

# Japan Labor Issues

## 8·9

August-September 2018

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### SPECIAL ISSUE

The 2nd JILPT Tokyo Comparative Labor Policy Seminar 2018  
*"Looking Back at the Policy Responses to Changes in Employment Structure and Forms—The Future as Seen from Here"*



Japan Labor Issues

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\*Entries are arranged based on the seminar program.

\*The responsibility for opinions expressed in signed reports rests solely with their authors, and publication does not constitute an endorsement by the Japan Institute for Labour Policy and Training of the opinions expressed in them.

## *Preface*

The 2nd JILPT Tokyo Comparative Labor Policy Seminar 2018

### ***“Looking Back at the Policy Responses to Changes in Employment Structure and Forms —The Future as Seen from Here”***

Technological innovation is leading to changes in the industrial structure, and employment structure and forms are approaching an era of further change. Most typically, Internet-related technology developed at a dramatic pace is no longer merely a tool for obtaining information; instead, it is now ushering in a society in which all kinds of things are being linked together through the Internet. Computing technology, which has also developed to an advanced level, has now reached the realm of artificial intelligence (AI), and it has even been suggested that it will not only complement human labor but could replace it in the near future. The consequence of these technological innovations is that humans are being liberated from spatial and temporal constraints, and as a result, employment structure and forms are also on the verge of change.

Since the speed and scale of technological progress as well as its impact differ from country to country, changes in industrial structure and the degree of progress in economic globalization will also vary. In some countries, there may also be unique changes in the structure of society. Recognizing this point, the Japan Institute for Labour Policy and Training (JILPT) held the 2nd JILPT Tokyo Comparative Labor Policy Seminar on March 28-29, 2018, under the theme of *“Looking Back at the Policy Responses to Changes in Employment Structure and Forms—The Future as Seen from Here”* to clarify how labor policy in various countries has responded so far to changes in the employment structure and forms. Comparing the responses to date in these countries, their shared problems could provide new knowledge or hints for future policy responses in each country.

This special issue carries 14 reports submitted by promising researchers from Asian countries and regions. They introduce their findings on the latest labor policy issues in each country and region addressing the theme of the seminar.

# Japan's Married Stay-at-Home Mothers in Poverty

Yanfei ZHOU

- I. New arising poverty issues of stay-at-home mothers
- II. Background: The changed environment and unchanged family stereotypes
- III. Understanding poverty problems of stay-at-home mothers
- IV. Implications: Encouraging women to make choices on a long-term basis

## I. New arising poverty issues of stay-at-home mothers

In the post-World War II high economic growth decades, nearly 90% of Japanese people considered themselves to be in the middle-class rather than at the extremes of the income distribution. Most male workers, both white-collar and blue-collar, were economically secure under the Japanese long-term employment system. Filled with a feeling of economic security, families with a working father and a stay-at-home mother (hereafter “SAHM families”) were predominant in the 1970s to 1980s. It was estimated that 80 to 90% of married women chose to leave the labor force when getting married or giving birth.

Since the collapse of bubble economy in the early 1990s, however, the situation of identification with the middle class and stay-at-home mothers has changed dramatically. Surveys now show that Japanese people are less likely to consider themselves middle class. SAHM families are gradually becoming a minority. One of the obvious turning points occurred in 1997. According to the Labor Force Survey by the Bureau of Statistics, working-wife families outnumbered non-working-wife families for the first time. In 2016, just one-third (37%) of married women were non-working, down from 65% in 1980.<sup>1</sup>

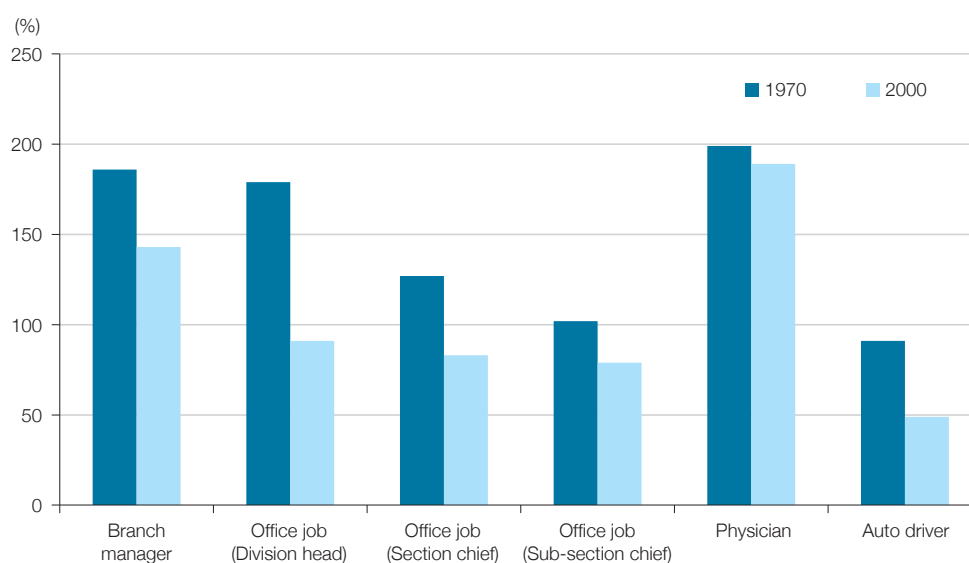
For a long time after these changes, stay-at-home mothers have been perceived as no longer being a dominant style of Japanese families, but as a symbol of wealthy families. Recent studies by Ohtake (2001) and Kohara (2007), however, cast doubt on the assumption that SAHM families in Japan were dominantly composed of married women with high-income spouses. A national survey conducted by the Japan Institute for Labour Policy and Training (JILPT) in 2011 also reveals that only a small proportion (18%) of SAHM families were earning 8 million yen or more, which is said to be high-income. In contrast, one in eight married stay-at-home mothers were living in households with an income below the poverty line (JILPT, 2012).

By analyzing household data from four rounds of a nationwide survey, this paper tries to tackle the newly arising poverty issues concerning stay-at-home mothers in Japan. Specifically, we first estimate the population size of poor stay-at-home mothers in recent years. We then explore the social backgrounds and mechanisms that drive these married women to continue to not work despite being in poverty. Finally, we discuss approaches to tackle these issues.

## II. Background: The changed environment and unchanged family stereotypes

Japan's employment structure and economy have changed fundamentally since the 1990s. Manufacturing industries have hollowed out. Low-paid service jobs, such as elderly care, retail, and temporary work, have increased. Middle-class incomes slowed in the 1970s and have substantially declined over the past two

1. JILPT eds. *Quick Guide for Long-Term Labor Statistics by Graphs*, 2017, Figure 12, <http://www.jil.go.jp/kokunai/statistics/timeseries/html/g0212.html> (accessed on 02/15/2018).



Source: Original data cited from the Household Survey conducted by the Bureau of Statistics and Private Companies Payment Survey by Professions conducted by the National Personnel Authority.

Figure 1. Average payment of typical male jobs as a percentage of average real living expenses of urban working families in 1970 and 2000

decades.<sup>2</sup> The demise of the bubble economy triggered a deep recession, and unprecedented rapid population aging continues to limit the future growth of national income.

In the decades just after World War II, and particularly in the golden era of 1955 to 1973, the Japanese economic miracle produced many good jobs for less-educated workers. As typified by manual manufacturing jobs, well-paid and secure middle-class jobs were abundant. Thanks to the rapid expansion of GDP and strong unions, a wide range of male-dominated occupations enabled stay-at-home mothers to have an affordable lifestyle.

In recent years, however, many of the good jobs that used to be available for less-educated or less-skilled male workers have been diminishing. More and more male workers fail to earn enough in their paychecks to support a whole family. Figure 1 demonstrates the average payment of typical male jobs as a percentage of average family living expenses in 1970 and in 2000. In 1970, not only elite jobs (branch manager or physician), but also ordinary salaried jobs such as sub-section chief (*kakari-cho*) of office jobs could support an average family with their own paychecks. Even auto drivers, a typical blue-collar occupation, were earning 90% of the family living expenses. In 2000, by contrast, only the two elite jobs are able to fully cover living expenses.

On the other hand, male-centered Japanese-style workplace practices are unchanged. In return for job security and relatively good payment, regular workers must provide a “flexible” working schedule that suits the company’s convenience, which typically includes long work hours, unscheduled overtime, and business trips as well as frequent relocations (Yashiro, 2009). These family-unfriendly workplace practices are essentially founded on a model of SAHM families, in which the wife is supposed to fit in with the husband’s schedule and take care of all housework and childcare duties (Kawaguchi, 2008).

Accordingly, traditional gender role divisions have also been maintained. It is well-known that the time spent on housework and childcare by Japanese husbands is at the lowest level on a global basis. For example, Tsuya *et al.* (2012) show that hours spent on household tasks by wives are roughly 10 to 15 times that of husbands. As women undertake the majority of household tasks, they simply cannot work “flexibly” according

2. U.S. Council of Economic Advisers, *2015 Economic Report of the President*: 35.

to company demands as men have done. In many cases, married women will find it hard to maintain a balance between their own careers and household tasks. Most women are then sorted into a “career interruption course:” staying at home when they give birth to children and start childcare, then re-entry into the labor force when childcare duties lighten (Zhou, 2015a).

Due to the weakening earning power of husbands and the enrichment of public childcare supports for working mothers, stay-at-home mothers’ non-working period has shortened and their labor re-entry has accelerated in recent years. Nevertheless, most re-entry women still need to take responsibility for household tasks and have to engage in low-paid part-time work. Therefore, although working-wife households have outnumbered non-working-wife households since 1997, it seems that the stereotyped model of SAHM families is essentially intact. In consequence, we see an increasing number of low-income families with a traditional male breadwinner and a stay-at-home mother.

### III. Understanding poverty problems of stay-at-home mothers

Based upon four waves of the National Survey of Households with Children (NSHC) conducted by JILPT in 2011, 2012, 2014 and 2016,<sup>3</sup> the section below explains new evidence regarding the poverty issues of stay-at-home mothers.

#### *Stay-at-Home Mothers in Poverty as a Persistent Social Phenomenon*

Stay-at-home mothers are now much more likely than working mothers to be living in poverty. According to NSHC 2011, 12% of stay-at-home mothers live in poverty, compared with 7% of regular worker mothers and 11% of part-time-worker mothers (Table 1). The estimated number of poor stay-at-home mothers is up to 500,000, which is almost the same as the number of poor single mothers (Zhou, 2015b).

Along with economic recovery and the improved job market in subsequent years, the poverty rate of stay-at-home mothers fell to some extent. In 2016, for example, which was a year of obvious excess demand for labor, the poverty rate of stay-at-home mothers fell to nearly half of its peak value. Despite this, the absolute number of poor stay-at-home mothers is of a magnitude that cannot be ignored. Even worse is that many stay-at-home mothers failed to move out of poverty even when they started taking on a part-time job, which we can infer from the inverse uptick in the poverty rate of part-time-worker mothers.

Table 1. Poverty rates of childrearing households by mother’s work status, 2011-2016

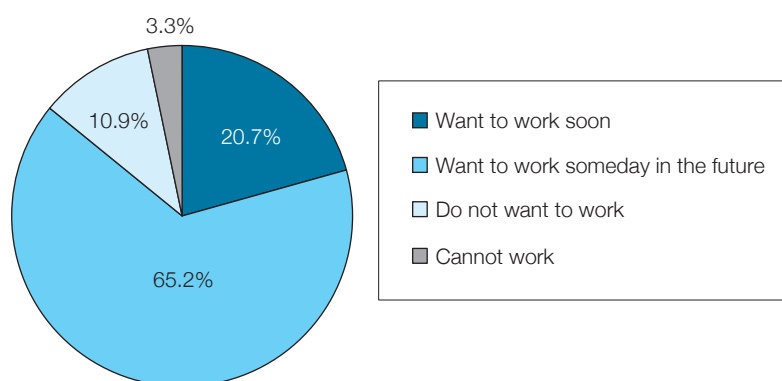
	Poverty rate (%)				*Jobs-to-applicants ratio for part-time workers
	All	Regular worker	Part-time worker, etc.	Non-working	
2011	11.1	7.6	11.9	12.7	0.89
2012	7.5	3.9	7.9	10.1	1.08
2014	7.3	3.7	6.1	11.8	1.38
2016	6.0	2.4	8.5	5.6	1.70

Source: JILPT (2017: 19); MHLW, Annual Average of Job Replacements for Ordinary Occupations 2011-2016.

Note: The poverty rate is defined as the ratio of the households whose disposable household income (family size adjusted) falls below the poverty line, taken as half the median household income of the total population. Japan’s poverty line in 2012 and 2015 was 1.22 million yen for single-person households, and 2.44 million yen for four-person households.

3. See Appendix for details of JILPT’s NSHC.





Source: Statistics obtained using the pooled data of JILPT's National Survey of Households with Children (NSHC) 2011-2016.

Figure 2. Work intentions of poor stay-at-home mothers

Therefore, economic recovery itself will not cure the poverty problem of stay-at-home mothers. Rooted in Japanese society as a persistent social phenomenon, poor stay-at-home mothers are weakly responsive to labor market conditions. Figure 2 shows that merely 20% of poor stay-at-home mothers indicated that they wanted to work soon. The remaining about 80% intended to continue to stay at home no matter how desperately the economy wanted their labor participation.

### ***The Discrepancy between Self-Awareness and the Facts***

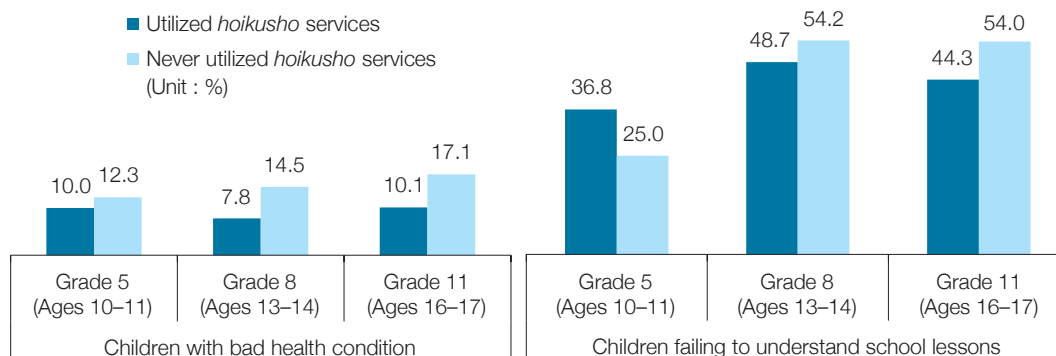
Many mothers in low-income families choose to stay at home for the sake of the children. According to NSHC 2012, 48% of non-working mothers and 56% of fathers agreed that having a working mother would negatively impact preschool-age children. Moreover, 62% of non-working mothers agreed that their parenting would be harmed if they re-entered the labor force soon.

Although Japan has a long history of providing affordable good-quality childcare services called *hoikusho* services to dual-earner families (Zhou et al., 2003), many poor stay-at-home mothers never think of utilizing them. A shortage of *hoikusho* services in some urban areas might be a reason for this, but the most prominent reason is that in their minds, childrearing by the parents themselves is in the best interest of the children, no matter how difficult their economic conditions are.

A survey of children's outcomes, however, tells a very different story. Figure 3 compares the outcomes for school-age children in poor families due to the experience of *hoikusho* utilization, using the Livelihood Survey of School-Age Children conducted by Tokyo Prefecture in 2016. Since only dual-earner families are eligible for using *hoikusho*, children raised by stay-at-home mothers generally have no experience of *hoikusho* utilization. Compared with children who never experienced *hoikusho*, we find that their counterparts tend to have a better health condition and more desirable school performance. The outcomes gap between the two groups widens as children grow older, with children in grade 11 (ages 16 to 17) reaping the biggest gains for *hoikusho* utilization. Note that we observe no correlation between *hoikusho* utilization and children's outcomes for children of non-poor families.

Put differently, for poor families, the mother working outside the home accompanied by *hoikusho* utilization seems to improve children's development from a medium- to long-term perspective. Although many mothers consider it to be for the children's sake, staying at home is in fact imposing a negative impact on children in the long term.<sup>4</sup>

4. Similar results are obtained by Shintaro Yamaguchi of Tokyo University and his colleagues. By analyzing governmental longitudinal



Source: Abe and Zhou (2018).

Figure 3. Outcomes for school-age children in poor families due to childcare service (*hoikusho*) utilization

#### IV. Implications: Encouraging women to make choices on a long-term basis

Failing to recognize the long-term effect of using *hoikusho* services is certainly not the only reason for being a poor stay-at-home mother. Zhou (2015b) finds that stay-at-home mothers are much more likely than working mothers to be women with high housework productivity (for example, taking care of several young children simultaneously) or women with a low prospective market wage (such as less education, and having little work experience).

A typical case of a poor stay-at-home mother is a woman who thinks or behaves on a short-term individual basis. In the short term, it seems to be more satisfactory if mothers can take care of children by themselves. Also in the short term, it seems optimal to be a stay-at-home mother when the available jobs have low wages and childcare costs are high.

In the long term, however, their behavior lacks rationality. In the long term, the mother's choice of working outside the home and using *hoikusho* services is a better choice for the development of the children. In the long term, they could have earned a much larger amount of lifetime earnings if they had not left the labor force for such a long period. The value of a stay-at-home mother's housework and childcare activities might surpass her value in the market for several years, but the difference definitely does not compensate for the huge earnings loss in the long term.<sup>5</sup>

To tackle the poverty problem of stay-at-home mothers, we must introduce mechanisms that will channel Japanese women to make optimal choices on a long-term basis. Delivering free vouchers for *hoikusho* services for low-income families without cumbersome screening, providing correct and accessible information to young women about lifetime earnings for various career paths, and reforming male-centered workplace practices so that household tasks can be shared equally between husbands and wives are some straightforward approaches to realize the goal.

#### Appendix: What is the JILPT's NSHC?

JILPT's National Survey of Households with Children (NSHC) is a periodic survey with a uniform sampling method and questionnaire design, which has been conducted since 2011. In each survey year, 4,000

data, they find that childcare improves language development among boys and reduces aggression and symptoms of ADHD among the children of disadvantaged families. For details, see the following website: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2932875](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2932875).

5. Tachibana Akira, in his book *Full-time Homemakers are Losing 200 Million Yen* (Magazine House, 2017) calculated a huge earnings loss incurred by Japanese women having a long period of career interruption.

households that are rearing children below the age of 18 were selected from the Basic Resident Register using the stratified two-stage random sampling method.

Survey specialists visit each household to deliver and collect questionnaires. Parents of children, with the mother given top priority, are requested to be questionnaire respondents. The valid response rates are kept at a constant rate of around 55%. For details of the survey design and results of each survey, see JILPT 2012, 2013, 2015 and 2017.

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# The Dynamics of Minimum Wage in Indonesia's Manpower System

Ikomatussuniah

I. Introduction  
 II. Minimum wage and PP 78  
 III. Conclusion

## I. Introduction

Wages<sup>1</sup> are one of the important components in Indonesian workforce. The basic wage regulations are compiled and written in legislation in order to create a social welfare system as follows:<sup>2</sup>

1. Article 27 Paragraphs (2) of the 1945 Constitution of the Republic of Indonesia declares that "Every citizen shall have the right to work and a decent living for humanity."
2. Act of the Republic of Indonesia No. 13/2003 on Manpower.
3. Government Regulation of the Republic of Indonesia No. 72/2001 on Income Tax on Income Received by Laborers up to Minimum Wage (MW) of Province or MW of District.
4. Presidential Decree No. 107/2004 on the Wage Council.
5. Government Regulation of the Republic of Indonesia No. 78/2015 on Wages (Peraturan Pemerintah 78 or PP 78).
6. Regulation of the Minister of Manpower of the Republic of Indonesia No. 20/2016 on the Procedures for Administrative Sanctions of Government Regulation No. 78/2015 on Wages.
7. Regulation of the Minister of Manpower of the Republic of Indonesia No. 21/2016 on Decent Living Needs.
8. Regulation of the Minister of Manpower and Transmigration No. 7/2013 on MW.
9. Decree of the Minister of Manpower and Transmigration of the Republic of Indonesia No. Kep-231/Men/2003 on Procedures for Suspending MWs.
10. Decree of the Minister of Manpower and Transmigration of the Republic of Indonesia No. Kep-49/Men/2004 on Terms of Wage Scale Structure.
11. Decree of the Minister of Manpower and Transmigration of the Republic of Indonesia No. Kep-102/Men/VI/2004 on Overtime and Overtime Wage.
12. Regulation of the Minister of Manpower and Transmigration of the Republic of Indonesia No. Per-03/Men/I/2005 on Procedures for Proposing Membership of the National Wage Council.
13. Regulation of the Minister of Manpower and Transmigration of the Republic of Indonesia No. 13/2012 on Components and Implementation of the Stages of Achieving Living Needs.
14. Guideline for Survey and Processing of Decent Living Cost (Kebutuhan Hidup Layak or KHL) Data.
15. Presidential Instruction of the Republic of Indonesia No. 9/2013 on MW Determination Policy for Business Continuity and Improvement of Laborer Welfare.

1. Article 1 number (25) of the Manpower Act defines wages as "the rights of laborers received and expressed in the form of money as remuneration from employers to laborers who are established and paid under an employment agreement, agreement or statutory regulations, including benefits for laborers and their families for work and/or services that have been and/or will be done."

2. The Manpower Act, Wage Rules Association. Directorate General of Industrial Relations and Labor Social Security. Ministry of Manpower of the Republic of Indonesia, 2016.

16. Decision of the Chair of the National Wage Council No. 01/DEPENAS/XII/2006 on the Working Procedure of the National Wage Council.

The set of rules is established based on the consideration that national development is implemented to fully build the Indonesian people and the community as a whole to create a prosperous society based on the ideology and the 1945 Constitution of the Republic of Indonesia.<sup>3</sup> Especially, wages are established to ensure a harmonious relationship that exists between the parties involved.

Laborers and employers are involved in private relation. They conduct employment agreements to create and maintain harmonious industrial relations. In addition, wage is one of the agreement clause. The basis of private law in the employment contract is ruled by Article 1320 of the Civil Code on the terms of the agreement's validity, as follows:

*Firstly*, the agreement between the binding parties means that the parties in the agreement mutually agree in terms of the principal agreement. Thus, an agreement may be abrogated if there are elements of fraud, coercion, and oversight. Moreover, Article 1321 of the Indonesian Civil Code states that, "there is no valid agreement if it is given in error or obtained by correction/fraud." In the case of wages, the agreement between laborers and employers must be recorded and mutually agreed. In that agreement some aspects should be taken into account, such as amount of wages, type of wages (basic wages, incentives, allowances for laborers and their families) and time of payment (daily, weekly, monthly or as agreed). The agreement is implemented on the basis of good faith. *Secondly*, it is lawful to make an agreement, meaning that the parties must be legally competent under the law, that is to be an adult (aged 21 years) and not under custody. The parties in industrial relations must have reached a certain age to be able to decide the desired wage amount. On the basis of Indonesia's Manpower Act, the legally allowed age for employment is a minimum of 18 years.<sup>4</sup> *Next*, the conducted agreement should be in certain terms which are clear and detail (type, quantity, and price) or object description, known to the rights and obligations of each party. Thus, there will be no dispute between the parties. In this case, remuneration is always clearly promised in a salary or wage usually in the form of money, but some are in the form of free medication, vehicles, meals and lodging, clothing<sup>5</sup> and other primary, secondary and tertiary needs. In this situation, industrial disputes will not arise. *The last*, points of agreement should contain a lawful clause that means the treaty contents must have a purpose that permitted by law, morality, or public order. According to wages, the agreement must be based on community's wage regulations, norms and rules.

Based on private law, wages are determined based on an agreement between laborers and employers. Furthermore, determination of public wages is participated by the government with a role in maintaining and ensuring good industrial relations. Thus, justice and prosperity are created. In this study, it is clear that wages are a right for both formal and informal laborers regarding to oral or written covenant in the context of an employment agreement.

Wage policies are stipulated by the government in order to protect laborers and to realize decent living income for humanity, one of which is MW.<sup>6</sup> The government shall stipulate the minimum wage on the basis of the adequate life needed by observing economic productivity and growth.<sup>7</sup> Nowadays, the dynamics of MW and wage's regulation on PP 78 are interesting subjects in Indonesia's manpower.

## II. Minimum wage and PP 78

### A. Minimum wage

Minimum wage is defined as the minimum wage in province or district/city. It is directed to the achievement

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3. See "Considering" the point (a) of the Manpower Act.

4. Article 1 number (25) of the Manpower Act.

5. Subekti, *Pokok-Pokok Hukum Perdata*, Intermasa, Jakarta, 1996, 173.

6. *Ibid*, N4, Article 88 Paragraphs (3).

7. *Ibid*, N4, Article 88 Paragraphs (4).

of KHL with the stipulation by the governor taking into account the recommendations of wage council,<sup>8</sup> at the level of province or district/city. Components and implementation of the stages in achieving the costs of decent living are regulated by a Ministerial Decree. Then, with the enactment of PP 78, regulation of the Minister of Manpower No. 21/2016 on Decent Living Costs is issued.

Prior to the issuance of PP 78, a technical regulation on minimum wage was set forth in the Regulation of the Minister of Manpower and Transmigration No. 7/2013 on Minimum Wage (*Permenakertrans 7/2013*). This rule is structured to protect laborers' wages from falling at the lowest level because of labor market imbalances. Therefore, the rules are established by policy maker for harmonizing minimum wage policies and improving the welfare of laborers. Based on these considerations, it is necessary to regulate minimum wage of province or district/city, and minimum wage for certain labor-intensive industries. The minimum wage is the lowest monthly wage consisting of the basic wage including the fixed allowance set by the governor as the safety net. Minimum wage consists of Minimum Wage Province (MWP) or Minimum Wage District/City (MWD/MWC) and Minimum Wage Sectoral Province (MWSP) or Minimum Wage Sectoral District/City (MWSD/MWSC).

The MWP is set and announced by each governor annually on November 1. In addition, the governor may set up MWD/MWC based on wage councils of province and district/city recommendation. MWD/MWC shall be determined and announced by the governor no later than November 21 after the determination of MWP. In this case, MWD/MWC is bigger than MWP. The MW shall be effectively implemented on January 1 of the following year and the review of the MW must be done in every single year. For regions, where the MW is still under KHL, the MW is applicable to certain labor-intensive industries and it is applicable either to other companies by referring to the consideration of business capability conditions. For regions whose MW is above KHL, in which KHL for the following year is greater than the MW of the previous year, the governor stipulates it in the following year to refer to the consideration of the business capability condition. Furthermore, for regions whose MW is the same or above KHL where value for the subsequent year is not greater than the MW of the previous year, the governor shall determine the MW based on the recommendation of the wage council.

In addition, the governor may establish the MWSP and/or MWSD/MWSC. This is based on the agreement between the company association and the trade unions in the involved sectors. Then, it is officially effective upon the governor stipulation. The MWSP and/or MWSD/MWSC quantity shall be stipulated in which MWSP and MWSD/MWSC should not be lower than MWP and MWD/MWC respectively. The wage council shall conduct research to determine the pre-eminent sector which is subsequently communicated for negotiation to the company association and/or trade unions in the related sector. Furthermore, the amount of sectoral wages is agreed by the company association and trade/labor unions in that related sector. The result of the agreement shall be submitted to the governor through the Regional Work Unit (*Satuan Kerja Perangkat Daerah* or SKPD) that responsible for the manpower field as the basis for determining sectoral wages.

The MW becomes an important issue in employment for Indonesia to be more competitive. The reasons for improving MW to achieve national competitiveness are:<sup>9</sup> companies classified as labor intensive, fluctuations and wage uncertainty are very influential for entrepreneurs in business certainty; competitive wages will lead to competitive prices. This happens if the government helps compensating for some laborers' needs (such as health and transport). Thus, sales and economic growth will significantly be increasing; labor absorption and unemployment reduction occur if the MW is rational. This will ease the employers to hire new employees.

The problem occurs, if the established legislation was not running properly. R. Irianto Simbolon, Directorate General of Industrial Relations and Labor Social Security, explained that MWP determination was not done

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8. Instruction of the President of the Republic of Indonesia No. 9/2013 Concerning Determination of MW in the Framework of Business Continuity and Improvement of Laborers' Welfare.

9. Ikomatussuniah, *Ketnagakerjaan Dalam Bingkai NKRI*, Untirta Press, Serang City, 2016, 64. Based on Anton J Supit, Deputy Chairman of the National Wage Council of Entrepreneurs' Element, Paper: *Penerapan Sistem Pengupahan Yang Berkeadilan (Perspektif Asosiasi Pengusaha)*, was presented at the National Wage Council Consolidation Forum at Grand Sahid Jaya Hotel, Jakarta, on September 8, 2014.



simultaneously. There were many provinces that did not stipulate MWP.<sup>10</sup> This was described in the National Wage Council Consolidation Forum in Jakarta on September 7 to 9, 2014. The wage council as a guardian of wage policy is an organization representative of the elements of laborers, employers, governments, experts, and scholars, which regularly work together to achieve fair wage aim.<sup>11</sup> Based on 2014's data, a social wage system can be analyzed as:<sup>12</sup>

1. The MWP shall be established and announced by the respective governor annually on November 1 of each year, but in the reality it was known as follows:
  - a. The provinces that set the 2014 MWP at the same time on November 1, 2013 were Nangroe Aceh Darussalam, North Sumatra, Riau, Riau Islands, South Sumatra, Jakarta, South Sulawesi, Central Sulawesi, and West Papua.
  - b. The provinces that established MWP 2014 before November 1, 2013 were West Sumatra, Jambi, Bangka Belitung, Bengkulu, Banten, West Nusa Tenggara, East Kalimantan, Gorontalo, North Sulawesi, Southeast Sulawesi, Maluku, and Papua.
  - c. The provinces that set the MWP 2014 after November 1, 2013 were Lampung, Bali, North Maluku, and West Sulawesi.
  - d. The provinces that did not stipulate MWP 2014 and only specified the MWD/MWC namely West Java, East Java, Central Java and Yogyakarta.
2. East Nusa Tenggara was the only one province that determined MW of labor-intensive industrial province<sup>13</sup> (Indonesian rupiah, IDR 1,125,000).
3. The highest MWP was Jakarta with IDR 2,441,000 and the highest percentage of the 2014 MWP was in Bali Province (30.62%).
4. The lowest MWP was East Nusa Tenggara with IDR 1,150,000 and the lowest percentage of the MWP was East Kalimantan (7.66%).
5. There were 16 provinces assigning MWP that were greater than KHL, namely: Nangroe Aceh Darussalam, North Sumatera, West Sumatera, Riau, Riau Islands, Jambi, Bengkulu, Lampung, Banten, Bali, Jakarta, South Kalimantan, North Sulawesi, South Sulawesi, and Papua.
6. There were four provinces assigning MWP 90% up to 99% KHL, namely: South Sumatra, Bangka Belitung, Southeast Sulawesi, and Central Sulawesi.
7. There were six provinces assigning MWP 80% up to 89% KHL, namely: Nusa Tenggara Barat, West Kalimantan, Central Kalimantan, Gorontalo, North Maluku, and West Papua.
8. There were three provinces assigning MWP 80% lower than KHL, namely: Nusa Tenggara Timur, West Sulawesi and Maluku.

Based on those data, it appears that the wage and wage systems are uneven and that the system of wages imposed has not occurred, because there are many problems in the regions related to the wage council in charge.<sup>14</sup>

- a. Wage Council of province and district/city has not fully understood the procedures for survey and determination of KHL values in accordance with laws and regulations, so that the wage setting mechanism is not in accordance with the provisions. Furthermore, poor coordination between National Wage Council, Province's Wage Council and District's/City's Wage Council and lack of budget allocation for the implementation of Wage Council's duties.
- b. There is no technical guidance on Road Map achievement as mandated in Permenakertrans No. 7/2013.

10. Ibid, 65, Based on R. Irianto Simbolon, Paper: *Membangun Sistem Komunikasi Dewan Pengupahan (Nasional, Provinsi dan Kab/Kota)*, submitted at Consolidation Forum of National Wage Council at Grand Sahid Jaya Hotel, Jakarta, on September 7, 2014.

11. Ibid.

12. Ikomatussuniah, *Op.Cit*, 68-69. Based on the Data in the Consolidation of the National Wage Council of 2014.

13. Mandated in Presidential Instruction No. 9/2013 and Permenakertrans No. 7/2013: "MW Determination Policy in the Framework of Business Continuity and Laborers Welfare Improvement."

14. Ibid, N12, 70.

It has been exactly 410 days after the National Wage Coordination Council was launched in 2014. The wage regulation is issued within Government Regulation No. 78/2015 on Wages (PP 78). It was established and enacted in Jakarta on October 23, 2015 and set forth in the State Gazette of the Republic of Indonesia No. 237/2015. At the time, this PP 78 comes into force, Government Regulation No. 8/1981 on the Protection of Wages (State Gazette of the Republic of Indonesia of No. 8/1981, supplement to the State Gazette of the Republic of Indonesia No. 3190) shall be revoked and nullified.<sup>15</sup>

## B. Regulation of PP 78

Problems occur in society related to wages are dynamics. The change of wage regulation causes pros and cons between laborers and employers, especially in enactment of PP 78. Generally, employers support and laborers refuse that PP 78 Policy. Said Iqbal, President of the Confederation of Indonesian Trade Unions (Konfederasi Serikat Pekerja Indonesia or KSPI), argued that the reasons for laborers to object PP 78 were:<sup>16</sup>

- a. Wages are not paid when laborers engage in trade union activities.
- b. MW increases are based on formula of inflation rate and national economic growth. It means that MW increases no more than 10% annually, while labor demands are always dynamic. In addition, adjustment of KHL's components is conducted within five years period. The increase of wage should be 22% of KHL, because decent living costs rise every year.
- c. Non-compliant entrepreneurs are regulated to get administrative sanctions rather than criminal sanction. This condition illustrates that the role of state is against citizens' wage protections. In fact, Indonesia's wage system impoverishes Indonesian laborers by implementing cheap wages. Privileges are given by the government to foreign laborers with the use of foreign currency as a payment of the amount following by current rate. Moreover, the wages of foreign laborers are much greater than the wages of the domestic one.

