					Sub total	Business situation	Expiration of term	Other factors
All	12,655	6,413	50.7	32.7	18.0	8.3	8.8	0.9
Fewer than 5	1,983	1,212	61.1	39.1	22.0	16.1	5.0	0.9
5-9	1,371	800	58.4	38.4	19.9	12.8	6.0	1.1
10-29	2,136	1,207	56.5	36.8	19.7	9.5	9.2	1.0
30-99	2,081	1,087	52.3	34.3	18.0	7.0	10.1	0.9
100-299	1,648	798	48.4	30.4	18.0	5.2	11.9	0.9
300-999	1,258	574	45.6	26.1	19.6	4.5	14.4	0.6
1000 or more	2,179	734	33.7	23.3	10.4	3.1	6.7	0.6

*Source: Calculated from the Yearly Statistics of Employment Insurance 2016, Ministry of Employment and Labor, and the Korea Employment Information Service.
**Note: Turnover rate = No. of turnover cases (those who lost employment insurance) ÷ No. of the insured × 100.

- Applying the Labor Standards Act to businesses with fewer than 5 employees is possible simply by revising Table 1 of the Enforcement Decree to the Act on the State Council.
  - In particular, Article 50 (Work hours), Article 53 (Restrictions on extended work), Article 56 (Extended, night or holiday work) and Article 60 (Annual paid leave) must be top priorities.

Issue 5

Introducing Statutory Minimum Daily Recess of 11 Hours

- With the introduction of the 52-hour working week, the number of employees working longer than 52 hours a week is quickly decreasing.
  - According to the Economically Active Population Survey by Statistics Korea, the number of employees working longer than 52 hours a week fell from 5,930,000 (22.7%) in 2015 to 4,030,000 (14.9%) in 2019.

- To guarantee a better health and work-life balance for workers, working hours per day should also be restricted.
  - Article 3 (Daily rest) of the EU Directive on the Organisation of Working Time, legislated in 2003, stipulates, "Member States shall take the measures necessary to ensure that every worker is entitled to a minimum daily rest period of 11 consecutive hours per 24-hour period".

- To prevent long daily working hours and guarantee sufficient time for rest and leisure, a statutory minimum daily recess must be introduced.
  - A statutory minimum daily recess would effectively ban uncivilized and backward work practices such as 24-hour shifts.

Issue 6

Applying the Labor Standards Act to Part-time Workers Working Fewer than 15 Hours per Week

According to the Economically Active Population Survey by Statistics Korea, the number of part-time workers working fewer than 15 hours per week is growing fast, with 1,460,000 (5.3% of the total employment) as of August 2019 (See Table 9 below).

- Based on usual work hours, the number of part-time workers working fewer than 15 hours per week is also increasing fast with 930,000 (4.5%) as of August 2019.

Table 9. Employees and workers working fewer than 15 hours per week

	Actual work hours of employees		Usual work hours of workers	
	No. (thousand)	Share of total employment (%)	No. (thousand)	Share of total employment (%)
Aug. 2015	951	3.6	585	3.0
Aug. 2016	1,023	3.8	634	3.2
Aug. 2017	1,073	4.0	685	3.4
Aug. 2018	1,217	4.5	756	3.8
Aug. 2019	1,461	5.3	932	4.5

*Source: Supplementary Results of the Economically Active Population Survey by Employment Type, Statistics Korea.

The number of part-time workers working fewer than 15 hours per week has been quickly rising because employers can enjoy a wide range of advantages by dividing up their employees' work week into fewer than 15 hours, including the following:

1) no need to guarantee a paid holiday per week and annual paid leave stipulated in the Labor Standards Act;
2) no need to guarantee retirement benefits stipulated in the Act on the Guarantee of Employees' Retirement Benefits;
3) no restrictions on employment contract period stipulated in the Act on the Protection, etc. of Fixed-term and Part-time Employees; and
4) no need to subscribe the employee to three of the four major social insurances - employment insurance, national pension or national health insurance.

In 2017, the National Human Rights Commission of Korea issued its Recommendations on the Improvement of the Human Rights Situation of Part-time Workers Working Fewer than 15 Hours per Week. The Recommendations include the following:

1) guarantee one paid holiday per week and annual paid leave stipulated in the Labor Standards Act, based on the principle of proportionality;
2) guarantee retirement benefits stipulated in the Act on the Guarantee of Employees' Retirement Benefits;
3) apply restrictions on employment contract period stipulated in the Act on the Protection, etc. of Fixed-term and Part-time Employees; and
4) if the part-time work is regular and continuous, guarantee employment insurance, national pension and national health insurance.

Article 18 (3) of the Labor Standards Act should be removed in the first place to implement these recommendations.

Article 18 (Terms and Conditions of Employment of Part-Time Employees)

(1) The terms and conditions of employment of part-time employees shall be determined on the basis of relative ratio computed in comparison to those work hours of full-time employees engaged in the same kind of work at the pertinent workplace.

(2) Criteria and other necessary matters to be considered for the determination of terms and conditions of employment under paragraph (1) shall be prescribed by Presidential Decree.

(3) Articles 55 and 60 shall not apply to employees whose contractual work hours per week on an average of four weeks (in cases where their working periods are less than four weeks, such period of working) are less than 15 hours.

- Also, the provisory clause (underlined below) of Article 4 (1) of the Act on the Guarantee of Employees' Retirement Benefits should be revised, and Article 3 (3) 6 of the Enforcement Decree to the Act on the Protection, etc. of Fixed-term and Part-time Employees should be removed.

- Article 3 of the Enforcement Decree to the Act on Employment Insurance, Article 9 of the National Health Insurance Act, and Article 2 4 of the Enforcement Decree to the National Pension Act should be revised to apply employment insurance, health insurance and the national pension system to permanent and continuous positions.

Act on the Guarantee of Employees' Retirement Benefits
Article 4 (Establishment of Retirement Benefit Schemes)

(1) Each employer shall establish at least one retirement benefit scheme in order to pay benefits to retiring employees: Provided, that this shall not apply to employees whose continuous service period is less than one year, nor employees whose average weekly working hours over a four-week period is less than 15 hours.

Enforcement Decree to the Act on the Protection, etc. of Fixed-term and Part-time Employees
Article 3 (Exception of Restriction on Period of Employment for Fixed-Term Employees)

(3) "Where prescribed by Presidential Decree" under Article 4 (1) 6 of the Act shall be any of the following:
6. Where a part-time employee whose contracted weekly working hours are clearly short under Article 18 (3) of the Labor Standards Act.

