Back to the Future:

Towards a fairer recovery with corporate responsibility

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Abstract

After the COVID-19 pandemic occurred, Korea was referred to as a successful case of prevention of infection. However the employment protection response is not as successful as the health response. Although the government has taken unprecedented fiscal measures, the hardest-hit groups including workers in non-standard employment are still least protected. For example, the Government decided to inject KRW seven trillion into the aviation industry. Nevertheless, this could not save jobs of subcontracted workers accounting for a half of workforce in the industry, because the financial aid concentrates on the principal contractors. The principals easily terminate the contract, instead of taking any job retention measures for subcontracted workers. The current crisis has found countries/industries where precarious employment is already widespread at their most vulnerable, and the existing social protection system does not work.

Since the 1997 financial crisis, Korean Government pushed ahead with deregulation on the side of capital and flexibilization policy on the side of labour. As a result, precarious work became a 'normal' in the labour market. The COVID-19 crisis reveals those who were excluded from labour protection before the crisis, the most vulnerable to the current crisis. For example, dependent self-employed workers are not protected from termination of contract or income losses, while employees in a comparable situation might be supported by job retention schemes and unemployment benefits. It means employers using precarious workers could take advantage of avoiding employer's responsibility in a normal situation as well as at times of crisis.

While the Government attempts to expand the unemployment insurance scheme to a few groups of dependent self-employed workers, debates over who should bear the financial burden are emerging.

Employers refuse to contribute to the unemployment insurance for self-employed workers, by reason that they are not an employer in relation with the workers.

This paper analyses how neo-liberal labour policy in Korea has affected vulnerability and the segmentation of labour protection system. It also argues that the 'protection gap' among workers resulted from the political choice and the strategy of capital to transfer cost-and-risks onto workers and the entire society. In turn, such neo-liberal politics undermine the capability of fair recovery. This paper concludes policy for reversing cost-and-risks shift is essential for a human-centred recovery.

Keywords: Corporate responsibility, Dependent self-employed, Income support, Non-standard employment, Unemployment insurance

1. Introduction

After the COVID-19 pandemic occurred, the Republic of Korea (hereafter Korea) was referred to as a successful case of prevention of infection (ILO, 2020b). Korea has effectively contained the spread of disease without severe lockdown measures. However the job protection response has not been as successful as the health response. Although the Korean Government has taken unprecedented fiscal measures, the hardest-hit groups including workers in non-standard employment are still least protected.

Since the Asian financial crisis in 1997, Korea pushed ahead with deregulation on the side of capital and flexibilization policy on the side of labour. Labour regulation has allowed employers to use precarious workers freely. As a result, precarious work including dependent self-employment has become widespread. The current crisis has found countries where precarious and informal work is already widespread at their most vulnerable.

This paper analyses how neo-liberal labour policy in Korea has affected vulnerability and the segmentation of labour protection system. It also argues that the 'protection gap' among workers resulted from the political choice and the strategy of capital to transfer cost-and-risks onto workers and the entire society. In turn, such neo-liberal politics undermine the capability of fair recovery. This paper concludes policy for reversing cost-and-risks shift is essential for a human-centred recovery.

2. An overview of employment protection measures in response to the COVID-19 crisis

At the onset of COVID-19 pandemic, the first action taken by the Government was to facilitate access to its Employment Retention Subsidy programme. Under the Employment Insurance Act (EIA), this subsidy programme was originally set to provide for employers who were faced with inevitable restructuring due to business slowdown but instead of laying off employees, took measures to retain their employees such as temporary shutdown or having employees take leave. In response to the growing employment crisis, the Government has relaxed the conditions for receiving the Employment Retention Subsidy, and temporarily increased the wage subsidy for companies if they keep their employees on paid-leave or leave-of absence programmes, from 50 to 67 per cent of the wage for large companies, and from 67 to 75 per cent of the wage paid for small and medium-sized enterprises (SMEs). Additionally, for supporting the worst-hit sectors such as travel, tourism and lodging, tourist transportation, aircraft ground handling and performance industries etc. ("Special

Employment Support Sectors"), the maximum amount of subsidy has increased up to 90 per cent of the paid wage.

The Employment Retention Subsidy, meanwhile, could provide support to a limited group of workers who are covered by the *Employment Insurance Act*. For supporting workers who were not covered by the Employment Insurance system, such as dependent self-employed workers and freelancers, the Government has provided an emergency employment security subsidy of KRW 500,000 (approximately USD 442) a month for up to six months for such vulnerable workers not covered by Employment Insurance system. For receiving such subsidy, workers must give proofs of over 25 per cent of income loss or over 5 days of job loss, compared with the level of pre-pandemic.