The entrepreneurs argue that the business communities support PP 78 with the following considerations:<sup>17</sup>

- a. PP 78 is a breakthrough in the world of Indonesian workforce. Before it was enacted, the adoption of the MWP was dominated by various forms of politicization that made irrational wage increases and caused uncertainty. Furthermore, wages are essentially private rights between employers and laborers. In this case, the state comes with MW policies to protect laborers from falling into inappropriate wage conditions.
- b. PP 78 aims to protect unemployed residents to hit the labor market, growth of business and increasing employment. Moreover, with the enactment of PP 78, the determination of MWP 2016 by the governor must use the mandated formula. The wages formula in PP 78 uses the national inflation rate and economic growth as the main variable. The governor should establish and announce MWP every November 1.

Hanif Dhakiri, Minister of Labour, said that<sup>18</sup> the issuance of PP 78 is to restore the function of MW as safety net, so that laborers get paid above the MW; the wage system in company is implemented through the wage scale structure; the pressures of current economic conditions are tough. Most countries, including Indonesia, are experiencing economic slowdown. To tackle this situation, the government continues to strive and stabilize economic growth by enacting one of the three packages of The Fourth Economic Policy Packages,

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15. See Article 65 of PP 78.

16. Tribunnews.com, *Ini 7 Alasan Buruh Tolak PP Pengupahan*, <http://www.tribunnews.com/nasional/2015/11/20/ini-7-alasan-buruh-tolak-pp-pengupahan>.

17. Soeprayitno, Member of the National Wage Council (DEPENAS), Chairman of the National Social Security Board Commission (DJSN), Chairman of the Indonesian Employers Association (APINDO), *Memahami PP 78/2015 Sudut Pandang Pengusaha* (Understanding PP 78/2015 Perspective of Employers), Spoken in Members Gathering DPN APINDO Jakarta, December 4 2015, [https://apindo.or.id/userfiles/publikasi/pdf/Ulasan\\_PP\\_78\\_DPN\\_APINDO\\_-\\_Members\\_Gathering\\_4\\_Desember\\_2015.pdf](https://apindo.or.id/userfiles/publikasi/pdf/Ulasan_PP_78_DPN_APINDO_-_Members_Gathering_4_Desember_2015.pdf).

18. Septian Deny, *Ini Tujuan Pemerintah Terbitkan PP Pengupahan*, <http://bisnis.liputan6.com/read/2351038/ini-tujuan-pemerintah-terbitkan-pp-pengupahan>



which the government set forth minimum wages wholly. MW regulation is one of the arrays on wages that is arranged by PP 78. Furthermore, based on PP 78, MW calculation formula, the periodic review of components and KHL type, wage scale structure, and the imposition of fines and wage deductions are conducted.

Hanif Dhakiri<sup>19</sup> said that the determination of MWP, referring to Government Regulation No. 78/2015 on Wages, has accommodated the interests of laborers and employers, namely:

- a. The wages will increase without any insistence from private parties. Thus, increasing wages are predictable. If the wage value is too volatile, it is feared that business put on hold and affect the employment termination.
- b. PP 78 is the best way to accommodate all interests. According to PP 78, the increasing wages consider inflation rate and economic growth average referring to the Central Bureau of Statistics (Badan Pusat Statistik or BPS). Considering these two things, the increasing MW in 2017 was 8.25%<sup>20</sup> and in 2018 is 8.71%.<sup>21</sup>
- c. Wage is a deal between laborers and employers. However, when it comes to the MW, the government has an interest in ensuring that there is a protection guarantee for the workforce to protect them from underpaid wage.
- d. MW determination is a safety net for laborers but unfortunately it is considered by them as an effective wage or a living wage. Thus, laborers insist that the wages should be increased due to the inappropriate comprehension.
- e. Entrepreneurs are misunderstood by enacting MW in general regardless of length of working time and competence. In fact, there is a wage scale structure, in which people who have different competencies and work period will get a different wage.

Table 1 describes wages condition before and after PP 78 in Banten Province.

Based on the figure, it can be seen that Banten's wage development change before and after the issuance of PP 78. The changes occurring during 2009-2016 were:

- a. Banten's MWP experienced change with various fluctuations. Since 2009-2016, the percentage of wages had unpredictably fluctuated. The wages ranged from 4.12% to 20.75%. Furthermore, this trend leads to uncertainty investment for employers.
- b. MWD/MWC in Banten saw an increase with uncertain fluctuations as well. During 2009-2016, the increases of wage were unpredictable and varied in magnitude ranging from 1.94% to 48.55%. The disparities of wage trend caused economic discrepancy between laborers in one area and other areas, even if they are in the same province. Thus, it stimulates laborer's demonstrations and strikes to fight their rights.
- c. In 2016, the implementation of wage formula had not been done properly and needed adjustment. As can be seen on the figure that some areas had not implemented the policy, namely, Lebak District and Pandeglang District, which implemented over 12% (that was suggested by rule) for their MW which were 14% and 15% respectively. MW by 12% were applied in six districts/cities: Serang City, Serang District, Cilegon City, Tangerang City, Tangerang Regency and South Tangerang City in accordance

19 *Tempo.co*, *PP Nomor 78 Tahun 2015 Mengakomodir Upah Karyawan*, November 2, 2017, <https://nasional.tempo.co/read/1030141/pp-nomor-78-tahun-2015-mengakomodir-upah-karyawan>

20. Letter of the Minister of Manpower No. B.175/MEN/PHIJSK-UPAH/X/2016 dated October 17 concerning the Submission of Data on National Inflation Rate and Gross Domestic Product Growth of 2016. National inflation data and national economic growth (Gross Domestic Product Growth) were used to calculate the MW of 2017 sourced from the Central Bureau of Statistics of the Republic of Indonesia (BPS RI) in accordance with the Letter of the Head of BPS RI No. B-245/BPS/1000/10/2016 dated October 11, 2016, namely: a. National inflation of 3.07%; b. Economic growth (GDP growth) of 5.18%.

21. Letter of the Minister of Manpower No. B.337/M.Naker/PHIJSK-UPAH/X/2017 dated October 13, 2017 on Data Delivery of National Inflation Rate and Gross Domestic Product Growth Year 2017. National inflation data and national economic growth (Gross Domestic Product) were used to calculate the MW of 2018 from the Central Bureau of Statistics of the Republic of Indonesia (BPS RI) in accordance with the Letter of Head of BPS RI No. B-188/BPS/1000/10/2017 dated October 11, 2017, namely: a. National inflation of 3.72%; b. Economic growth (GDP growth) of 4.99%.

Table 1. Banten's minimum wage values year 2009-2018<sup>22</sup>

AREA	2009	(%)	2010	(%)	2011	(%)	2012	(%)	2013	(%)
BANTEN PROVINCE	917,500	9.62	955,300	4.12	1,000,000	4.68	1,042,000	4.20	1,170,000	12.28
LEBAK DISTRICT	918,000	9.03	959,500	4.52	1,007,500	5.00	1,047,800	4.00	1,187,500	13.33
PANDEGLANG DISTRICT	918,950	9.40	964,500	4.96	1,015,000	5.24	1,050,000	3.45	1,182,000	12.57
SERANG DISTRICT	1,030,000	11.05	1,101,000	6.89	1,189,600	8.05	1,410,000 1,320,500	18.53 11.00	2,080,000	47.52
SERANG CITY	1,030,000		1,050,000	1.94	1,156,000	10.1	1,379,150 1,231,000	19.30 6.49	1,798,446	30.40
CILEGON CITY	1,099,000	13.14	1,174,000	6.82	1,224,000	4.26	1,481,000 1,347,000	21.00 10.05	2,200,000	48.55
TANGERANG CITY	1,064,500	11.03	1,130,000	6.15	1,290,000	14.2	1,529,150	18.54	2,203,000	44.07
	1,054,660	10.57	1,118,009		1,250,000	10.6	1,381,000	7.05		
TANGERANG DISTRICT	1,055,000	10.6	1,125,000	6.64	1,285,000	14.2	1,527,150	18.84	2,200,000	44.06
	1,044,500	9.50	1,117,247		1,243,000	10.5	1,379,000	7.32		
SOUTH TANGERANG CITY			1,125,000		1,290,000	14.7	1,529,150	18.54	2,200,000	43.87
					1,245,800	10.7	1,381,000	7.05		

AREA	2014	(%)	2015	(%)	2016	(%)	2017	(%)	2018	(%)
BANTEN PROVINCE	1,325,000	13.25	1,600,000	20.75	1,784,000	12	1,931,180	8.25	2,099,385.778	8.71
LEBAK DISTRICT	1,490,000	25.47	1,728,000	15.97	1,965,000	14	2,127,112.50	8.25	2,312,384.00	8.71
PANDEGLANG DISTRICT	1,418,000	19.97	1,737,000	18.36	1,999,981	15	2,164,979.43	8.25	2,353,549.14	8.71
SERANG DISTRICT	2,340,000	12.50	2,700,000	13.33	3,010,500	12	3,258,866.25	8.25	3,542,713.50	8.71
SERANG CITY	2,166,000	20.44	2,375,000	9.65	2,648,125	12	2,866,595.31	8.25	3,116,275.76	8.71
CILEGON CITY	2,443,000	11.05	2,760,590	13.00	3,078,057.85	12	3,331,997.62	8.25	3,622,214.61	8.71
TANGERANG CITY	2,444,301	10.95	2,730,000	10.47	3,043,950	12	3,295,075.88	8.25	3,582,076.99	8.71
TANGERANG DISTRICT	2,442,000	11.00	2,710,000	9.89	3,021,650	12	3,270,936.13	8.25	3,555,834.67	8.71
SOUTH TANGERANG CITY	2,442,000	11.00	2,710,000	9.89	3,021,650	12	3,270,936.13	8.25	3,555,834.67	8.71

with Banten's MWP.

Over two years after PP 78 established (2017 and 2018), it can be seen that the increasing wage seems to be certainly stable and equal based on inflation rate and Gross Domestic Growth (8.25% and 8.71%). Investors can gain a benefit from business certainty condition and job security for increasing wages and regulating wage scale structures.

The dynamics of wage-setting implementation appear in discussions which are conducted on the recommendation of the regent/mayor. In certain situation, one wage recommendation document stands for more than one wage number. This is common to accommodate both trade unions and employers' opinion. Then, in 2017 and 2018, based on Banten Governor Decree, amount of wages must be determined based on mandatory of PP 78 by considering the advice of the provincial wage council.<sup>23</sup>

Up to now, wage regulations seem to apply only to formal laborers. Nevertheless, the informal sector is not paid a good attention; their wage condition is out of control. Thus, informal laborers should be protected

22. Data from Secretariat of Banten Provincial Wage Council, Section of Wage Sector, Field of Industrial Relations of Banten Provincial Labor Office, February 9, 2018.

23. Article 22 of Presidential Decree No. 107/2004 on Wage Council.

by the government by empowering the functions of the Local Work Units in workforce field and maximizing the wage council's function. The number of Banten's formal laborers is higher than those of informal ones. In addition, percentage of formal laborers increased from 61.47% in August 2015 to 61.52% in August 2016. The supervision of formal and informal laborers should be done proportionally and sustainably by all parties. Therefore, the Banten's wage council and all work units take concrete steps to create a fair wage for all parties, especially formal and informal laborers by:

- a. Conducting direct supervision. It is done with persuasive monitoring to all companies in Banten. The main priorities are foreign, medium and large companies.
- b. Obtaining companies data from mandatory employment report and database of Manpower and Transmigration Office of Banten Province.
- c. Surveilling the troubled companies.
- d. Following up on community information about employers who do not pay MW.

### III. Conclusion

This report is summerized as follows:

- a. Wages are both formal and informal private studies. The state contributes and takes the role of protecting its citizens by drafting the MW rules to realize prosperity. The wages rules are very dynamics and they are adjusted to create welfare. Government representation is reflected in the wage council's assignment that they have a mandatory to create and supervise ideal wage system.
- b. Wage legislation has been prepared as well as possible but it is only implemented partially. For example, simultaneous MWP determination has not performed yet. Furthermore, some provinces have not specified MWP. Therefore, the role of the government in monitoring wage system should be improved.
- c. The PP 78 debate takes place between trade unions and company associations as well as the government. Laborers are against in cheap wages. Whereas, company associations and the government support the act by arguing that it is intended for the certainty of the business and laborers' wage assurance through the wage scale structure.
- d. After the issuance of PP 78, the act gives more certainty and clarity to laborers and employers in the law for conducting industrial relations. Furthermore, the low binding of the wages act is caused by reduction of the role of wage councils in determining KHL components review and the type of necessities of life which are carried out within five years.
- e. The dynamics of Banten Province's wage fluctuated before the PP 78 was established. Then, after the covenant appears and consider as a mandatory, the wages determination that held by parties run effectively.



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# Wages Policy in the Current Context of Industrial Relation in Vietnam

Phuong Hien NGUYEN

- I. Introduction
- II. Wage regulation in the applicable Labour Code 2012
- III. Some evaluations regarding the wage policy in the Labour Code 2012

## I. Introduction

In Vietnam, since 1989, the regulation on income distribution in the centralized economy has been gradually replaced by the wage regulation laws more consistent with a market economy. The major reform of wage regulation in the Labour Code 2012, especially the minimum wage since 2013 until now, has improved workers' living standards. However, after 6 years of implementation, the wage regulation reveals some limitations, such as the definition of wage, the minimum wage rate, and how to set the minimum wage, etc. Therefore, this article analyzes some important points of wage regulation in Labour Code 2012, then suggests a number of amendments and supplements to these regulations.

## II. Wage regulation in the applicable Labour Code 2012

### 1. Wage structure regulation

The definition of wage according to Article 90, Labour Code 2012, is: *“Wage is a monetary amount which is paid to the employee by the employer to perform the work as agreed by the two parties. Wage includes remuneration which is based on the work or position, as well as wage allowances and other additional payments. An employee’s wage must not be lower than the minimum wage provided by the Government.”*<sup>1</sup>

The approach to defining “wage” in the Labour Code is similar to the concept of wage in Convention C095—Protection of Wages 1949 of the International Labour Organization,<sup>2</sup> which provides that a “wage” is monetary compensation paid by an employer to an employee in exchange for work done. A wage is set by supply and demand in the labour market, but must not be lower than the minimum wage required by law. At the same time, wage is determined through the negotiation mechanism between the parties in labour relations in accordance with market’s rules but not entirely fixed by the state as in the past.

According to Vietnamese law, wage consists of: basic remuneration which is based on the work or position, wage allowances, and other additional payments. Basic remuneration is paid for the quality and quantity of the employee’s labour contribution under standard working conditions. Wage allowances can compensate for working conditions, the complexity of work, living conditions, level of labour attraction and retention, etc. that are not accounted or not fully considered in the basic remuneration.<sup>3</sup> As such, wage allowances can be considered as supplementary for basic remuneration; they are popular and easily adjusted for the complexity of the work or difficult living conditions of the employee.

1. Labour Code 2012, <http://www.ilo.org/dyn/natlex/docs/MONOGRAPH/91650/114939/F224084256/VNM91650.pdf>.

2. Article 1, Protection of Wages Convention 1949: “In this Convention, the term *wages* means remuneration or earnings, however designated or calculated, capable of being expressed in terms of money and fixed by mutual agreement or by national laws or regulations, which are payable in virtue of a written or unwritten contract of employment by an employer to an employed person for work done or to be done or for services rendered or to be rendered.” [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C095](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C095).

Wage allowances agreed between the employer and the employee must be established in the employment contract or collective bargaining agreement,<sup>4</sup> or the company's internal labour rules. Currently, the concept of wage allowances is specifically guided in Circular 23/2015/TT-BLDTBXH, whereby each type of allowance will cover the corresponding elements of work such as: an allowance for heavy and hazardous work; an allowance for management and/or seniority; an allowance for working in remote or expensive areas; an allowance to encourage employees to work in new economic zones; and an allowance to encourage employees to work harder with higher productivity, with higher quality, or to meet a deadline.<sup>5</sup>

However, the regulation on an allowance to “*encourage employees to work harder with higher productivity and quality or to meet deadline*” leads to confuse this type of allowance with a “bonus.” According to Article 103.1, Labour Code 2012, “*A bonus is an amount paid by an employer to reward his/her employees on the basis of the annual business results of the enterprise and the level of work performance of the employees.*”<sup>6</sup> So when employees try their best to meet deadline and provide better products, clearly they have a good work performance.

The additional payments in wages concept are known as “*money in addition to basic remuneration, wage allowances related to work performance or title of the employee in the employment contract.*”<sup>7</sup> These are excluded from bonuses (in Article 103, Labour Code 2012) such as mid-shift meal payments, supportive payments in case that employees' close relatives<sup>8</sup> die or get married, supportive payment for employees' birthdays, supportive payments for disability resulting from an occupational accident or disease, and other allowances not related to work performance or title of the employees in the employment contract. In fact, this regulation causes difficulties for enterprises in applying and defining what constitutes an additional payment. The wage term in the applicable law has led to some difficulties in applying the law, and enterprises often do not fully understand of the subtle differences between allowances, additional payments, and bonuses.<sup>9</sup> And in some other cases, enterprises try to reduce their payment to the social security fund by reallocating money from basic remuneration to additional payments or bonuses.

In fact, the purpose of wage regulation is to determine a salary to serve as a basis for calculating the social insurance contribution, as well as defining any payments in case of dismissal, overtime salary, etc. However, wage regulation has not effectively restricted the social insurance fraud such as minimizing the social insurance contributions to the minimum wage. Additionally, another reason for the status of late payment or evasion of social insurance premium is that many employees work without employment contracts.<sup>10</sup>

## 2. Minimum wage

Minimum wage is a popular policy over the world, with 92% of ILO member states having a minimum wage policy taking the form of a country minimum wage, a regional minimum wage, or a sectoral minimum wage.<sup>11</sup>

Minimum wage policy is designed to protect workers against unduly low pay at the bottom of the labour

3. Article 21.1, Decree 05/2015/ND-CP dated 12 January 2015 defining and providing guidance on the implementation of a number contents of the Labour Code, [http://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---ilo\\_aids/documents/legaldocument/wcms\\_388371.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_388371.pdf).

4. Article 102, Labour Code 2012.

5. Article 3.1.b, Circular 23/2015/TT-BLDTBXH dated 23 June 2015 guiding a number of articles on wages of the Decree No. 05/2015/ND-CP, <http://www.molisa.gov.vn/en/Pages/Detail-document.aspx?vID=642>.

6. Labour Code 2012, N1 above.

7. Article 3.1.b, N5 above.

8. Such as parents, parents in laws, wife, husband, children.

9. Ministry of Labour, Invalids and Social Affairs, Report on investigation and assessment of the implementation of the Labour Code in industrial parks, export processing zones and high-tech zones, December 2015 (not available in English)

10. VEPR and JICA, Labour productivity and wage growth in Vietnam, September 2017, [http://vepr.org.vn/upload/533/fck/files/1\\_%20Full%20ENG\\_20170912\\_0615pm.pdf](http://vepr.org.vn/upload/533/fck/files/1_%20Full%20ENG_20170912_0615pm.pdf).

11. Lee Chang Hee, Challenges of wage fixing in private sector, Decent Work project, Vietnam, December 2017.



market. A minimum wage creates a legally enforceable wage floor. As such, the role of minimum wage is limited to ensuring minimum living standards at the bottom of the labour market, and it is not meant to fix the actual wages of most workers. However, in Vietnam, the salary of many textile workers is highly dependent on minimum wage.<sup>12</sup> Minimum wage policy is also designed to narrow the inequality of wages and to serve as a basis for collective bargaining. The minimum wage is also set to reproduce the labour force to meet the minimum biological and social needs of workers. According to Article 91 of the Labour Code 2012, “*Minimum wage is the lowest payment for an employee who performs the simplest work in normal working conditions and must ensure the minimum living needs of the employee and his/her family.*”<sup>13</sup>

In principle, Article 91 also reflects the view and method of determining the minimum wage, which is guaranteed to be a living wage. It is in line with the ILO’s view, which is in determining the minimum wage, some elements should be taken into account: (a) the needs of workers and their families, taking into account the general level of wages in the country, the cost of living, social security benefits, and the relative living standards of other social groups; and (b) economic factors, including the requirements of economic development, levels of productivity, and the desirability of attaining and maintaining a high level of employment.<sup>14</sup> The issue is that the minimum wage in Vietnam does not really meet the minimum living standard for employees and their families.

According to Article 91, the minimum wage differs by region and sector. The regional minimum wage is determined by the government and applied in some certain regional territories. The minimum wage varies by region to reflect different natural and social conditions and living standards. The government sets the regional minimum wage according to the minimum living requirements of employees and their families, socioeconomic conditions and minimum wage levels in the labour market, and based on the recommendations of the National Wage Council.

The sectoral minimum wage is determined by sectoral collective bargaining, must be recorded in the sectoral collective bargaining agreement, and must be not lower than the regional minimum wage set by the government. According to Article 91, the minimum wage is set on a monthly, daily and hourly basis. However, in practice, it is currently determined on a monthly basis only. Therefore, the lack of minimum wage on a daily and hourly basis leads to difficulties in assessing minimum wage policy compliance, especially regarding part-time workers. This also creates obstacles for both employers and employees in negotiating wages for employees doing simple jobs, especially in the agricultural and service sectors. Additionally, there is no wage policy for employees in the informal sector.

Though the nominal regional minimum wage has increased since 2013,<sup>15</sup> whether the actual income of employees has increased correspondingly is questionable. Many employees have higher incomes than the minimum wage, so the increase of minimum wage has no positive impact on their income.<sup>16</sup> On the other hand, increasing the minimum wage also reduces workers’ income because of increasing social insurance, health insurance, unemployment insurance, and union fees. Even more damaging, the rise in minimum wage puts too much pressure on the business, leading to employment reduction, especially unskilled labour. No matter how increasing of minimum wage affects society, the problem is that the increase minimum wage must lead to an increase in actual income of the employees. To achieve this goal, a more reasonable and scientific method of determining minimum wages is needed.

Increasing minimum wage always poses debate in the society, from the both side of the employer as well as the union. From the side of the employer, a higher minimum wage leads to higher labour costs, higher product

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12. DO Quynh Chi, Minimum Wage and Wage-setting in the Global Supply Chains, Minimum Wage conference, Ton Duc Thang University, January 2018.

13. Article 91, Labour Code 2012.

14. Article 3, Convention 131 on Minimum Wage Fixing, 1970.

[http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0:NO::P12100\\_ILO\\_CODE:C131](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0:NO::P12100_ILO_CODE:C131)

15. Table 1: Minimum wage in Vietnam from 2013 to 2018.

16. <http://soha.vn/tang-luong-toi-thieu-vung-muc-song-nguoi-lao-dong-co-tang-2017081310101046.htm> (not available in English).

prices, negative impacts on economic growth, and therefore decreased employment. But from the side of the union, a higher minimum wage leads to higher wage earnings for most workers, leading to higher consumption and higher demands for goods and services, positively impacting economic growth and therefore employment. In most countries, the impacts of minimum wage on wages and employment are carefully assessed based on analysis of economic and labour market data, which is relatively weak in Vietnam.<sup>17</sup>

The current way to determine minimum wage in Vietnam is based on the minimum needs of workers who do the simplest, untrained work, under normal working condition and childcare needs, including:

- (i) The demand of foods is calculated according to the value of the “basket of goods” that a person needs on a daily basis (at least 2,300 kcals/day, as recommended by the National Institute of Nutrition, Ministry of Health).
- (ii) The demand of non-foods stuffs such as the need of clothes, accommodation, transportation, education, medical treatment, culture activities, insurance contributions, etc. This proportion usually accounts for 49-54% of the fee for minimum needs, depending on the region.
- (iii) The demand of child support for an employee: assuming that each employee has to support one child, the cost of childcare accounts for about 70.0% of the employee’s (the cost of food of one 4-6 years old child is about 1,600 kcals/day).

The minimum wage in this method not only includes minimum needs of the employees, but also includes child care fees, which ensures the reproduction of labour force in the society. However, its application also exposed certain shortcomings. For example, the housing fee in the minimum living requirements at 80 thousand per person per month is inappropriate.<sup>18</sup>

In fact, according to a study on determining living a wage using the Anker method by ISEAL Alliance, the living wage for a worker in Region One like Ho Chi Minh City is 6,435,000 VND while the actual average income of such worker is 4,812,000 VND/month (including basic salary, attendance allowance, living cost allowance, Tet bonus, year-end bonus, lunch allowance 15,000 VND/day).<sup>19</sup> This calculation method emphasizes the participation of local people and organizations to increase the credibility and acceptance of stakeholders. At the same time, the cost of housing and food in this method is in accordance with national and international standards, ensuring acceptable living standards. However, this living wage survey only covers a narrow area in some provinces, so in order to calculate a more comprehensive living wage, the National Wage Council may need to apply such method in a wider area.

The current minimum wage adjustment in Vietnam is based on recommendations of the National Wage Council, comprising three parties: the Ministry of Labour, Invalids and Social Affairs; representatives of employers’ organizations such as the Vietnam Chamber of Commerce and Industry (VCCI), Vietnam Cooperative Alliance (VCA), and the Vietnam Association of Small and Medium Enterprises (VASME); and the representative of the workers at the central level—Vietnam General Confederation of Labour (VGCL). The adjustment of minimum wages based on tripartite negotiation of the National Wage Council is a new mechanism which has been applied in Vietnam since 2013. This is the right direction in minimum wage policy reform. However, the National Wage Council includes only 15 people coming from three stakeholders, and excludes independent researchers and scholars. This is probably a limitation that needs to be changed.

### III. Some evaluations regarding the wage policy in the Labour Code 2012

#### *First, specify the concept of wages*

As discussed above, with unclear provisions on wage allowances, additional payments and bonuses, the application of wage policy in enterprises is inconsistent. Some enterprises also take advantage of this unclear

17. Lee Chang Hee, N11 above.

18. VGCL, Report on the role of trade union in amending regional minimum wage policy in Vietnam, 2016.

19. ISEAL Alliance, Living Wage Report—Urban Vietnam, March 2016, [https://www.isealliance.org/sites/default/files/Urban\\_Vietnam\\_Living\\_Wage\\_Benchmark\\_Report.pdf](https://www.isealliance.org/sites/default/files/Urban_Vietnam_Living_Wage_Benchmark_Report.pdf).

Table 1. Regional minimum wage in Vietnam from 2013 to 2018

(Unit: 1,000 VND/month)

Applicable year	01/2013	01/2014	01/2015	01/2016	01/2017	01/2018
Minimum wage region I	2,350	2,700	3,100	3,500	3,750	3,980
Minimum wage region II	2,100	2,400	2,750	3,100	3,320	3,530
Minimum wage region III	1,800	2,100	2,400	2,700	2,900	3,090
Minimum wage region IV	1,650	1,900	2,150	2,400	2,580	2,760
Average regional minimum wage	1,975	2,275	2,600	2,925	3,137	3,340
Average increase percentage comparing with previous year	17.20%	15.20%	14.20%	12.40%	7.24%	6.40%
Applicable legislation	Decree 103/2012/ND-CP dated 04/12/2012	Decree 182/2013/ND-CP dated 14/11/2013	Decree 103/2014/ND-CP dated 11/11/2014	Decree 122/2015/ND-CP dated 14/11/2015	Decree 153/2016/ND-CP dated 14/11/2016	Decree 141/2017/ND-CP dated 07/12/2017

Source: Compiled by the author based on an original source.

provision to contribute to social insurance at deceitful lower level. Thus, lawmakers can consider two options which are (i) more detailed provisions on wage allowances, additional payments, and bonuses; or (ii) separating payables related to work performance from wage. In the latter option, the parties will only contribute to social insurance fund on basic salary; people who want to pay social insurance at a higher level can choose supplementary social insurance fund.

### ***Second, improving minimum wage adjustment mechanism***

The minimum wage adjustment mechanism in Vietnam mainly depends on the recommendation of the National Wage Council, which has no independent labour economists or researchers. Another limitation is that minimum wage policy has a limited role of protecting workers at the bottom of the labour market. Consistent with the practice of some other countries, a better way to fix the minimum wage is through voluntary negotiation between employers and workers represented by unions. Collective bargaining is not well developed in Vietnam, and ratification and application of the ILO Convention on Collective Bargaining is one of the key requirements of the EU-VN FTA, as it is an integral part of a market economy.<sup>20</sup>

Moreover, the current minimum wage has not met the minimum living requirements of employees. The fundamental living expenses such as food, clothing, housing, and transportation are relatively higher compared with the income of most employees. To erase this gap, better reform at the macro level on the price of goods is necessary.

Last but not least, the applicable minimum wage on a monthly basis does not cover the benefits of employees who work on an hourly basis or on a daily basis. Therefore, lawmakers should consider determining

20. Lee Chang Hee, N11 above.



the minimum wage on an hourly basis, so that employees can receive full benefits in terms of salary and at the same time employers are more flexible in employment.



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# A Brief Analysis on the Influence of ICT Change on China's Labor Market

Xiaomeng ZHOU

- I. Introduction
- II. ICT increases the coordination of industrial structure and employment structure
- III. ICT makes “difficult employment” and “job difficulty” coexist
- IV. ICT increases the wage gap in the industry

## I. Introduction

China's information and communication technologies (ICT) reform began in the mid-1990s which was about 30 years later than that of the U.S., and it had a profound impact on the labor market. This paper analyzes the influence of ICT on China's labor market from three aspects: employment structure transformation, employment contradiction, and wage inequality. The results show as follows. (1) The rise and development of ICT significantly promoted the employment of related industries, and increased the coordination of industrial structure and employment structure. (2) The rapid development of ICT has led to the structural contradiction between “recruitment difficulty” and “employment difficulty.” Jobs closely related to ICT is in short supply, while employment in traditional industries is oversupplied. (3) The wage gap in industries is increasing, which shows that an obvious increase in the industries closely related to ICT and that the wage gap with the traditional industries is increasing.

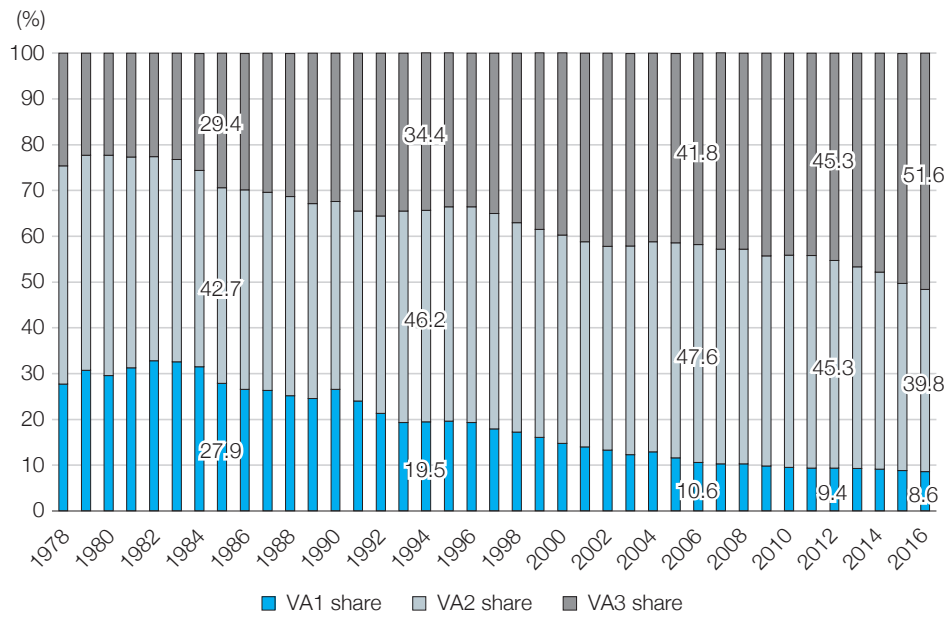
Facing the employment structural contradictions and the widening wage gap, the Chinese government has issued relevant policies accordingly, for example, from the educational aspect to set up the shortage of specialty and strengthen the cooperation between schools and enterprises to provide financial and technical support to encourage entrepreneurship, to take reform of personal income tax and to raise minimum wage.

## II. ICT increases the coordination of industrial structure and employment structure

### 1. The evolution of industrial structures and employment structures

In 1978-1994, the share of China's tertiary industry increased whereas the share of the primary industry decreased, and the employment ratio also showed the same change. However, the employment structure is far behind the optimization and upgrading of the industrial structure. In 1985, when the share of the tertiary industry increased to 29.4% which was the first time exceeded 27.9% in the primary industry (Figure 1), the employment ratio of the tertiary industry was only 16.8% which was far below 62.4% in the primary industry (Figure 2). The primary industry absorbed so many labor force. The comparative labor productivity was as low as 0.4 in the primary industry (Figure 3). While the absorptive capacity of the secondary and the tertiary industries was relatively low, the comparative labor productivity was up to 2.1 and 1.8 respectively.