IV. Using Solidarity Wage Policy to Reduce the Wage Gap

by **Yoo Sun KIM**
Chairperson
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Issue 7

Raising the Statutory Minimum Wage to KRW 10,000 by 2022

In the 2017 presidential election campaign, the Democratic Party, the Justice Party and the Bareun Party all pledged "KRW 10,000 minimum wage by 2020", while the Liberty Korea Party and the People's Party pledged "KRW 10,000 minimum wage by 2022".

- The current administration failed to fulfill its pledge by 2020. It now has to make clear when the pledge will be fulfilled, for example, by 2021 or 2022.

If the administration sets a feasible target of KRW 10,000 by 2022, the minimum wage has to increase by about KRW 700, or 8%, every year (See Table 10 below).

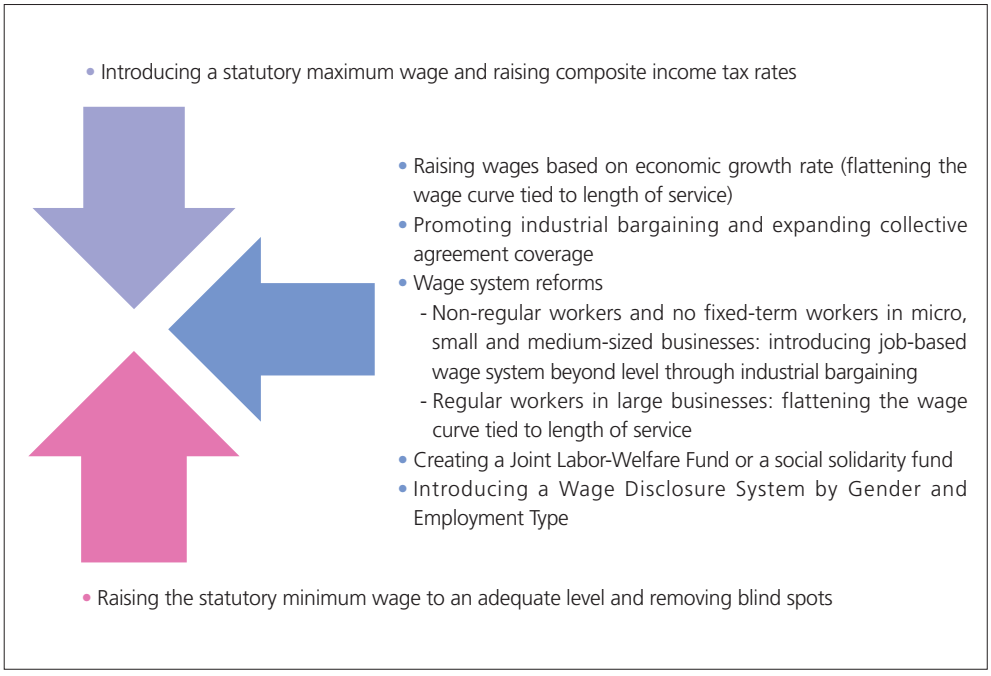
Table 10. Scenarios for raising the statutory minimum wage

Target year	Statutory minimum wage (KRW)				Increase amount (KRW)	Increase rate (%)
	2020	2021	2022	2023		
KRW 10,000 by 2021	8,590	10,000			1,410	16.4
KRW 10,000 by 2022	8,590	9,295	10,000		705	8.2 – 7.6

Another option is to raise the minimum wage by 20% and change the statutory paid weekly holiday to an unpaid one at the same time.

- Corporate Korea argues that the paid weekly holiday needs to become an unpaid holiday, which would reduce the wages for low-paid workers by 20%. To be deemed reasonable, it will need to be combined with a 20% raise in the minimum wage as a "package solution".
- With such a package in place, employers who have granted statutory paid weekly holiday would effectively pay the same minimum wage, and those who haven't would pay a minimum wage that is 20% higher.

Figure 1. Initiatives to reduce the wage gap



Issue 8

Introducing a Statutory Minimum Wage and Raising the Composite Income Tax Rate Ceiling

- A statutory maximum wage should be set at 7 times the minimum wage, with heavy tax rates applied to wage income above that ceiling.
  - With the maximum wage linked to the minimum wage, the highest-income earners can make more money only when low-income earners do so. In the US, the highest tax rate on income of USD 200,000 or above was 94% at the end of the Second World War, and remained around 90% for the next 20 years. Such a high tax rate shouldn't be so surprising in Korea, where the tax rate ceiling was 70% in the 1970s.
  - The purpose of raising the tax rate ceiling is to improve income distribution by curbing the income growth of high-income earners, not to increase tax revenue (Piketty 2014).

- In South Korea, local governments are taking the lead on maximum wage.
  - In March 2019, the Metropolitan Council of Busan passed a local ordinance that limits the wages for heads of public institutions to no higher than 7 times the minimum wage, and the wage of other executives of public institutions to no higher than 6 times the minimum wage.
  - In July 2019, the Provincial Council of Gyeonggi also established a local ordinance that limits the wages for heads of public institutions to no higher than 7 times the minimum wage, and that recommends a reduction in the wage gap between executives and employees.

- The central government and the National Assembly need to take the lead in introducing a statutory maximum wage and raising the ceiling on the income tax rate, in order to limit the wages of high-level civil servants, members of the National Assembly, and executives and employees of public corporations and private corporations.
  - Trade unions should persistently demand a maximum wage system in their collective bargaining at company or industry level.

- The ceiling on the composite income tax rate should be raised, with tax exemptions and reductions decreased.
  - The current ceiling on the tax rate is 40% for a tax base of KRW 150-500 million, 50% for a tax base of KRW 500 million to KRW 1 billion, and 60% for a tax base above KRW 1 billion (See Table 11 below).

Table 11. Proposed composite income tax rates by tax base

Tax base (composite income tax)		Tax rate (present)	Tax rate (proposed)
KRW 12 million or less		6%	6%
Over KRW 12 million – 46 million		15%	15%
Over KRW 46 million – 88 million		24%	24%
Over KRW 88 million – 150 million		35%	35%
Over KRW 150 million – 300 million		38%	40%
Over KRW 300 million – 500 million		40%	
Over KRW 500 million	Over KRW 500 million –1 billion	42%	50%
	Over KRW 1 billion		60%

- Tax reductions function as compensation for low wages. Therefore, tax exemptions and reductions should be decreased primarily for high-income earners, and gradually

decreased for middle- and low-income earners as income distribution improves.