In April 2020, the Key Industry Stabilization Fund was introduced to support seven industries severely impacted by the pandemic: airlines; shipping; shipbuilding; autos; general machinery; electric power; and communications. The Fund was designed to provide loans and purchase corporate debt and equity. The conditions for accessing the Fund include a requirement to retain at least 90 per cent of employees for over six months from the beginning of accessing the Fund.

On the other hand, a wide range of monetary and fiscal policy measures were undertaken to support enterprises. This includes low interest rates loans and guarantees for SMEs and small merchants; liquidity support to the financial sector; and tax relief etc. This emergency relief programme does not require beneficiary firms to retain their employees.

As of January 2021, the total financial support for enterprises without employment retention duty amounted to KRW 91.2 trillion (approximately USD 80 billion), which accounted for around 4 per cent of GDP. In contrast, the income support for workers, which includes the Employment Retention Subsidy and the emergency employment security subsidy amounted to KRW 4.7 trillion (approximately USD 4 billion), which accounted for around 0.2 per cent of GDP (Lee, C-G, 2021). This means the Korean Government has spent 20 times more money for supporting enterprises than for supporting employment and labour income (Table 1).

Table 1: Comparison of Government policy for enterprises with policy for workers

		Total (as of January 2021)			
		Amount		Nos of beneficiary workers	
			% of GDP		% of workers
Employment Support measures	Employment retention measures*	KRW 3.0 trillion	0.15	817,000	4.0
	Income support for vulnerable workers	KRW 1.7 trillion	0.1	1,088,000	5.3
	Subtotal	**KRW 4.7 trillion**	**0.2**	**1,905,000**	**9.3**
Enterprise support measures without employment retention duty		**KRW 91.2 trillion**	**4.0**		

* Total of the Employment Retention Subsidy, Special Employment Support Sectors, Key Industry Stabilization Fund

Source: Lee, C.-G. (2021: 10)

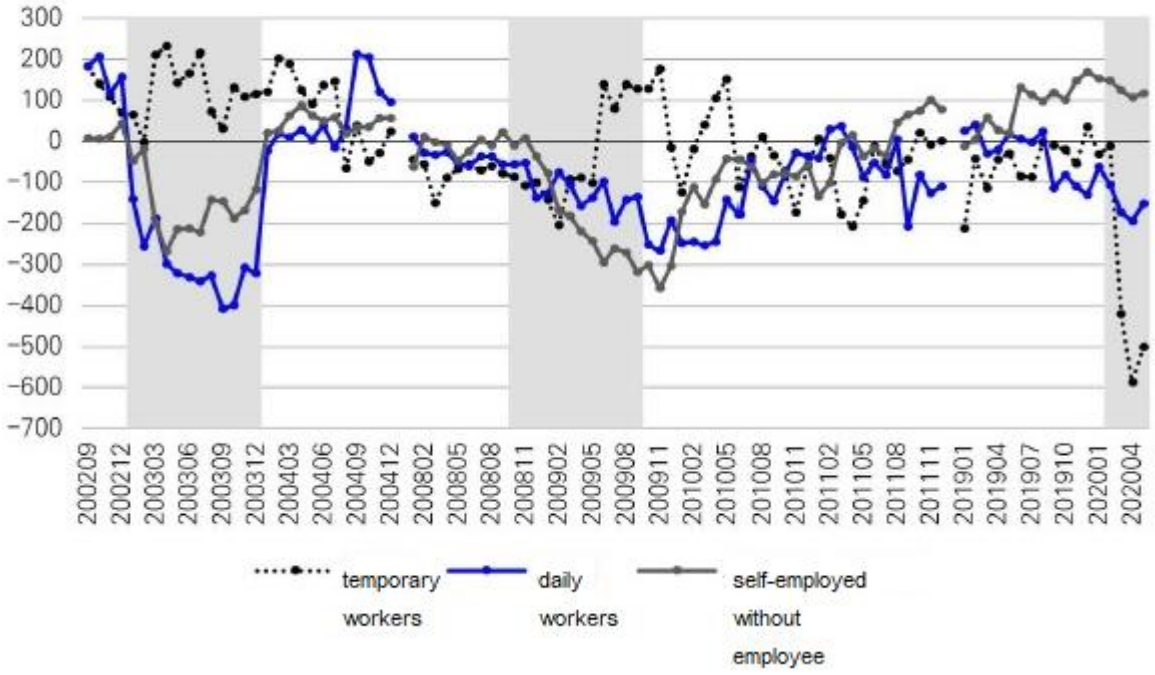
While Korean Government has emphasized its effort to protect jobs and the vulnerable workers, the actual amount of employment support measures is much smaller than that of relief measures for enterprises. Further, the effect of employment support measures has been limited to the small portion of workers, who account for 9.3 per cent of the total workers. One of the important reasons could be ascribed to labour market segmentation in Korea, as explained in the next Section.