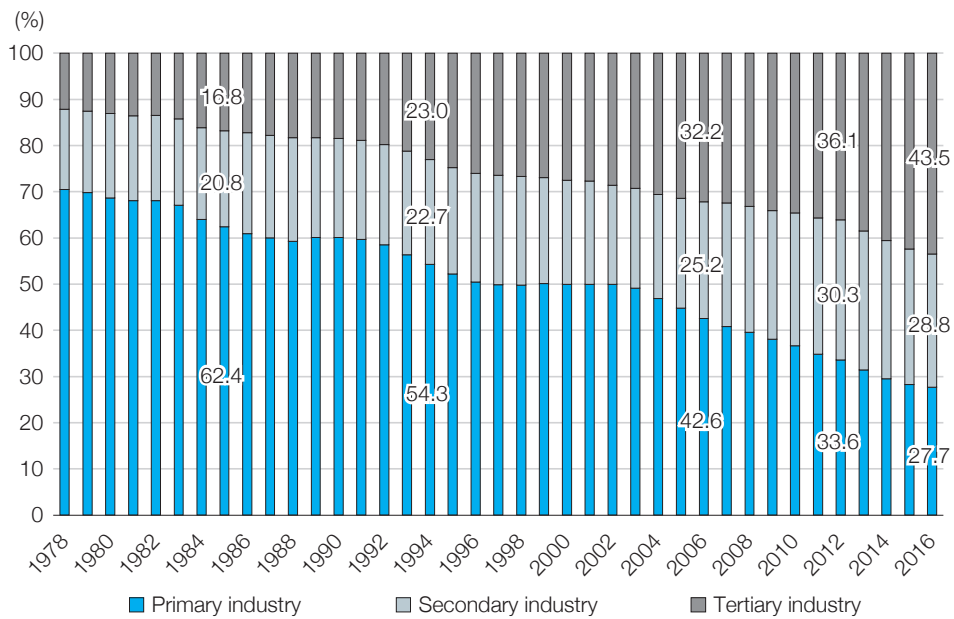
Since 1993, with the rise of the internet in China, the industrial structure and employment structure have been optimized and transformed from the primary industry to the tertiary industry. The employment absorption capacity of the tertiary industry had been enhanced obviously. With the share of the tertiary industry increased, the employment ratio showed a faster growth. In 1994, when the employment ratio of the tertiary industry increased to 23% which was the first time exceeded 22.7% in the secondary industry, the share of the tertiary industry was 34.4% which was far below 46.2% in the secondary industry. The labor productivity of the tertiary industry reduced to 1.5 which showed obviously pulling effect on the employment of labor force, while the



Source: CEInet Statistics Database.

Note: VA stands for value added.

Figure 1. Changes in industrial structure during 1978-2016

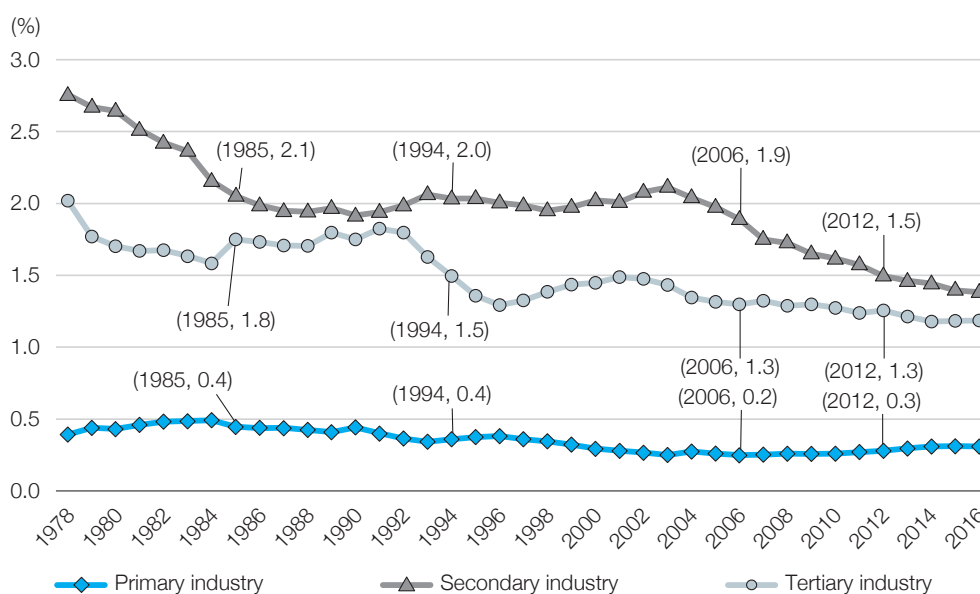


Source: CEInet Statistics Database.

Figure 2. Changes in employment structure during 1978-2016

comparative labor productivity of the primary industry and the secondary industry was 0.4 and 2.0 and their employment capacity were basically unchanged.

Since 2006, industrial structure has shifted from the secondary industry to the tertiary industry. The employment capacity of the secondary and the tertiary industries is obviously enhanced. By 2012, the share of



Source: CEInet Statistics Database.

Figure 3. Comparative labor productivity during 1978-2016

the tertiary industry added up to 45.3% which was equal to that of the secondary industry, and the employment ratios of the secondary and the tertiary industries were 36.1% and 30.3% respectively. The comparative labor productivity had already dropped to 1.5 and 1.3.

To sum up, since the reform and opening up the optimization and upgrading of the industrial structure had led to the continuous adjustment and improvement of the employment structure in China. Especially since the rise of the internet in 1993 the employment absorption capacity of the tertiary industry has been significantly enhanced. However, until now the coordination of the industrial structure and the employment structure remains to be further improved, and there still retains a lot of labor force in the primary industry.

By 2016, the share of the three industries in China was 8.6%, 39.8% and 51.6% respectively, and the corresponding employment ratios were 27.7%, 28.8% and 43.5% respectively. The comparative labor productivity of the secondary and the tertiary industries was 1.4 and 1.2 respectively, while that of the primary industry was as low as 0.3 which showed that a large number of labor need to be transferred from the primary industry to the secondary or tertiary industries.

In addition, the speed of China's industrial structure and employment structure adjustment is very fast, especially in recent ten years: the share of the tertiary industry had increased from 41.8% in 2006 to 51.6% in 2016 with an increase of 9.8 percentage points, and its employment ratio had increased from 32.2% in 2006 to 43.5% in 2016 with an increase of nearly 11.3 percentage points. The share of the secondary industry was reduced by 7.8 percentage points, and its employment ratio increased by 3.6 percentage points in the same period. While the share of the primary industry is reduced by 2 percentage points and the employment ratio is reduced by 14.9 percentage points in the same period.

## 2. The transition of industry structure and employment structure in the tertiary industry

In the tertiary industry, the sectors which are closely related to ICT, such as finance and IT, have significantly improved their industry contribution rates. The share of the financial sector to the tertiary industry increased from 10.6% in 2004 to 16.9% in 2015 with an increase of 6.3 percentage points, and its employment ratio also increased from 6.0% to 6.8% accordingly. The share of leasing and business services to the tertiary industry

Table 1. The VA share and employment ratio of major sectors in the tertiary industry

Year	Transport, Storage and Post		Accommodation and Catering		Wholesale and Retail		Finance		IT services <sup>1</sup>		Leasing and Business services		Scientific research and Technical service	
	share	ratio	share	ratio	share	ratio	share	ratio	share	ratio	share	ratio	share	ratio
2004	14.8	10.6	5.6	3.0	19.3	9.9	10.6	6.0	6.3	2.1	3.9	3.3	2.6	3.7
2005	14.0	10.2	5.5	3.0	18.3	9.1	9.8	6.0	6.4	2.2	4.1	3.6	2.8	3.8
2006	13.4	10.0	5.4	3.0	19.1	8.4	10.6	6.0	6.3	2.3	4.2	3.9	3.0	3.9
2007	13.0	10.0	5.1	3.0	19.8	8.1	11.5	6.2	5.9	2.4	4.1	4.0	3.0	3.9
2008	12.6	9.8	5.1	3.0	20.8	8.0	11.6	6.5	5.8	2.5	4.2	4.3	3.0	4.0
2009	11.9	9.5	4.8	3.0	21.2	7.8	12.4	6.7	5.3	2.6	4.1	4.4	3.1	4.1
2010	10.5	9.1	4.3	3.0	20.1	7.8	14.4	6.8	5.0	2.7	4.2	4.5	3.2	4.2
2011	10.5	9.1	4.1	3.3	20.5	8.9	14.1	6.9	4.8	2.9	4.4	3.9	3.7	4.1
2012	10.2	8.7	4.0	3.5	20.9	9.3	14.2	6.9	4.9	2.9	4.6	3.8	3.9	4.3
2013	10.1	9.8	3.9	3.5	21.2	10.4	14.4	6.3	5.0	3.8	4.8	4.9	4.0	4.5
2014	9.9	9.8	3.8	3.3	21.6	10.1	14.7	6.4	5.2	3.8	5.0	5.1	4.0	4.6
2015	8.9	9.5	3.5	3.1	19.3	9.8	16.9	6.8	5.4	3.9	5.0	5.3	3.9	4.6

Source: CEInet Statistics Database.

increased from 3.9% in 2004 to 5.0% in 2015, as to scientific research and technology services the share rose from 2.6% to 3.9%. Their employment ratio went up from 3.3% to 5.3% (leasing and business services) and 3.7% to 4.6% (scientific research and technology services). The share of IT services to the tertiary industry decreased by 1.3 percentage points in 2004-2010, and began to increase in 2013, while its employment ratio increased significantly from 2.1% in 2004 to 3.9% in 2015 (Table 1).

In addition, the rise of ICT revolution has enabled e-commerce mode to enter the wholesale and retail industry which make a huge effect. The online platforms, such as Taobao and Jingdong, have greatly reduced the trade costs, increased the efficiency and vitality of the market. In recent years, the share of the wholesale and retail industry has increased on the whole, and its employment ratio has also increased.

However, the share of industries, which are not highly correlated with ICT, decreased significantly. For example, the share of transport, storage and post industry dropped significantly from 14.8% in 2004 to 8.9% in 2015 with a decrease of 5.9 percentage points, its employment ratio decreased from 10.6% to 9.5%. And the share of accommodation and catering trade was also reduced from 5.6% to 3.5%, while the employment ratio changed little.

Thus, we can see that the optimization and upgrading of China's industrial structure and employment structure in recent years is mainly derived from the promotion of ICT technology.

### III. ICT makes “difficult employment” and “job difficulty” coexist

#### 1. Employment is reducing in traditional industries while increasing in emerging industries

The rapid adjustment of industrial structure driven by ICT technology has greatly changed the structure of employment demand. In the labor market, the demand of traditional industries has declined, while in emerging industries it is booming. As shown in Table 2, the employment growth rates in mining industry, manufacturing

1. IT represents for information transmission, software and information technology.

Table 2. Employment growth rate of the traditional and emerging industries during 2014-2016

(%)

Year	Mining	Manufacturing	Transport, Storage and Post	Finance	IT	Leasing and Business services
2014	-6.3	-0.3	1.8	5.3	2.7	6.5
2015	-8.5	-3.3	-0.8	7.2	4.0	5.5
2016	-10.1	-3.4	-0.6	9.6	4.1	3.0

industry, transportation, storage and post industry, which are less associated with ICT, were significantly negative during 2014-2016. While the employment growth rates of the finance, IT, and the leasing and the business services, which are closely related to ICT, are obviously increased.

Because the restructuring of the supply of talents in China is slower than the upgrading of the industrial structure, there exists serious imbalance in the proportion of supply and demand in the labor market which has caused the contradiction of structural employment to become increasingly prominent. The problem of “recruitment difficulty” and “employment difficulty” are becoming more and more acute. The talents for the jobs, which are closely related to ICT industry, are in short supply, while the jobs that are less related to ICT industry are oversupplied.

## 2. The talents for emerging industries that are closely related to ICT, are in short supply

As the talents for the emerging industries that are closely related to ICT, are in short, the Chinese government is taking active measures to increase talents supply, by strengthening professional construction and setting up related specialties, seeking college-enterprise cooperation, standardizing the social training and so on. As China is a centralized country which make decisions with high efficiency, the shortage of talent will soon be relieved.

### (1) AI field

As the rise of ICT technology has made the artificial intelligence (AI) flourishing, the demand for AI talents in many industries and fields, such as internet, finance, automobile and manufacturing, has surged. The number of AI positions released only through the LinkedIn platform has soared from 50 thousand to 440 thousand, increased by about eight times during 2014-2016.<sup>2</sup> According to the big data of China intelligence association, the demand for AI talents in the third quarter of 2017 increased by 179% compared with the first quarter of 2016. On the other hand, the development of education and training system is lagging behind, resulting in an AI supply and demand ratio to be only 1:10. There exists a serious imbalance between supply and demand. From the subdivision level, such as algorithm, machine learning, GPU, smart chip, show a more significant talent gap compared with the application technology.<sup>3</sup>

In order to increase the talents supply, our country plans to set up AI specialty and seeks the cooperation between schools and enterprises to cultivate the reserve force. *The New Generation of Artificial Intelligence Development Plan*, issued by the State Council recently, pointed out that we should improve the layout of artificial intelligence, set up artificial intelligence specialty, and promote the construction of the first level discipline in the field of AI. Besides strengthening professional construction, the government also plans to cultivate AI talents by college-enterprise cooperation which can enrich the form of AI education and promotes the development of AI education.

### (2) Internet finance

As an emerging field, the internet finance also encounters structural imbalance, and there exists a huge talent

2. From the 21st Century Business Herald, [http://www.21jingji.com/2017/7-25/xOMDEzNzlfMTQxNDIxOA\\_2.html](http://www.21jingji.com/2017/7-25/xOMDEzNzlfMTQxNDIxOA_2.html).

3. From Chinanews, <http://www.chinanews.com/it/2017/07-06/8270299.shtml>.

gap. At present, the contradiction between enterprises and talents is mainly reflected in the rapid development of the industry, which leads to a general lack of understanding of the internet financial industry and inadequate knowledge and skills, making it difficult for enterprises to acquire high-quality talents in the short term. It is expected that the gap of internet financial talents will exceed three million people during 2017-2019,<sup>4</sup> and the huge gap of talent has become the bottleneck of the internet financial enterprises in China.

In order to increase the supply of internet financial talents, our country is actively seeking cooperation between schools and enterprises and strengthening the skill training. The internet financial leaders, represented by Luo Mingxiong and other internet financial leaders, have already joined in alliance with the heads of relevant universities, such as the Central University of Finance and Economics and University of International Business and Economics, to establish the internet finance course in order to develop systematic internet financial knowledge and skills for students in schools and make them meet the talent needs of internet financial enterprises.

### (3) Big data

The emergence of the big data industry has made data analysts the most demanding jobs, while the supply of talents lags far behind the industry development. The supply index is only 0.05. In the future, the gap between China's basic data analysis and talent analysis will be as high as 14 million times, according to the data analysis of the China Commercial Federation.

At present, there are two main aspects of the implementation of talent measures. First, to add related specialties and increase the supply of talents. In February 2016, the Ministry of Education first approved to set up the specialty of "data science and big data technology" in three universities i.e., Peking University, University of International Business and Economics, and Central South University. In March 2017, the Ministry of Education had announced that 32 universities can set up this specialty. Up to now, 35 universities in China have been approved for the major. Second, to standardize the social training and cultivate professional talents. In order to rectify the training errors of training institutions for big data talents, Specialized Committee<sup>5</sup> joins forces with 87 experts to co-draft "*Standards for the Training System for Large Data Talents in China.*"

## 3. The talents for the jobs that are less related to ICT industry, are oversupplied

In recent years, as economic growth is no longer driven by investment, the traditional fields like steel and coal sectors are facing overcapacity and serious loss, and the employment absorptive capacity has also been reduced. Since 2016, in the iron and steel industry and the coal industry, 1,300 thousand and 500 thousand respectively of the workers are facing to be laid off, accounting for more than 20% of employment in these industries.<sup>6</sup> For this part of the laid-off workers, our government has launched an employment support plan, taking a series of measures in the occupation training, occupation introduction and occupation guidance to help the workers to get employment or start a business as soon as possible. At the same time, for workers who are unable to carry out employment in the market, the government will set up public service jobs for them.<sup>7</sup> Although it is not easy as expected, the government is doing it actively and expecting that there will be significant results by 2020.

For college graduates who have difficulty in employment, the government encourages them to carry out their own business. Since 2011, the state has vigorously introduced a number of preferential policies for entrepreneurship, mainly in the following six aspects:<sup>8</sup> (1) Reduce the entrepreneurship barriers. To simplify the formalities of starting, examining and approving the project which opens up a green channel for college

4. From People's Daily Online, <http://js.people.com.cn/n2/2016/1216/c360301-29474761.html>.

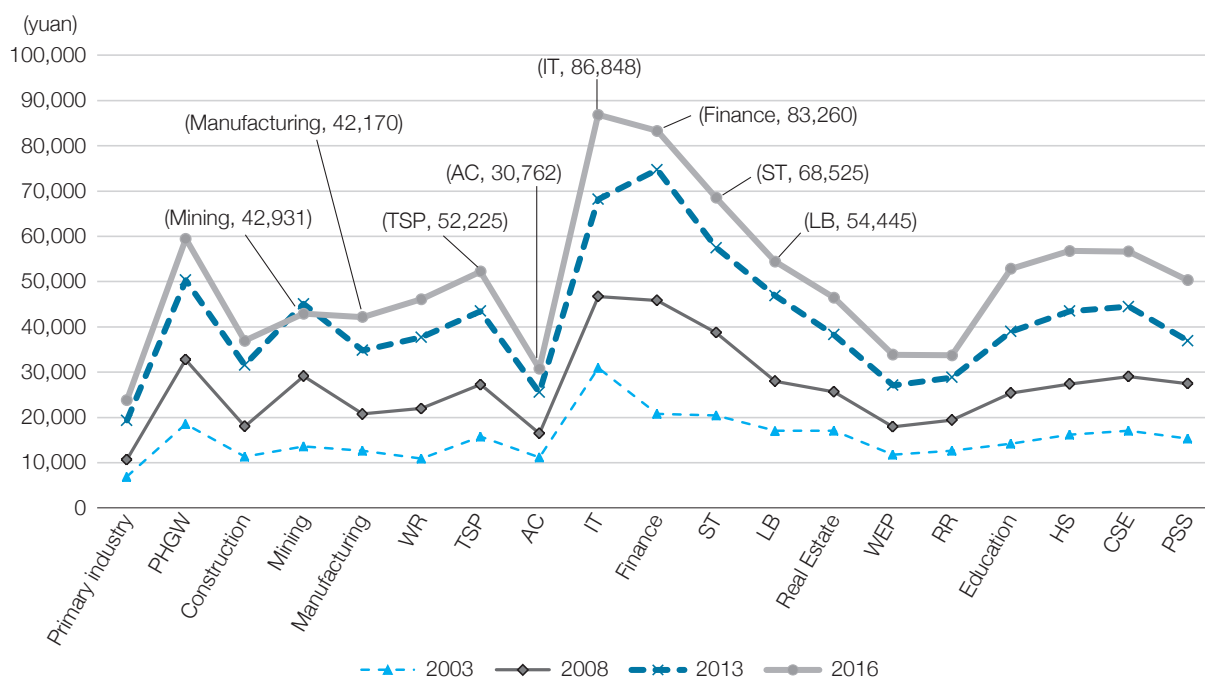
5. Specialized Committee is short for China Commercial Federation Data Analysis Specialized Committee.

6. From People's Daily Online, <http://energy.people.com.cn/n1/2016/0301/c71661-28160325.html>.

7. From Ministry of Land and Resources of the People's Republic of China, [http://www.mlr.gov.cn/xwdt/jrxw/201605/t20160519\\_1405783.htm](http://www.mlr.gov.cn/xwdt/jrxw/201605/t20160519_1405783.htm).

8. From People's Daily Online, <http://finance.people.com.cn/n/2015/1027/c1004-27745092.html>.





Source: CEInet Statistics Database.

Note: PHGW is short for Power, Heat, Gas and Water Production and Supply; likewise, WR: Wholesale and Retail; TSP: Transport, Storage and Post; AC: Accommodation and Catering; LB: Leasing and Business services; ST: Scientific research and Technical services; WEP: Water, Environmental and Public facilities management; RRR: Residents' services, Repairs and other services; HS: Health and Social work; CSE: Culture, Sports and Entertainment; PSS: Public administration, Social security and Social organization.

Figure 4. Average real wages across industries in urban areas over the period of 2003-2016

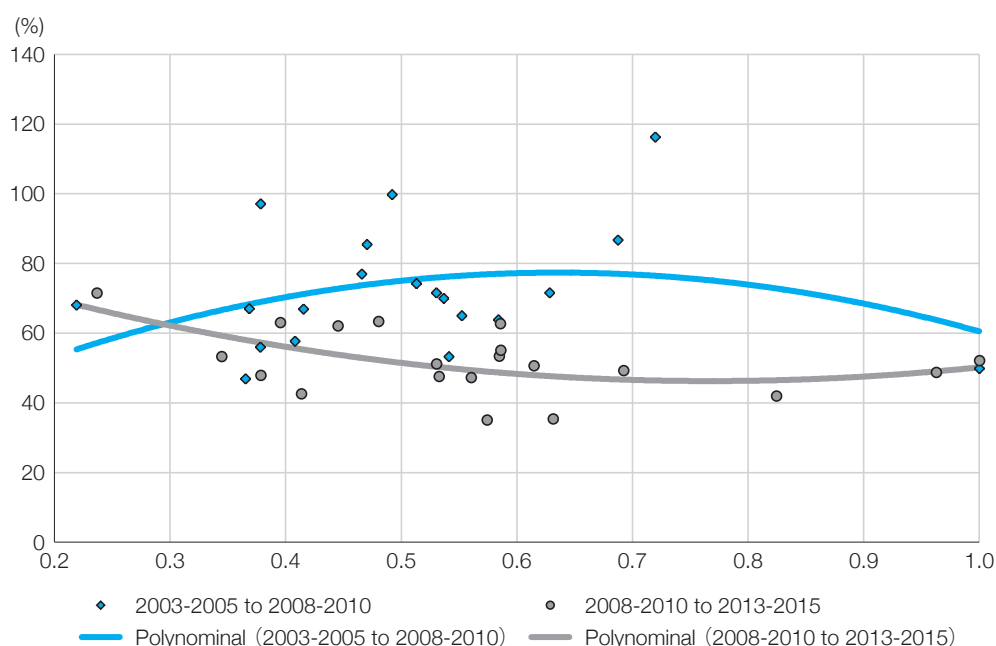
students to start their own business; (2) Strengthen the training of entrepreneurship. To prepare special training programs and to give priority to training resources, which guarantee the students to get their business training; (3) Provide financial support. To provide less than 100 thousand yuan of venture guarantee loan for entrepreneurial college students, and for a partnership or organization the amount will be further increased; (4) Reduce tax and fees for college graduates who engage in self-employed businesses. Although business tax, urban construction and maintenance tax, as well as additional education fee and the personal income tax will be deducted within three years, it is limited to the cases that the amount of relief is not more than 8,000 yuan per year. To exempt from administrative fees about the category of management, registration and evidence; (5) Implement household registration support. To abolish the restrictions on the settlement of college graduates, and to allow them to handle the settlement procedures in the entrepreneurial place; (6) Provide business services. To provide project development, opening guidance, financing service and tracking support service for the college students. In recent years, the scale of college students' participation in entrepreneurship has increased rapidly from 359 thousand in 2013 to 615 thousand in 2016, with an increase of 71.3%.

#### IV. ICT increases the wage gap in the industry

For more than 10 years, the reward to workers in different industries changed a great deal. Figure 4 shows the change of average real wages of employees in cities and towns in each industry over the period of 2003-2016,<sup>9</sup> through which we can see the average real wage level of the industries closely related to ICT is far higher than that with low correlation to ICT and the gap between them is increasing.

9. Basis year is 2003.





Source: CEInet Statistics Database.

Figure 5. Changes in real yearly wages over the period of 2003-2015

The average real wage of the productive service industry,<sup>10</sup> closely related to ICT, is in the lead and growing faster during 2003-2016. In 2003, the average real wages per year of IT, Finance, Scientific research and technical services (ST), and Leasing and Business services (LB) were 30.9 thousand yuan, 20.8 thousand yuan, 20.4 thousand yuan and 17.0 thousand yuan respectively, which were far above the whole industry average of only 14.0 thousand yuan a year. By 2016, they were up to 86.8 thousand yuan, 83.3 thousand yuan, 68.5 thousand yuan and 54.4 thousand yuan in turn, and increased by 181.09%, 300.67%, 235.22% and 219.89% respectively compared with those in 2003.

The wage gap in the industry has increased significantly. While the average real wages per year of the primary industry and the wholesale and retail industry were 6.8 thousand yuan and 11.2 thousand yuan respectively, 24.0 thousand yuan and 19.7 thousand yuan less than that of IT industry. By 2016, the average real wages per year of the primary industry and the wholesale and retail industry increased to 23.8 thousand yuan and 30.8 thousand yuan, and the wage gap with the IT industry expanded to 63.0 thousand yuan and 56.1 thousand yuan.

Although the wages of mining and manufacturing industries increased significantly during 2003-2013, they went up from 13.6 thousand yuan and 12.7 thousand yuan to 45.1 thousand yuan and 34.8 thousand yuan respectively, with an increase of 215.05% and 232.80%. However, after entering the year of 2013, with the industrial transformation and upgrading driven by ICT technology revolution, the economic development has entered the new normal. The traditional industries are facing serious overcapacity and large loss, which makes the growth rates of the wage level slow down or even decline. The average actual wages per year in the mining and manufacturing industries in 2016 were 42.9 thousand yuan and 42.2 thousand yuan respectively, increased by -4.79% and 21.13% compared with the year of 2013.

After experiencing the rapid growth of economy driven by investment, the new normal economic growth led by ICT technology has made the wage growth of most industries decrease significantly, especially for

10. Productive service industry includes IT, Finance, Scientific research and technical services, Leasing and Business services.

Table 3. Main conclusion of academic research on personal income tax reform

Literature Sources	Main Conclusion
Tian Zhiwei et al. (2014); Guo Xiaoli (2016)	The average tax rate is small, the adjustment of income distribution is limited.
Xu Jianwei et al. (2013); Hu Wenjun (2017); Liu Yang et al. (2014)	The structure of the tax rate is unreasonable, the income gap is widened.

Table 4. Main conclusion of academic research on minimum wage

Literature Sources	Main Conclusion
Quan Heng and Li Ling (2011); Weng Jie and Xu Sheng (2015); Fu Wenlin (2014)	On the whole, the income gap cannot be narrowed; however, the amount of employment will be reduced.
Zhang Shiwei and Jia Peng (2014)	In the short term, the income gap will be narrowed without employment reduction; in the long run, only if the minimum wage rises within 25%, wage inequity is reduced.
Ye Linxiang et al. (2015)	Only for labor-intensive and Hong Kong and Macao Taiwanese investment enterprises, the minimum wage has a significant impact on the employee's hourly wage.

industries in which the wage level belong to upper-middle class.

Figure 5 shows the growth of average real wages in each sectors during 2008-2010 and 2013-2015 compared with 5 years ago. We can see that the average real wage growth rate of 2008-2010 is generally higher than 2013-2015 in each quantile, and the growth rates of the lower limit of 50% highest incomes are obviously much lower during 2008-2015 than those during 2003-2010.

At the same time, the distribution of wages is more scattered. The number of industries, of which average real wages are in the lower limit of 80% highest, increased from 1 to 3. And the wages of finance and scientific research and technical service move upwards obviously in wage distribution.

In order to cope with the widening of the wage gap among industries, our government has adopted two measures: the individual tax reform and the minimum wage adjustment.

The reform of personal income tax is a common means to adjust the income gap in China. In recent years, the starting point of personal income tax has been adjusted frequently, from the initial 800 yuan in 1980 to 1,600 yuan in 2005, 2,000 yuan in 2007 and 3,500 yuan in 2011. Moreover, in 2011, the tax rate was adjusted so much that the first level tax rate of individual income tax was changed from 5% to 3%. By raising the threshold and reducing the tax rate, the disposable income of the middle and low classes are increased. It is expected that by 2020, our country will raise the tax threshold and reduce the tax rate again. However, according to academic research results, up to now the adjustment of personal income tax does not reduce wage inequality and makes it even larger, thus personal income tax needs further reform (Table 3).

The implementation of the minimum wage policy in China began in recent years. The minimum wage regulation was passed by the end of 2003 and put into effect since March 1, 2004. Due to the great difference of economic development level and living cost, minimum wage standards are different in each provinces and cities. In recent years, the government began to raise the minimum wage frequently, and the minimum wage level and adjustment frequency in the eastern region are obviously higher than those in the central and western regions. By the end of 2017, the minimum wage in Shanghai, Tianjin and Beijing is higher than 19 yuan per hour, while that in the western regions, such as Shanxi, Ningxia and Guangxi, is less than 15 yuan per hour (Table 4).<sup>11</sup> According to these academic research, raising minimum wage is not a good way to reduce wage inequality.

11. From People's Political Consultative Conference, <http://www.rmzxb.com.cn/c/2017-12-06/1890536.shtml>.

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## Employment Contract in Cambodia: A Focus on Rules Transforming Fixed-duration to Undetermined Duration Contract

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- I. Introduction
- II. Formation of fixed duration contract
- III. Renewal of fixed-duration contract
- IV. Tacit continuation of employment relation
- V. Concluding remarks

### I. Introduction

Under the Labor Law of Cambodia, there are two main types of employment contracts: fixed-duration and undetermined duration contracts. Undetermined duration contract is used for long-term employment relations and termination of this contract by an employer can be made only if there is valid reason in relation to capacity or misconduct of the worker or operational requirement of the enterprise.<sup>1</sup> In this sense, undetermined duration contract provides workers with job security and stable income under the rule requiring valid reason for dismissal. If compared with undetermined duration contract, fixed-duration contract protects workers from employers' unilateral termination of contract until the expiry date. However, employments and incomes of workers are unsecured and unstable since employers may use short-term contract for the period of two, three or six months or may not renew the contract upon the expiry date.<sup>2</sup>

The use of fixed-duration contract provides employers with flexibility in managing their workforces; however, the excessive use of short-term or fixed-duration contract for continuous or long-term employment relations need special regulations such as the transformation rules provided under Article 67 and 73 of the Labor Law. In country report for the 1st JILPT Tokyo Comparative Labor Policy Seminar in 2017, I raised three labor legal issues, one of which is unclear employment contract due to unclear transformation rules. Through examination of legal rules and their implementation by labor arbitration council, transformation rules can be articulated through (1) the requirements of contract formation, (2) renewal of contract up to the total length of two years, and (3) tacit continuation of employment relations.

### II. Formation of fixed duration contract

One of the transformation rules is embedded in the requirements of contract formation. The Labor Law provides that employment contract establishes employment relations between workers and employers. The contract is governed by the general law and can be made in a form that is agreed upon by the contracting parties.<sup>3</sup> It can be written or verbal.<sup>4</sup> Based on arbitration council, general rule that is mentioned above refers to

1. Law on Labor, Royal Code NS/RKM/0397/001 (1997) (Cambodia) [hereinafter called the Labor Law], art. 74, para. 2; Arbitration Council, Arbitration Award Case Number 07/06, February 17, 2006; Arbitration Award Case Number 09/06, March 09, 2006; Arbitration Award Case Number 24/06, April 11, 2006.

2. When reviewing the cases of collective labor disputes, I observe that at the early stage of the adoption of Labor Law in 1997, the fixed-duration contract for garment and footwear industry is one year. However, since then the length of fixed-duration contract is decreased to six months and currently to three or two months. The awards of the labor arbitration council are publicly available on its website, <https://www.arbitrationcouncil.org/>.

3. Law on Labor, *supra* note 1, art. 65, para. 1.

4. *Id.*, art.65, para. 2.

the Civil Code of Cambodia.<sup>5</sup> Pursuant to Article 311 of the Civil Code, contract is the matching of intentions held by one or more parties to create, change or extinguish an obligation. Moreover, Article 336(1) of Civil Code provides that contract comes into effect when the offer and the acceptance thereof conform to each other. Therefore, no party can force the other party to accept the form or give consent to the content of the contract if latter party does not agree.<sup>6</sup>

Under the Labor Law, everyone can be hired for a specific work on the basis of time, either for a fixed duration or for an undetermined duration.<sup>7</sup> The undetermined duration contract can be made in writing or verbal agreement. There is no requirement of valid reason for the conclusion of fixed-duration contract, but the Labor Law requires that the formation and performance of fixed-duration contract strictly follow the requirements stipulated in Article 67 and Article 73 respectively. Article 67 provides three main requirements on formation of fixed-duration contract. Firstly, the employment contract signed with consent for a specific duration cannot be for a period longer than two years. Secondly, the fixed duration contract must be in writing. Thirdly, it must contain a precise finishing date. Failure to abide by any of these rules, the contract will be converted to undetermined duration contract.

The followings are cases in relation to disputes over the use of fixed-duration contract. In case 229/16, the probationary contracts are concluded to examine the workers' fitness to the jobs. However, after the end of probationary period, there are no written contracts executed by employer and workers for their continuing employment relation. The employment contracts of workers in this case are undetermined duration contracts because the formation of the contracts is not in compliance with the requirements that fixed-duration must be concluded in writing and must have specific date of contract termination.<sup>8</sup>

The employer's practice of using employment card without having concluded written contract is under undetermined duration contract.<sup>9</sup> In case 209/16, employer views that its company practice of the employment relations with workers are under the fixed-duration contracts for the period of three months; however, there are no written contracts. In addition, every time at the expiry of the period of three months, the employer changes the employment identity card of the workers, pays compensation of the unused annual leave and provides 5% severance pay to the workers. In this case, the contracts that are not made in writing are undetermined duration contract because employment identity card is not an employment contract.

The existence of written employment contract shall be proved with evidence. In case 182/16, after probation, employer claims that he concludes fixed-duration contract with the worker for a period of three months. The arbitration council rules that fixed-duration contract has to be made in writing by agreement of the parties and there should be signatures or thumbprints or other means to prove that the parties truly conclude the written contract.<sup>10</sup> The creation of the written contract by a party without the acknowledgment of the other party cannot be assumed that the parties truly conclude the written contract with each other. In this case, the employer makes the written contract alone and the worker does not know about this contract. Hence, there is no written contract between the parties. Consequently, when the employer cannot prove the evidence of the existence of the employment contract, the employment relation in this case is under undetermined duration contract.

5. Arbitration Council, Arbitration Award Case Number 43/17, December 26, 2017; Arbitration Award Case Number 56/06, August 09, 2006; Arbitration Award Case Number 96/13, June 05, 2013; Arbitration Award Case Number 204/13, October 21, 2013; Arbitration Award Case Number 16/14, February 28, 2014; Arbitration Award Case Number 12/16, February 19, 2016.

6. Id.

7. Law on Labor, *supra* note 1, art. 66.

8. Arbitration Council, Arbitration Award Case Number 229/16, November 24, 2016; Arbitration Award Case Number 182/16, August 23, 2016.