- In particular, a ceiling needs to be placed on wage and salary income deductions for high-income earners, who gain significant benefit from deductions. The Income Tax Act, revised in 2020, places a ceiling of KRW 20 million on wage and salary income deductions, which only affects wage earners with an annual income of KRW 362,500,000 or above. Therefore, the ceiling on wage and salary income deductions should be reduced so as to decrease tax benefits for high-income earners.

Issue 9

Promoting Industrial Bargaining and Expanding Collective Bargaining Agreement Coverage

- Korea has huge wage gaps between businesses and different types of employment. This is attributed not just to the country's industrial and labor market policies, but also to labor-management relations policy that has required bargaining on the company level.

- Industrial bargaining should be promoted, and reforms should be made regarding expansion of collective agreement coverage (See Table 12 below).

- Workers need to be covered by collective agreements, even if they can't join unions. With little industrial bargaining, and the current Trade Union Act hampering the expansion of collective agreement coverage beyond company level, workers in businesses without unions are not covered by collective agreements.
- In France, the unionization rate is 8%, but 95% of workers are covered by collective agreements.

Table 12. Proposed revision for expanding collective agreement coverage

Present	Proposed revision
Article 36 (Geographical Binding Force) (1) When two-thirds or more of the workers of the same kind of job employed in an area are subject to one collective agreement, the administrative agencies may, with resolution of the Labor Relations Commission, at the request of either of the parties to the collective agreement or ex officio, make a decision that the said collective agreement shall apply to other workers of the same kind of job and their employers engaged in the same area.	When there is a collective agreement in an industry, area, or category of business, the administrative agencies may, with resolution of the Labor Relations Commission, at the request of either of the parties to the collective agreement or ex officio, make a decision that the said collective agreement shall apply to other workers of the same kind of job and their employers engaged in the same industry, area, or category of business. In that case, the Labor Relations Commission shall make a resolution considering whether the content of the collective agreement to be applied serves the social and public interest.

Issue 10

Reforming Wage Systems through Industrial Bargaining

- Non-regular and no fixed-term contract workers: Introducing job-based wage system through industrial bargaining, beyond company level.

- Regular workers in the public sector and large private businesses with seniority-based wage systems: flattening the wage curve tied to length of service, and expanding the share of job-based wage

Issue 11

Creating a Joint Labor-Welfare Fund or Social Solidarity Fund

○ Creating a Joint Labor-Welfare Fund or Social Solidarity Fund through bargaining beyond company level such as industry, area, etc.

- The fund will improve working conditions and benefits for non-regular workers and those in micro, small and medium-sized businesses, and strengthen social solidarity (See Table 13 below).

Table 13. Relevant provisions on the creation and use of a Labor-Welfare Fund

Framework Act on Labor Welfare

Article 86-2 (Creation of Joint Labor-Welfare Fund)

(1) At least two employers may jointly create a joint labor-welfare fund (hereinafter referred to as "joint fund") by contributing part of their income, to conduct the business activities specified in Article 62 (1).

(2) An employer participating in a joint fund and any person, other than employers, may contribute securities, cash, and other assets specified by Presidential Decree to the joint fund, in addition to the contributions made under paragraph (1). [Newly Inserted, Jul. 20, 2015]

Article 62 (Business Activities of Incorporated Fund)

(1) An incorporated fund may conduct the following business activities with its profits, as prescribed by Presidential Decree:

1. Assistance to employees' property formation, including subsidization of purchase of a house and support for purchasing the employee share;
2. Granting of scholarships or disaster relief fund, and other aid for employees' livelihood;
3. Subsidization of expenses incurred in the protection of maternity and the balance between work and family;
4. Subsidization of expenses incurred in operating an incorporated fund;
5. Investment in or contribution to a facility specified as a labor welfare facility by Ordinance of the Ministry of Employment and Labor or purchase, installation, and operation of such facility;
6. Improvement of welfare benefits of employees employed by companies directly contracted by the relevant business and temporary agency workers placed to work for the relevant business;
7. Business activities specified by Presidential Decree, in addition to those for which an employer is obliged to pay wages and others to employees under other statutes.

Issue 12

Introducing a Wage Disclosure System by Gender and Employment Type

○ An employment type disclosure system has been in place since 2014 for businesses with 300 or more employees. Information on wage by gender and type of employment can be simply added to the existing system.

○ It is also necessary to introduce a law similar to Germany's Transparency of Pay Act, enacted in March 2017, which would require employers, at the request of an employee, to make public all information on wage and allowances paid to his or her colleagues in a transparent manner.

V. Direct and Regular Employment for Permanent and Continuous Positions

by **Kwang-pyo ROH**
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Issue 13

Reforming Criteria for Determining Whether Positions are Permanent and Continuous

The MOON administration has transitioned non-regular contracts to regular contracts in the public sector over the last 2 years, based on its pledge of "direct and regular employment for permanent and continuous positions" in the 2017 presidential campaign.

- As of the end of December 2019, 174,000 contracts of 194,000 positions deemed permanent and continuous had transitioned (See Table 14 below).

Table 14. Transition to regular employment in the public sector as of December 2019

	Phase 1	Phase 2	Phase 3
Institution and contractor	Central government ministry, local government, public institution, local public corporation, educational institution	Local government-invested or –funded institution, subsidiary of public institution and local public corporation	22,743 contractors for 10,099 services
Employee	316,000 non-regular workers in permanent and continuous positions → 205,000 to be transitioned by 2020	16,000 non-regular workers to be transitioned	196,000 workers employed by private contractors
Progress	• Guidelines (July 20, 2017) and transition plans (Oct. 25, 2017) issued • 189,000 workers decided as policy target (end of Dec. 2019), and 174,000 of them transitioned	• Guidelines issued (May 31, 2018) • 5,800 workers decided as policy target (end of Dec. 2019), and 5,100 of them transitioned	• Survey research (July-Nov. 2018) • Policy direction on private contracting issued (Feb. 2019) • Guidelines on protection of working conditions in private contractors issued (Dec. 2019)

This public sector transition has greatly improved employment security for and treatment of workers who now have regular contracts. In the process, however, the government and workers disagreed on transferring the contracts to subsidiaries as part of the transition, the standard wage system, etc. These issues will lead to major conflicts in labor-management relations and personnel management in the public sector in the coming years.