3. The most vulnerable workers in the crises

In Korea, workers in non-standard employment, including temporary workers and daily workers, are found the most vulnerable to economic crises like the COVID-19 pandemic.[1] For example, the number of daily workers in April 2020 declined by -13.7 per cent year-on-year while that of temporary workers and self-employed with employees fell by -12.0 per cent and -11.4 per cent respectively. In contrast, the number of permanent workers increased by 2.9 per cent (National Statistics Office, 2020).

[1] According to the Guidelines of the Economically Active Population Survey (EAPS) conducted by the National Statistics Office (NSO), "daily workers" are defined as 'workers with employment contracts of less than one month', and "temporary workers" are as 'workers with employment contracts of at least one month, less than one year'. "Permanent workers" are referred to as 'workers with employment contracts of more than one year'.

Figure 1: Change in employment by employment status (year-on-year, thousands)



Source: Seong, J.-M. (2020: 36)

As Figure 1 shows, the fall in employment has also been most severe among temporary and daily workers in previous economic crises such as the 2009 global financial crisis and the 2003 credit card crisis. Employers have reduced appreciably their use of regular employees and increasingly turned to non-standard employment for making hiring and firing easier in case of workforce adjustment. It means non-standard workers who already suffered from insecure jobs and insufficient social protection, have experienced the hardest hit and the latest recovery in recent economic crises. During COVID-19 crisis the Government has attempted to support those workers, still non-standard workers are least protected. In the next section, I illustrate why current employment protection system does not work for those workers, with examples of subcontracted workers and dependent self-employed.

3.1. Subcontracted workers

The Asian financial crisis in 1997 was a turning point, where occurred a significant change in the structure of the labour market in Korea. After the crisis, employers have minimized the use of regular employees and replaced permanent jobs with precarious work through redundancy,

restructuring, outsourcing, and so on. Since then, new jobs have been created albeit mostly in non-standard work, and precarious workers have become the core workforce.

Aviation industry is the case that multi-party employment is prevalent practices. Most airline companies have contracted out aircraft ground handling to their subsidiary companies, which again outsource the work to subcontractors. Korean Airlines (KAL), for example, has its ground handling subsidiary (named as KAS), which contract out most work to lower subcontractors. While KAS employed 2,612 regular employees, 3,107 subcontracted workers also worked for KAS, as of 2019 (Lee, Y.-S., 2020).

As mentioned in Section 2, the Government injected KRW 3.3 billion into airline companies including KAL, in response to COVID-19 crisis. Nevertheless, this could not save jobs of subcontracted workers accounting for a half of workforce in the industry. Airline companies and their subsidiaries easily terminate the contract, instead of taking any job retention measures for subcontracted workers.

In addition, the Employment Retention Subsidy has rarely protected subcontracted workers. Even though employers should bear only 10 per cent of the allowance after the public subsidy, most subcontractors, who are actually no more than temporary employment agency, chose to shut down or dismiss workers, rather than applying for Employment Retention Subsidy.

3.2. Dependent self-employed workers

After mid-1990s, employers have increasingly used workers as a form of 'independent contractor' or 'own-account worker'. This type of workers provide his/her labour for particular user-companies, and are integrated to the user's business. While there exists no commonly accepted definition of this type of work arrangement, the National Statistics Office describes them as "a worker who provides her service for certain clients and is paid piece rates". Various research estimate the size of this type of workers from 506,000 (Seong, J.-M. et al, 2018) to 2,210,000 (Jung, H.-J. et al, 2018).

This type of workers normally have not been protected by labour law and social insurance, as being regarded as 'self-employed'. Since these workers including private home tutors, insurance salespersons, golf caddies and owner-operators have formed trade unions after the late 1990s, they have demanded protections by labour laws and social insurances. As an outcome of their fights, in 2007 new provisions regarding "persons in special types of employment" were inserted to the *Industrial Accident Compensation Insurance Act* (IACIA) in order to provide some protections for a few groups of dependent self-employed workers. Here, "persons in special types of employment" is defined as those who should routinely provide usually a single business or workplace with labour service necessary for the operation thereof, be paid for such service and live on such pay; and should

not use other persons to provide the labour service (Art. 125). Moreover, whether anyone falls under that status is decided by the Presidential Decree. According to the Presidential Decree as of 2021, 14 job categories of workers (i.e. private home tutors, insurance salespersons, golf caddies, certain trades of owner-operators, door-to-door couriers, parcel deliverers, loan solicitors, chauffeur service drivers, and door-to-door salesperson etc.) are regarded as "persons in special types of employment".