9. Arbitration Council, Arbitration Award Case Number 209/16, September 22, 2016.

10. Arbitration Council, Arbitration Award Case Number 182/16, August 23, 2016. In this case, the employer asserts that he/she also pay the severance pay of 5% each time at the expiration of the period of three months and the contract should be fixed-duration contract. The arbitration ruled that the condition of establishment of fixed-duration contract is that the contract must be made in writing and payment of 5% severance cannot be used as condition to determine that a contract is fixed-duration contract. In this case, the contract is undetermined duration contract since there is no written contract after the probation.

While requiring fixed-duration contract to have finishing date, Article 67(3) of the Labor Law also provides that sometimes, fixed-duration contract may have an unspecified date when it is drawn up for (1) replacing a worker who is temporarily absent; (2) work carried out during a season; and (3) occasional periods of extra work or a non-customary activity of the enterprise. This duration is then finished by (1) the return to work of the worker who was temporarily absent or the termination of his/her employment contract; (2) the end of the season; (3) the end of the occasional period of extra work or of the non-customary activity of the enterprise, respectively. Furthermore, contracts of daily or hourly workers who are hired for a short-term job and who are paid at the end of the day, the week or fortnight period, are considered to be contracts of fixed duration with an unspecified date.

### III. Renewal of fixed-duration contract

Renewal of contract may cause fixed-duration to undetermined duration contract. The Labor Law allows the possibility of subsequent renewals of fixed-duration contract and limits the period of the fixed-duration contract. However, there is dispute whether the limit of two-year period applies to each renewed contract or the total period of fixed-duration contract including initial and its renewal(s). Article 67(2) of Labor Law reads, “The labor contract signed for a specific duration cannot be for a period longer than two years. It can be renewed one or more times, as long as the renewal does not surpass the maximum duration of two years. Any violation of this rule means that the contract shall be renegotiated as a labor contract of undetermined duration.” Furthermore, Article 73(5) of the same law reads, “If the contract has a duration of more than six months, the employee must be informed of the expiration of the contract or of its non-renewal ten days in advance. This is increased to two weeks for contracts exceeding one year. If this is not done, the contract is extended for a length of time equal to its initial duration or redefined as a contract of unspecified duration if its total length exceeds the limit allowed in article 67.”

In 2003, the arbitral award in case 10/03 which limits the total period of fixed-duration to two years becomes the famous arbitrator-made rule that has been used as the precedent since then until today.<sup>11</sup> In case 10/03, employer hires workers under fixed-duration contract for the period of six months and successively renews these short-term contracts. The workers request that these fixed-duration contracts be converted to undetermined duration contracts where the renewal occurs four times, or employment lasts for two years. Arbitration council views that the use of the words “the renewal” in that Article 67(2) is not clear which leads to different interpretations either “the duration of each renewed contract” or “the total length of the employment contract including the initial contract and all subsequent extensions.”

The arbitration council views that the Labor Law promotes the use of undetermined duration contracts because such contracts lead to increased employment security which is important for workers and which is also in the interests of the employer because long-term employment leads to increased workers’ commitment to their work.<sup>12</sup> In addition, Article 73(5) provides that fixed-duration contracts be converted to undetermined duration contracts if there is no notice of termination and their “total length exceeds the time limit specified in Article 67.” Because Article 73(5) refers to the total length of time specified in Article 67(2) the arbitration interprets that the period of two years specified in Article 67(2) is also a maximum total duration and not the duration of an individual renewal. The arbitration council further refers to paragraph 3 of ILO Recommendation 166 of 1982 regarding Termination of Employment which provides that contracts of fixed duration should not be used for long term employment and that fixed duration contracts should be converted to undetermined duration contracts if they are renewed one or more times.<sup>13</sup> Based on the above grounds, the arbitration council interprets Article 67(2) to mean that fixed duration contract is converted into undetermined duration contract if a renewal causes the total length of the employment contract to exceed two years.

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11. Arbitration Council, Arbitration Award Case Number 10/03, July 23, 2003.

12. *Id.*

13. *Id.*



A clause of the internal regulation of the employer that violates the above said arbitrator-made rule is void.<sup>14</sup> In case 91/10, a clause of the employer's internal regulation provides that fixed-duration contract can be renewed once or many times as long as each renewal has maximum duration of two years. The employer pays severance pay 5% every time of termination.<sup>15</sup> Hence, the employer claims that the contract is fixed-duration contract since each time of renewal does not exceed two years. The arbitration council rules that such clause of internal regulation violates Article 67(2) and Article 73(5). Based on Article 13 of the Labor Law, internal rules must comply with Labor Law.<sup>16</sup>

Furthermore, the collective agreement that is agreed for the use of only fixed-duration contract in the company is void.<sup>17</sup> In case 133/16, the collective agreement of the company provides that the contract of each worker is fixed-duration contract with the period of three months and it is agreed to provide 5% severance pay at the expiry of each three-month period based on the request of the worker. The arbitration council rules that the collective agreement that regulates the use of only fixed-duration contract violates the Labor Law, particularly Article 67(2) and Article 73 that provides that fixed-duration can be renewed once or more times as long as the total length does not exceed two years.<sup>18</sup> The point violating the Labor Law is that the clause of collective agreement regulates that the contract of each worker is fixed-duration contract for the period of three months forever and employer asserts even though the length of contract exceeds two years the contract is fixed-duration contract. Based on Article 13 of the Labor law, such collective agreement is void because it violates Labor Law.

In 2017, there was an interesting case 022/17 where workers demanded employer to continue using fixed-duration contract for the period of six months even though their contracts had total duration more than two years because they wanted to get severance pay. However, the employer rejected such demand because under the practice of the company and the Labor Law the employer converted fixed-duration contract to undetermined duration contracts for the workers whose total duration of contracts exceeded two years.<sup>19</sup> Based on the arbitrator-made rule that no party can force the other party to accept the form or type of contract and content of the contract they do not agree,<sup>20</sup> the fixed-duration contract can only be concluded if employer agrees to change undetermined duration to fixed-duration contract. In this case, the arbitration rejects the demand of the workers because the employer does not agree to use the fixed-duration contract after the total length of employment exceeded two years. It is worth noticing that in addition to case 022/17, there have been several arbitrator decisions allowing the employer and employee to execute the fixed-duration contract even though they have undetermined duration contract if there is free and true agreement of employers and workers.<sup>21</sup>

If agreement of the parties is condition to allow the use of fixed-duration contract when the total length of contract exceeds two years or when the undetermined duration contract is already in place, such rule is in

14. Arbitration Council, Arbitration Award Case Number 91/10, August 30, 2010.

15. Law on Labor, *supra* note 1, art. 73, para. 6 provides that at the end of fixed-duration contract, the employer must provide the worker with the severance pay proportional to both the wages and the length of the contract. The exact amount of the severance pay is set by a collective agreement. If nothing is set in such agreement, the severance pay is at least equal to 5% of the wages paid during the length of the contract. Based on arbitration council, this Article means that the provision of 5% severance pay to workers must be made at the termination of contract and employment relation is terminated. See also Arbitration Council, Arbitration Award Case Number 60/06, August 31, 2006; Arbitration Council, Arbitration Award Case Number 99/06, December 12, 2006; Arbitration Council, Arbitration Award Case Number 85/09, August 24, 2009.

16. Law on Labor, *supra* note 1, art. 13 provides that the provisions of the Labor Law are of nature of public order, excepting derogations provided expressly. Consequently, all rules resulted from a unilateral decision, a contract or a convention that do not comply with the provisions of the Labor Law or any legal text for its enforcement are void.

17. Arbitration Council, Arbitration Award Case Number 133/16, July 23, 2016.

18. Arbitration Council, *supra* note 17.

19. Arbitration Council, Arbitration Award Case Number 022/17, May 09, 2017.

20. Arbitration Council, Arbitration Award Case Number 170/11, January 12, 2011; Arbitration Award Case Number 147/14, January 07, 2014.

21. Arbitration Council, Arbitration Award Case Number 69/04, September 08, 2004; 03/06, February 10, 2006; Arbitration Award Case Number 141/08, December 11, 2008; Arbitration Award Case Number 114/14, June 13, 2014.

contradiction with the rule that limits the total length of fixed-duration contract to two years. For example, in case 023/17, the arbitration council rules that the agreement of the employer and workers to conclude fixed-duration contract even though total period exceeded two years violates Article 67(2) and Article 73(5) and such agreement was void pursuant to Article 13 of the Labor Law.<sup>22</sup> In this case, when the total period of contract reaches two years, the employer gives options to the workers to choose fixed-duration or undetermined duration contract. If workers choose fixed-duration contract, the workers are required to affix thumbprint on letter requesting the renewal of fixed-duration contract. The objective of this letter is to request the continuation of the use of fixed-duration contract with the company even though the seniority/length of service with employer exceeds two years. In this case, arbitration council rules that even though the workers request in the letter to continue using fixed-duration contract in order to get 5% severance pay and the employer agrees thereto and such request is in violation to Article 67(2) and Article 73(5) which are interpreted by the arbitration council that fixed-duration contract having the total period more than two years will be converted to undetermined duration contract. Based on Article 13 of the Labor Law, such request letter is not enforceable. Since the total period is more than two years, the workers had undetermined duration contract.

If there is no continuous employment relation due to the break of each time of renewal, the fixed-duration contract will not be converted to undetermined duration contract. The break period is not defined but should be reasonable to prove that the nature of employment is not continuous or permanent relation. In case 177/16, the workers work for more than two years, but the employer asserts that workers do not have undetermined duration contract because every time the total of contract equal to two years, the employer allows the worker to leave 10 days and when the workers come back, the employer changes the identity numbers and new cards for these workers. In this case, the workers leave from work for only two days since they are poor. The employer pays full for the two days leave and kept seniority of the workers. The arbitration council rules that the renewal of contract by the employer above has no break period because the employer still pays the workers and workers are required by employer to take rest for two days every time the total duration of fixed-duration contract equal to two years.<sup>23</sup> In addition, the seniority is maintained even though the employer changes identity numbers and cards. Accordingly, fixed-duration contract becomes undetermined duration contract.

#### **IV. Tacit continuation of employment relation**

The tacit continuation of the employment relation is also one of the conditions that transform fixed-duration to undetermined duration contract. Article 67(8) of the Labor Law provides that when a contract is signed for a fixed period of or less than two years, but the work tacitly and quietly continues after the end of the fixed period, the contract becomes a labor contract of undetermined duration. The phrase “tacitly and quietly continues after the end of the fixed period” means that upon the expiry of the initial period of fixed-duration contract, there is no party expressing its intention to renew or terminate the contract and after the expiry of this initial period, the employment relation continues tacitly.<sup>24</sup> In other words, the workers still continue working for the employer as normal and the employer continues paying wages and having other same working conditions as those under the initial employment contract. Therefore, Article 67(8) means that when fixed-duration contract for the period less than or equal to two years expires but there is no party expressing the intention to renew or terminate the contract and consequently the employment relation between employer and worker still continues tacitly as normal after the expiry of the contract, the employment relation after the expiry of initial period continues tacitly and must be under undetermined duration contract.<sup>25</sup>

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22. Arbitration Council, Arbitration Award Case Number 023/17, June 07, 2017.

23. Arbitration Council, Arbitration Award Case Number 177/16, August 18, 2016.

24. Arbitration Council, Arbitration Award Case Number 271/13, January 22, 2014. In this case, after passing the two-month probation, the worker worked under fixed-duration contract for two months from 05 April 2013 to 05 June 2013 and then for another two months from 05 June 2013 to 05 August 2013. From 05 August 2013 there was no written contract and the worker continued to work as normal until the employer terminated him on 22 November 2013.

25. Arbitration Council, *supra* note 24.



Article 67(8) and Article 73(5) of the Labor Law seem to overlap with each other since there is no difference between situation of “tacit or quiet continuation of employment after expiry date” and that of “continuation of employment due to employer’s failure of prior notice of non-renewal of fixed-duration contract.” Article 67(8) provides that the work tacitly and quietly continues after the end of the fixed period causes the fixed-duration contract become a labor contract of undetermined duration contract. The tacit renewal of the contract will not extend the contract for the period equal to the period of the initial contract but it converts fixed-duration to undetermined duration contract even though the total length of the contract is less than the period of two years. Article 73(5) provides that if the employer fails to serve prior notice within the required period, the contract will be extended for the period equal to its initial duration or become unspecified duration if its total length exceeds two years.<sup>26</sup> Furthermore, the contract can be extended many times as long as the total period does not exceed the maximum limit of two years.

Based on arbitration council’s decision in case 271/13, Article 67(8) and Article 73(5) are not overlapping but they complement each other. The arbitration council views that Article 73(5) is only used for the fixed-duration contract that has the period more than six months. If the employer fails to express his or her intention of non-renewal of the contract within this required period or the employer expresses his or her intention of non-renewal of the contract on the expiry date of the contract, the employment contract will continue for a period equal to the period of the initial contract or become undetermined duration contract if the total period including renewal exceed two years. In this case, the employer has two options. The first option is that the employer must execute new contract for the period at least equal to period of initial contract. The second option is that the employer continues tacitly the employment relation.

For the first option, the employer and worker must sign written contract before the commencement of the new employment relation in order to comply with Article 73. If employer does not conclude the written contract then this contract will become undetermined duration contract based on Article 67(7).<sup>27</sup> For the second option (case of continuing the employment relation tacitly), the contract that continues tacitly does not fall under the scope of this Article 73, but it falls under scope of Article 67(8).

The arbitration council rules that the case where the employer does not fulfill the obligation of prior notice as required by Article 73(5) and the case where the employer does not make written contract as required by Article 67(7) are different from the case of tacit renewal of the contract stipulated under Article 67(8) of the Labor Law.<sup>28</sup> The tacit renewal of contract happens at the expiry date of the contract and there is no party of the contract expressing the intention of renewal or non-renewal of the contract and the employment relation continues tacitly after the expiration of initial contract. Therefore, for the fixed-duration contract with period more than six months, if the employer fails to give prior notice of renewal or non-renewal and the employment relation continues tacitly after the expiry of the contract, it is viewed that contract is renewed quietly and becomes undetermined duration contract pursuant to Article 67(8) of the Labor Law.<sup>29</sup>

## V. Concluding remarks

The fixed-duration contract can be converted to undetermined duration contract pursuant to Article 67 and

26. Law on Labor, *supra* note 1, art. 73, para. 5 of the Labor Law provides that “if the contract has duration of more than six months, the worker must be informed of the expiration of the contract or of its non-renewal ten days in advance. This notice period is extended to fifteen days for contracts that have duration of more than one year. If there is no prior notice, the contract shall be extended for a length of time equal to its initial duration or deemed as a contract of unspecified duration if its total length exceeds the time limit specified in Article 67.” Article 67(2) provides that fixed-duration contract can be renewed one or more time as long as the renewal does not exceed two years. See also Arbitration Council, *supra* note 24; Arbitration Award Case Number 277/13, February 20, 2014; Arbitration Award Case Number 064/16, April 19, 2016.

27. Law on Labor, *supra* note 1, art. 67, para. 7 provides that a contract of a fixed duration must be in writing. If not, it becomes a labor contract of undetermined duration.

28. Arbitration Council, *supra* note 24.

29. Arbitration Council, *supra* note 24.

Article 73 of the Labor Law. The lack of clarity of the transformation rules leads to different interpretations and different uses of employment contracts. With an attempt to understand how these transformation rules are applied to resolve the disputes over employment contracts, the paper examines the awards of the labor arbitration council and it finds that there are a lot of rules governing the use of fixed-duration contract. This reflects that the Labor Law does not encourage parties to use fixed-duration contract for long-term or continuous employment relations.

The Labor Law requires that fixed-duration contract be converted to undetermined duration contract if the contract is not made in writing, or it has no specification of finishing date. Furthermore, the renewal of contract can cause the fixed-duration contract to become undetermined duration contract if the total duration of initial and renewal contracts exceeds two years. Last but not least, for the contract having the period for more than six months, if employer fails to provide prior notice of non-renewal with the required period and fails to have written contract before the commencement of the new employment relation, fixed-duration contract will become undetermined duration contract because the employment relation continues tacitly after the expiry date of the initial contract. For the contract having the period less than six months, if the employer fails to make written contract before the commencement of new employment relation and the employment relation tacitly continues after the expiry date of the initial contract, it is ruled that fixed-duration contract become undermined duration contract.



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# The Policy Responses to Changes in Employment Structure and Forms in Myanmar

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## I. Introduction

As a developing country, Myanmar undergoes several challenges of labor issues to responsible business. Laws covering labor protection were outdated as there was not really any laws cover enough for both employers and employees in the past before election. The Myanmar government has carried out reform in the labor laws since 2011 to reach international labor standards and norms. After 2012 election, Myanmar has gained much attention and has a chance to exposure to global markets and modern technologies which resulted in drastic changes in community, economy, society and its environment. Things which were done in conservative manner and traditional way become more systematic and structured in business and industrial sectors. After decades of isolation, the government has opened up to the international community and consolidating democratic governance. The government has been considerably drafting and amending labor laws. Therefore, labor policy in Myanmar is changing rapidly with many draft laws currently under review and at various stages of the legislative process with various parts of the government organization. As a result, the current legal framework on both existing and draft laws and regulations that impact on the labor market causes much confusion to its legal rights and obligations of employers and employees.

## II. The role of industrial structure and employment status in Myanmar

Myanmar's industrial structure is still in the early stage and the industrial base is still weak. Myanmar's current industry is highly focused on limited sectors such as agriculture, natural resources and manufacturing industries.<sup>1</sup> The share of GDP in agriculture sector constantly drops down while industry and services sectors increase repetitively.<sup>2</sup> Myanmar's economic growth in the past few years has nothing short of explosive. The GDP of agriculture sector contributes 31.4% in 2013-2014, 29.9% in 2014-2015, and 28.9% in 2015-2016, while the industry and services sectors contribute 28.6%, 40.0% in 2013-2014, 29.7%, 40.5% in 2014-2015 and 30.0%, 41.1% in 2015-2016 individually.<sup>3</sup> In 2016-2017, the agriculture sector contributes 27.2% of GDP production and the industry and services sectors contribute 30.9% and 41.9% of GDP production respectively.<sup>4</sup> Most manufacturing enterprises in Myanmar were micro size establishments with fewer than 10 workers, which account for over 80%<sup>5</sup> and of which nearly 90% is owned by private entrepreneurs in the past years. The modern industry sector has only recently become a key economic contributor in Myanmar. The majority of

1. United Nations Industrial Development Organization (UNIDO), *Strategic Directions for Industrial Development—Summary of Industrial Development Strategy 2017*, 2018.

2. Ministry of Commerce, *US GSP Report*.

3. World Bank Group, *Myanmar Economic Monitor*, October 2017.

4. Ibid.

5. World Bank Group, *Myanmar Economic Monitor*, December 2016.

the industry sector included labor-intensive, low-technology industries engaged in relatively low value-added activities such as textiles/garments manufacturing mostly in the textile and garment industry and the labor intensive CMP<sup>6</sup> industry, construction and transportation.

“As registered industries increased, their employment also augmented. Here again, Garment Industry recorded the highest growth rate of 77.7% per annum. However, apart from the garment industry, the industrial structure has not been much changed. Myanmar’s industry is still characterized with the extremely large share of agro-based consumer’s goods industries and less importance of heavy industries.” (Toshihiro Kudo, ed., *Industrial Development in Myanmar: Prospects and Challenges*, IDE-JETRO, 2001, 40)

“The agriculture sector is home to the majority of Myanmar’s workers. 56.0% of labor market participants self-identified in the Census as primary sector workers in agriculture, forestry, fisheries or mining. A further 12.0% of workers were employed in the secondary sector, of which 7.0% are found in manufacturing activities and nearly 5.0% in construction. Finally, tertiary employment accounts for 32.0% of workers. The share of the population working in agriculture, industry and services did not change substantially between 2009/2010 and 2014—reflecting limited reallocation of labor to higher productivity sectors.” (World Bank Group, *Myanmar Economic Monitor*, December 2016, 13)

Myanmar has a comparative advantage of low-cost labor. The agricultural sector employed 48.8%<sup>7</sup> of workforce in 2017 contributes about 50.0% of GDP. Nonetheless, it is important to note that agricultural sector has low value-added activities and low labor productivity. And it is followed by 33.4% of labor force in the services sector and 17.8% of labor force in the industry sector.<sup>8</sup>

### 1. Employment status, structure and forms in Myanmar

The employment status was classified as (i) employee (including paid apprentices), (ii) employer (with regular employee), (iii) own account worker (including cooperation of a household or family business, (iv) contributing family worker (helping without a pay in a household or family business) and (v) cooperative member (not getting salary).<sup>9</sup> In terms of the types of employment of the working population, it is found that the group of own account workers made up 34.0% of the working population, employees in private organizations accounted for 39.9%, contributing family workers 23.7% and employers 2.4%.<sup>10</sup> As Myanmar is still a predominant agricultural country, the workforce of Myanmar mainly involved in the primary employment sector.<sup>11</sup>

There is no definition of categories of workers. Even though certain laws, such as the Factories Act or the Shops and Establishments Act, differentiate on the basis of workplace most of the labor laws apply to all workers regardless of the types of work they are engaged in. Either self-employment or statutory employment are not specifically defined in the current Myanmar labor laws.

“Most jobs in Myanmar are outside the modern sector. More than one-third of workers—equivalent to 8.5 million jobs—own a family farm and identify farming as their primary employment activity. Another 16% (nearly 4 million people) are primarily agricultural laborers. More than six million own their own non-farm household businesses. Among wage earners who do not work in agriculture, half (2.6 million) are in small firms, which are likely to offer few worker protections. The other half work in government jobs (800,000) or in large private sector firms (1.7 million), both domestic and foreign. Thus, the formal modern sector is still only 11.0% of total jobs in Myanmar, which is in line with other economies with longer structural transformation periods.” (World Bank Group, *Myanmar Economic Monitor*, October 2017, 53)

6. Cut, Make, Pack Industry.

7. Ministry of Labour, Immigration and Population, *Annual Labour Force Survey 2017, Quarterly Report*, the first quarter.

8. Ibid.

9. Ministry of Labour, Immigration and Population, *Thematic Report on Labour Force, Census Report Volume 4-G*, June 2017.

10. Ministry of Labour, Immigration and Population, N7 above.

11. Ministry of Labour, Immigration and Population, N7 above.

Overviewing to the labor market in Myanmar, lack of awareness by workers of the new legal rights safeguards, skill shortage labor with low educational attainment, and lack of consistency in enforcing labor laws are recognized as weakness.

“The main occupations are skilled agricultural workers (34.0%), elementary occupations (25.1%), services and sales workers (16.9%) and craft and related trade workers (11.2%). In 2017, the working-age population (aged 15 or over) was about 36.4 million. In terms of rural and urban areas, rural area covers 70.9% of working age population while urban area, 29.1%. It is relatively higher percentage in younger age groups among the distribution of working age population for each 10 years age groups of working age population. Among the 15 or over population, employed persons constitute 60.2% and in turn employees constitute 39.9% of the employed persons while employers occupied 2.4%, own account accounts 34.0% and 23.7% by unpaid family workers. The same as other ASEAN developing countries, informal employment is very large and accounted for 83.0% at the national level. The unemployment rate in 2017 was raised by 1.3%. While the unemployment rate in 2015 was 0.8%, the rate in 2017 was higher (2.1%).” (Ministry of Labour, Immigration and Population, *Annual Labour Force Survey 2017, Quarterly Report*, the first quarter, 7, 11, 12, 18)

Across Myanmar almost 10% of firms indicate a poorly skilled workforce is a major constraint compared to 1.4% of firms citing labor regulations as a major constraint.<sup>12</sup> At the national level, the proportion of the working age population that have completed high school is 6.5%.<sup>13</sup> It could be considered as comparatively low compared with other developed countries. The proportion of the working age population with a graduate education qualification and above is 5.8%. In urban areas it is 13.0% while in rural areas it is 2.6%.<sup>14</sup> In 2015, 56.0% of the employed population at a main job had a primary or below primary level of education.<sup>15</sup> The proportion rose to 77.0% for an education level below high school and 13.0% had an education level of high school or above.<sup>16</sup> The percentage of the employed population with an education level of bachelor degree and above is highest in the services sector.<sup>17</sup>

The Ministry of Education offers some important strengths that can lay the roots for forthcoming education reforms. While the reform agenda is introduced, education reforms (including Technical and Vocational Education and Training, TVET, started in 2012) are already showing positive effects. Youth citizens such as school drop outs, and vulnerable persons can easily access to the TVET programs. The TVET sector covers a wider range of technical occupations related to construction, electrical, electronic, and mechanical, etc., hotel and tourism, pharmaceutical and nursing, agriculture and livestock breeding, and different vocational skills.<sup>18</sup> The TVET sector is currently being reviewed by the TVET Sub-working Groups participated by 19 ministries including the Ministry of Education, the Ministry of Labour, Employment and Social Security, and the Ministry of Science and Technology.<sup>19</sup>

The Ministry of Education of Myanmar has recently launched a new National Education Strategic Plan (NESP) aiming to establish an accessible, equitable and effective national education system over the next five years.<sup>20</sup> The NESP roadmap clearly recognizes the vital importance of developing an industry-led and competency-based TVET system able to train a skilled and competitive local workforce to support Myanmar’s long-term social and economic growth. However, due to financial constraints, training centers under ministries

12. World Bank Group, N3 above.

13. Ministry of Labour, Employment and Social Security, and Central Statistical Organization in collaboration with the ILO, *Myanmar Labour Force, Child Labour and School to Work Transition Survey, Executive Summary Report*, August 2015.

14. Ministry of Labour, Employment and Social Security, and Central Statistical Organization in collaboration with the ILO, *Myanmar Labour Force Survey 2015*.

15. Ibid.

16. Ibid.

17. Ibid.

18. TVET Myanmar, <http://www.tvetmyanmar.gov.mm/en/tvet/tvet-myanmar-directory.html>.

19. Ibid.

20. *Myanmar National Education Strategic Plan 2016-2021*, <http://sustainablekills.org/myanmar-national-education-strategic-plan-2016-2021/72495/>.



have limited capacity. There are over 100 private sector vocational/skills training providers and a few local NGOs (initiated with international support) that provide vocational and technical training.<sup>21</sup> And investments are needed to place for the TVET programs in Myanmar in order to fulfill skillful labor demand.

## 2. Industries based on rural livelihoods

Agriculture, forestry/livestock and fisheries have the potential to expand with an effective industrialization strategy. The State in 1988 and 2011 adopted and implemented policies aimed at uplifting the life of rural people with agriculture based livelihoods.<sup>22</sup> Since 1988, Myanmar has been in a transition from a developing country to that of a modern, developed country centered on agriculture.<sup>23</sup> Myanmar landscape has significantly changed based on agricultural development. A substantial share of the population is in the rural areas, so it is important to add value to agricultural production. However, at the moment, there is systematic disintegration of rural livelihoods, logistics, rural finance and rural industries. There is also a lack of modern machinery and proper storage capacity, as well as a low level of knowledge related to principles of integrated agriculture. Therefore, it is crucial to begin immediately to structurally improve and transform rural livelihoods based on market perspective and criteria of environmental and social sustainability.

According to DICA Report, investments are in particular encouraged in the labor-intensive industries in second-tier cities in areas such as production of garments and shoes or assembling of toys and stationary articles, and agro-processing industries at the locations of agricultural produce in rural areas.<sup>24</sup> Approximately 11,000 registered firms exist in industrial zones in Myanmar, with over half in Yangon alone.<sup>25</sup> The majority of large registered firms are in Yangon.<sup>26</sup> Just after the election period, there were industrial zones of 18 in all locating in various rural or small-town areas, notably in the minority regions.<sup>27</sup> Recently, FDI (Foreign Direct Investment) commitments and New Industrial Zones, moreover Special Economic Zones have developed in places of Myanmar, and the inflow of employment opportunities through such industrial zones have attracted people in rural area of a relatively poor agricultural region and lost population through migration to the more developed cities.

## III. Changes in employment structure due to changes of social structure

“Even though the labor force of the country remains predominately agricultural, change is occurring. The tempo of urbanization is increasing and the percentage employed in agriculture is decreasing. The causes of these changes reflect a decline in the share of the economy that is derived from agriculture and an increase resulting from industry and services. (Ministry of Labour, Immigration and Population with technical assistance from UNFPA, The 2014 Myanmar Population and Housing Census, *Thematic Report on Migration and Urbanization, Census Report Volume 4-D*, December 2016. XV, 13)

“This finding suggests that the policy of developing industrial zones in rural area is a powerful instrument influencing the direction of migration. Industrial zones attract those persons who reside at rural areas to work within the zones and if the workers are able to live close to where they work, this increases the population of these areas. Policymakers should be aware of the relationship between migration and the development of new industrial zones, and they should make appropriate arrangements for accommodation and other services for those who lives in rural areas.” (Ibid, XII)

Among total population of Myanmar, 65.6% are of productive age and about 28.6% are under 15 years of

21. Gemunu Wijesena and Roel Hakemulder, ILO Liaison Office in Myanmar, *Assessment of the Business Service and Training Market in Myanmar*, 2014.

22. Shin Thynn Tun, *Rural Livelihood and Agricultural Reform in Chiba Village, Shwebo Township, Sagaing Region, Myanmar*, 2015, 12.

23. Ibid.

24. DICA (Directorate of Investment and Company Administration), <https://www.dica.gov.mm/>.

25. Tim Dobermann, *Urban Myanmar*, International Growth Centre, November 2016.

26. Ibid.

27. Dwight H. Perkins, *Industrial Policy Reform in Myanmar*, 2012.



age.<sup>28</sup> It is an impressive number of working age population compared to other countries. In Myanmar, there has been facing a shortage of skilled workers regardless of having a big workforce firms. Myanmar Business Survey 2014 cites lack of skilled labor in Myanmar as one of the biggest obstacles to start a business.<sup>29</sup> The role of tradable services depends on Myanmar's ability to increase its human capital.<sup>30</sup>

Myanmar has risen to the challenges to enact meaningful reforms, improvement, development in the areas of workers' right, eliminating child labor and developing substantial policy reforms.<sup>31</sup>

## 1. Migrants in Myanmar and urbanization

According to the census report, Myanmar is still very much a rural society, with about 70%<sup>32</sup> of the population living in rural areas. Participation in the labor force is higher in rural areas than in urban areas: 69.3% and 62.9%, respectively.<sup>33</sup>

“As the country becomes more developed economically, its population is more likely to reside in urban areas. The percentage of the population living in urban areas in more developed regions was estimated at 78.0% in 2014, while it was only 48.0% in less developed regions. From 1983 to 2014 the tempo of urbanization in Myanmar increased. From 24.8% of the population that lived in areas classified as urban in 1983, the level of urbanization increased to 29.6% in 2014. With alternative sources of employment coming up, the pace of development remains slow, and the gap between rural and urban development can be partly attributed to an urban bias and governmental policies which focus more on developing cities and urban areas. There is a finding that the lack of off-farm employment in rural areas and the seasonality of agriculture were the main factors in rural to urban migration. Rural-urban migration has increased dramatically since 2010 in the area around Myanmar's largest commercial center, Yangon, where it represents a far more important migration flow than international migration. Migration accounts for 80.0% of Yangon's population growth in the last five years. During the years of 2011 to 2014, the proportion of the population migrating within Myanmar is much higher for the people currently living in urban areas compared to rural areas. For example, 42.3% of people currently living in Yangon have migrated from another state or region.” (Ibid, 2, 13, 71, 106, 149)

The timing of this trend parallels the growth of opportunities in the urban economy, most importantly in manufacturing, which employs 70% migrants from the village tracts surveyed, split almost equally between women and men, with most of the remainder working in the services sector, or as skilled labor in trades.<sup>34</sup> In Myanmar, female labor force participation tends to be high because agricultural work and family responsibilities can easily be combined.<sup>35</sup> It is only recently that rural women have begun migrating to garment factories coming up in and around Yangon.<sup>36</sup> The main reason for movement for both sexes was “following family” and “employment/seeking employment.” Females were more likely to follow family than males—49.0% versus 32.0%; and males migrated more for reasons of employment than females—47.0% versus 23.0%.<sup>37</sup>

“Almost all Burmese nationals living overseas have migrated for employment purposes, 98.0% of the total. The next most important reason for moving overseas is following moving family members, which accounts

28. Ministry of Immigration and Population, The 2014 Myanmar Population and Housing Census, *The Union Report: Occupation and Industry, Census Report Vol.2-B*, March 2016.

29. Rajan Acharya. Myanmar Labour Market beyond 2015. *Myanmar Business Today*, January 6, 2016.

30. Dobermann, N25 above.

31. Ministry of Commerce, *Second US GSP Report*, April 2014.

32. Ministry of Labour, Immigration and Population, N9 above.

33. Ministry of Labour, Immigration and Population, N9 above.

34. Kyan Htoo and A Myint Zu, Rural-Urban Migration around Yangon City, Myanmar, *Food Security Policy Project Research Highlights, Myanmar*, December 2016.

35. World Bank Group, N5 above.

36. Anu Seth, Myanmar—The Rural-Urban Divide, *Myanmar Insider*, September 2014, <http://www.myanmarinsider.com/myanmar-the-rural-urban-divide/>.

37. Ministry of Immigration and Population, The 2014 Myanmar Population and Housing Census, *The Union Report: Census Report Volume 2*, May 2015.

for 1.0%. According to the 2014 Census, approximately 4.0% of the population, or 2.02 million persons,<sup>38</sup> of Myanmar were reported to be living abroad, 74.3% of whom are residing in Thailand. The next most popular destination is Malaysia (14.5%) and Singapore (2.4%).” (Ministry of Labour, Employment and Social Security, and Central Statistical Organization in collaboration with the International Labour Organization (ILO), *Myanmar Labour Force, Child Labour and School to Work Transition Survey 2015, Executive Summary Report*, August 2015, 28-29)

The main driving factor behind these migrant flows is economic, with most of migrants in search of jobs and higher wages.