According to the Supplementary Results of the Economically Active Population Survey by Statistics Korea, the number of non-regular workers decreased from 8,430,000 (42.4%) in August 2017 to 8,210,000 (40.9%) in August 2018, and then increased by 350,000 to 8,560,000 (41.6%) by August 2019 (Yoo Sun KIM 2019).

- The total number of non-regular workers increased between 2018 and 2019 despite the transition of 170,000 non-regular to regular contracts in the public sector, largely due to the lack of private sector efforts to reduce the number of non-regular workers and discrimination against them.

Existing laws grant exceptions on various grounds to the principle of regular employment for permanent and continuous positions. Many non-regular contracts have become non fixed-term contracts, instead of proper regular contracts. Reforms are needed to the criteria for determining whether a position is permanent and continuous.

Issue 14

In-sourcing Based on Assessment of Subsidiaries

- The "subsidiary option" was abused in many transitions to regular contracts in the public sector. As of the end of 2019, 47 public institutions had established 62 subsidiaries. Many of the newly established subsidiaries have been criticized as no better than temporary work agencies, for lacking job expertise and autonomy as organizations.

- The government should assess the subsidiaries created by public institutions for transitioning work contracts. If the subsidiaries lack job expertise and autonomy, they should be in-sourced back to the mother corporation, or merged into a public service corporation that would function as a single window for in-sourcing in the public sector.

Issue 15

Establishing Standard Wage and Rank Systems based on Bargaining in the Public Sector

- A standard wage system is necessary to ensure equal pay for workers engaged in equal or similar tasks. However, the administration put forward a model system limited to low-wage workers, including those in cleaning, security services, facility management, cooking, administrative work, etc. In addition, the model system was designed without consulting trade unions.

- The government has also been criticized for creating regular employment 'only in name', or a type of employment 'in between' regular and non-regular, as it has not allocated additional quotas for or budgeted additional funding to regular workers who recently had their contracts transitioned. Many of these workers have been placed in separate occupational groups such as "public employees with no fixed-term", instead of integrated into existing groups, without systematic personnel management. It is likely that these workers will continue to suffer discrimination in wage and working conditions.

- It is necessary to establish and implement a standard wage and rank system based on bargaining in the public sector, or industrial bargaining.

Issue 16

Cracking Down on In-house Subcontracting and Illegal Use of Temporary Agency Work: Transitioning to Regular Employment

- According to the MOEL's Results of the Employment Type Disclosure System in March 2019, 880,000 workers (18.1%) are indirectly employed by in-house subcontracting or other means in private businesses with 300 or more employees. The top 10 conglomerates have 410,000 (29.8%) indirectly employed workers.
  - Most of the indirect employment by in-house subcontracting or other means is for permanent and continuous positions, and likely to be considered as illegal use of temporary agency work. Therefore, the government should crack down on illegal use of temporary agency work, including in-house subcontracting and other types of indirect employment, and transition indirectly employed positions to regularly employed positions.

Issue 17

Using the Law to Require that Non-regular Employment Contracts be Used Only for Justifiable Reasons

- For progress to be made in transitioning non-regular contracts for permanent and continuous positions into regular ones in the private sector, regular employment should be required for permanent and continuous positions and life- and safety-related jobs, and non-regular employment should be legal only when there are seasonal or other justifiable reasons such as a regular employee taking leaves for pregnancy, childbirth, or childcare, in principle.

VI. Protecting Labor Rights for Workers in Special Types of Employment and Platform Workers

by **Soo-ok HWANG**
Researcher
Korea Labor & Society Institute

Korea Employment Information Service defines platform work as "a type of work found through the mediation of a digital platform, from which labor income is earned without an employment contract and with a certain degree of protection for intermittent (one-off, non-permanent or non-regular) assignments".

- It also pays attention to major digital platforms in Korea such as applications for paid designated driving, delivery (food, express delivery, flower, etc.), taxi call, household chores, patient and hospice care, interpretation and translation, cleaning, security service, ICT outsourcing (website and application development), professional tasks (design, writing, accounting, consulting, and sales and marketing), moving company, pet care, interior design, beauty service, automobile repair, tutoring, fishing, and other one-off, part-time jobs (job-search websites such as Albamon, Alba Heaven, etc.).

The ILO categorizes platforms by how the work is performed as the following:

a) Location-based applications for offline on-demand work

- Work is allocated on a digital platform at the demand of clients and performed in a geographical area where the platform operates.
- This category includes physical services such as Uber, paid designated driving, household chores, food delivery, cleaning, errands, etc.

b) Web-based platform for online work

- Work is mediated on a digital platform and performed in a virtual online space by an unspecified number of workers without personal contact.
- This category includes online hiring platforms that connect users with professionals and freelancers, digital content creation platforms that collect and select creative content, and crowdwork platforms that allocate microtasks to a large number of users.

Platforms today are designed to cut labor cost and employee benefits with little change in how the work is actually performed. This is why platform workers are often considered as employees disguised as the self-employed or independent contractors.

- Platform businesses argue that they are just intermediaries and not involved in any direction of work, evaluation or discipline regarding workers. However, platforms effectively exercise control and discipline over platform workers with client review and online evaluation on the platform, which determine their fees and eligibility to use the platform.

In particular, offline on-demand work has little difference from existing special types of employment, except that the work is mediated by digital platforms.

- These platform businesses effectively manage their workers by training them prior to recruitment, mandating them to wear logos or uniforms, monitoring their punctuality, managing the time deliveries start and end, and denying their eligibility to use the applications. Workers don't have choice about time, place and content of work.
- Recently, the court decided that workers of Yogiyo have an employment relation with the food delivery platform.

Web-based platforms for online work have some difference in how the work is performed, but workers' dependency on the platform remains essentially the same.

- Some platforms grant workers choice about time and space, but the work has to be performed within the system's boundaries.

- There are platforms where workers are denied autonomy in setting the prices for their service or choice of clients, work schedule is shared with the platform and penalty is imposed based on screenshots or business logs. In this case, it is likely that an employment relation is recognized.