When COVID-19 crisis occurred, dependent self-employed workers were first hit to employment shock. User-companies easily terminate or refuse to renew their contract. Even in case of their contract being maintained, user-companies bear no responsibility for income loss of dependent self-employed workers. User-companies just tell workers there are no (or reduced) demand for their service, and it boils down to their income loss. Most of dependent self-employed were not protected from such income loss, as the *Employment Insurance Act* was mandatory only for an "employee".

To cope with this problem, the Government introduced an emergency employment security subsidy for dependent self-employed workers and freelancers, as is mentioned earlier. However, it soon encountered various practical problems such as how to find an eligible workers and how to evaluate their job loss or income loss. Also it was required for applicants to submit a contract underpinning their status as a dependent self-employed or proof of income loss, but it was difficult procedure unless user-companies cooperated with workers. Eventually, workers who were regarded as "persons in special types of employment" under the IACIA as well as who were unionized could receive the subsidy. According to the Ministry of Employment & Labour, around 861,000 workers were given this subsidy, which covered 40 per cent of total dependent self-employed being estimated at 2,200,000.

4. Vulnerability of current labour and social protection

The COVID-19 crisis reveals those who were excluded from labour and social protection before the crisis, the most vulnerable to the current crisis. Despite emergency employment measures, the segmented structure in the labour market, which was constructed by previous political choice is creating new gaps and inequality in terms of labour and social protection.

4.1. Policy and regulations for facilitating greater labour flexibility

It is noteworthy that state policy for facilitating greater labour flexibility has fostered a significant increase in non-standard work. Since the 1997 financial crisis, Korean Government has driven the

public sectors to reduce personnel and to contract out their services to private enterprise. Particularly, the Government has forced this restructuring through budget mechanisms, that is, imposing financial penalties, when public organizations fail in implementing required restructuring. As a result, hundreds of thousands of public employees have been retrenched and non-standard employment has been introduced. The share of non-standard work in public sector was 34 per cent of total workers, and one fourth of non-standard work was triangular employment, as of 2016 (Korean Contingent Workers' Center, 2017).

Also, the state pushed ahead with 'flexibilization' of employment protection regulation. Under the *Labour Standard Act* (LSA), an employer must have a justifiable reason for dismissal. After Asian financial crisis in 1997, three new ways of avoiding this regulation have been created:

First, the Government legalized "collective dismissal" in 1998, that had until then been restricted under labour law and limited by the power of the trade union movement. The courts also upheld employers' managerial prerogatives, holding that the justifiable reason of redundancy could be widely recognized even in cases of making a profit.[2]

Second, triangular employment relationships, which had been prohibited in principle under labour laws, were legitimized after the enactment of the *Act on the Protection of Temporary Agency Workers* (APTAW) in 1998. Under the APTAW, a temporary employment agency is formal party to the employment contract with a worker. However, it should be noted that most employment agencies are, in practice, merely intermediaries, and are incapable of holding accountability for employment rights. For example, the wage of agency worker is, in practice, decided by the contract between a temporary employment agency and a user-employer. If a user-employer demands that a certain agency worker be replaced, the worker has no choice but to lose that job. Consequently, neither a user-employer nor an employment agency holds responsibility for employment security, while agency workers suffers from periodical job insecurity.

Third, the *Act on Protections of Fixed-term and Part-time Workers* (APFPW) in 2006, in which the Government took lead, allows the free use of fixed-term employment for up to two years without any reasons, and created broad exceptions where fixed-term contracts over two years would be allowed. Under this law, most enterprises have resorted to using fixed-term workers continuously, and fixed-term employment became the selective entry point to regular employment. The Government argued that this law introduced some protective measures, such as converting fixed-term contracts to contracts of unlimited duration for those workers who have worked for more than two years. In reality, however, most employers do not hire fixed-term workers for more than two

[2] See for example, the Supreme Court Decision, 9 July 2002, 2001-da-29452.

years, and instead terminate contracts before the two-year deadline, or switch to another precarious worker.

With taking advantage of such changes in legislation, large corporations and conglomerates (*Chaebol*s) have led increasing use of non-standard employment and low-cost subcontracting to replace regular employees. *Chaebol*s reorganized vertically integrated production networks with multi-tiered subcontracting. Many domestic SMEs became subcontractors along the value chains controlled by *Chaebol*s.[3] Large corporations have contracted out their production and a sizeable workforce to subcontractors, which employ the majority of the workforce.[4] Work in such SMEs can often be characterised by low wages, a precarious employment status, large gaps in social insurance coverage and a near-total absence of trade unions.

Under such drive towards labour flexibilization, Korean labour market has become precarious in general, as well as segmented by employment type and the size of the firm. The shrinking of standard employment means it is limited to regular employees in large corporations. The majority of the workforce, who are in non-standard employment, female or SMEs' workers, are in precarious work outside of labour protection.