## 2. Child labor participation in rural and urban areas

As such, in Myanmar, there is no official definition on child labor yet.<sup>39</sup> Therefore, ILO and the Ministry of Labour, Employment and Social Security defines the child labor in accordance with the international practices where working children such as age 5-17 and engaged in hazardous work for pay or profit or age 15-17 and engaged in work more than 44 hours a week for pay or profit. According to the survey conducted by the Ministry of Labour, “there are 1,278,909 children work across the informal and formal sectors including 60.5% in agriculture, forestry, and fishing; 12.0% in manufacturing; 11.1% in trades; and 6.1% in other services. Numbering 676,208, boys account for a larger share of this workforce than girls, who the survey found to number 602,701. Expectedly, an overwhelmingly large proportion of the children engaged in hazardous work are from 15-17 age group.<sup>40</sup> Over 63.0% of the working children in the construction industry and 54.6% of those in the agriculture, forestry, hunting and fishery industry are engaged in hazardous child labor. 4.9% of total child population has been involved in hazardous work place.<sup>41</sup> Of all those engaged in hazardous child labor, 75.0% are in the age group of 15-17 years, a third of this in the age group of 12-14 years.” (Ibid, 45)

The jobs available to the children are similar to those available to adult.<sup>42</sup> In some cases, children works alongside their parents, performing less skilled work.<sup>43</sup> Nevertheless, these jobs, in common, do not represent the full range of employment carry out by children. Children reported working in a wide range of sectors and findings suggest that younger children work in less regulated environment such as places for delivery, rubbish collection sites and selling newspaper at the traffic points. The major cause of child employment is household financial hardship, with around one-third of Myanmar’s households estimated to be living in poverty.<sup>44</sup> Poverty, cost barriers to education and lack of effective labor legislation are some of the factors which contribute to the existence of the child labor. In addition, internally displaced and stateless children, in particular, have limited access to education due to an inadequate number of schools.<sup>45</sup>

“By the level of education attained, almost all child labors were educated only completed primary level. Among the total population of 48 million in Myanmar, children (5-17 years) comprised 27% of the population with over 12 million with boys and girls accounting for 6 million each. 83% of children are only attending schools and not working. This is highest in the 5-11 years group (97.5%). By the time they reach the age of 15-17 years, 50% have already quit schooling and boys more than the girls. About 6.5% of children have never attended a school.” (Ibid, 33, 35)

The Government has established laws and regulations related to child labor. However, gaps exist in Burma’s

38. Ministry of Labour, Immigration and Population with technical assistance from UNFPA, The 2014 Myanmar Population and Housing Census, *Thematic Report on Migration and Urbanization, Census Report Volume 4-D*, December 2016.

39. Ministry of Labour, Immigration and Population, N7 above.

40. Ministry of Labour, Immigration and Population, N7 above.

41. Ministry of Labour, Immigration and Population, N7 above.

42. ILO, *Rapid Assessment on Child Labour in Hlaing Thar Yar Industrial Zone in Yangon, Myanmar - 2015*, International Programme on the Elimination of Child Labour (IPEC).

43. Ibid.

44. BSR Report, “*Child Labor in Myanmar’s Garment Sector: Challenges and Recommendations*.” BSR, 2016, San Francisco.

45. ILO, N42 above.

legal framework to protect children effectively from child labor. And Myanmar's parliament ratified an ILO convention calling for the elimination of the worst forms of child labor including slavery, trafficking and the use of children in armed conflict and hazardous work.<sup>46</sup> In 2016, the government amended the Shops and Establishments Act and the Factories Act, which raised the minimum age for work to 14 years of age in these sectors. The amendment to the Shops and Establishments Act also established 18 years of age as the minimum age for dangerous work in this sector. During the reporting period, a list of hazardous work prohibited for children was drafted and is awaiting government approval.<sup>47</sup> However, a general minimum age for work has not been established, and as a result, there is no minimum age for work in all sectors in which children are employed, including agriculture and informal work.<sup>48</sup>

#### IV. History of Myanmar labor law and its reform

In Myanmar, labor laws were composed of a series of the old Indo British laws and various laws related to labor can be found as they were provided by sector (factories, shops and establishments, oil fields) or by theme (leave and holidays, minimum wages, workmen's compensation).<sup>49</sup> There is no existence for principal of labor legislation in Myanmar. Subsequently, Myanmar's labor markets face many difficulties to adjust labor policy as the Myanmar labor legislation systems were being lack of accuracy with rapid changes and many gaps in application regarding some categories of labors which were not mentioned in the respective labor laws (for instance, the working hour for shift-worker was not clearly mentioned in the Factories Act or the Shops and Establishments Act), as well as some exclusion of legal protection on labour-related issues. In the past years, the employees were employed without concluding any employment contract. However, the Ministry of Labour has implemented reforms in the labor legislation system by enacting the new labor laws (the Employment and Skills Development Law, the Labour Organization Law, the Minimum Wages Act, the Settlement of Labour Disputes Law, and the Shops and Establishments Act 2017) and amended the old provisions of labor laws (the Factories Act 1951, and the Leave and Holidays Act 1951).

According to the Employment and Skills Development Law which was enacted in 2014, the employers are required to execute an employment contract within 30 days of appointment of an employee.<sup>50</sup> The law further provides that the employment contract shall be submitted for the review, approval, and registration to the respective township labor office.<sup>51</sup> In August 2015, the Ministry of Labour, Immigration and Population issued Notification 1/2015 announced that all employees must be employed under the prescribed employment contract<sup>52</sup> with the specified minimum wage set by the Ministry of Labour.<sup>53</sup> Unfortunately, the official template of employment contract was focused on factory workers and was unable to cover most businesses in Myanmar. Working hours and overtime were regulated exclusion of shift-workers for logistic business. The Ministry of Labour issued the revised employment contract template in August 2017. Moreover, the National Minimum Wage Committee has tentatively suggested the proposed new minimum wage of 4,800 Kyat for an eight hour working day after discussing the survey results from state and regional level of minimum wage committees, ILO, non-government organizations, representatives of employers and employees from upper Myanmar and lower Myanmar.<sup>54</sup> After scrutinizing with the objections or suggestions from the representatives

46. ILO, Worst Forms of Child Labour Convention, December 2013.

47. ILO, *Myanmar Programme on the Elimination of Child Labour (My-PEC) Project, Technical Progress Report*, September 2016.

48. Ibid.

49. ILO, *Labour Law Reform in Myanmar*, January 2017.

50. Section 5 (a) of the Employment and Skills Development Law.

51. Section 5 (g) of the Employment and Skills Development Law.

52. The notification 1/2015 was issued on August 31, 2015, announcing that the official employment contract template was uploaded to the Ministry of Labour website effective from September 2015.

53. By issuing the notification 2/2015 in August 2015, minimum wage rate is set at 450 Kyat per hour, and 3,600 Kyat per day (official working hours shall be 8 hours per day) for workers in all enterprises except small enterprises with 15 employees and under, and family enterprises with effect from September 1, 2015.

54. Notification 1/2018 issued on January 2, 2018, by National Minimum Wage Committee.

of the government, employers and employees, the National Committee for Minimum Wage shall determine the new minimum wage rate within 60 days with the government approval.<sup>55</sup>

By repealing the Social Security Act 1954, the new Social Security Law provides for a health and social care insurance system; a family assistance insurance system; invalidity benefit, superannuation benefit and survivors' benefit insurance system; and unemployment benefit insurance system from a social security fund, which both employers and employees pay into.<sup>56</sup> The Social Security Board (SSB) is progressively implementing the new law. In April 2014, the SSB started "the implementation of the new contribution and benefit levels for the existing benefits (medical care, sickness, maternity and work injury) as well as the collection of contributions for the new family benefits. As Myanmar is moving towards significant policy reforms, the social protection sector will be subject to be considered as important institution of the country. It is crucial that it adopts a strategy of growth of the covered population and improved efficiency." (Lou Tessier and Mi Win Thidar, *Evaluation of the Operations of the Social Security Board*, ILO-MDRI Technical Report, December 2014, 3-4)

However, only about 1% of the population is registered in the social security system according to the head of the Social Security Board.<sup>57</sup> Meaning that social security system in Myanmar is still in a weak stage. Despite delays in paying benefits, computer system failures and piling up of documents needed signatures, workers welcome to the new systems implemented under the 2012 Social Security Law as it provides more generous benefits.<sup>58</sup> However workers still get confused by the complicated procedures.

## V. Conclusion

The early stage of industrialization presents quite a few challenges for Myanmar needed to overcome effectively. The labor laws cannot cover all types of employment sectors in Myanmar at the present time. As Myanmar has opened its doors to foreign business, many FDI commitments have poured into Myanmar and urbanization has increased. The development of industrial zones was found near the big cities and people tend to leave their residential areas and seek jobs in more developed areas. Moreover, despite the high literacy rate, there is a low rate of skilled labor workforce. The social structure of Myanmar also has impact on employment status and forms such as child labor or migration problems due to financial situation. The Myanmar government put many efforts to eliminate child labor issues and has established or reviewed legislation system related to child labor and migrant workers.

Myanmar has been focused on developing effective labor legislation system. In the late 2016, the government introduced its new investment law, enabling new opportunities and relief for some sectors of foreign investments. In cooperation with the ILO, UN and some NGOs, the responsible ministries have conducted evaluation on existing legislation aimed at enhancing the legal framework to meet the current global standard. Some of the new legislation regarding child labor or overseas employment have been laid down in order to monitor and review the labor market and its enacted labor laws. Currently, a draft bill on the Overseas Employment Act is waiting for approval by the parliament. At the present time, the Ministry of Labour is drafting labor laws for foreign workers, the Occupational Safety and Health Law, as it is necessary.

Moreover, new minimum wage has been proposed and revision of model employment contract format has been newly introduced this year. On the other hand, national education system such as the TVET programs has been focused and developed by the new government to fulfill skillful labor demand in Myanmar. Nonetheless, Myanmar labor legislation is still considered to be weak covering all employment in every sector.

Ensuring that labor laws are accessible and equally understood by employers and workers is vital in

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55. National Minimum Wage Committee, N54 above.

56. Social Security Law enacted on August 31, 2012, which came into effect on April 1, 2014.

57. *The Irrawaddy*, "Burma's Social Security Enrollees to See Benefits Boosted by April" (January 29, 2014), <https://www.irrawaddy.com/news/burma/burmas-social-security-enrollees-see-benefits-boosted-april.html>.

58. *Frontier Myanmar*, November 10, 2017.

Myanmar. Moreover, new industrial regulations are in transition. The lack of labor courts and a labor conciliation and arbitrations systems puts a considerable burden on the Ministry of Labour. Till now, Myanmar's legal framework still has gaps for all labor issues. For the future as seen from here, labor policy and labor legislation system in Myanmar would be improved to adequately protect all employments sectors and should be better to be well understood by both sides of employers and employees.



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# Are Long Working Hours in Japan Becoming Invisible? Examining the Effects of ICT-based “Spatial Flexibility” on Workloads

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## I. Introduction

This paper examines flexible working styles free from restrictions regarding time or location, which have attracted attention in recent years as new ways of working that have arisen along with the advances in information and communication technology (ICT). In particular, this analysis focuses on the effects of such working styles on working hours in Japan.

As symbolized by the Japanese term *karōshi*, which translates to “death from overwork,” labor in Japan has typically been characterized by long working hours. This became a significant problem both internationally and domestically particularly in the second half of the 1980s. Are Japanese today still overworked? Or have there been changes in the working styles of Japanese people?

When addressing the topic of overwork in the present day, especially overwork among white-collar workers, simply focusing on overtime working at the office may cause us to lose more and more sight of the core of the problem. We need to take into account the fact that advances in ICT have expanded the domain of work beyond the conventional boundaries of official workplaces and times.

With the developments in ICT and socioeconomic changes in recent years, the growing diversity and flexibility of working styles have been widely discussed in the developed countries. In the case of Japan, the first point to note is that the rapid rise in the numbers of part-time, non-regular workers has clearly been a key factor in shaping the increased diversity and flexibility of working styles. And even in the case of regular employees (employees on full-time, open-ended contracts), there are also calls for working hours to allow workers to balance work with the demands of their life courses and family lives, especially given the increasing expectations for women to take a role in the core of the labor force. Various systems have been developed to ensure that working hours can be flexibly arranged to accommodate workers’ individual needs.<sup>1</sup> At the same time, increased flexibility includes liberating workers from constraints regarding when and where they work. While the fundamental concept of the conventional working hour system was that workers work predetermined hours at the normal workplace (their employer’s place of business) under the control and supervision of their employer, the development of ICT has enabled flexible working styles free from the restrictions of such rigid ways of working. These have taken form as working styles in which workers use ICT to enable them to work outside of the normal workplace, such as work from home (otherwise known as “telecommuting”) and mobile working.<sup>2</sup> While such liberation from temporal and spatial constraints is said to make work more comfortable,

1. This covers all kinds of flexible working time arrangements suited to individual workers’ life courses and family lives, including not only the development of various systems for time off or leave, such as child care leave or family care leave, but also flextime and reduced working hours.

2. The development of such working styles has prompted important topics for discussion in recent years with regard to work using cloud



as it allows workers to organize their worktime as suits their own convenience, it has also been noted to generate problems such as the risk of excessive work. This paper will discuss such aspects of those working styles. Moreover, although such overwork is an issue affecting all developed countries, there are also thought to be distinctly Japanese features to this issue, given aspects such as the typical Japanese employment system and attitudes toward work. Let us start by looking at the statistics to gain an overview of the characteristics of working hours in Japan.

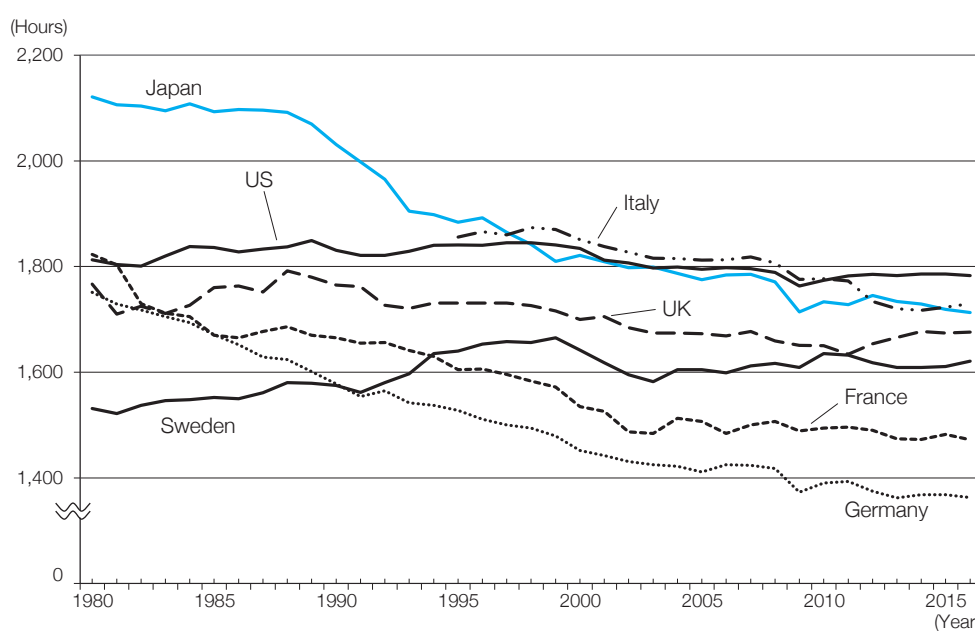
## II. Working hours in Japan: “Reduction” and “diversification” as seen in the statistics

### 1. Distinctive characteristics of working hours in Japan revealed by international comparison

Firstly, let us ascertain the distinctive characteristics of working hours in Japan by looking at an international comparison of statistical data. Figure 1 shows the trends in working hours of major countries. On a long-term basis, we can see that in many developed countries working hours are on the decrease. Possible explanations that have been suggested for this decrease in working hours include the increase in productivity along with the development of industry, and the results of activities by labor unions.

So, what features do working hours in Japan show in comparison with other countries? Up until the 1980s, Japanese working hours were extremely long in comparison with those of other developed countries. Since then, following a significant decrease in the period from the end of the 1980s to the early 1990s, working hours in Japan have been consistently on the decrease. Looking at the current levels, Japanese working hours can be described as close to those of the US and the UK, but still long in comparison with countries such as France, Germany, and Scandinavian nations.<sup>3</sup>

The reduction in working hours in Japan from the end of the 1980s was significantly influenced by legal



Source: OECD Database.

Figure 1. International comparison of average total annual working hours per capita (employed workers)

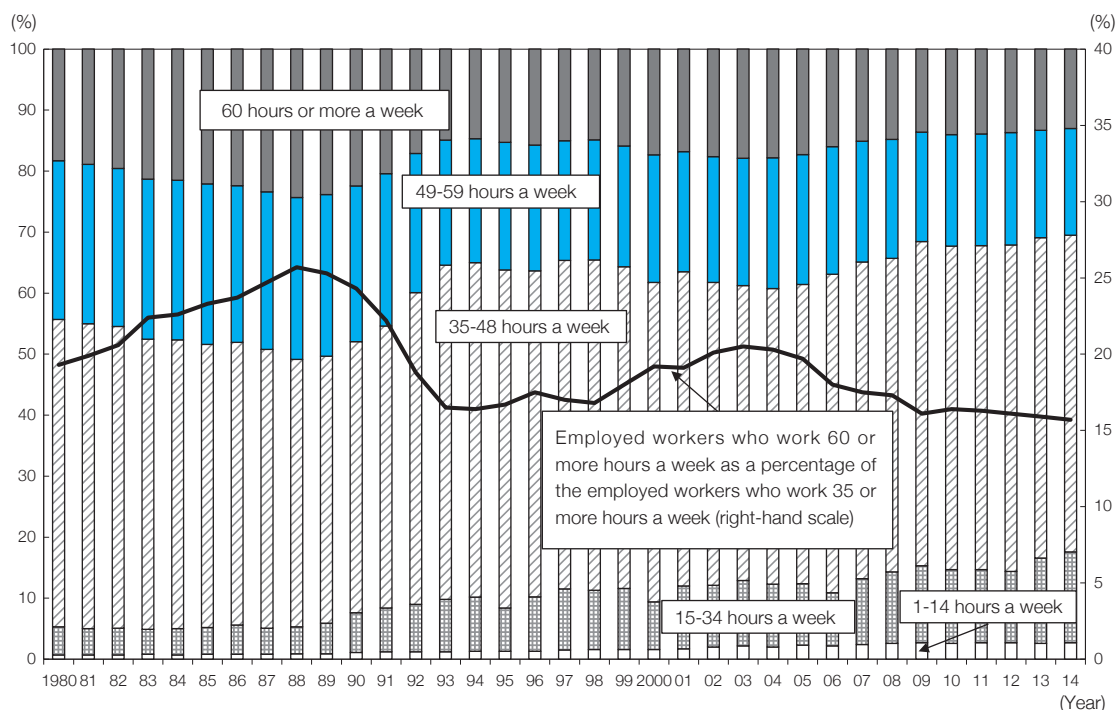
computing and other such forms of work that constitute self-employment or the boundary between self-employment and employed labor (including points such as low wages, or the lack of opportunity to improve skills). However, this paper focuses on employed workers (company employees) who adopt flexible working styles, looking at what those working styles entail and the resulting working hours.

3. We have not fully ascertained the figures on working hours for the other Asian nations, but as far as the statistics show, average working hours in South Korea for 2015 were 2,113 hours, longer than those of Japan.

policies. Reducing working hours became a key policy issue in response to the increased awareness of the problem both in and outside Japan in the second half of the 1980s.<sup>4</sup> Efforts were subsequently made to develop policies with the aim of reducing annual working hours to 1,800 hours, the level of the US and Europe. This came to fruition in the 1987 amendment to the Labor Standards Act, which set out a reduction in the legally-prescribed working hours (from 48 to 40 hours per week).<sup>5</sup> Further amendments were made to the act in stages, such that the system of a “five-day work week” (namely, the system by which every weekend and public holiday are days off) was quickly adopted by an increasing number of employers in the 1990s. This reduction in working days undeniably had a significant effect on the reduction of working hours in Japan.<sup>6</sup>

## 2. Diversification (de-standardization) of working hours

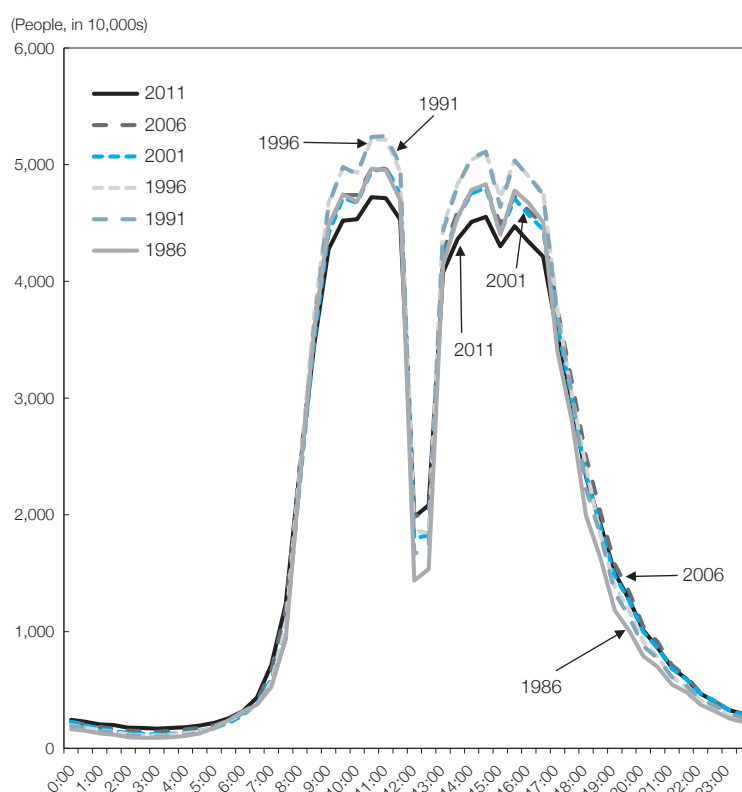
While working hours in Japan in recent years have been decreasing on average, this does not mean that all workers are working shorter hours. This is shown by the dispersion of the distribution in the statistics. Looking at Figure 2, while the percentage of workers working 49-59 hours per week is decreasing in the long term, there has been an increase in employed workers working less than 35 hours a week, and there continues



Source: Ministry of Health, Labour and Welfare, “White Paper on the Labour Economy 2015.”

Figure 2. Trends in the breakdown of employed workers’ working hours per week (male)

4. As a result of Japan’s vast trade surplus (particularly the trade imbalance between Japan and the US), coupled with the appreciation of the yen, which became an issue in the second half of the 1980s, Japanese people’s long working hours also became the target of international criticism on the suggestion that they constituted “social dumping.” Within Japan, people also began to readdress what makes for true affluence. In a Japanese society that had achieved material affluence through fiercely hard work, people saw increasing value in enjoying private time free from pressure.
5. Japan’s current legal provisions on working hours prescribe 40 hours a week and eight hours a day. The “normal working hour system” mentioned later in this paper refers to company working hours set within these legally-prescribed working hours.
6. At the same time, looking at the reduction in working hours by worker average, it can be seen that the increase in part-time workers has had a considerably large influence. The rapid reduction from the end of the 1980s to the beginning of 1990s is thought to be the impact of the amendment to the Labor Standards Act, but it is not possible to unequivocally claim that the long-term decrease that followed is a reflection of reductions in working hours for normal workers. (regular workers etc.)



Source: Ministry of Health, Labour and Welfare, "White Paper on the Labour Economy 2015."

Figure 3. Trends in the numbers of workers by time of day on weekdays

to be workers working long hours, namely, 60 hours or more a week.<sup>7</sup> Some see this as a loss of clarity in the conventional standard working times—or, in other words, the “de-standardization” of working hours.<sup>8</sup> This provides something of an insight reflecting the diversification of working styles.

Furthermore, when discussing the diversification and de-standardization of working hours, the times of day at which people work is another characteristic that should not be overlooked. An increasing number of both regular employees and part-time workers are working in the evenings and at nights. Looking at the trends in the numbers of employed workers by time of day on weekdays (Figure 3), the number of workers working during the day is on the decrease, in contrast with a rising number of workers working at night.

Such a rise in the numbers of people working in the evenings and at night has been discussed in terms of non-standard work schedules in many countries.<sup>9</sup> While this trend toward work times stretching across all 24 hours of the day (tendency for work at night) can be seen to reflect greater options with regard to work,<sup>10</sup> the discussions also pick up on the potential problems, namely, the negative effects such a trend can have on workers’ health and family lifestyles.<sup>11</sup> Such de-standardization of working times and schedules is a result of

7. Looking at the statistics in the long term, it can be suggested that the percentage of people working 60 hours or more per week has dropped.

8. This trend is common in many developed countries. See sources such as Bosch (2006).

9. See sources such as Craig and Powell (2011), Presser (2003), and Barnes et al. (2006) on the current state and problems of non-standard work schedules.

10. For instance, allowing workers to work at night or weekends when they have insufficient time for work during the day or on weekdays due to childcare and other such reasons means an increase in the opportunities for work. In that sense, this trend seems to be helpful to working people.

11. Presser (2003) addresses the way in which non-standard work schedules lead to negative effects on married life, sharing housework, and relationships with children.

the impact of service economy (such as staying open 24-hours a day) and globalization, but it also appears to be a result of workers determining for themselves the hours that they work. The changes in the structure of industry and advances in ICT are particularly noted as factors that have widened the scope for work that is liberated from spatial and temporal constraints.<sup>12</sup> What effects do such working styles liberated from temporal and spatial constraints have on workers? More specifically, the factors to address are what kinds of working style such work free of temporal and spatial constraints entails, how such working styles affect working hours (in terms of their length or timing), and the implications that they have for workers' health and family lives.<sup>13</sup>

This paper focusses on the current forms of overwork that have developed amid such changes. Before doing so, let us summarize the distinctive factors behind long working hours in Japan.

### 3. Distinctive features of long working hours in Japan: Previous studies

As noted at the beginning of this paper, long working hours have been highlighted as a key characteristic and issue of labor in Japan. Let us look at an outline of the conventional explanations of the factors that lay behind this trend.

In discussions that addressed the factors behind Japan's long working hours in the past, constant overtime was explained by the fact that employers in the manufacturing industry and other such fields used overtime as a buffer for preventing the need for staff cutbacks.<sup>14</sup> In the case of small and medium enterprises, the workloads resulting from subcontracting arrangements (such as workloads due to tight deadlines) have also been a key point for discussion as a factor behind long working hours. Even now, such long working hours among blue-collar workers are still an unsolved problem and remain an issue that needs to be dealt with.<sup>15</sup>

It is also not uncommon for employees engaged in office work or other such white-collar work to work long hours. One of the factors noted to explain this is the fact that workers constantly work overtime due to workplace norms.<sup>16</sup> The Japanese employment system is characterized by the way in which it is fundamentally based on the notion of a worker's company being like a "community."<sup>17</sup> On the one hand, this perception of a company as a "community" serves to provide guarantee of livelihood for its members, while on the other it compels members to diligence, loyalty to the company, and sometimes to conform to such workplace norms. And there have been work ethics that workers have values and standards that put their companies first. In terms of working hours, it has been noted that these work ethics or workplace norms have led to the issue of large amounts of overtime for which workers do not receive the equivalent wages (namely, unpaid overtime), as reflected by the Japanese term "service overtime" (*sābisu zangyō*). This includes significant amounts of "take-home overtime" (*mochikaeri zangyō*) where employees take the work that they have not finished within

12. For research on the increasing flexibility in working locations, see sources such as Felstead et al. (2005).

13. For instance, it is noted that when workers engage in work from home, such as contacting people regarding work matters or putting together documents, the boundary between work and their lives outside work becomes unclear, increasing the risk of them sensing conflict between the two (see sources such as Schieman and Glavin (2008)). This is particularly a problem in relation to the ways of working of people with a high professional status, such as specialists or managerial-level employees.

14. It is suggested that companies choose to respond to increased demand in prosperous periods by allowing existing employees to take on more overtime, as opposed to hiring more personnel. This is in exchange for employment security, namely, that companies are able to avoid dismissing employees in periods of recession as far as possible.

15. A comparison of working hours from industry to industry shows that working hours in the transport and construction industries are particularly long. Along with those in the manufacturing industry, such long working hours remain an important issue that needs to be tackled.

16. The prime type of overtime resulting from workplace norms is working overtime because other employees are still working (*tsukiai zangyō*). This occurs due to the fact that employees find it difficult to leave when their manager or colleagues are working overtime.

17. The typical Japanese employment system involves characteristics such as long-term employment practices, seniority-based wages and promotions, cooperative relationships between labor and management, and internal company programs for developing skills and ability, such as on-the-job training and job rotation. (See JILPT, 2017.) Moreover, under the concept of the company as a "community," the company and the members of its community are joined by mutually-supportive relationships based on cooperation and unity, as opposed to relationships that are merely financial (Hazama, 1996).

the company working hours with them to complete at home or elsewhere outside of the office.<sup>18</sup> Such overtime has been raised as a problem in terms of regulating workloads, given that it makes it difficult to ascertain and manage working hours.

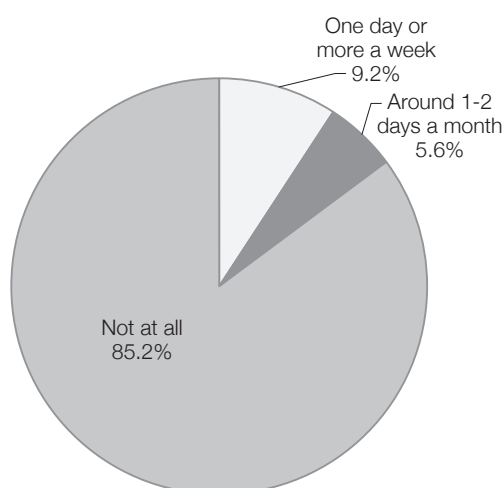
With such conventional characteristics of Japanese working styles in mind, let us look at flexible working styles and working hours today. The next section onward investigates such trends on the basis of survey data.

### III. Investigating ICT-based flexible working styles on the basis of survey data

In the previous section, we demonstrated the increasing diversity in Japanese working hours, and particularly noted the discussion surrounding the way in which long working hours arise. As touched on at the beginning of this paper, advances in ICT have given workers greater flexibility to choose where they work, as they are no longer restricted to working at the premises of their employer. What do such working styles—that is, working free from spatial constraints—mean for workers? More specifically, in what kinds of ways do workers work when they adopt such a spatially flexible working style, how does it affect their working hours (in terms of factors such as length or timing) and what kinds of implications does it have for their health and family life?

This section explores such questions by looking at the working styles of people who use computers, email, cell phones, and other such ICT-based methods to work at alternative workplaces (that is, places other than the normal place of work at their employer’s premises). The data used for analysis is taken from the “Survey on the Current State of Flexible Working Styles using ICT” (company survey and employee survey, 2014) conducted by the Japan Institute for Labour Policy and Training (JILPT). Here we focus largely on data from the employee survey.<sup>19</sup>

Firstly, let us look at what kinds of percentages of people use ICT to work in alternative work places.<sup>20</sup> Figure 4 shows that 9.2% of workers chose to adopt such an option of working away from the normal



Source: JILPT “Survey on the Current State of Flexible Working Styles Using ICT” (2014).

Figure 4. Frequency of working at alternative workplaces using ICT (N=4198)

18. This was formerly also known as “*furoshiki zangyō*,” in reference to the way in which workers would wrap documents and other such papers up in a traditional wrapping cloth (*furoshiki*) to take home.

19. 10,000 companies across Japan (companies with at least one employee) and the 60,000 employees working at those companies were surveyed. The questionnaire response rates and numbers of questionnaires collected were as follows: 16.6% (1,661 questionnaires) for the company survey and 9.1% (5,451 questionnaires) for the employee survey. See JILPT (2015) for more details on the survey (only available in Japanese).

20. Given that we are investigating working hours, the analysis in this paper focusses exclusively on regular employees.

workplace “one day or more a week” and 5.6% do so “around 1-2 days a month,” while 85.2% do not work at alternative workplaces using ICT. In the analysis that follows, we will treat people who use ICT to work at alternative workplaces one day or more a week as “workers with an ICT-based flexible working style,”<sup>21</sup> and people who do not adopt such a working style involving alternative workplaces as “workers with a standard working style” (given the fact they account for the majority of workers). We will investigate the trends through a comparison of these two types of workers.<sup>22</sup>

Let us now look at the profile of the kinds of people who adopt a flexible working style. Table 1 compares the gender, age, and academic backgrounds of workers with an ICT-based flexible working style and workers with a standard working style. These figures show that in terms of gender, a large percentage of men adopt a flexible working style, and in terms of academic background, a relatively high percentage of university and graduate school graduates adopt such working styles. There are no significant differences according to age composition. Turning to look at the differences according to the composition of job types (Figure 5), we can see that a particularly large proportion of workers adopting a flexible working style are employed in “sales and marketing.” Specialist roles such as jobs with a “technical specialism”<sup>23</sup> also account for a relatively considerable proportion.<sup>24</sup> This suggests that it is largely such white-collar workers who are using ICT to adopt flexible working styles free from the restraints of having to work in a certain place.

Now we will look at data that shows the kinds of place in which workers with a flexible working style work and the frequency with which they work in such places (Figure 6).<sup>25</sup> A high percentage—66.5%—work at their “company’s business premises” “almost every day.” This, combined with the 17.2% who do so “around 3-4

Table 1. Gender, age, and academic background composition: By type of working style

(%)

	Gender		Age				Academic background		
	Male	Female	29 or under	30-39	40-49	50 or above	Lower secondary school/ upper secondary school	Junior college/ college of technology/ professional training college	University/ graduate school
Workers with a flexible working style (N=387)	79.3	20.7	11.9	31.3	35.4	21.4	22.2	14.2	63.6
Workers with a standard working style (N=3576)	61.0	39.0	17.6	30.6	31.2	20.6	30.5	20.3	49.2

Source: Same as Figure 4.