Issue 18

Establishing Legal Criteria for Determining the Existence of an Employment Relation

It is necessary to establish criteria for deciding that the "self-employed" are actually employees.

- Those who provide labor or service to employers for compensation should be recognized as employees.
- Employees disguised as the self-employed or independent contractors should be regarded as employees and covered by the Trade Union and Labor Relations Adjustment Act.
- Employment relations should also be recognized for workers in special types of employment (disguised self-employed workers) and platform workers whose tasks can be performed only under direct or indirect supervision and direction of employers, even if those workers are technically regarded as the self-employed.

California Assembly Bill 5 (AB 5) in the US recognizes individuals who provide labor or service to the employer for compensation as employees, and entitles them to labor protection and social insurances.

- Under AB 5, the employer bears the burden of proof. To deny the existence of an employment relation with an individual, the employer has to prove all of the following:

a) the individual is free from direction and control for the performance of service;
b) the service is performed outside the usual course of business of the employer; and
c) the individual is customarily engaged in an independently established trade, occupation, profession, or business of the same nature as that involved in the service performed.

Issue 19

Protecting the Right to Organize for Quasi-employees

It is necessary to protect workers who don't fit either the definition of an employee under existing laws, or the definition of the self-employed by classifying them as a third group.

- They are not employees nor the self-employed, with a lower level of personal dependency and the same level of economic dependency compared to employees.
- Most European countries, including Germany, the UK and Italy, classify these workers as a third group (e.g. Quasi-employees) for protection.

This group of workers should be entitled to the right to organize as an extension of freedom of association, since they have almost the same level of economic dependency compared to employees, despite their technical status as the self-employed.

Issue 20

Expanding Social Insurance Coverage

Workers in special types of employment and platform workers should be covered by social insurances.

- A growing number of workers are excluded from the social insurance system due to the issue of employment relations.
- Many occupations are increasingly characterized by special types of employment. But only 9 of such occupations are eligible for industrial accident insurance.
- The simplest way to cover workers in special types of employment and platform workers is to abandon the current approach of applying the social insurance system only to "employees" defined by the Labor Standards Act and adding a patchwork of exceptions and special provisions to the narrow definition.
- Coverage of social insurance should be expanded to all workers to protect them from poverty after retirement, unemployment and industrial accident.

VII. Right to not be Discriminated against or Harassed at Work

by **Soo-ok HWANG**
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Issue 21

Introducing a Comprehensive Anti-Discrimination Act

- Currently, provisions against discrimination in employment relations are scattered in a number of different laws, including the National Human Rights Commission of Korea Act, the Trade Union and Labor Relations Adjustment Act, the Labor Standards Act, the Equal Employment Opportunity and Work-Family Balance Assistance Act, the Act on the Prohibition of Discrimination against Persons with Disability and Remedy against Infringement of Their Rights, etc., the Act on the Employment, etc. of Foreign Workers, and the Act on Prohibition of Age Discrimination in Employment and Elderly Employment Promotion.

- Existing provisions against discrimination lack consistency regarding scope and subject of application, definition of discrimination, grounds for discrimination, etc.
  - Discrimination in hiring and recruitment is stipulated by the Employment Security Act.
  - Discrimination in working conditions such as wages, personnel management, age limit, retirement and layoffs is stipulated by the Labor Standards Act, the Act on the Protection, etc. of Fixed-term and Part-time Employees, the Act on the Protection, etc. of Temporary Agency Workers, and the Act on the Employment of Foreign Workers.
  - Discrimination regarding employment in general is stipulated by the Equal Employment Opportunity and Work-Family Balance Assistance Act, the Act on Prohibition of Age Discrimination in Employment and Elderly Employment Promotion, the Act on the Prohibition of Discrimination against Persons with Disability and Remedy against Infringement of Their Rights, etc., and the National Human Rights Commission of Korea Act.
  - The Equal Employment Opportunity and Work-Family Balance Assistance Act, the Act on the Protection, etc. of Fixed-term and Part-time Employees, and the Act on the Protection, etc. of Temporary Agency Workers explicitly stipulate that the employer bears the burden of proof. However, the Act on the Prohibition of Discrimination against Persons with Disability and Remedy against Infringement of Their Rights, etc. places the burden of proof both on the victim and the perpetrator, while other laws don't have provisions on burden of proof.

- As these laws provide for different means of enforcing the prohibition against discrimination, there are many problems in corrective measures to remedy discrimination against victims.
  - Existing corrective measures include only criminal punishment and administrative fines for discriminatory measures by the employer. Without means of remedy for the damage caused as a consequence of discrimination, victims are left to bear it themselves.
  - In addition, remedy systems for victims of discrimination are very complicated as existing laws designate different institutions and authorities to implement remedy.

- Corrective measures against discrimination should be strengthened.
  - It is necessary to establish a single window for remedy for discrimination, instead of having a number of different authorities.
  - Also, measures need to include practical and meaningful means for remedy for discrimination as well as existing punishment of the perpetrator for discrimination.
  - For practical and meaningful remedy, class action lawsuits of workers discriminated against in employment relations, or lawsuits on their behalf by anti-discrimination groups should be allowed.

Many international organizations, including the UN, have made strong recommendations that the Korean government introduce a comprehensive anti-discrimination act.

- Anti-discrimination bills have been submitted many times between 2006 and 2020, from the 17th to the 20th National Assembly. Unfortunately, the bills were not enacted largely due to opposition from corporate Korea and far-right Christian groups.

A comprehensive anti-discrimination act would serve as governing law on discrimination.

- It would make the prohibition against discrimination more effective by making up for the shortcomings of existing provisions.
- Grounds for discrimination and remedy for and sanctions against it can be stipulated in a consistent and systematic manner.
- It can also include provisions on raising public awareness about discrimination and preventive measures.

It is necessary to establish an anti-discrimination body based on a comprehensive anti-discrimination act.

- Such a body would be in charge of investigation, mediation, litigation and training for prevention of discrimination, like the Equal Employment Opportunity Commission in the US, and Germany's Antidiskriminierungsstelle, or the Federal Anti-discrimination Agency.

Issue 22

Strengthening the Prohibition against Workplace Harassment

The National Human Rights Commission plans to issue policy recommendations on the prohibition against workplace harassment in 2020. It already raised the need for a comprehensive response to workplace harassment by proactively establishing a separate law on its prohibition and remedy for violation of rights, or revising existing laws.