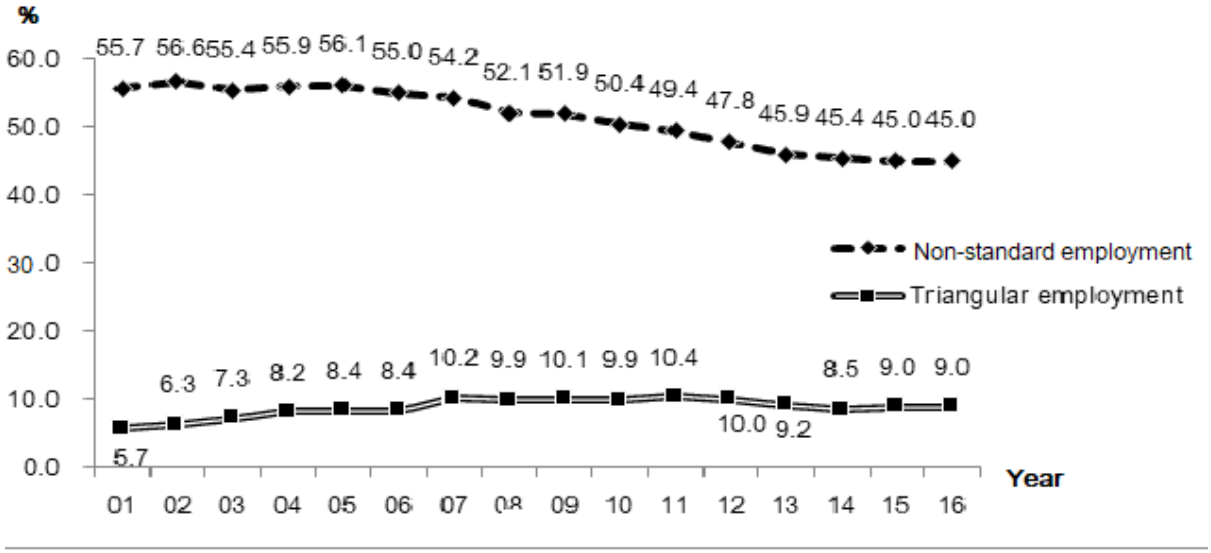
Figure 2 shows that about half of total wage workers are non-standard workers since 2000.[5] In particular, the share of triangular employment workers such as temporary agency workers and subcontracted workers has doubled.

[3] The share of SMEs that is entrusted with manufacturing etc. by a principal company increased from 20 per cent in the early 1980s to 70 per cent in the early 1990s (Cho, S., 2007).

[4] As of August 2019, the share of workers in firms with fewer than 100 employees, is 77.4 per cent, while workers of firms with 300 or more employees account for 12.9 per cent merely (Kim, Y.-S., 2019). In 1993, firms with 300 or more employees accounted for 22.6% of total employment in Korea (34.4% in the manufacturing sector). The share declined rapidly to around 12% in 2000s (OECD, 2018a).

[5] Here, the definition of 'non-standard workers' refers to temporary, part-time, on-call workers, those in triangular employment relationship, home workers and certain dependent self-employed (Kim, Y.-S., 2019).

Figure 2: The Share of non-standard workers, 2001-2016



Source: Kim, Y.-S. (2016)

As a result, the majority of workers cannot be protected by labour law. Workers on a fixed-term contract, daily workers, agency workers as well as workers of firms of four or less employees (whom employment protection regulation already excluded) are fall outside employment security regulation, and they account for 47 per cent (9,700,000) of total wage workers, as of 2019 (Kim, Y.-S., 2019). This affects short job tenure for the average worker with one in three workers having less than one year of job tenure, which is the highest share in the OECD countries (OECD, 2018b).

4.2. Non-regulation on contract-out of employer's responsibility

In Korea, like many other countries, the 'employee' and 'employer' under labour regulations are the prime actors who have rights and responsibility under labour law and the social insurance system. Traditionally, the legal definition and scope of an "employee" and an "employer" was basically interpreted as parties of an employment contract. In determining the existence of an employment relationship, judicial precedents have consistently required the existence of a "user-subordinate relation". While various indicators regarding the existence of an employment relationship have been listed in judicial precedents, traditionally the courts noted such factors as whether the employer ***exercised*** direction or supervision over the performance of work, and whether the employer ***offered*** remuneration for the price for labour, while various indicators have been listed in the rulings.[6] In other words, many judicial precedents interpret the existence of direction/supervision as exercising

[6] The Supreme Court Decision 9 December 1994, 94-da-22859; The Supreme Court, 7 December 2006, 2004-da-29736.

direct and specific directions over performance of work. Moreover, the courts quite often denied a worker the status of "employee" under collective labour laws as well as individual employment laws in cases where the worker owned the work tools such as a truck or provided his/her labour for multiple hirers. Such a narrow interpretation of the employment relationship has contributed to an increase in 'bogus self-employed'. Employers could easily disguise their employees behind a form of commercial contract, and thus, avoid their responsibility under labour and social protection law.