21. As we will see in more detail later, this includes workers who engage in mobile work (working at a customer’s premises or in transit) and workers who telecommute (work largely conducted in the home). Moreover, people who work at alternative workplaces “around 1-2 days a month” have been excluded from the following analysis because they cannot be classed as adopting a flexible working style.

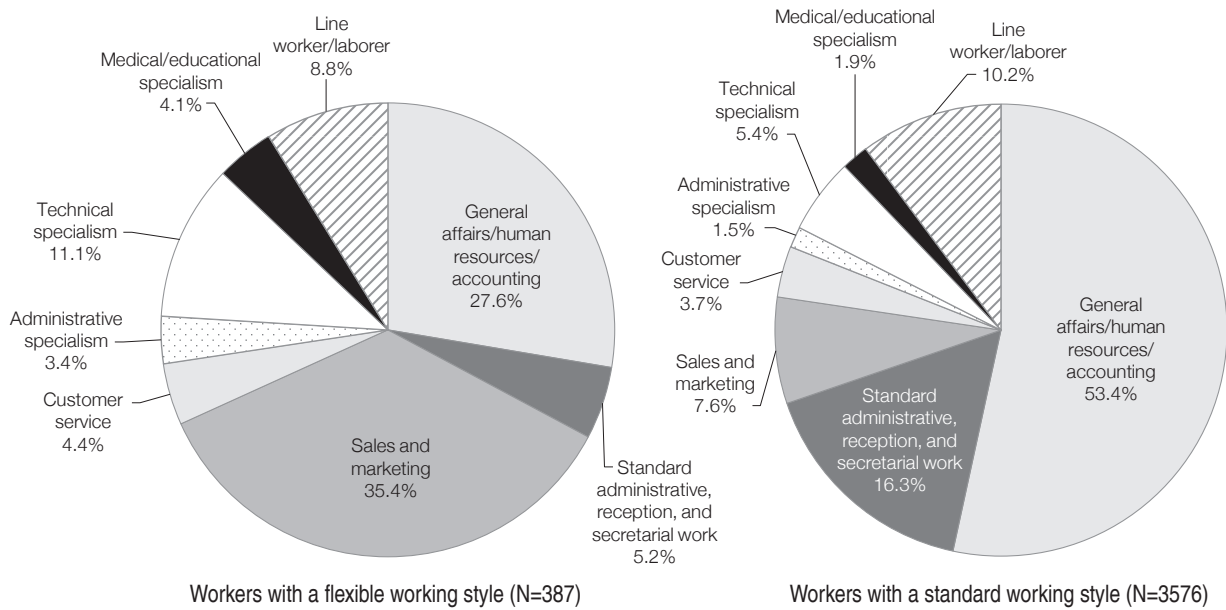
22. As far as these responses suggest, it appears that the majority of employed workers in Japan do not adopt flexible working styles. However, it is possible that the numbers of workers who do may increase in the future. Statistics from the Ministry of Land, Infrastructure, Transport and Tourism (“2016 Survey on the Current State of the Teleworking Population”) show that at least 40% of workers (including the self-employed) “have the experience of using ICT, etc. to work in a place other than the typical business premises or place of work.”

23. Here, jobs with a “technical specialism” refers to work such as research and development, design, or system engineering. Jobs with an “administrative specialism” include surveying and analysis, and legal administration related to patents. See JILPT 2015 for more details (only available in Japanese).

24. The diagram is not included here, but looking at the differences by industry type, the following industries have large percentages of people adopting flexible working styles: the manufacturing industry, information and communications industry, academic research and specialist/technical services industry, wholesale and retail industry, and other service industries not elsewhere classified. Moreover, looking at differences according to whether respondents held a managerial role, the percentage of workers adopting a flexible working style is also relatively high among workers with a managerial role of section manager or above.

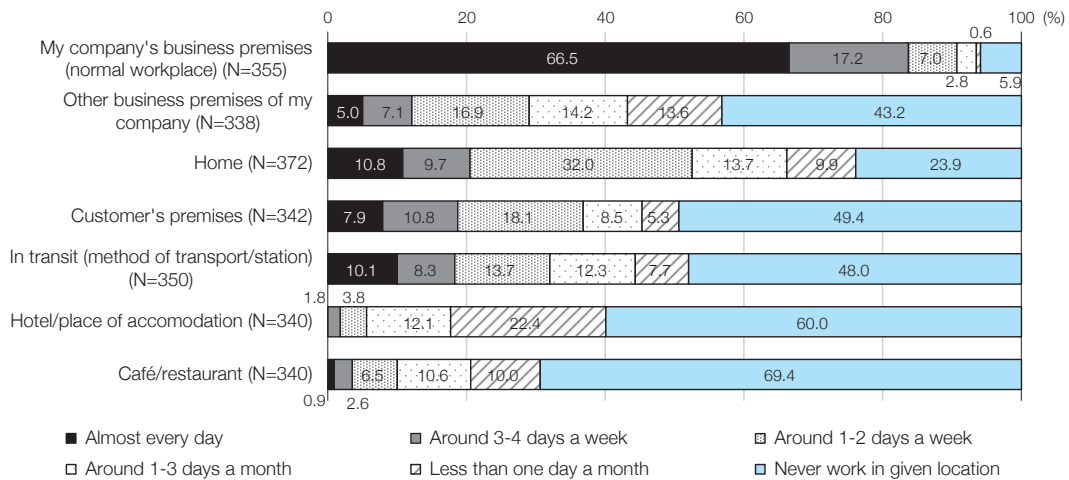
25. As the following figures have missing values, such as non-responses, they may not be consistent with the N for the figures up to Figure 5.





Source: Same as Figure 4.

Figure 5. Composition of job types: By type of working style



(Workers with an ICT-based flexible working style)

Source: Same as Figure 4.

Figure 6. Frequency of working in each workplace: By workplace

days a week,” suggests that the majority of people usually also go to work at the normal workplace. Looking at the other locations in which such people work, a relatively high proportion work at “other business premises” of their company or “at home.” For instance, with 10.8% of such people working at home “almost every day,” 9.7% working at home “around 3-4 days a week,” and 32.0% working at home “around 1-2 days a week,” more than half of such workers work at home at least one day a week. There is also a considerable percentage of such workers who work at a “customer’s premises” or “in transit.”<sup>26</sup>

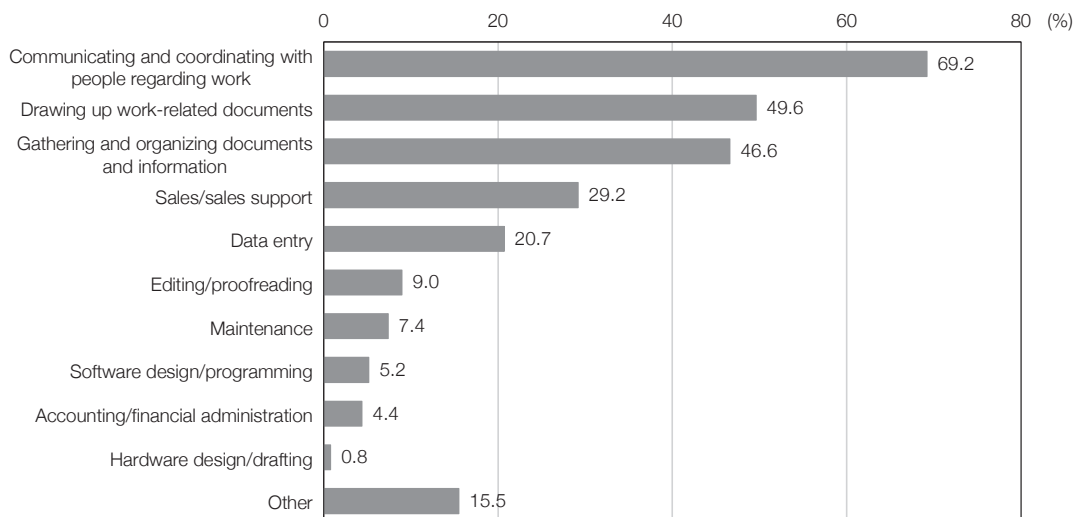
26. As far as can be seen from the survey data, people who work at a customer’s premises frequently (around 3-4 times a week) include a considerable number of people who use ICT to also work at home (or in some cases, in transit). Moreover, among those who work at home, a certain number work at cafes and other such places. This seems to reflect the possibilities for working “anytime, anywhere.”

Next, let us look at the particular work duties that workers with a flexible working style are conducting at alternative workplaces. Figure 7 shows that a significant percentage conduct work such as “communicating and coordinating with people regarding work,” “drawing up work-related documents,” and “gathering and organizing documents and information.”

We will now examine the reasons why people choose to work at alternative workplaces (Table 2). Among those who work at “other business premises” of their company or at “a customer’s premises” large percentages selected the response “because it is necessary given the nature of the work” (65.2% and 75.9% respectively). In contrast, the reasons for working at “home,” “in transit (method of transport/station),” at a “hotel/place of accommodation,” or at a “café or restaurant” are slightly different. Commonly selected reasons include “because I want to improve the efficiency with which I work” and “because it is work that can be done anywhere.” Moreover, in the case of working at home, certain percentages of respondents also selected such responses as “because I want to increase the time spent with my family” (15.2%) and “because I want to decrease the burden of commuting to work” (9.7%), in addition to the aforementioned reasons. This shows that the implications of working at alternative workplaces differ between cases where workers work at customer’s premises or other such location and cases where they work at home or in transit.

The reasons touched on above are also reflected in the advantages perceived by the workers themselves. Looking at the kinds of aspects that workers with a flexible working style sense as benefits of a flexible working style (Figure 8), an exceptionally high percentage selected the response “it improves the productivity and efficiency of work” (59.9%). This is followed by responses such as “it improves customer service” (23.4%). This suggests that flexible working styles have significant advantages in terms of raising work productivity and efficiency.

On the other hand, there are concerning factors when we consider the workload involved. Let us look at the disadvantages of flexible working styles as seen by workers with a flexible working style (Figure 9). The most commonly selected response is “it is difficult to draw the line between what is and isn’t work” (44.8%),



(Workers with an ICT-based flexible working style, N=367)

Source: Same as Figure 4.

Figure 7. Particular work duties conducted at alternative workplaces (M.A.)

Table 2. Reasons for working at alternative workplaces (M.A.): By workplace

(Workers with an ICT-based flexible working style)

(%)

	Because it is necessary given the nature of the work	Because it is work that can be done anywhere	Because I want to improve the efficiency with which I work	Because I want to decrease the burden of commuting to work	Because I want to increase the time spent with my family	Other
Other business premises of my company (N=184)	65.2	16.3	30.4	1.6	0.5	4.9
Home (N=269)	27.9	32.7	40.1	9.7	15.2	11.2
Customer's premises (N=166)	75.9	9.0	25.3	0.0	0.0	4.2
In transit (method of transport/station) (N=174)	28.2	31.0	49.4	4.6	4.6	6.9
Hotel/place of accommodation (N=126)	27.8	35.7	50.0	3.2	1.6	4.8
Café/restaurant (N=101)	23.8	44.6	45.5	5.0	1.0	9.9

Source: Same as Figure 4.



(Workers with an ICT-based flexible working style, N=367)

Source: Same as Figure 4.

Figure 8. Perceived advantages of a flexible working style (M.A.)

followed by “I tend to work long hours” (27.1%).<sup>27</sup> On the other hand, 25.7% selected the response “I don’t see any particular disadvantages,” indicating a divide in workers’ opinions toward flexible working styles.

27. “It makes it difficult to evaluate work” was another response selected, but it is unclear what this means. This could be a reflection of workers’ dissatisfaction that the way they work does not receive sufficient recognition from their company or manager.



(Workers with an ICT-based flexible working style, N=362)

Source: Same as Figure 4.

Figure 9. Perceived disadvantages of a flexible working style (M.A.)

#### IV. Flexible working styles and working hours

This section investigates what kind of hours are worked by workers with an ICT-based flexible working style (a working style not restricted to a certain workplace) and identifies where the problems lie.

##### 1. Application of working hour systems

We will start by considering the kinds of working hour systems under which such workers are adopting flexible working styles. Looking at the working hour systems applied (Figure 10), in a significant percentage of cases “the normal working hour system” is applied (60.7%). Flexible working hour systems such as “discretionary working systems”<sup>28</sup> or the “deemed working hours system for work outside of the employer’s business premises”<sup>29</sup> are only applied in the minority of cases.<sup>30</sup> As far as we can see in the working hour systems applied, the systems currently provided can hardly be described as an environment that allows workers to flexibly arrange their time and location as suits them.<sup>31</sup>

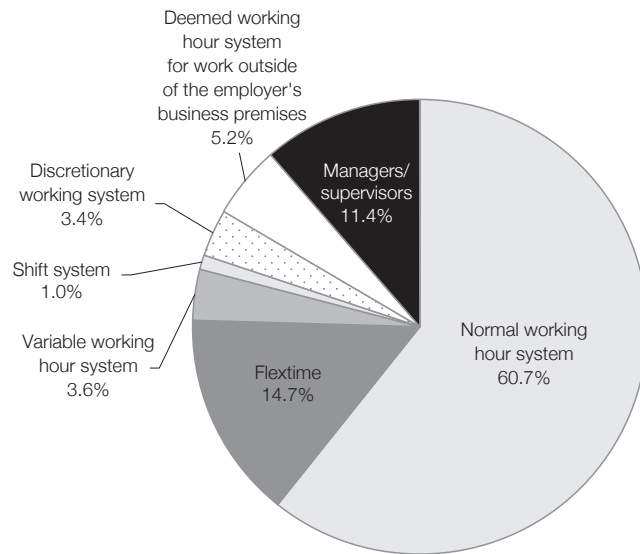
Moreover, while for people who work at home on a daily basis the application of “telecommuting systems” is a conceivable option, looking at the extent to which such systems are applied to people who work at home at least one day a week (Figure 11), only around 10% are “using a telecommuting system etc.” The majority of

28. Discretionary working systems (*sairyō rōdō-sei*) are applied whenever necessary due to the nature of the work in question, to largely entrust the method of performing the work to the discretion of the workers who are engaged in the work. There are two types, which differ according to the type of work they are applied to: the “discretionary working system for professional work” and the “discretionary working system for planning work.”

29. The deemed working hours system (*minashi rōdō-sei*) for work outside of the employer’s business premises is applied to account for the actual circumstances of work in the case of workers who often work at locations other than their employer’s business premises, such as salespeople who visit customers, etc. Under the system, when a worker has engaged in work outside of the business premises for all or part of the working hours, and it is difficult to calculate working hours, they are deemed to have worked the prescribed working hours.

30. As this includes workers in managerial roles, over 10% are managers/supervisors for whom working hour restrictions do not apply.

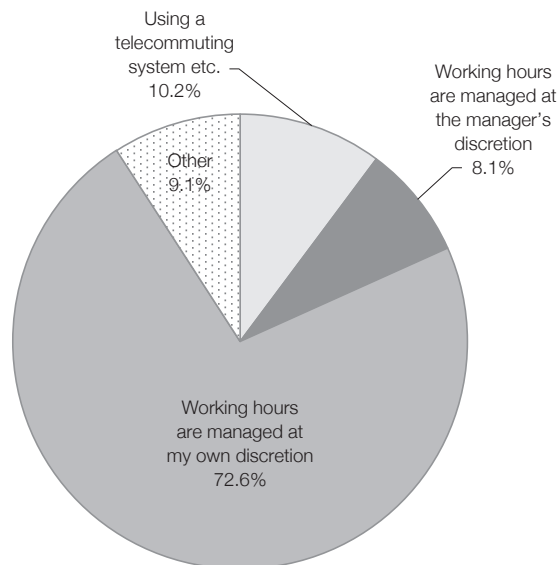
31. “Flextime systems” are also treated as flexible working hour systems, but while they allow workers flexibility in setting their starting and finishing times, they cannot really be described as suitable for working styles in which workers flexibly arrange their time and location, as they are essentially based on calculating working hours according to the time spent at the employer’s business premises.



(Workers with a flexible working style, N=387)

Source: Same as Figure 4.

Figure 10. Working hour systems applied



(Workers who work at home at least one day a week, N=186)

Source: Same as Figure 4.

Figure 11. Use of telecommuting and other such systems

such people (72.6%) selected the response “working hours are managed at my own discretion.”<sup>32</sup>

These results suggest that currently many workers who adopt such flexible ways of working are not doing so under company systems. Instead, such workers manage their working hours at their own discretion. In other

32. The results of the company survey also reflect that such systems are only being put into practice by a limited number of companies, with only 1.7% of companies implementing telecommuting as a company system.

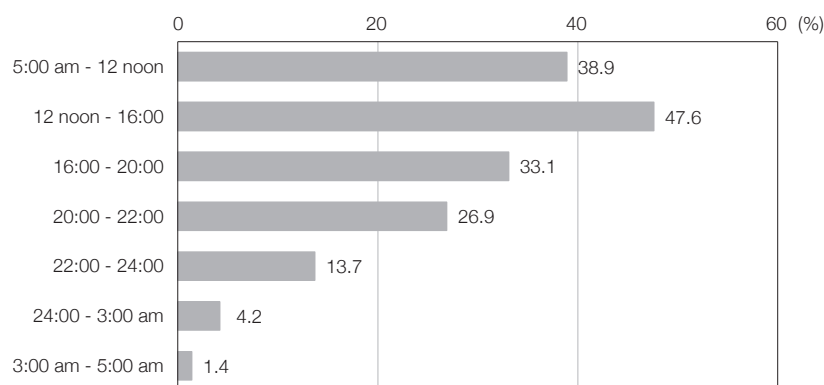
words, we can say that this working style includes informal overtime at home in great amount, so companies are not fully ascertaining or managing such workers' working hours.<sup>33</sup>

## 2. Actual working hours

Here we will investigate the actual working hours of people with a flexible working style, starting by looking at the times of day that people work at alternative workplaces.

Looking at Figure 12, which shows compiled data on the main working times,<sup>34</sup> large percentages of such workers work at times during the daytime—namely, “5:00 am to 12 noon,” “12 noon to 16:00,” and “16:00 to 20:00.” At the same time, there are also certain percentages of such workers who work at night or late at night, that is, from “20:00 to 22:00,” “22:00 to 24:00,” and “24:00 to 3:00 am.”<sup>35</sup>

Now, let us look at the length of working hours, by comparing the actual monthly working hours (the actual hours worked, including overtime) of workers with a flexible working style and workers with a standard working style (Figure 13). The figure shows us that in comparison with workers with a standard working style, there are particularly high percentages of workers with a flexible working style who work “200 hours to under 220 hours,” “220 hours to under 240 hours” and “240 hours or more.” This suggests that there is a general tendency among workers with a flexible working style toward long working hours.<sup>36</sup> This seems to imply that at present, cases in which workers work at alternative workplaces often involve informal overtime at home or elsewhere.<sup>37</sup>



(Workers with an ICT-based flexible working style, N=357)

Source: Same as Figure 4.

Figure 12. Main working times when working at alternative workplaces

33. This is also corroborated by the fact that a low percentage of people who work at home gave the response that “working hours are managed at the manager’s discretion.”

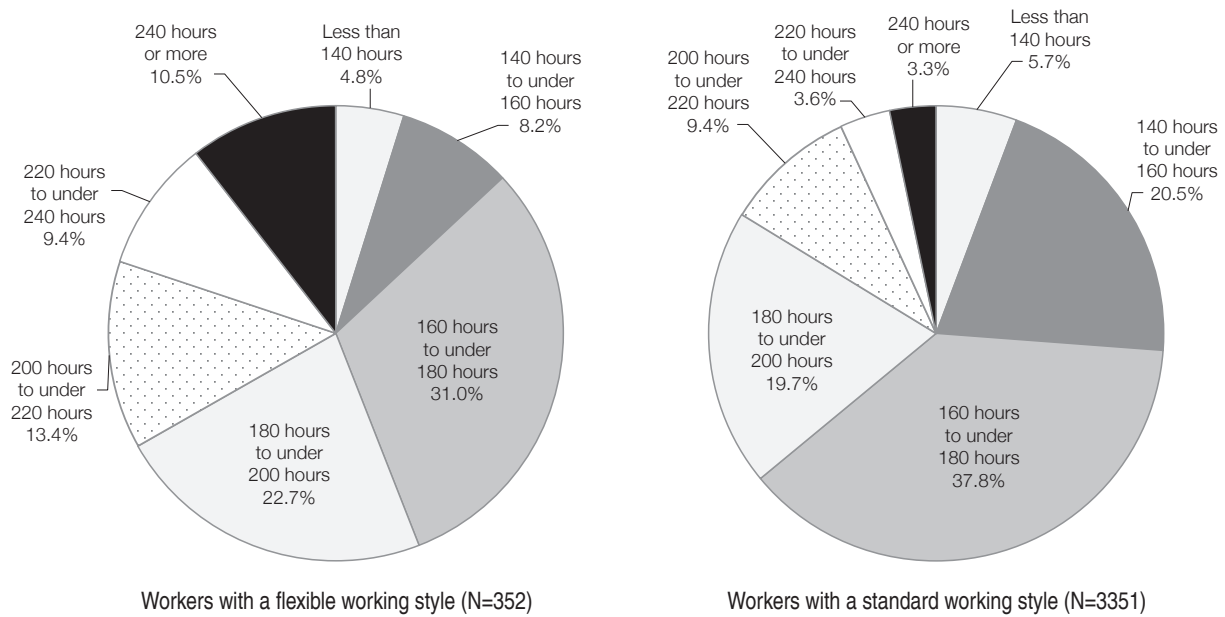
34. This data is gathered on the basis of responses to a survey question asking the main times of day in which workers actually work when working at alternative workplaces (respondents selected two main working times).

35. While the diagram is not included here, looking exclusively at workers who work from home at least three days a week, the percentage whose main working times are at night “from 20:00 to 22:00” and “from 22:00 to 24:00” are higher than the percentage whose main working times are during the daytime.

36. Furthermore, looking at income levels, workers with a flexible working style have higher income levels, but as this is related to factors such as managerial positions and years in continuous employment with their current employer, it would be wrong to make the generalization that flexible working styles pay off in terms of the salaries that such workers receive. This is a point to clarify in future research.

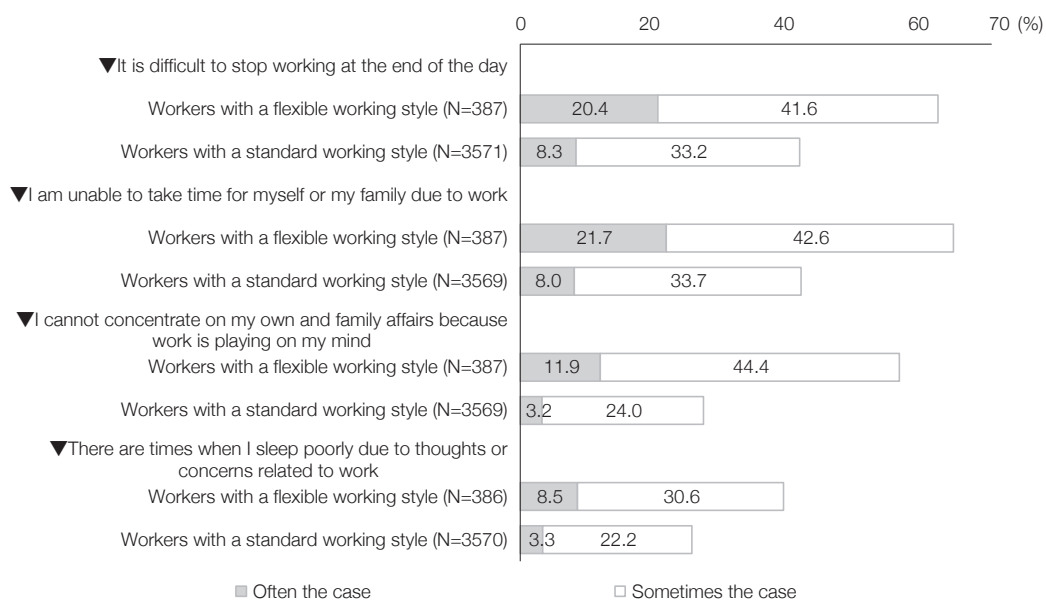
37. However, while the figures are not included here due to the low number of responses, working hours among people who use telecommuting systems are (although shorter in comparison with workers who manage their hours at their own discretion) likewise longer in comparison with people with a standard working style. In other words, this is not to suggest that it is invariably the case that working hours are longer due to informal overtime at home. This is a point to be addressed in future research.





Source: Same as Figure 4.

Figure 13. Actual monthly working hours: By type of working style



Source: Same as Figure 4.

Figure 14. Impact of work on family and private life: By type of working style

Earlier in this paper, it was noted that many workers identified the fact that “it is difficult to draw the line between what is and isn’t work” as a disadvantage of flexible working styles. Examining the length of working hours alone is not sufficient to investigate this point. Let us look at the questionnaire responses on the impacts on private and family life to see how workers with a flexible working style perceive such workloads. Figure 14

shows that the percentages of workers with a flexible working style who selected the responses “it is difficult to stop working at the end of the day,” “I am unable to take time for myself or my family due to work,” and “I cannot concentrate on my own and family affairs because work is playing on my mind” are higher than those of people with a standard working style. In addition to these negative effects on work-life balance, there is also a difference in terms of issues that affect health, with higher percentages of people with flexible working styles selecting the response “there are times when I sleep poorly due to thoughts or concerns related to work.” As we have just seen, this appears to be related to the fact there is currently a common trend among people with flexible working styles to work long hours and work late at night. It is a serious issue to deal with such problems affecting workers’ health and private lives. That needs to be addressed through employment management by companies and policy support, rather than simply reduced to an issue of workers’ self-discipline.

## V. Conclusion

This paper started by giving an overview of the growing diversity in working hours in Japan, and then went on to examine the current ways of working and other such factors concerning people who use ICT to adopt a flexible working style free from temporal and spatial constraints.

What does liberation from temporal and spatial constraints (or, in other words, “increased flexibility”) mean for working people? Firstly, such flexibility is called for due to the demands of family life, such as the need to balance caring for children or relatives with work, and it has the advantage that it does enable such balance. With the increasing percentages of women in employment and other such growing diversity in the labor force, there is a high necessity to ensure flexibility in working styles to suit such people’s needs. On the other hand, it is also necessary to practice caution given the potential for flexible working styles to lead to overwork. More specifically, there is a risk of workers being expected to work “anytime, anywhere,” as flexibility becomes solely for client convenience,<sup>38</sup> and workers face demands from their companies or managers to fulfill excessive work quotas. The analysis results in this paper have touched on just some of the issues this creates, namely, problems that affect workers’ health and their ability to balance work with their private lives.

As far as can be seen from the survey data, a considerable proportion of people with ICT-based flexible working styles (who work somewhere other than the normal workplace at their employer’s premises) work at locations such as customer’s business presences or at home or other such locations on a daily basis. At the same time, people who do so under flexible working hour systems or telecommuting systems are in the minority, and many are managing their work at their own discretion. The data also showed that people who adopt such working styles may work long hours and late at night, and such workers were also seen to be sensing conflict between work and their private lives.

It goes without saying that such trends and issues are not unique to Japan. As we have seen at the beginning of this paper, in recent years other developed countries have also faced a number of issues such as the diversification in the times of day at which people work and the related problems, as well as the problem of the erosion of boundaries between work and private life when working at home or other such locations. This led us to address which characteristics are particular to Japan.

As noted in Section II, constant overtime such as “unpaid overtime” and “take-home overtime” has always been a distinctive feature of the long working hours in Japan. These working styles—which have typically been explained as a reflection of Japanese peoples’ work ethics and Japan’s workplace norms—have spawned the trend of workers long working hours out of sight from companies and managers. As the advances in ICT make it increasingly easier to work at home or other such locations beyond the normal workplace, it is possible that workers may be compelled to engage in long working hours in such alternative locations in order to meet excessively high demands for results from their employers or customers. If this is the case, it is necessary for

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38. Takami (2018) examines overwork due to the demands of client convenience.

institutional or social measures to be adopted to put a check on such a trend.<sup>39</sup> Such flexible working styles make it difficult for companies and managers to ascertain and manage working hours, meaning that it is also unclear what workloads workers are tackling. In that sense, overwork problems could become invisible for companies and managers. While recognizing the advantages of flexibility, we also need to keep a careful eye on what this entails and what trends it prompts, with a view toward preventing overwork.

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39. It is critical to ensure that systems are not only provided for the appropriate management of working hours, such as restrictions on work late at night, but also to ensure that the amount of work is managed correctly. With the growing spread of specialist white-collar work, which is difficult to manage and supervise, it is becoming ever more vital for management to address the risks of overwork by assigning work on the basis of accurate calculations of the time required for each task. It is also important for management to adopt measures to protect workers' health, such as medical checkups and tests to ascertain psychological stress.

## Thailand Policies for the Age of Rapid Technology Change

Praewa MANPONSRI

- I. Introduction
- II. Government policies
- III. Possibility for making dream come true
- IV. Overview of the main findings

### I. Introduction

Thailand is confronted with a crisis. Thai nationals have been frequently hearing the word ‘Middle-Income Trap (MIT)’ in our daily life. We started being caught in this trap before the “Tom Yum Kung crisis” about 20 years ago, as said by Thailand Development Research Institute (TDRI). According to the records regarding the period to overcome this trap in the developed countries, the average period is six years and the longest period belongs to Argentina (41 years) followed by Greece (28 years). However, considering our growth rate of labor productivity, which is around 2% per annum, we are estimated to disengage from this trap in the next 17 years or so. The new record might belong to Thailand.

MIT situation will not be considered as crisis if we are not facing the rapid technology change which may cause the country collapses due to lack of competitiveness. To free from this trap and avoid being in trouble, several economists said that we must invest in developing innovation as well as skills and labor productivity in order to support using such innovation. Nevertheless, it is not easy for Thailand to follow said recommendation.

According to the World Bank’s research result regarding Thailand Investment Climate Assessment, two main reasons why the private sector does not invest in innovation are specified, i.e., 1) high cost for investment (43.6%) and 2) lack of skilled workers to use the innovation (42.7%). Even though the research was conducted in 2008, the result is still adaptable for nowadays. This is because of inconsistency between the educational system and the demand of labor market.

Mismatches can be found both horizontal and vertical. To solve this problem, the stakeholders, namely related government organizations and the private and public sectors, must coordinate. Unfortunately, the current situation can be called a coordination failure.

From the above information, it can be said that we are in the trap because we lack important propellants, which are technology innovation and skilled workers. Our country must be shifted to be “Innovative-Driven Economy” instead of “Heavy-Industry.” It is desirable that the Thai government does not ignore the crisis and, at least, try to find solutions by setting the national policies under the concept of “Thailand 4.0.”

### II. Government policies

“Thailand 4.0” is set as the most important keyword appears in all government policies. Although large number of Thai nationals do not yet have a clear understanding about this word, at least, this is symbolical and we continue to try to keep up to date.

Firstly, we shall start with considering *the Constitution of the Kingdom of Thailand*, enacted on April 6, 2017 (B.E.2560). It states new important principles in Chapter 16 “National Reform” of which the focused part is “f. Economy” (1) and (2) as follows:

- (1) Eliminating obstacles and promoting competitiveness of the country in order that the nation and the people benefit from participation in various economic groups in a sustainable and resilient manner.

(2) Establishing a mechanism to promote and support the application of creative ideas and modern technology in economic development of the country.

Secondly, let us consider *Thailand's 20-Year National Strategy (2017-2036)* which will be a concrete guideline driving the country towards Stability, Prosperity and Sustainability (These three words are set as "Vision"). The strategic framework covers increase of competitiveness as stated in the second strategy that the infrastructure, logistic system, science, technology and innovation, human resources, and administration both in private and public sectors must be improved.

Thirdly, we should see *the Twelfth National Economic and Social Development Plan (2017-2021)*. There are ten strategies under the plan. The strategies related with this research will be the first, the third and the eighth strategies, namely (1) Strengthening and developing the potential of human capital, (3) Strengthening sustainable economic development and competitiveness, and (8) Science, technology, research, and innovation development.

The first strategy aims to prepare Thai nationals of all ages to acquire skills needed for quality of life in the upcoming 21st Century world. The government plans to support the lifelong learning by lifting the quality of the "Institute for Skill Development." There are three responsible organizations, i.e., Thailand Professional Qualification Institute (a public organization), the Department of Skill Development, and the Institute for Skill Development.

The aim of the third strategy is to increase the growth rate of total factor productivity not less than 2.5% per annum by:

- Strengthening competitiveness in the production and service sectors, focusing on:
  - Developing and strengthening existing competitive industries towards more high-technology-based industries.
  - Upgrading the capacity of the important income-generating industries existing in Thailand to be able to shift towards more advanced production technology, which meets the diverse needs for consumers.
  - Establishing efficient and strong mechanisms, systems, and networks for collaboration linkages among business firms along a supply chain.
  - Promoting the creation and development of markets for high-quality products.
- Laying the foundation for future industries, focusing on formulating a workforce development plan to prepare human resources for the targeted future industries as well as developing infrastructure and technology capabilities to support the development of future industries.

The eighth strategy aims to strengthen and enhance the capability of advanced science and technology to support higher value-added activities in target production and service industries, as well as to integrate the management systems of science, technology, research, and innovation to move in the same direction. This strategy drives the development of technology and innovation by:

- Promoting R&D investment, social adoption, and commercialization.
- Developing Technopreneurs.
- Developing a proper environment for promotion of science, technology, research, and innovation.

Fourthly, the important policy we could not skip is "*Thailand 20-Year Strategic Framework for Human Resource Development (2017-2036)*." It separated the framework into four steps, i.e.:

*The 1st Step: Productive Manpower (2017-2021)*

To improve the workforce skills to meet the international standards by eliminating any obstacles, proceeding labor zoning, training to be multi-skilled workers, re-training the existing labors of important new skills, and adding STEM (Science, Technology, Engineering, and Mathematics) skills in order to prepare the workforce to face Thailand 4.0 era.