- The Commission pointed out that, although it has implemented remedy for harassment based on existing anti-discrimination provisions, labor laws, and civil and criminal measures, they are ineffective in enforcing the prohibition against discrimination.
- It also demanded that the government establish a designated body, carry out survey research on the situation, train for prevention, make labor inspections stricter, and require organizations to set up prevention and response systems and procedures, in order to prevent workplace harassment.
- The following improvements are also necessary regarding remedy procedures:

a) revise the Labor Inspector Work Rules to authorize labor inspectors to investigate into and take measures against workplace harassment;

b) revise the National Human Rights Commission of Korea Act to expand the scope of complaints it will deal with;

c) revise the Labor Relations Commission Act to establish sectoral committees within the Commission; and

d) revise the Occupational Safety and Health Act and the Industrial Accident Compensation Insurance Act to define harassment as a form of industrial accident based on a new set of criteria.

- To prevent recurrence, the Labor Standards Act, the Labor Relations Commission Act and the National Human Rights Commission of Korea Act should be revised to require corporations, the Ministry of Employment and Labor and the National Human Rights Commission to implement training on prevention.

It remains necessary to establish a special act on workplace harassment, as it is related to diverse areas, including workplace democracy, non-discrimination, safety at work, etc. However, the National Assembly's Environment and Labor Committee decided instead to insert a new chapter (VI-2 Prohibition against Workplace Harassment) into the Labor Standards Act at the end of December 2018.

- A few articles were added along with the revision: Article 76-2 on prohibition, Article 76-3 on measures to be taken in the event of workplace harassment, and Article 109 on penalties for unfair treatment of employees who report the occurrence of workplace harassment and victimized employees.

The revised Labor Standards Act will improve the human rights situation for workers to a certain extent, but it should be complemented with the following:

a) apply the new provisions to temporary agency workers, workers in special types of employment, etc.;
b) require training on prevention of workplace harassment; and
c) revise the Occupational Safety and Health Act to require the employer to take measures in support of employee health.

- It is particularly important that the provisions are made applicable to temporary agency workers and workers in special types of employment who do not have direct employment relations. In addition, another revision should be made to the Labor Standards Act to introduce a doctrine of "joint employer", or define "workplace harassment" as harassment related to work, not just what takes place at the workplace.
- Employers should be required to implement annual training on prevention of workplace harassment, and employers and employees required to receive such training, with a new provision similar to Article 13 of the Equal Employment Opportunity and Work-Family Balance Assistance Act on preventive education on sexual harassment in the workplace.
- Employers should be required to take action in support of employee health regarding workplace harassment with a new provision in the Occupational Safety and Health Act similar to Article 26-2 on measures to prevent health risks from a client's use of violent language, and a new provision in the Rules on Occupational Safety and Health Standards on measures to prevent health risks from workplace harassment similar to Article 669 on measures to prevent health risks from occupational stress.

VIII. A Social Safety Net for All Workers

by **Jeong-hyang YOON**
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Issue 23

Expanding Eligibility for Basic Pension

- In Korea, poverty grows steeply after retirement from the labor market. People aged 66 or over accounted for 49% of the population in poverty in 2014. Public spending on the elderly stands at 2.2% of GDP as of 2013 (2.8% as of 2017), much lower than the OECD average of 7.7% (Yu-jin YEO 2019:2)[3].

- In the Second Basic Plan on Social Security (2019-2023), the government set out plans to expand the coverage of basic pension to those in the lower 70% in terms of income by 2021. However, it is not clear whether it is a sustainable income guarantee system for poverty among the elderly.

- This paper proposes a stable public system for prevention and mitigation of old-age poverty and income guarantee for all workers, including young workers in particular. To this end, the basic pension should be improved as a first phase of the public pension system in the medium term.
  - Today, pensions (public and basic) account for 11.9% of the income of a single-member household, and 22.5% of that of an elderly married household (Yu-jin YEO, 2019: 4-5).

- In the short term, eligibility for the basic pension should be expanded. Conditions other than being aged 65 or over, a resident of Korea or of Korean nationality should be abolished in phases. In addition, the scope of beneficiaries and the amount of benefits need to be more universal with a guaranteed amount of benefits - for example, at a certain percentage (50%) of the average national pension benefits for an average national pensioner over a certain number of years.

Issue 24

Expanding the National Pension Credit Scheme

- With increasing labor market instability, there is a growing number of workers unable to pay the national pension premiums. The average period of contribution to public pension schemes is 38.6 years in the EU as of 2010. In Korea, however, the figure is expected to peak at 24.8 years in 2020 before declining (Eun-seon JOO 2017, and Yu-jin YEO 2019).

- Korea's national pension system has a "credit" scheme, where those unable to pay premiums due to certain circumstances, including military service, suspension of work due to childbirth, etc., are given credits recognized as continued payment of premiums.

- The government should expand the credit scheme by actively identifying "inevitable reasons in an individual's life cycle, or socially valuable acts" (See Table 15 below).
  - There is a wide range of workers, including the youth, women with career disruptions, non-regular workers, the micro-sized self-employed, etc., who often experience difficulties in remaining eligible for the national pension system and can only expect an inadequate amount of benefits. In addition, the relatively short service years in the labor market means there is a substantial risk that contributions will have to be suspended with a change of employment type.

3 Yu-jin YEO (2019), Poverty in and Income Guarantee for the Elderly in Korea, Health and Welfare Issue and Focus, (364).

Table 15. Proposed expansion of the credit scheme in the National Pension system

Credit type	Present	Proposed expansion
Childbirth credit	• National Pension Act: Article 19 (1) - 12 months for the second child, 18 months for each of the third and later child (with a ceiling of 50 months in total) - Financed entirely or partly by state	- 18 months for each of the first and later child (with a ceiling of 60 months in total) - Financed by the pension fund
Military service credit	• National Pension Act: Article 18 (1) - 6 months for active duty servicemen, secondment servicemen, full-time reserve servicemen and social work personnel who served longer than 6 months based on the Military Service Act - Financed entirely by state	- Full service period for all servicemen - Financed entirely by state

Issue 25

Establishing a Public Corporation for Social Services

According to the Economically Active Population Survey by Statistics Korea, employment in the social services sector increased from 4,510,000 (17.4% of total employment) in 2014 to 5,170,000 (19.0%) in 2019 – a 660,000 person difference (1.6%p). This means that the sector accounted for more than half (53.5%) of the total employment growth (1,230,000) in the last 5 years.