Also, the Supreme Court hardly recognized the third entity outside an employment relationship as the employer. In relation to the work arrangement involving multiple parties, a few exceptions have been made by the court rulings and legislation. First, the court has found the existence of an "implied contract of employment", where a contractual employer is no more than a nominal entity, in cases where the employer lacks independence as a business owner and merely performs the function of a labour-management department of a user-employer, and; where the worker provides his/her labour for a user employer in a subordinate relation, and the user-employer indeed offers remuneration to the worker.[7]

Second, under the APTAW, a temporary employment agency takes responsibility for wages and social insurances contribution, while a user-employer shall take responsibility for working hours, holidays and occupational health and safety. In particular, a user-employer shall directly employ an agency worker, in cases of using the worker in breach of regulations under the APTAW.

However, such a user-employer's liabilities are hardly found in cases where the subcontracting company made the subcontractor supervise the performance of work on behalf of the subcontracting company, or where the worker had to follow materialized control such as service guidelines by which the subcontracting company instructed a standardized process of performance or performance ratings. Consequently, in only a few cases user-employers hold responsibility, while others did not, on the grounds that such work is not temporary agency work but is, rather, genuine subcontracting.

Labour laws which seek to regulate non-standard work not only have many loopholes, but also suppress the involvement of trade unions in the restructuring of work organization. Until 1997, workers could join or form a trade union only at enterprise level and, under labour law, only one union was allowed at the enterprise level. While the 1997 *Trade Union and Labour Relation Adjustment Act* (TULRAA) allowed other types of trade union than the enterprise-level union, collective rights are still restricted to workplace disputes in the narrow sense. For example, strikes

[7] The Supreme Court, 12 November 1999, 97-nu-19946; The Supreme Court, 10 July 2008, 2005-da-75088.

against redundancy, outsourcing or Government policy are banned.[8] Workers joining such 'illegal' collective action are penalized under criminal law, and are at risk of enormous damages awards for the "obstruction of business" under the Criminal Act.

Also, subcontract workers are rarely allowed to conduct collective actions at the user company's workplace, even though this is the actual place of their work. The courts, for example, have penalized union members who joined collective actions against a subcontracting company, ruling that such union activity is an "obstruction of business" or "coercing" under criminal law statutes. While a user company can exert the power to terminate a contract, which results in dismissal of contract workers, collective actions against the user company are often banned as such.

Consequently, employers could use freely outsourcing and non-standard employment, and easily contract out employer's responsibility.

4.3. Segmented employment insurance system

Korea enacted the *Employment Insurance Act* (EIA) in 1995. The employment insurance (EI) programme is made up of the employment security and vocational skills development programmes; the unemployment insurance programme; and maternity protection. Despite continuous expansion of the programme since its introduction, the biggest problem of EI scheme remains the low number of workers insured and the low number of jobseekers entitled to a benefit. There are a number of reason as follow.

First, there are certain groups of wage employees legally excluded from EI. This includes: a) employees whose contractually defined working hours are less than 60 hours per month or 15 hours per week, and the term of a contract is shorter than three months (marginal part-timer); b) businesses with less than five employees in the agricultural, forestry, and fishery industries; and c) most domestic workers. Second, EI was not mandatory for the self-employed including dependent self-employed workers. While self-employed workers can in principle choose to opt-in they almost never do so in practice. Third, while EI is legally mandatory for all groups of employees not explicitly excluded, many daily workers are not enrolled to EI.

Table 2 shows the blind spots of EI enrolment in Korea. Overall, in 2019 only just over half (54.8 per cent), of the employed population had access to an unemployment safety net, either through EI (49.4 per cent) or through other schemes for special groups of public workers (5.4 per cent). Of the remainder, 13.8 per cent were wage workers not enrolled in EI although they should be enrolled (mostly daily workers); 6.5 per cent were excluded wage workers (mostly marginal part-time

[8] See for example, the Supreme Court Decision, 26 February 2002, 99-do-5380.

workers); and the remaining 24.9 per cent were non-wage workers (mostly dependent self-employed workers but also employers and unpaid family workers).