*The 2nd Step: Innovative Workforce (2022-2026)*

Under the concept of "global citizen", the government will fully drive Thailand 4.0 by amending several regulations for supporting employment in the digital age, creating employment system for sending

workforce to the world.

*The 3rd Step: Creative Workforce (2027-2031)*

The age of full employment, productivity, and decent work.

*The 4th Step: Brain Power (2032-2036)*

Thailand disengages from Middle-Income Trap and is filled with STEM human resources.

To accomplish the *1st Step* of the framework, Ministry of Labour have defined “8 Agendas for Labor Reform” as follows:

1. Zero corruption
2. Reform of the role of Ministry of Labour
3. Eliminate the illegal workforce including human trafficking
4. Enhance the life quality of informal workers
5. Employment promotion
6. Safety Thailand (to promote the safety standards)
7. Increase productivity
8. Information technology (provide services by using technology)

Lastly, we have to talk about *the Twelfth Education Plan (2017-2021)* which enacted on October 1, 2016.

This plan consists of six strategies as follows:

1. Strategy of developing the educational program, learning process as well as educational measurement and evaluation in order to respond to the rapid change of the world.
2. Strategy of enhancing the quality and quantity of educational personnel.
3. Strategy of promoting research in order to support the country’s development.
4. Strategy of expanding the opportunity for reaching the education services.
5. Strategy of developing digital technology for education to support the lifelong learning.
6. Strategy of improving the education management.

We now acknowledge our country crisis and note the government policies for dealing with such situation. The next question to be answered is about the implementation and the possibilities for us to accomplish our goals. If any weakness is found, we are able to strengthen it and move on.

### III. Possibility for making dream come true

Reference is made to the recommended policies from the report, *the OECD Jobs Strategy: Technology, Productivity and Job Creation-Best Policy Practices*, concerning the reforms for responding to the technology age stating that “*Factors for success include the extent to which coordination can be achieved between different ministries and the involvement of various stakeholders. Checks must be put in place against government failure, such as institutions furthering their own special interests, or adopting a partial rather than an economy-wide perspective. Measures to promote upskilling and lifelong learning can raise the mobility and employability of workers, mitigate the costs of job displacement resulting from rapid technological change and reduce resistance to reform. At the same time, policies must be designed so as to avoid undermining incentives for work, upskilling, organizational change and restructuring.*”

Starting with the first factor recommended that different ministries must coordinate, it is said that this cannot be happened at this time for Thailand. Each ministry has its own policy, budget, and measurement. Coordination can be made with different organizations which are under the same ministry. This is the first obstacle.

Not only between different ministries, but also between different sectors, namely government organizations, business firms, and public sector, cannot connect and coordinate with one another. Return to the point of the mismatch between demand and supply for skills, in order to solve this problem, the main stakeholders which are Ministry of Labour, Ministry of Education, and the industrial sectors or the entrepreneurs requiring the workforce must find solutions together and play the role of each part. The best sample when talking about a



successful case of having overcome this problem is Germany.

“Dual Vocational Training (DVT)” is educational system used in Germany. This is the mechanism which connects business firms to the government as well as trade unions. All stakeholders play its role. Business firms arrange important technical skills training for workers conducted by certified lecturers. Meanwhile, vocational colleges provide training of basic skills namely required theories and other skills which are necessary for working life. By this practice, mismatch of demand and supply for skills is reduced.

Considering the Thai government policies, we found that the government planned to improve the quality of workers by training provided by the Institute for Skill Development. While the officers of this organization have been arranging several training programs for Thai workers for a long time, no significant effect has been seen. This is because the government officers do not thoroughly understand the business needs, especially the business driven by new technology. The government should not play this role. Instead, playing the role as a support party to promote the business sectors’ investment in human resources would be better.

Apart from the inconsistency among the stakeholders, lack of technology transfer is an important obstacle as well. The above policies always point out the importance of improving human resources especially education of personnel, but how? How can we improve human resources relying on the workforce who are on the same level? Without any technology transfer from the developed countries, how can we keep up with the rapid technological change and improve ourselves?

The developed countries used to be the developing countries. One important factor enables a developing country shifts to a developed country is “technology transfer and policy to attract professional or skilled workers to work for them.”

South Korea is the best sample when talking about this point. Within three decades, having shifted from the agricultural country to the newly industrialized country, the government leads the country to be a developed nation by using five factors as follows:

1. To force the public to improve themselves, Korean nationals had only two choices “survive or give up and dead.”
2. To promote “Chaebol” which are the group of industrial sectors. When the Chaebol grows, the employment and the national income per capita also grow.
3. To improve education.
4. To promote export policy.
5. To promote technology transfer policy by reducing the restrictions regarding FDI (Foreign Direct Investment) and foreign licenses in order to increase the absorptive capacity.

Apart from South Korea, Singapore is another good sample. Being a small country with poor in natural resources and workforce, Singapore is now the top ranking of ASEAN for per capita income by the government policies promoting attractiveness for skilled workers to come and work in Singapore and good management for controlling demand and supply of those workers.

Considering the above-mentioned samples, technology transfer plan should be put in the government policies as well.

#### **IV. Overview of the main findings**

One of the important reasons why Thailand is caught in the Middle-Income Trap is due to lack of technology innovation and skilled labor. Recommended policies to overcome such crisis specified that we have to develop our technological level, especially technologies used in industrial sectors, and improve skills of workers as well. The government policies are set in accordance with said principles under the main concept of what “Thailand 4.0” focuses on development of technology innovation and human resources. In addition, further important factors should be added to the policies, i.e., policy to promote technology transfer and coordination of stakeholders including enhancing co-operation between different ministries.

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# Technological Innovation and Its Challenges to Taiwan's Employment Law: Telework as an Example

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- I. The changing from the technological innovation
- II. Taiwan's modern employment laws and the challenges it faces with telework
- III. The directive on the work hours of employees working outside of the company: The government response
- IV. Conclusion: Problem is only partially resolved

## I. The changing from the technological innovation

Traditional employment law in Taiwan, generally speaking, can be interpreted as a system that is built on a workplace-centered presumption, and the related laws and regulations are designed to cover cases that occurred under this model. When the wave of technological innovation arrived at Taiwan's industries, the new technologies accompanying the new approaches to produce products and provide services substantially altered the traditional idea of running a business.

So-called teleworkers are this report's main focus. The revolution in digital technology has stimulated both employers and employees to imagine more-flexible and customized ways of submitting and receiving labor. New working arrangements, such as work-from-home, satellite offices, or simply just working in a quiet coffee shop, have become options to consider. The employer may benefit from having professional employees in multiple locations, and the employee can enjoy the flexible working conditions with lower commuting costs. This is particularly true for the modern companies in which the job merit, not the time spent in the office cube, is of the essence in performance evaluation.

These new technologies and working arrangements, however, also bring new challenges in implementing the employment laws. Taking working hours and the prevention of occupational accidents as the examples, the authority's supervision of working hours relies heavily on the records kept by the employer, and the prevention of occupational accidents also depends on the employer's diligence in maintaining the workplace he/she is able to control. Unfortunately, the employer's ability to track accurate working hours and control the workplace happens to be the most cited difficulties in telework arrangements.

To shed light on the impact and the governmental response on telework issue, the following chapter will focus on related labor legislations and the directive on telework, and conclude this report with brief recommendations.

## II. Taiwan's modern employment laws and the challenges it faces with telework

### 1. What lies outside employment laws

#### a. Work hours and wages

Taiwan's major employment laws are often decades-old and were written to regulate the traditional employment model: a central workplace and 9 to 5 regime. In the Labor Standards Act,<sup>1</sup> Article 30 (1) sets up a general work hours criterion that establishes a regular work time of 8 hours per day, 40 hours per week. If there is a need to extend regular work hours, there are requirements in Article 32 (1) and (2) which specifies that the

1. The full English text of the Labor Standards Act can be found at <http://law.moj.gov.tw/Eng/LawClass/LawAll.aspx?PCode=N0030001> (Last reviewed on February 25, 2018).

employer will need permission from the union (if there is no union, then from the worker-management meeting) to work overtime. The maximum overtime hours, including the regular hours, shall not exceed 12 hours per day. Both the regular work hours and the overtime hours cap are subject to flexible use with the prior permission from the union or labor-management meeting.<sup>2</sup> The employer is obligated to keep the employee daily attendance records to minutes for 5 years and must provide a copy of the record per the employee's request.<sup>3</sup>

Moreover, the statutes on wage and overtime payment are also listed in the Labor Standards Act, the implementation of which is strongly associated with the accuracy of calculating work hours. Generally, for ordinary work days, if overtime work is less than 2 hours, the employer shall pay the employee 1.34 times the regular hourly rate. If overtime lasts from 2 to 4 hours, the rate increases to 1.67, and 2.67 times the regular rate may be imposed when the employee is requested to work on rest days.<sup>4</sup>

Simply aligning the laws does not mean the law can be implemented well. As mentioned above, the core innovation of telework is its flexibility to customize the needs of the employer and the employee and reshape the employment format. For the higher ranking white collar teleworkers, who usually have commensurate negotiating power, telework is more like a benefit. They may enjoy quiet discretion on when and how to do their jobs, and the daily 9-5 work rule cannot represent their actual work time. The ordinary teleworker may still need to respond to the employer on the 9-5 work rule basis, in which case the problem becomes how the employer can verify the actual billable hours and pay the appropriate rate while the teleworker is not working in the office or somewhere else he/she can be observed.

There are other professionals who also work in a telework and flexible working arrangement. For example, a reporter may need to work continuously for a period of time to report on breaking news; a writer may need to write at midnight at a coffee shop when he/she catches the inspiration. All of these situations reveal the difficulties for the traditional employment law regime to supervise and implement the working hours criteria and base the related wage payment on actual hours of work.

#### b. Occupational safety and health

Another omission in the employment law may come from the Occupational Safety and Health Act.<sup>5</sup> Article 5 of the act explicitly assigns the obligation to provide a safe workplace and prevent occupational accidents to the employer. The employer shall apply necessary precaution measures and provide appropriate equipment to avoid accidents. Moreover, the employer is also responsible for exercising prior risk evaluation on machines, other equipment, and raw materials before they are used on the job. These duties allocated to the employer seem reasonable because the law can properly assume the employer is the most capable party to maintain his/her own property. Given that the employer provides the place and necessary tools and materials for the work, it makes sense to hold the company owner, who is also the final beneficiary of the work, responsible for workplace safety and health.

The teleworker, again, does not seem to fit in this regulatory regime. One of the most obvious characteristics of teleworkers is that they work outside of the traditional office which the employer is able to maintain and control. This raises the question of whether it remains possible and reasonable to require the employer to play the role allocated in the Occupational Safety and Health Act. If the employer may not be able to maintain and pre-evaluate the workplace, should he/she be liable when an accident occurs? This also touches upon the issue of privacy rights if the employer is obligated to inspect the workplace when the workplace is the teleworker's private home.<sup>6</sup>

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2. Please refer to the Labor Standards Act, Article 30 (2) and (3), Article 30-1, Article 32 (2) and (4).

3. Please refer to Labor Standards Act, Article 30 (5) and (6).

4. Please refer to Labor Standards Act, Article 24.

5. The full English text of Occupational Safety and Health Act can be found at <http://law.moj.gov.tw/Eng/LawClass/LawAll.aspx?PCode=N0060001> (Last Reviewed on February 20, 2018).

6. Wan-Ning Hsu, Labor Protection for Teleworkers in Japan: New Legislation in Taiwan?, *Taipei University Law Review*, vol.99 (2016), 187-248, 236.

Another interesting issue will be the production equipment of teleworkers. Many recruitment announcements require applicants to prepare their own laptop or motorcycle for business use. Sidestepping the controversy on asking a worker to invest in work equipment, it would seem to be the employer's legal obligation to assess the risk of the teleworker's laptop and other devices for occupational safety and health purposes. To some extent, if necessary, the employer may need to request that the teleworker replace his/her computer or commuting device for safety purposes, and objectively, I cast doubt on this kind of measurement's practicability.<sup>7</sup>

### c. Employment discrimination

Employment discrimination legislation is another area of employment law that fails to address the unique situation of teleworkers. In Taiwan's Employment Service Act, Article 5 (1),<sup>8</sup> the employer is prohibited from discriminating against an applicant or current employee on the basis of these protected characteristics: race, class, language, thought, religion, political party, place of origin, place of birth, gender, gender orientation, age, marital status, appearance, facial features, disability, or past membership in any labor union. Moreover, in the Act of Gender Equality in Employment,<sup>9</sup> Articles 7 to 13 emphasize especially on discrimination based on gender and sexual orientation. This act also includes workplace sexual harassment and deals with it as gender discrimination. These two acts together build the basic foundation of Taiwan's employment discrimination laws.

The fundamental idea of discrimination law is that simply receiving different treatment from the employer may not automatically be seen as illegal discrimination unless the complainant can successfully prove that the disparate treatment is based on the complainant's protected trait<sup>10</sup> or an allegedly neutral policy has a disparate impact on a particular protected group.<sup>11</sup>

Employment discrimination law cannot protect a teleworker from disparate treatment (direct discrimination) because the identity of the "teleworkers" has not been recognized as among the protected traits listed above. In this circumstance, the employer can discriminate against the teleworker just because of his/her special work arrangement, in contrast to workplace-centered workers. This initially does not seem to be a wrong policy until we discovered that, ignoring the high ranking white collar teleworker, it is possible a good portion of teleworkers could be less competitive laborers such as worker with disability, part-time females with family care obligation, or suburban workers.<sup>12</sup> Many of these workers are those who deserve anti-discrimination protection, but may face disparate impact (indirectly discriminated against) because of the stereotype surrounding the teleworker group. Without a clear protection of their characters or identity as teleworkers, they may face difficulties in mobilizing employment discrimination law when these cases usually lack sufficient evidence and support.

## III. The directive on the work hours of employees working outside of the company: The government response

To respond to the problems above, the Ministry of Labor has promulgated the "Directive on the Work Hours of Employees Working Outside of the Company (hereafter, the directive)" in 2015. An update of this directive was announced in 2017<sup>13</sup> and the Ministry has expanded its coverage from reporters, teleworkers,

7. This issue may be solved if the employer is willing to provide all of the equipment for the teleworkers.

8. The full English text of Employment Service Act can be found at <http://law.moj.gov.tw/Eng/LawClass/LawAll.aspx?PCode=N0090001> (Last reviewed on February 20, 2018).

9. The full English text of Act of Gender Equality in Employment can be found at <http://law.moj.gov.tw/Eng/LawClass/LawAll.aspx?PCode=N0030014> (Last reviewed on February 20, 2018).

10. This kind of discrimination is also called disparate treatment or direct discrimination.

11. This form of discrimination is also called disparate impact or indirect discrimination.

12. Fang Wang, The New Labor Issue in the "E Generation": The Sociological Studies on the Teleworker's Labor Rights, *Journal of Labor Research*, vol. 4 (2004), 7-38, 16-17.

13. The Chinese version of the directive can be found at <https://www.mol.gov.tw/topic/3067/14530/24411/> (Last reviewed on February 22, 2018).

field salespersons, and drivers to all employees who work outside of an office. The new version of the directive also lifts the agency pre-approval to apply this directive; now all employees who work out of the office may be covered under this directive.

### 1. General rules

The general rules of the directive focus on the verification and the record keeping of work hours. Article 2 of the directive states that when verifying the work hours of employees who perform their duties out of the office, the following circumstances shall be noticed (abstracting the relevant points below.)

- (a) The initiation and the end of the regular hours, overtime hours, rest time, and the shift shall be agreed on by the employer and the employee in a written contract. This contract shall be included in the workplace rules.
- (b) The traditional definition of work hours refers to the time that the employee is under the supervision and disposal of the employer or the time that the employee is on-call per the employer's request. However, if the employee is not under one of these circumstances, and is out on a business trip or simply working outside of the office, the work time calculation can be agreed upon. The employer and the employee may agree on a start and finish time to define the work hours. The overtime hour, however, is still being verified on the actual time worked basis.
- (c) The employer is obligated to keep the work records of the employee. If there is a need to work overtime, the employer shall record the actual time spent on the assigned task. When the employee cannot complete the assignment within the regular hours, he/she needs to request the employer's permission to work overtime. After completing the assignment, the worker needs to report the actual time worked to the employer so that he/she can record the ending time of the assigned task.
- (d) Under special circumstances, when the out-of-office assignment often requires working overtime, the employer and the employee may agree on a particular amount of work hours that do not need to get the employer's prior approval. The employer, however, is still obligated to keep tracks on the work hours in the worker's actual overtime hours.
- (e) The record keeping methods for the out-of-office worker include but are not limited to sign up sheet or punch card. Other electronic devices and records can also be considered, including car dash camera, GPS tracker, phone record, electronic clock-in, Internet report, customer signature sheet, communication software and other devices that may be helpful. All of these records shall be prepared in written format when undergoing a labor inspection.
- (f) After the regular work hours, if the employer assigns a new task to the employee through the communication software or telephone or other methods, the employee can track the initial and end time of the assignment. The record accompanied by proof on the software or the phone can be seen as the evidence of working. Once the employee submits these materials to the employer, he/she shall register the extra hours in the record.

These general rules in the directive strive to establish a way to calculate the actual work hours and overtime hours that are not easy to catch under the telework work style, and included these working records into the current supervision and regulatory regime.

### 2. Special rules for particular professions' employees who work outside of the office

The directive also lists several special professions that are hard to verify work hours and provides guidance on the proper way of calculation.

- (a) News reporter
  - (1) Recognizing reporter's special time pattern when they often perform their duties outside of the office, not required to clock out, and difficult to track their actual work hours, a special verification method



is needed. The employer and the reporters may agree upon a written contract with regard to the initial and end of the regular hours and overtime hours. This contract needs to be included in the workplace rules.

- (2) To cover breaking news, reporters often receive assignments after regular hours. In this case, the employee's actual start and end time of the overtime work can be verified on different kinds of supplemental records. It can be the publication record, car dash camera, employee self-record, communication software, and phones. The employer is obligated to keep the record once the worker submits it.
- (3) The employer and the employee may agree upon a particular amount of time that does not require employer's pre-approval. The employee still needs to submit the initial and end time record to the employer after completing the job, and the employer is obligated to keep the actual overtime hours on file.

(b) Teleworker<sup>14</sup>

- (1) The definition of "teleworker" in this directive means employees who work under the supervision and disposal of the employer and submit the fulfillment of their contract obligation through electronic technology.
- (2) The work hours of a teleworker, due to the worker's autonomy, shall be agreed upon by the employer and employee. The actual work hours and rest time shall be recorded by the employee and logged through an electronic device to submit to the employer.
- (3) Recognizing that teleworkers usually do not work in the employer's workplace, the employer does not always get to control an employee's overtime hours. Therefore, overtime work hours shall be allowed on a pre-approval or agreed-upon basis.

(c) Field salesperson

- (1) Field agents, such as insurance or real estate agents, are seldom fixed in one office but traveling around different places to meet customers. Their actual work hours and overtime hours are thus hard to verify. To solve this issue, their work hours and overtime work, accompanied by a verification method, shall be put into the written contract and included in the workplace rules.
- (2) The record keeping methods include but are not limited to sign up sheet or punch card; other documents and electronic records can also be submitted to the employer for recording.
- (3) If the employer assigns a new task to the field agent after regular hours, the employee shall submit the actual end time to the employer for the record. If the customer requests a service outside of regular hours, the field agent shall ask for the employer's approval and report the actual hours to the employer after finishing the job.

(d) Car driver

- (1) The actual work hours for all kinds of drivers (cars for different purposes) need to be verified. It shall include but not be limited to time spent on pre-heating the car, driving, ticket verifying, shifting, car-washing, fueling, maintenance, on-call time, loading time, and other work times under the employer's supervision or disposal.
- (2) Rest time means the block of free time when the driver is not subject to the employer's disposal and control.
- (3) Whether the waiting time can be counted into the work hours depends on whether the employer still controls and supervises the driver during those times. If the driver has a two-hour break when he can freely conduct his/her own business after taking people to a location, it should not be included as work hours. In contrast, if one or more customers remain in the car, it shall be seen as work hours.

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14. The definition of "teleworkers" in the directive is narrower than the one this report uses as the topic. This report's definition included but not limited to the teleworkers who submit their labor and working achievement electronically, but also included people who work remotely, who seldom goes back to the office, and who is not required to report to a particular workplace.

- (4) The verification of the driver's work hours can be supplemented through various ways. The car dash camera, GPS, car assignment sheet, or the customer signature sheet will be accepted. The supervisor of the car shall bear the burden to keep the record and verify the work hours for the driver.

#### **IV. Conclusion: Problem is only partially resolved**

It is fair to say the government directive in 2017 partially resolved some of the problems identified in this report, especially the difficulties in verifying the actual work and overtime hours for teleworkers. The related wage and overtime pay issues may also be solved after successfully generating the working hours record.

Some other issues, such as employer's obligation to maintain a safe and healthy workplace, may be partially resolved by pre-assessing the workplace and providing sufficient advice and guidance on workplace safety and health to the employees.

Other problems, take employment discrimination as an example, are still unsolved through the limited circumstances that the directive covers. It may require further research and amendments to fundamentally reconsider the proper approach to deal with these emerging new working arrangements under the technology innovation.

Although there still have some difficulties need to be overcome, we shall be optimistic that through the continuingly discussion and research, a more tailored and comprehensive regulatory regime for the teleworkers will be revealed soon.



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# Changes in Employment Structure in Malaysia: The Way Forward

Beatrice Fui Yee LIM

- I. Introduction
- II. The structure of the Malaysian economy
- III. Overview of the Malaysian labor market
- IV. Changes in social structure
- V. The future workforce in Malaysia
- VI. Policies to increase female labor force participation in Malaysia
- VII. Conclusion

## I. Introduction

The Malaysian economy recorded remarkable growth throughout the post-independence period. Between 1980 and 2015, Malaysia's GNI per capita increased close to sixfold from USD1,790 in 1980 to USD10,570, well above the average of other upper-middle-income countries (World Bank 2016). Among the developing countries in the ASEAN region, the GNI per capita for Malaysia is the highest.

After Malaysia gained independence in 1957, the country's real GDP growth accelerated from -0.1% to 7.8% (1966) before declining to 6.0% in 1970. During this period, living standards improved, while the access to health care and education increased. In the 1970s, the government promoted export-oriented industries which saw significant growth in the manufacturing sector. From 1971 to 1980, the economy grew at an average annual rate of 7.9%. In the 1980s, the prolonged global recession resulted in a sharp fall of commodity prices and the average annual growth rate declines to 6.0%. From 1991 to 1996, the annual average growth rate registered a staggering 9.6% as a result of heavy involvement of the private sector in the economy and an increased inflow of foreign direct investment. However, the country was affected by the Asian financial crisis in 1997 and later the world trade recession in 2001.<sup>1</sup> Between 2002 and 2017, real GDP growth ranges from 4.2% to 7.2% with the exception of a negative growth in 2009.

## II. The structure of the Malaysian economy

In the 1970s, there was a radical shift from inward-looking import substitution to outward-looking, export-oriented industrialization policies in Malaysia. The country transitioned from a rural-based agricultural economy to urban-based industrial economy. The country experienced major growth in industries such as electronics, food processing, plastics, textiles and garments. In the 1980s, the services sector expanded rapidly, especially in the education sector and public administration. By 2016, the share of the services sector is the largest at 55.68%, while the share of the manufacturing sector is 35.68% (Table 1).

Today, the advancement of technological innovation has continued to impact employment structure and

Table 1. Share of economic sectors in the gross domestic product (percentage of GDP), 2006-2016

	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Agriculture	8.61	9.99	9.97	9.22	10.09	11.45	9.79	9.11	8.87	8.45	8.65
Manufacturing	46.10	42.22	42.92	38.46	37.89	37.23	37.49	37.19	37.17	36.43	35.68
Services	45.29	47.80	47.12	52.32	52.11	51.32	52.72	53.70	53.96	55.12	55.68

Source: World Bank 2018.

1. This discussion is drawn from Ang (2007).

form. With the arrival of Industry 4.0, menial jobs will be replaced by automation. The manufacturing sector which relies heavily on foreign labor faces continuous challenge to increase efficiency and productivity through adoption of new technology. There is a growing need for multi-skilled and multi-disciplined workers across all economic sectors. In the future, work is projected to be on-demand and project-based, replacing regular employment.

### III. Overview of the Malaysian labor market

The labor force participation rate in Malaysia for persons aged between 15 and 64 fluctuated between 64.8% and 67.7% from 1982<sup>2</sup> to 2016. Due to increasingly unstable commodity prices in the 1960s, the Malaysian government introduced policies to encourage export-oriented industries in the 1970s. This resulted in increased employment in the economy which peaked in 1988 with a labor force participation rate of 66.8%. After 1997, there was a slight decrease of labor force participation rate from 65.6% and it has fallen to 63.7% in 2010 as a result of the slower growth in the country's economy post-Asian crisis (Department of Statistics Malaysia 2016; National Economic Advisory Council 2010). However, labor force participation rate increased gradually beyond 2010. Meanwhile, the unemployment rate is 3.4% in the same year.

#### 1. Not in the labor force

The total number of persons in the labor force is 14.2 million in 2016. A total of 7 million person (32.3% of the population aged between 15 and 64 years) is not in the labor force in 2016. Almost half of this number are individuals between 15 and 24 years. The main reasons cited for not being in the labor force include still studying (43%) and housework or family responsibilities (41.6%). Other reasons include intend to pursue study (2.2%), disability (3.9%), not interested to work (1.3%) and retired (8.0%).

#### 2. Educational attainment

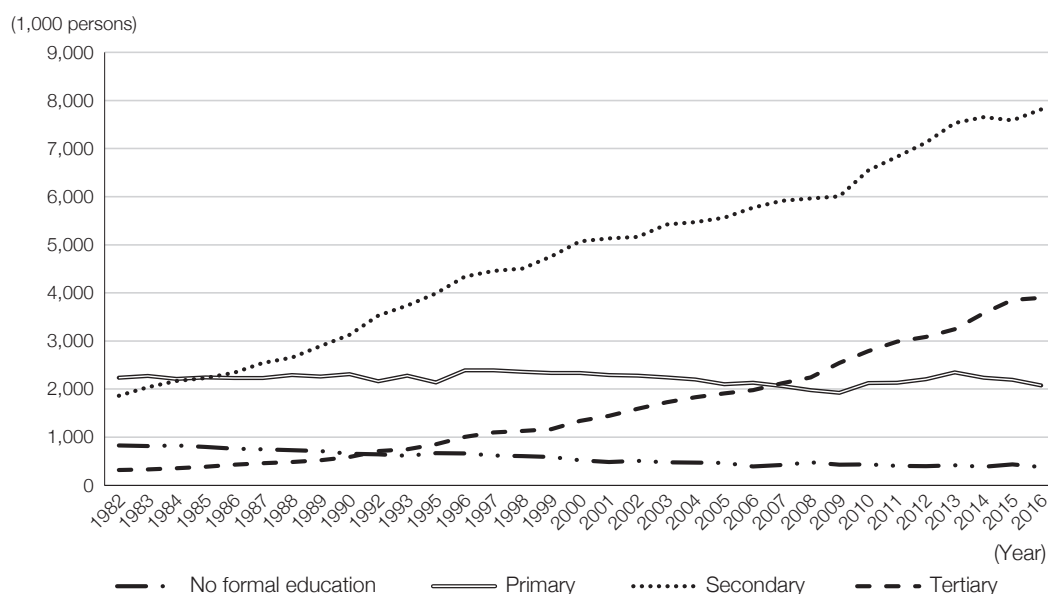
The education system in Malaysia is constantly being revised to keep up with the country's structural change, especially to meet the demand for skilled and knowledgeable workers. In terms of educational attainment (Figure 1), the majority of the labor force have secondary school qualifications (or 7.8 million). This is followed by individuals with tertiary education (3.89 million). In order to boost the economy of Malaysia, a better proportion of skilled workers is needed. In developed economics, skilled workers made up at least half of the total workforce. The development of human capital is regarded as one of the most important pillar to the success of the National Transformation 2050 (TN50) which aims to transform the country into a calibre nation state with par excellent mindset. The Malaysia Education Blueprint 2015-2025 was designed to increase access to education. By 2025, the Ministry of Higher Education aspires to increase tertiary education enrolment to 53%. At the same time, the Ministry promotes the TVET (Technical and Vocational Education and Training) pathways to develop skilled talent to meet the growing and changing demands of industry (Ministry of Education Malaysia 2015).

#### 3. Labor force participation by sex

The female labor force participation rate is historically lower than the male participation rate in Malaysia. Between 1970 and 1980, the female labor force participation rate increased significantly from 37.2% to 44.5%. However, the rate showed a modest change from 40% to 49% from 1982 to 2012. In 2013, the female labor force participation rate surpassed the 50% mark for the first time and it hit an all-time high in 2016 at 54.3%. On the other hand, the male labor force participation rate was 85.3% in 1982 and this has decreased over the decades to 79.7% in 2011. In 2016, male labor force participation rate is 80.2%. The gender gap in labor force participation has narrowed between 1982 and 2015 from 40.8% to 25.9%. Although this is a positive indicator

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2. Time series data from the Labour Force Survey is only available from 1982 onwards. The data was not collected in 1991 and 1994.



Source: Department of Statistics 2017.

Figure 1. Employed persons by educational attainment, Malaysia, 1982-2016

for women's development, it should be noted that the closing of the gender gap is partly attributed to the decline in male labor force participation. Nonetheless, the primary reason behind the increasing number of women in the workforce is rising educational attainment among women.

Female educational attainment in Malaysia has increased substantially in the post-independence era. Female adult literacy (among population aged 15 years and older) increased from 61.25% in 1980 to 90.75% in 2010 (UNESCO-UIS 2016). By 1990, universal primary education was almost achieved, when the net enrolment ratio rose to 94% (United Nations Development Programme 2005). According to data from UNESCO-UIS (2016), between 1970 and 2010, the net enrolment rate at primary level for girls rose from 79.7% to 96.7% in Malaysia. Meanwhile at the secondary level, net enrolment rate increased from 26.6% to 69% in the same period. The gross enrolment ratio at tertiary level for female increased from 3.07% in 1980 to 43.16% in 2010. By 2010, the percentage of females enrolled in Malaysian public universities was 60.1% (Ministry of Women, Family and Community Development 2014).

#### 4. Employment by occupation type

The structure of employment by occupation is shown in Table 2. The occupation for year 2005 and 2010 is classified according to the Malaysia Standard Classification of Occupations 1998 (MASCO-98). Based on Table 2, there is a huge increase in the number of service workers employed from 2005 to 2015, indicating the importance of this sector in the economy. In contrast, there is a decrease in the number of persons employed in the agricultural-related occupations between 2010 and 2015.

### IV. Changes in social structure

#### 1. Population trends in Malaysia

The Malaysian population is growing at a rate of 1.94 per annum as of 2017. The median age of the population is predicted to increase in the future. By 2040, it is predicted that the percentage of the population aged 14 or younger will be 18.6% (Table 3). On the contrary, the percentage of population aged 65 and above shows an increasing trend. Furthermore, it is predicted that by 2040, 14.5% of the population will fall into this age group. The percentage of the population aged between 15 and 64 years is 69.2% in 2015. However, it is

Table 2. Employed persons by occupation, Malaysia, 2005, 2010 and 2015

(1,000 persons)

Occupation	Year		
	2005	2010	2015
Legislators, senior officials and managers	777.4	856.7	718.6
Professionals	555.1	737.4	1,462.0
Technicians and associate professionals	1,266.8	1,695.8	1,406.9
Clerical workers	992.3	1,183.2	1,241.1
Service workers and shop and market sales workers	1,483.7	1,959.6	3,188.9
Skilled agricultural and fishery workers	1,268.6	1,382.0	940.3
Craft and trade related workers	1,145.5	1,228.3	1,578.8
Plant and machine-operators and assemblers	1,427.5	1,502.8	1,585.2
Elementary occupations	1,128.3	1,353.7	1,945.9

Source: Department of Statistics Malaysia, 2017.

Table 3. Distribution of population in Malaysia, 1980-2040

	1980	1991	2000	2009	2010	2015	2040 <sup>e</sup>
Mid-Year Population (million)	13.88	18.55	23.49	28.08	28.59	31.19	41.5
Age Group (years)							
0-14 (%)	39.9	37.2	34.1	28.0	27.4	24.9	18.6
15-64 (%)	56.5	59.2	62.0	67.1	67.7	69.2	66.9
65 and above (%)	3.5	3.6	4.0	4.9	5.0	5.8	14.5
Median Age	19.4	21.6	23.4	25.9	26.3	27.6	38.3

Source: Department of Statistics Malaysia 2018.

Note: <sup>e</sup> Estimates.

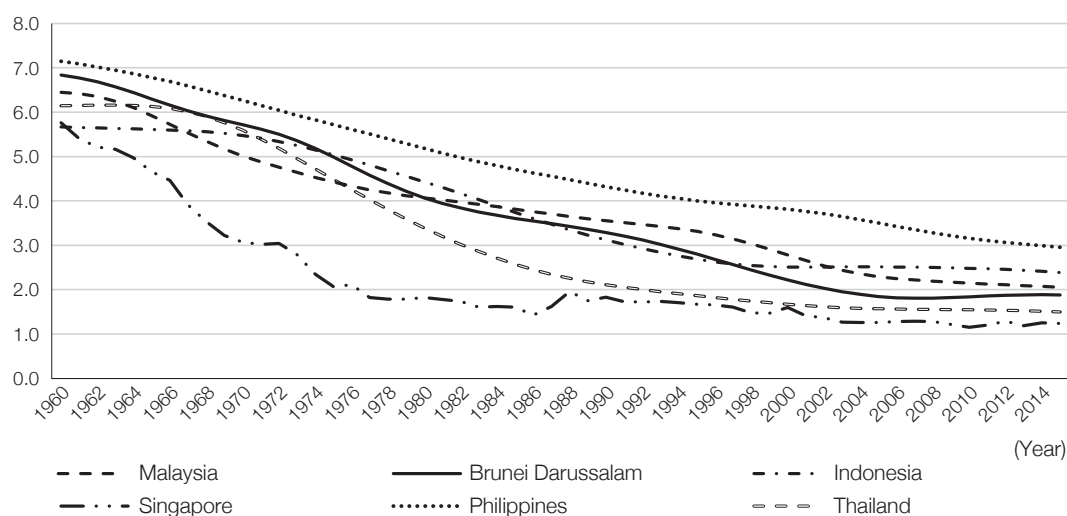
predicted that this figure will decline to 66.9% in 2040 due to a shrink in the percentage of population aged 14 or younger and a rise in the population aged 65 and above. Aging population will likely lead to declining labor force and an increase in the age dependency ratio.