- However, the social services sector is characterized by the predominance of older women and women experiencing career disruptions, and poor working conditions such as low wages and job insecurity.

The government has been running a "Public Agency for Social Services" as a pilot program since 2019 in 4 regions (Seoul, Gyeonggi Province, Daegu and South Gyeongsang Province) to provide decent jobs in the social services sector, improve the quality of social services and ensure that social services in general are based more on the public interest.

- The Public Agency for Social Services is mainly responsible for direct operation of service providers (state-owned and public institutions previously run by private entities on contract, and newly established institutions), direct employment and training of social service professionals, consulting for private institutions, etc.

However, the Public Agency for Social Services will be ineffective in providing decent jobs and orienting social services in general more towards the public interest. First, the government has a policy of limiting financial support for the Agency to the costs of labor for its head office, without offering additional support for institutions such as childcare centers and the Comprehensive Home Care Centers run by the Agency, so that they would be financed with the existing subsidy and support from the Long-term Care Insurance.[4]

- Considering the fact that private institutions account for 95% of all elderly care facilities, the government's approach to running the Public Agency for Social Services and supporting the private sector described above will only widen the gap between public and private institutions, rather than driving the entire market more toward the public interest.

4 Press Release, Ministry of Health and Welfare. Nov. 8, 2019.

Second, there is no law that directly governs the Public Agency for Social Services yet.[5] The Agency is now established by mayors and governors based on the Act on the Operation of Local Government-invested or -funded Institutions, with the central government only providing financial support through the national budget. The situation has caused substantial tensions between local governments and local councils.

- With the state's responsibility passed on to local governments today, it is expected that regional gaps in social services will emerge and blind spots will not disappear quickly. In addition, as the Agency is technically a foundation, it won't be able to secure an adequate number of service professionals.

Third, there are no clear alternatives yet to improving employment conditions for social service professionals.

A Public Corporation for Social Services should be established by the central government as was once planned. The government should secure a public supply of social service professionals with the Corporation accounting for 30-40% of the total employment under its supervision, and non-profit organizations in the private sector accounting for another 30-40% with a public interest-oriented approach.

- Providing decent jobs in the sector requires a complete overhaul of employment conditions for social service professionals. Based on an assessment of the value of social services work, new work arrangements, wage systems, etc. should be introduced.

5 The Bill on the Management of and Support for Social Services, submitted by National Assemblywoman In-soon NAM and 10 others in May 2018, remains with a related committee for review.

IX. Better Democracy in the Workplace

by **Kwang-pyo ROH**
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Issue 26

Introducing Works Councils

- Reforms need to be made in how workers are represented in workplaces for better collection of opinions and decision-making.
  - Workers are represented on a daily basis by a union with the majority of workers in a workplace. However, it is unclear how the workers in workplaces without a majority union, or a union in the first place, are represented.

- In existing labor law, employee representatives are defined separately by the Labor Standards Act, the Act on the Guarantee of Employee's Retirement Benefits, the Act on the Protection, etc. of Temporary Agency Worker, the Framework Act on Employment Policy, the Act on Prohibition of Age Discrimination in Employment and Elderly Employment Promotion, the Employment Insurance Act, the Occupational Safety and Health Act, and the Act on the Promotion of Employees' Participation and Cooperation, etc. (See Table 16 below).
  - However, these laws lack provisions or are unclear on election process, terms of service and authority of employee representatives, and protection from unfair treatment by the employer. They are also limited in terms of representing workers in increasingly diverse types of employment, and independence and democratic accountability of employee representatives

- To resolve these challenges, establishment of a representative body of employees needs to be mandated, like Germany's Betriebsrat, or the Works Council, which is comprised of representatives elected by direct and secret voting of employees in the workplace. In addition, reforms should be made to provisions on election process, terms of service and authority of employee representatives, and protection from unfair treatment by the employer.

Table 16. Authority of employee representatives stipulated by existing labor laws

Law	Provisions
Labor Standards Act	1) To be consulted on dismissal for managerial reasons in advance: Article 24 (3) 2) To agree in written form on flexible work hours system for a unit period of not more than three months : Article 51 (2) 3) To agree in written form on selective work hours system: Article 52 4) To agree in written form on restrictions on extended work: Article 53 (3) 5) To agree in written form on substitution of holiday work: Article 55 (2) 6) To agree in written form on compensatory leave system: Article 57 7) To agree in written form on special cases for calculation of work hours: Article 58 (2) and (3) 8) To agree in written form on special cases concerning work hours and recess hours: Article 59 9) To agree in written form on substitution of annual paid leave: Article 62 10) To be consulted on night and holiday work of pregnant women before seeking an approval: Article 70 (3) 11) To be heard and to agree on the preparation or alteration of the rules of employment (the majority of the employees): Article 94 (1)
Act on the Guarantee of Employees' Retirement Benefits	1) To consent to establishing or changing retirement benefit schemes, and to be heard on changing the details of a retirement benefit scheme established or changed: Article 4 (3) and (4) 2) To be heard on establishing retirement benefit schemes of newly established business: Article 5 3) To consent to rules for defined benefit plans: Article 13