Table 2: The coverage of employment insurance, 2019 (thousand, %)

<table>
<tr><td colspan="5">Total</td></tr>
<tr><td rowspan="2">Non-wage workers</td><td colspan="4">Wage workers</td></tr>
<tr><td>Excluded</td><td>Not enrolled</td><td>Public servants
Teachers</td><td>Workers with EI</td></tr>
<tr><td>6,799
(24.9)</td><td>1,781
(6.5)</td><td>3,781
(13.8)</td><td>1,469
(5.4)</td><td>13,528
(49.4)</td></tr>
<tr><td colspan="2">Legal blind spot</td><td>Effective blind spot</td><td>Other social insurance</td><td></td></tr>
</table>

Source: Lee, B.-H. (2020)

The significant portion of the legal blind spots of EI is presumably related to dependent self-employed workers. Mandatory coverage would be especially important for the many dependent self-employed workers in Korea, whose income is concentrated on particular users and who are hardly different from wage workers. After 2017, the Government has pursued expanding the scope of those eligible for EI to the dependent self-employed and artists. Through consultation with social partners, in July 2018 the Government introduced the amendment of EIA in order that certain group of dependent self-employed are mandatorily enrolled to EI. Social partners aroused various issues over how to define the scope of dependent self-employed workers who should be enrolled to EI; to what extent EI benefits should be provided for the workers; and who should bear the financial burden and so on. In particular, employers organizations opposed expansion of the EI coverage for dependent self-employed, arguing they are genuine self-employed and thus user-companies bear no liability for their employment safety net. In contrast, trade unions demanded universal employment insurance scheme for all workers including dependent self-employed workers. The Government put forward an amendment that the personal scope of eligible dependent self-employed would be limited to those who are economically dependent on particular user-companies. The proposal of the Government are based on that identifying a 'particular' employer is necessary for authorities to collect the social insurance premiums under current EI system.[9]

[9] Unemployment benefits are funded by 1.3% of the worker's gross wage, with the cost shared equally by employer and employee. Depending on firm size, employers have to pay an additional contribution ranging from 0.25% of the wage sum (less than 150 employees) to 0.85% of the wage sum (over 1,000 employees) to cover the cost of the employment security and vocational skills development programme.

As social concerns about income insecurity for workers outside of current employment safety net grow, the Government amendment bill was enacted in January 2021. Under the Presidential Decree of EIA, 12 occupations selected among those covered by Industrial Accident Compensation Insurance Act will become eligible to receive unemployment benefits from July 1, 2021. It means only a few groups of dependent self-employed workers whose income is concentrated on a few users, could be covered by EI system. Therefore, dependent self-employed workers and platform workers who provide his/her labour for multiple user-companies still fall outside of EI system.

5. Towards a fair recovery

The COVID-19 crisis reveals those who are excluded from existing labour protection before the crisis, the most vulnerable to the crisis. Moreover, the cumulative effects of the previous crisis responses limit the effectiveness of recent crisis response.

For the effective response to the COVID-19 crisis as well as for building a better future of work, the current policies for labour market flexibilization and for repressing workers' voice should be fundamentally changed. First of all, legal changes to re-regulate non-standard work is necessary. In Korea, the Labour Standard Act (LSA) requires an employer to have a justifiable reason for dismissal. Nevertheless, workers on fixed-term contracts have few protections when an employer terminates the contract at the end date or refuses to renew a contract, as the courts have ruled that such a refusal did not amount to a dismissal. By concluding fixed-term contracts, employers determine whether an employment relationship will last or not. In other words, by using fixed-term contract, employers take advantage of securing constant workforce when times are good, whereas can dismiss at will without any justifiable reasons. During current crisis as well, non-standard workers who are in most cases on fixed-term contract, first lost their job, but their unemployment were not even noticed as 'unemployment' in the legal sense. It is regarded as just 'termination of contract'. In economic crisis, workers on fixed-term contracts were not protected by employment retention programme. Without tackling such abuse of non-standard employment, employment support measures would have very limited effectiveness no matter how much money is spent. For supporting employment security of all workers regardless of employment type, legislation that limits the use of non-standard employment to cases where there are justifiable reasons, such as temporary replacement of regular employees is necessary. At least, employer's refusal of renewing an employment contract should be limited to the case in which justifiable reasons for that exist.

Second, regulation to combat disguised employment relationship is also required. Introducing a legal presumption of an employment relationship would be very helpful (ILO, 2006). Still, employers could avoid those regulations by transforming the form of contract or the structure of company, while employment law could provide some regulatory frame to accommodate non-standard employment. Therefore, there is an urgent need to secure right to organize and to collective bargaining for all workers including dependent self-employed workers. In current crisis, it is trade unions representing non-standard workers that could find a countervailing solution to protect job security. For curbing user-companies that legally avoid any accountability for employment security by using disguised employment relationship, it is essential to secure collective labour rights correspondingly. Given that more and more workers are dependent on the rule of a fractured labour market rather than a particular employer, collective representation in the labour market should be protected as much as that evolved in a particular workplace or enterprise. In particular, the right to collective action vis-à-vis user-company or lead firms should be secured. Also, sectoral bargaining or collective bargaining with multi-employers should be encouraged, or at least should not be discouraged by labour law. Accordingly, current labour regulations that restrict collective bargaining on restructuring and managerial decision should be revised. Social dialogue is a pillar of a human-centred recovery (ILO, 2020a). Enhancing effective collective bargaining system for all workers is a precondition for meaningful social dialogue.