	4) To consent to rules for defined contribution plans: Article 19 (1) 5) To be consulted on the responsibilities of an employer who has established a defined benefit plan or a retirement allowance system: Article 32 (4)
Act on the Protection, etc. of Temporary Agency Workers	1) To conduct surveys and research on temporary agency work business: Article 4 (1) 2) To be consulted on the use of a temporary agency worker in advance: Article 5 (4) 3) To consent to shortening the period during which no company may assign a temporary agency worker to the duties in which a worker terminated by the company for management reasons: Article 4 of the Enforcement Decree to the Act
Framework Act on Employment Policy	1) To request employment security offices for support concerning employment management: Article 29 (2)
Act on the Prohibition of Age Discrimination in Employment and Elderly Employment Promotion	1) To consent to implementing a wage peak system: Article 14 (2) 2 2) To restructure wage systems following extension of retirement age: Article 19-2 (1)
Employment Insurance Act	1) To be consulted on preparing plans for retaining employees: Article 20 (1) 1 of the Enforcement Decree to the Act 2) To agree on measures regarding requirements, etc. for granting subsidies to insured employees in cases of business suspension, etc.: Article 21-3 (1) 2 of the Enforcement Decree to the Act 3) To consent to implementing a wage peak system with extension of the retirement age as required for receiving subsidies for wage peak system: Article 28 (1) 1 of the Enforcement Decree to the Act
Occupational Safety and Health Act (In effect from Jan. 16, 2020)	1) To consent to preparation and modification of health and safety management regulations in a place of business where no occupational health and safety committee is established: Article 26 2) To request for notification of decisions made by occupational health and safety committee (or the labor-management council), safety and health analysis results, formulation and implementation of a health and safety improvement plan, implementation of a contractor's duties, material safety data sheets, working environment measurement, etc.: Article 35 3) To be heard on preparing a process-safety report in a place of business where no occupational health and safety committee is established: Article 44 (2) 4) To request to be present when a safety and health analysis is conducted: Article 47 (3) 5) To present opinions on preparation of a health and safety improvement plan in a place of business where no occupational health and safety committee is established: Article 49 (2) 6) To be consulted on safety inspection under voluntary inspection program: Article 98 (1) 7) To request for information on the name and content of chemical substances provided in written form as a replacement to material safety data sheets: Article 112 (10) 8) To request to be present when the working environment is being measured, and to request for an explanatory meeting on the findings of the working environment measurement: Article 125 (4) and (7) 9) To request to be present when health examinations are being conducted, and to request for explanation of the result of health examination: Article 132 (1) and (2) 10) To request to be present when epidemiological inspections are conducted: Article 141 (1)

*Source: Soo-jeong SHIN 2019.

Issue 27

Introducing Board-Level Employee Representation

- Board-level employee representation (BLER) refers to a practice where representatives of employees or trade unions participate in the board of directors for high-level decision-making of a business.
  - Many European countries have introduced BLER as part of workers' participation in business management.

- The MOON administration promised to introduce BLER in public institutions as one of its 100 priorities. Due to a delay in revision of relevant laws, however, this promise is yet to be realized.
  - Public institutions under local governments, unlike those under the central government, are increasingly adopting BLER. In 2016, the Seoul Metropolitan Government became the first government in Korea to introduce BLER in the publicly-invested or -funded institutions under its supervision. Gyeonggi Province, Gwangju City and Busan City have also adopted BLER based on their local ordinances.

- The purpose of BLER is to establish labor-inclusive industrial relations based on participation and cooperation.
  - Many countries grant workers' participation in business management, because it facilitates their voluntary commitment.
  - BLER should be adopted in phases, starting with the public sector and large businesses.

X. Establishing a Labor Court

by **Soo-ok HWANG**
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Issue 28

Establishing a Labor Court

- Workers are unable to .engage in bargaining with the employer on an equal basis due to their disadvantageous position in general.
  - Labor laws intend to protect workers and correct the imbalance between labor and management. The unique nature of labor laws require that labor disputes are resolved by a different system than other civil disputes.
  - Labor disputes also require labor law principles, different from civil law principles, and specialized legal procedures.
  - Currently, the Labor Relations Commission is responsible for resolving labor disputes while a designated group of judges in the general court deal with labor cases in an attempt to take account of the unique nature of labor disputes.

- The current system is not capable of taking full account of this unique nature of labor disputes and providing adequate remedy for violation of rights.
  - The dual system of the Labor Relations Commission and the court effectively function as a 5-instance system, which consists of the Regional Labor Relations Commission, the National Labor Relations Commission, the Administrative Court, the High Court and the Supreme Court.
  - The system often leads to overlap between administrative and civil remedy processes, for example, for unfair dismissal. It also delays effective remedy and leads to unnecessary litigation by having separate institutions deal with labor disputes. For example, unfair labor practices or cases related to industrial action are handled by the Regional Labor Relations Commission.
  - Remedy orders by the Labor Relations Commission doesn't have binding force, and are therefore ineffective. If labor or management fails to follow such orders, the other side must file a civil lawsuit to remedy the situation.

- Because of the unique nature of labor cases, they need to be resolved speedily, impartially and cost-effectively.
  - Delays in remedy or resolution leads to prolonged instability in labor-management relations.
  - If labor disputes remain unresolved for a long time, workers suffer financially because they need wages to provide for themselves and their families.
  - Workers cannot afford the cost of dispute resolution in many cases. The cost has to be minimized.

- Labor cases these days take place in a fast-changing labor environment. They require expertise on the principles of labor law and impartiality, which are rarely seen in court decisions today.
  - Judges assigned to labor cases are also subject to regular job rotations, which often makes for a lack of expertise on the unique nature of labor cases.
  - This lack of expertise leads to court decisions based on the principles of general civil law, not taking into account the unique nature of labor law.
  - This lack of expertise also causes distrust in, and dissatisfaction with court decisions and fuels further distrust between labor and management.
  - The Labor Relations Commission sometimes makes decisions without consulting a labor law expert, leaving a serious gap in legal expertise.

- Academic discussions on a labor court have offered the following 5 options for reform:

a) abolish the Labor Relations Commission;

b) have the Labor Relations Commission continue to deal with unfair labor practices, while a Labor Court handles unfair dismissals;

c) have the Labor Relations Commission deal only with mediation, and have a Labor Court handle all cases that require legal decisions;

d) retain the current functions of the Labor Relations Commission, and establish a Labor Court at the same time; or

e) like the UK's Advisory, Conciliation and Arbitration Service[6], the Regional Labor Relations Commission would serve as a mediation body for cases filed with a Labor Court.

- According to a survey on composition of the judicial panel in a Labor Court by the Judicial Policy Research Institute in 2019, 168 of 318 judges (52.8%) responded that they prefer a lay judge system.

- In a lay judge system, the panel consists of two lay judges, one representing labor and the other representing management, and three career judges. While lay judges participate in the trial, they only put forward opinions, while career judges make the decisions.
- The Judicial Policy Research Institute study also suggested that a Labor Court would take charge of making judgments on unfair dismissal and unfair labor practice, while the Labor Relations Commission engages only in pre-trial mediation for all labor disputes.

6 The Advisory, Conciliation and Arbitration Service provides advice to employers and employees, conciliation for individual and collective disputes, arbitration for unfair dismissal, etc.

The views expressed in this publication are not necessarily those of Friedrich-Ebert-Stiftung.

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