Last but least, it is time to re-construct the concept of 'employer' and the scope of employer accountability for a fairer and sustainable recovery. While debates over 'who are workers in need of protection' arose recent decades, the other side of the question – who should be accountable for their protection – has not been thoroughly explored. Similar atmosphere is found during current crisis. However, attempt to extend the scope of "worker" would be faced to the limit unless another attempt to extend the scope of "employer" be made at the same time. As explained earlier, debates over expanding EI scheme to dependent self-employed show this intertwined problem. Unless we find out who should bear liability for job and income security, protection for non-standard workers becomes ineffective in the end.

Various attempts have already been done: for example, in case construction work is subcontracted down several levels from a main contractor, the main contractor shall pay into employment insurance and industrial accident compensation insurance fund (*Industrial Accident Compensation Insurance Act*). This method could be applied to other industries which have similar industrial structure with widespread precarious work. For platform workers like riders, the amended 2021 *Employment Insurance Act* stipulates platform companies should report enrolment of workers to the

authority and collect social insurance contributions. Going further is needed. Platform companies should jointly bear financial contribution for social safety system for gig workers. In conclusion, establishing employers' *collective* accountability beyond an employment relationship and across corporate boundaries is critical to a 'better normal' of post COVID-19.

References

Ha, Byung-Jin; Lee, Sangheon. 2013. *Dual dimensions of non-regular work and SMEs in the Republic of Korea*. Employment Working Paper no. 148 (Geneva: ILO).

ILO. 2020a. *A policy framework for tackling the economic and social impact of the COVID-19 crisis* (Geneva: ILO).

ILO. 2020b. *Policy Brief: Republic of Korea – A rapid assessment of the employment impacts of COVID-19* (Geneva: ILO).

ILO. 2006. Employment Relationship Recommendation, 2006 (No. 198).

Jung, Heung-Jun et al. 2018. *Basic Research to Estimate the Size of Dependent Self-Employed Contractors* (Sejong: Korea Labor Institute). (*in Korean*)

Kim, Yoo-Seon. 2019. *Size and the Employment Conditions of Precarious Workers: An Analysis of Supplement Survey of Economically Active Population*, KLSI Issue Paper no. 2019-17 (Seoul: Korea Labour& Society Institute). (*in Korean*)

Kim, Yoo-Seon. 2016. *Size and the Employment Conditions of Precarious Workers: An Analysis of Supplement Survey of Economically Active Population*, KLSI Issue Paper no. 2016-4 (Seoul: Korea Labour& Society Institute). (*in Korean*)

Korean Contingent Workers' Center. 2017. *The Preconditions of Successful Regularization of Non-standard Workers in Public Sector*, KCWC Issue Paper no. 2017-02 (Seoul: Korean Contingent Workers' Center). (*in Korean*)

Lee, Byung-Hee. 2020. 'Main issues and challenges in universal employment insurance', *Monthly Labor Review*, no. 183 (Sejong: Korea Labor Institute). (*in Korean*)

Lee, Chang-Geun. 2021. *One year after COVID-19 pandemic: An analysis on the effectiveness of employment measures*, KCTULI Issue Paper 2021-4 (Seoul: Korean Confederation of Trade Unions Labour Institute). (*in Korean*)

Lee, Young-Su. 2020. *The problems of aviation industry and suggestions on public reorganization*, PPIP Issue Paper no. 2020-5 (Seoul: Public Policy Institute for People). (*in Korean*)

Ministry of Employment and Labor Republic of Korea. 2020. *Responding to COVID-19 - Emergency Employment Measures* (Sejong: Ministry of Employment and Labor)

OECD. 2018a. *OECD Economic Surveys: Korea 2018* (Paris: OECD).

OECD. 2018b. *Towards Better Social and Employment Security in Korea: Connecting People with Jobs* (Paris: OECD).

Seong, Jae-Min. 2020. 'How should we overcome the COVID-19 crisis so that it will not lead to inequality?', *Monthly Labor Review*, no. 184 (Sejong: Korea Labor Institute). (*in Korean*)

Seong, Jae-Min et al. 2019. *2018 KLI Labor Statistics on Non-regular Workers in Korea* (Sejong: Korea Labor Institute). (*in Korean*)