## 2. Fertility trends in Malaysia

The change in the demographic structure of Malaysia can be partly attributed to the decline in fertility rate, apart from rising life expectancy. Malaysia is classified as an intermediate-fertility country, whose total fertility is estimated to be between 2.1 and 5 children per woman in 1995 to 2000. It is anticipated that “by 2050, fertility rate in intermediate-fertility countries will fall below the level required for long-term population replacement” (United Nations 2002). As shown in Figure 2, the fertility rate in Malaysia decreased from 6.19 in 1960 to 1.93 in 2015. In general, this trend has also been observed in other ASEAN countries over the last five decades.

The changes in population structure and fertility are closely related to the trend in marriage and the marital status of the population. The proportion of females (aged 15 years and above) who never married increased from 26.0% to 32.2% between 1970 and 2010, while the mean age at first marriage increased from 21.6 to 25.7 years between 1970 and 2010. Therefore, it can be concluded that there is a rising trend of non-marriage





Source: World Development Indicators, World Bank 2016.

Figure 2. Total fertility rates (births per woman) in selected ASEAN countries, 1960-2015

and a rise in the mean age at first marriage. Postponement of marriage has enabled more women to enter and remain in the workforce at the cost of a reduced span of active reproductive life. The increasing rate of entry of the increasingly educated Malaysian women into the labor market can mitigate the impact of a shrinking work force. Policy-makers play an important role in designing family-friendly policies that enable women to reconcile both work and family.

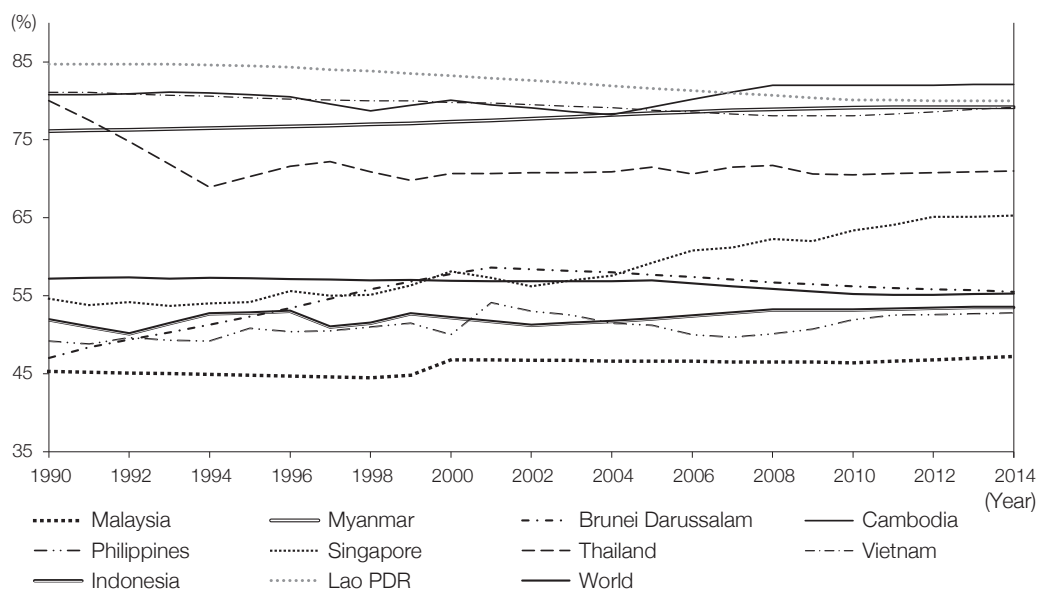
Besides increasing the participation of women in the labor market, the government can provide opportunities for the elderly to remain longer in the workforce. In 2012, the mandatory retirement age in Malaysia has been increased to 60 years. While the employment of elderly is a potential solution amidst the challenge of an aging population, this topic is not discussed in this paper. The discussion in the subsequent sections in this paper focuses on how to enhance female participation in the labor market.

## V. The future workforce in Malaysia

Although Malaysia has acknowledged and has been actively promoting the role and involvement of women in the country's economic development through various policies and initiatives post-independence, the growth in the female labor force participation rate is considerably lower when compared to neighbouring countries in the Southeast Asia region (World Bank 2016). In the context of the ASEAN region, the female labor force participation rate in Malaysia has been the lowest from 1990 to 2014 (Figure 3).

This is of particular concern given the country's immediate policy targeting. In the Eleventh Malaysia Plan (2016-2020), the government has targeted an increase in the female labor force participation rate to 57% by the year 2020 (Economic Planning Unit 2015). The increased participation of women in modern urban-based employment increased their income and enabled them to enjoy greater independence and increased status within the household where bargaining power is usually unequally distributed between male and female members (Leete 2007). Therefore, investing on the development of women become one of the country's most important agenda.

Despite the government's effort to increase women's economic opportunities, Malaysian women are still underrepresented in the job market enforcing the need to introduce social policies or family friendly policies to address barriers to women's labor force participation. A survey conducted by the National Population and Family Development Board (2016) indicated that 42.4% of female respondents who had decided to withdraw from the labor force cited family responsibilities and the difficulty to balance career and family life as some



Source: World Development Indicators, World Bank 2016.

Figure 3. Female labor force participation rate in ASEAN countries, 1990-2014, aged 15-64

of the main reasons affecting their decisions. In view of this, various policies were implemented to motivate women to participate in the labor force.

## VI. Policies to increase female labor force participation in Malaysia

The government introduced various policies and legislations to encourage women to enter the labor market such as parental leave, provision of child care, tax system reform, flexible work arrangement and part-time work regulations. The private sector is encouraged to facilitate women’s entry into the labor market through flexible working hours, career breaks, family-friendly workplace practices and new working arrangements such as teleworking, part-time work and job-sharing.

### 1. Maternity leave

The government provides generous maternity leave benefits to women. Female civil servants are entitled to a total of 300 days paid maternity leave for the entire duration of service with the flexibility of 60 to 90 days leave per child delivery (Public Service Department of Malaysia 2010). Employees from the private sector are entitled to a minimum of 60 days paid maternity leave with the exception of clerical workers in the banking industry (with influential trade unions) who enjoy 90 days leave. Beginning in 2007, civil servants also enjoy up to a total of 1,825 days of unpaid leave entitlement (for the entire service duration) for childcare following a new birth (Public Service Department of Malaysia 2007).

### 2. Flexible work arrangement

Although flexible work arrangements are becoming more common in recent years, the structure of employment in Malaysia is highly formal with limited availability of part-time and casual work (Aziz 2011, 11). In 2007, the government implemented flexi-work time in the public sector with three staggered work times. Although part of the reason was to reduce traffic congestion, the move was well-received as employees with family commitments could choose their working time to suit family commitments. In 2015, the Ministry of Women and Family Development took the initiative to introduce three flexible working modes in 2015 including: (1) working from home; (2) flexi-working hours; and (3) modified compressed workweek. In

the private sectors, such arrangements are limited and are usually practised by foreign owned multinational corporations, educational institutions and a few small firms (Subramaniam and Selvaratnam 2010).

### 3. Part-time work regulations

One of the barriers restricting flexible work arrangements such as part-time work is the complexity of implementation, for example, the employer contributions to employee provident funds are calculated on a monthly basis based on full-time work hours. On October 1, 2010, the Employment (Part-Time Employees) Regulations 2010 came into effect. The work regulation for part-time work defined the minimum standards for part-time employment in terms of hours of work, holidays, annual leave, sick leave and rest days. The implementation of the regulation is expected to benefit 6.5 million latent workers in Malaysia who are willing to work part-time, including housewives, single mothers, retirees, people with disabilities and students. According to the new regulation, part-time workers would be given salaries and other relevant benefits and entitlements on a *pro rata* basis. At the same time, the new regulation would help lessen the country's dependence on foreign workers.

### 4. Government support and training program

Other initiatives including programs such as 1Malaysia Support for Housewives program, and the Housewives Enhancement and Reactivate Talent Scheme (HEARTS) were also implemented to attract housewives, especially those with tertiary educations, to participate in the labor market. The HEARTS aim to train educated housewives in the latent workforce in specialised fields that would enable them to work from home or under flexible working arrangements. In 2010, the government spent RM4.7 million to assist 946 women entrepreneurs in 1Azam programs. In 2013, RM50 million were allocated by the government to carry out I-Kit program which aims to develop entrepreneurial skills among single mothers and Get Malaysian Business Online in order to assist women entrepreneurs.

### 5. Empowering women

The contribution of women in the country's economy development is acknowledged during the tabling of the 2018 Budget. The year 2018 was declared the Women Empowerment Year by the Prime Minister. Four main measures will be taken to elevate the role of women in the economy. First, the mandatory maternity leave for the private sector is to be increased from 60 to 90 days, similar to what is currently practised in the public sector. Second, government-linked companies, government-linked investment companies and statutory bodies would be compelled to allocate 30% of positions in their board of directors to women by the end of 2018. Third, the announcement of individual income tax exemption on income earned within 12 months for women's re-entry into the workforce after a two-year hiatus, which is in line with the existing Career Comeback Programme initiated by the government's agency, TalentCorp. TalentCorp is an agency established in 2011 to attract, nurture and retain the best and right talent to enable Malaysia to reach its aspirations. Fourth, a sum of RM20 million has been allocated towards training and entrepreneurship programs tailored for women through the Entrepreneur Programme under the MyWin Academy.

## VII. Conclusion

Moving forward, the employment structure and form will shift from standard to non-standard work, such as part-time, temporary or self-employment. A report by OECD (2017) indicates that digital transformation will benefit women in the labor market through the introduction of more flexible ways of working which allows women to combine work and family. Automation is common in the agricultural and manufacturing sectors, presently dominated by men. However, in the future automation is expected to spread across all sectors including retail trade and services sector, which have been traditionally female-dominated. The Malaysian government has already launched several programs for women including Investment Literacy, Malaysia

Woman Made, and Impact for Humanity Woman (IR) 4.0 in order to embrace the rapid technological progress. In conclusion, Malaysia is taking continuous steps to leverage on women where women are regarded as an important pillar for economic growth and sustainability in Malaysia.

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# Narrowing the Gaps among Workers: Changes in Korea

Sukhwan CHOI

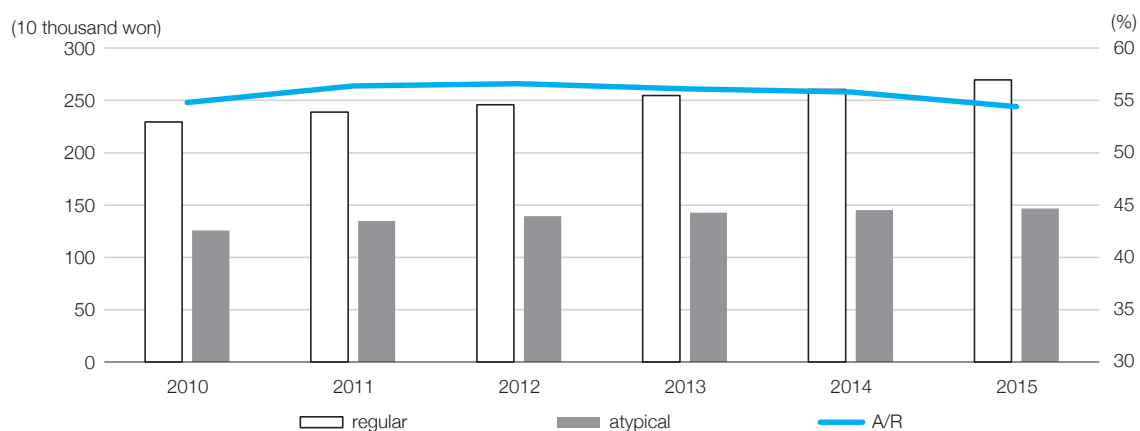
- I. Introduction
- II. A case study: The present situation, changes and responses
- III. Possible answers: Legal responses
- IV. Conclusion

## I. Introduction

Recently we are facing dramatic changes over the whole area of society in Korea. Both in economy and politics, we are experiencing many changes which inevitably affect policies and legal responses concerning labor relations and working lives. We can analyze the present situation from various points of view. At the same time, partly because of traditional hardships such as unemployment or economy crisis, and partly because of new wave of technological innovation such as ubiquitous society or IoT, we need to think of other possibilities of regulations. Situation is just the same in Korea.

### 1. Economic/social background

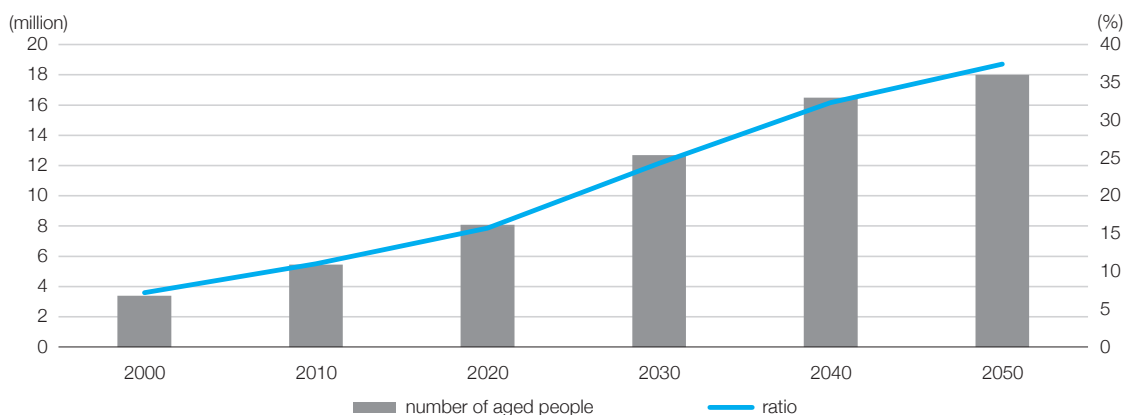
Among the many changes we have been faced with, I would like to introduce two features: working system and population ratio. Two grand financial crisis (1997 and 2007) gave rise to relatively deregulated labor market unavoidable, including flood of atypical workers. Legislation of fixed term and part-time employment contract (2007), temporary agency work (1998) were made during this period. From the very beginning of these new regulations, there had consistently been worries about the influences, in mainly bad ways. Atypical workers are increasing, and they are suffering from undergoing traps of unsatisfactory jobs as a whole. Social polarization is enlarged, making two extremes of society.



Source: Statistics Korea.

Note: The line chart shows wage gaps between regular and atypical workers (right scale).

Figure 1. Wages of regular and atypical workers



Source: Statistics Korea.

Figure 2. Trends in number of aged people and its ratio

Aging society is also big issue in Korea. The rapid aging of society suggests many problems including reform of social security system. We are expecting deficiency in labor power, however for now unemployment rate is very serious. As of December 2017, unemployment rate was 3.3%, while youth unemployment rate was 9.2%. With not so many decent workplaces for the young people, self-employed business could be an alternative. The ratio of self-employed among the whole working population in Korea is 26% (men) and 14% (women), both over the average of OECD countries (17% and 10% respectively, *OECD Entrepreneurship at a Glance 2017*). However, it seems that they do not have much possibilities of success. About 71% of self-employed persons are quitting their business in five years (Statistics Korea). We cannot deny that we are at the crossroad for the labor and social security policies.

With social polarization and aging society, there had been some legislations and policies such as protection of part-time workers' overtime work, three times as much compensations as the difference to the atypical workers for the intentional discrimination (part-time workers, fixed term workers, and temporary agency workers). Making the period of unemployment benefits, compensating commuting accident as an industrial accident are also major legal responses to changing society.

## 2. Political reformation and changes in labor policies

After the impeachment in March 2017, new president was elected in Korea. New president had been in the presidential office during the years of President Roh (2003-2008), and worked for the progressive party. Naturally, in the field of labor relations and regulations, new government is seeking for revolutionary reformations. New government set five goals of governance, 20 national strategies and 100 policy tasks to achieve them, which include many of labor/social security issues. Main features are as follows:

Goal of "An economy pursuing co-prosperity," strategy of "Fostering a job-creating economy for income-driven growth." Tasks are: to create quality jobs meeting the expectations of the public; to build an infrastructure for social services and create jobs; to strengthen support for workers to better prepare for unemployment and retirement; to promote innovation in the service industry to create decent jobs; to strengthen employment assistance tailored to age and gender. Goal of "A nation taking responsibility for individual lives," strategy of "Providing inclusive welfare." Tasks are: to provide customized social welfare guaranteeing a basic standard of living; to guarantee a healthy and decent life for the elderly in preparation for an aged society; to enhance coverage of the national health insurance and support for preventive healthcare; to enhance healthcare in the public interest and provide patient-oriented medical services; to promote affordable housing for low and middle income workers. Strategy of "Fostering a fair society that respects labor and promotes gender equality."



Tasks are: to realize a society where labor is respected; to create a healthy and discrimination-free workplace; to support various disadvantaged families to stabilize their lives and address discrimination; to achieve de facto gender equality society.

Besides these tasks, we have more goals concerning social security and fair market competition, etc. that suggest tasks for new government. These tasks are a good effort to narrow the gaps among people, making jobs for unemployed people to work, getting rid of discriminations, searching for the strengthening social safety net. As a matter of fact, revisions in the Labor Standards Act (2018, mainly about working time. Reducing working time, setting limitation of weekly working time clear, guaranteeing public holidays, 11-hour interval for rest in some jobs, etc.) have been made. Minimum wage of 2018 sharply rose by 16.4%, which was the obvious biggest increase compared with 2.8%-8.3% for the last 10 years. We are waiting for revisions in collective labor law, too. On the other hand, without waiting for the legal revisions, measures in policy making level are very active. For example, there have also been significant movements to change atypical workers into regular employees in public sector.

Actually, new government set a committee for constitutional amendment which took a lot of chances of public opinion hearing as well as consulting professionals. Presidential office proposed a bill for constitutional amendments in March 2018, which included determination of working conditions by worker and employer on the basis of equality, enlarging the scope of the right to strike, enlarging the constitutional rights of labor to public officials, duty to effort for the “equal pay for equal work,” duty to operate the policies to enhance work-life balance on the area of labor policies. However, all parties except the ruling party opposed to this amendment bill, consequently was declared void at the national assembly due to a lack of quorum.

With these flood of policies that are now moving, we would like to review one recent case about temporary agency workers, so called “Paris Baguette illegal agency work case.”

It is very interesting in the sense that they tried to approach and handle the case by administrative supervision over the illegal agency work. We had similar cases associated with the same law for the last 20 years. However, in reality, there rarely had been this kind of intervention, therefore whether this attempt can handle the case or not was a good test board for a different way of legal execution and compliance.

It is also worthy of being paid attention to, because its structure is a little different from typical dispute about temporary agency workers in Korea. Usually we have three actors in temporary agency work; however, we have one more actor here, and the traditional characteristics of employment relations are substituted by SNS.

This was a case covered partly the issues of atypical workers, indirect employment, discrimination, the concept of the employer, and the procedure leading to the solution was very unique.

## **II. A case study: The present situation, changes, and responses**

### **1. What happened?**

Paris Baguette is a famous franchise bakery brand. SPC Group owns the brand which has over 3,300 bakery stores all over Korea and some abroad. The franchisees could hire bakers or bake themselves. Nevertheless, because of high quality required by the franchise headquarters (FH), most stores used bakers professionally trained by the FH.

What is important here is that, the FH directly supervised, ordered and controlled the bakers employed by the Partner Firms. For example, they ordered each baker to make designated cake or bread at the designated time. The FH usually gave these orders by text messages or SNS. The FH was also involved with the Partner Firms’ hiring process. The Partner Firms sent the bakers to franchisees’ bakery stores. There were 11 Partner Firms and they were mainly run by retirees from the bakery chain. For eight out of 11 Partner Firms, their only business is to manage bakers for Paris Baguette stores. These bakers are working at franchisees’ stores; however, they are paid by the Partner Firms whom they are employed by. For the wages of the bakers, there was no room for franchisees to handle.

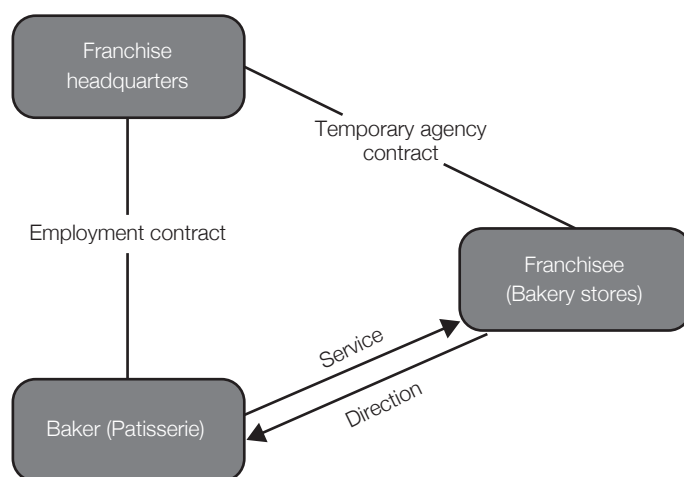


Figure 3. Traditional structure of temporary agency work in Korea

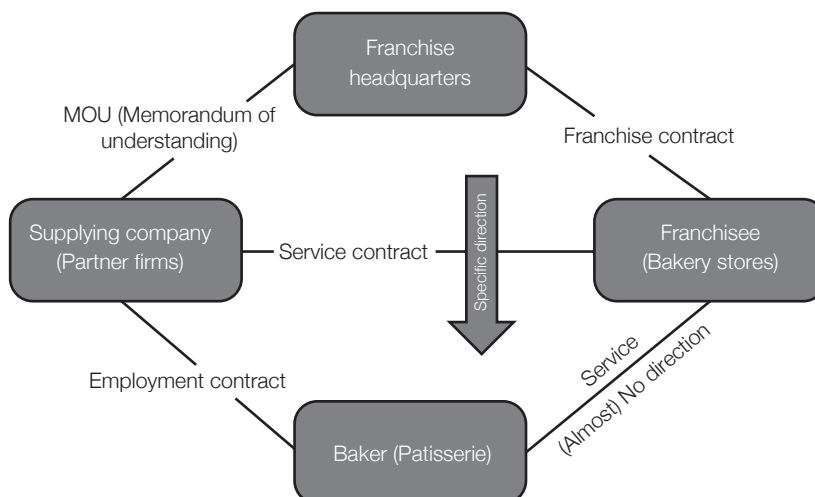


Figure 4. Bakers' contractual relations of Paris Baguette franchise

The baking process was a little further than McDonaldization. Although all the frozen materials were delivered from the FH, each baker should bake according to the recipes they were trained by the FH. There were only about 100 bakers employed by the FH, working at the store operated by the FH directly. (These stores were usually referred to as “Paris Croissant” to distinguish themselves from “Paris Baguette.”)

The FH provided detailed and specific directions and supervisions every single day. Operation management, human resource management, quality supervision, hygiene check and performance evaluation were all the role of QSV (Quality Supervisor) employed by the FH. For example, QSV ordered the exact time of a particular cake on a specific morning. CEO of the FH was always walking around the franchisees' stores, and called to the FH QSV at any time for the orders. If he found that there was no fresh pie at 1:30 p.m., then the FH will send a text to all the bakers to arrange for the production time of the pie, eventually leading to bakers' early start of work. Length of a bread, arrangement of fruit on the cake, cleaning of the air conditioner, decorating banner for the Christmas season were all reported to QSV by each baker. As is often the case, each baker was required to report via mobile messenger attaching the pictures he/she has taken.

## 2. What the government (MOEL) did

The Ministry of Employment and Labor (MOEL), which has the right of supervision and judicial police power on the matter of labor law violation, found that Paris Baguette was concerned with illegal temporary agency work in September 2017. MOEL made a corrective order requiring direct employment by the FH after on-site inspections at 68 locations. These inspections were performed at the FH, Partner Firms (supplying companies) and franchisees' stores. The FH was ordered to directly hire 5,378 bakers working at 3,396 franchisees' stores. MOEL also told that if the FH would not follow the corrective order, then an administrative fine of 10 million KRW (under 30 million KRW is possible, Act on the Protection, etc. of Temporary Agency Workers: APTAW, Art.46, para.2) would be imposed per baker as well as further investigation by the Public Prosecutor's Office would be requested.

## 3. End of the story

Four months after the administrative order to the FH to directly employ all the bakers, the FH and two national trade union centers (FKTU and KCTU) made an agreement on the issue. They decided to make a subsidiary company (the FH owns 51% of shares), which will employ all the bakers. CEO of this company would be an executive of the FH. Bakers to be employed by new company will get the same fringe benefits as the FH immediately, while gradually making the same level of wages in three years. Moreover, the FH, association of franchisees, and two national trade union centers will make a council for better treatment and working conditions.

## III. Possible answers: Legal responses

### 1. Regulations

Temporary agency workers or dispatching workers are regulated by Act on the Protection, etc. of Temporary Agency Workers in Korea. In principle, we have some particular jobs that temporary placement of workers is permitted by Presidential Decree (Art.5, para.1). However, if a vacancy occurs due to child birth, an illness, injury, etc. or there is a need for temporarily or intermittently secure manpower, temporary work agency business may be conducted (Art.5, para.2). In principle, the employment period of a temporary agency worker shall not exceed one year, and another year is permitted with the agreement among the temporary work agency, the user company and the temporary agency worker (Art.6).

The user company owes the duty to employ the temporary agency worker when he/she used the temporary agency worker on the jobs which are not permitted to use, or exceeding the designated period, or take the temporary agency worker from temporary work agency which did not get adequate business permission. This duty to directly employ the temporary agency worker shall not apply where the relevant temporary agency worker clearly expresses his/her dissenting opinion, or a justifiable ground prescribed by Presidential Decree exists (Art.6-2).

Concerning working conditions for the temporary agency worker, temporary work agency as well as user company should not give discriminatory treatment, on the ground of his/her employment status compared with other workers engaged in the same or similar kind of duties at the business of the user company (Art.21).

### 2. What can be done?

With these regulations, user companies are restricted to use temporary agency workers for the limited job list, and this makes user companies rather choose outsourcing contract or supplying contract than employment contract, because they would like to make flexible labor arrangement depending on the economic changes. Thus main concern in Korea till now has been focused on the directions and controls by the users of the companies that temporary agency workers actually gave their labor at. This has been the world where three actors (agency, user and worker) were playing, and workers were arguing against two actors.

Now we have one more character. From the case above, making the FH employ all the bakers could probably be an answer by the present law. Temporary agency work is not allowed because bakers are not the jobs allowed by the present law.

We also have the world that employees are working at the store, directed by the FH through SNS. At first, the agency was very clear, while the entity which orders and directs the employees was not that clear from the traditional point of view. They were working at the franchisees' store, sometimes directed by the franchisees' store owner, which made the position of franchisees' store owner very ambiguous.

The FH argued by citing the Franchise Business Promotion Act (FBPA), which regulate mainly fair market function about franchise headquarters and franchisees. Here the definition clause says the term "franchise business" means a continuous business relationship, in which a franchise headquarters allows its franchisees to use its own trademarks, service marks, trade names, emblems, or any other business marks (hereinafter referred to as "business marks") and sell commodities (including raw materials and supplementary materials) or services in conformity with certain quality standards or certain business methods, provides them with supports for and education on business management and business activities, and controls their business operations, and franchisees pay money to the franchise headquarters in return (Art.2). Nonetheless, MOEL translated that what the FH did was over the line of the support for and education, controls their business operations that FBPA regulates.

In this case, they agreed on the solution of new company instead of direct employment, which some of the bakers really hoped. Can this be an alternative? We need a little more time to consider this issue. We can also find that the gaps between/among workers were to be narrowed in two senses.

First, the wage gap between regular workers and atypical workers were to be narrowed in three years. This is a meaningful step considering the trend of polarization and on-going two extremes between regular/atypical workers. As we touched, the wage gaps between regular/atypical workers in Korea is serious, while the agreement at this specific bakery franchise company could be a good inspiration to handle this problem.

Second, and more importantly, workers found themselves got together, united, and they succeeded in making collective bargaining with the FH. They were scattered, doing his/her own job at each franchisees' bakery store, yet the very means to direct and regulate them (i.e. SNS message tools) made them associated with each other and gather their opinions, express their voices. This is also one more feature of narrowing the gaps among workers which formerly existed.

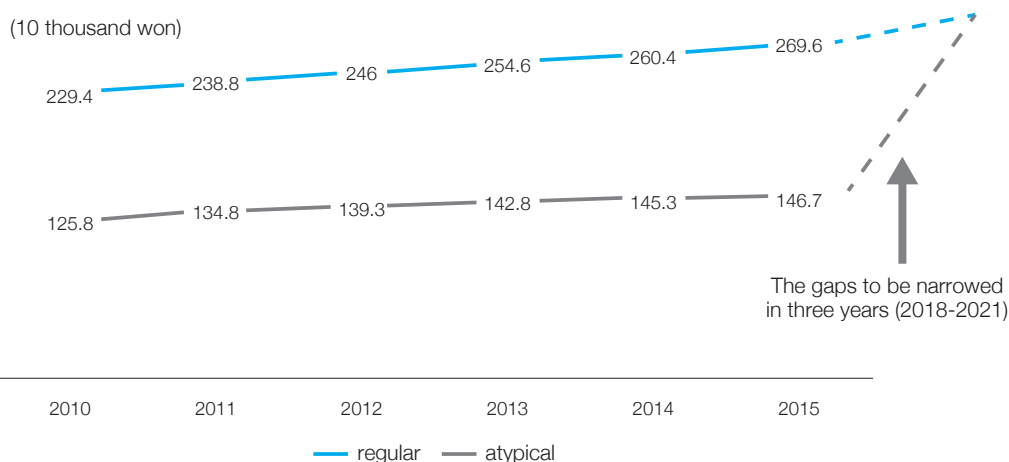


Figure 5. The effect of the agreement on narrowing gaps at Paris Baguette (considering general gaps between regular and atypical workers as a whole)

#### IV. Conclusion

Now we have another legislative actions such as protection of indirect employment, limitation of using fixed term employment, making clear the range of minimum wage. As a matter of course we are deliberating on the big picture of industry 4.0 and its effect on labor relations as is the case with many other countries.

With all these situations, we are in a position to choose a better way to cope with pending issues. Governmental intervention can be a solution, while we are continuously searching for good ways to hear the voices of working people and employers, to communicate one another, so that we can adequately reflect genuine intent of both (in many cases more than both) parties to the labor relations and its regulations.

Also traditional thoughts about union is not so efficient to cover new types of work style. In the case presented above, enterprise level union did not exist. Instead, national trade union centers played a key role. From the viewpoint of the bakers' working style and places, it would be a better choice, which would inspire collective labor relations in Korea so much.

Not only traditional area of labor law, but also the regions that were regarded as not our field are becoming labor issues crossing the border. New frontiers that have never been traveled in front of us are waiting for our new approach.



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# The Destiny of Web Platform Workers in China: Employees, Nothing or a “Third Option”?

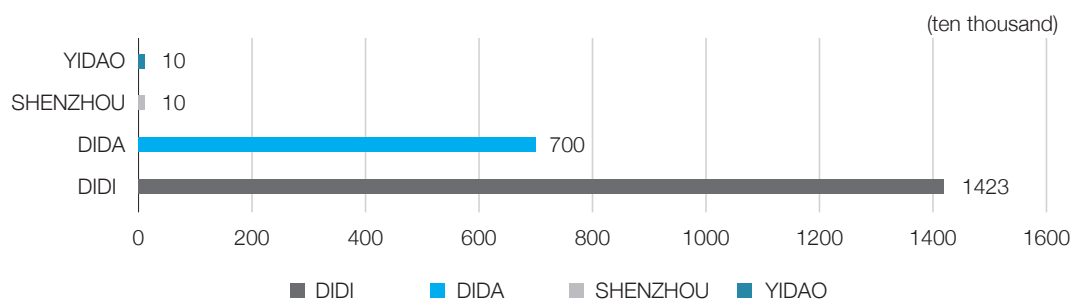
Hui YU

- I. Introduction
- II. The current test of employment in China
- III. The actual working condition of web platform workers in China
- IV. The future of web platform workers in China: A third option breaking the binary divide

## I. Introduction

As a researcher working and studying in a university in Beijing, here is an observation on how the college students spend their days: After getting up in the morning, they have a quick breakfast in the cafeteria and go to class. In the classroom, the professor might recommend some books during the lecture. They place their orders immediately on Amazon or JING DONG online bookstore, expecting to receive the book in one day or two. The class ends around 11:30 a.m. and to avoid the long lines in the cafeteria, the students normally place an order ten minutes before the class is over through a food delivery web platform, Eleme or MEITUAN, so they could avoid the crowd in the cafeteria and eat in their cozy and warm beds. On the way back to the dorm, they pick up the delivery they bought from TAOBAO or TIANMAO (online shopping platform) from the delivery guy. They might go out for dinner, by the “private car” they booked on DIDI, or asked a designated driver on E-Daijia. Basically, in most Chinese college campus, life would be much harder without the web platforms in smart phones, and things are not much different outside the campus.

The large demand explains, in recent years, the proliferation in the number of people who provide services through web platforms. According to the “Report on Sharing Economy in China 2016,”<sup>1</sup> in 2015, about 50 million people provide service in the form of gigs or on-demand services, accounting for 5.5% of total laborers in China. DIDI, for instance, one of the biggest ride-sharing company in China, provided about 15 million job opportunities (Figure 1). In other words, 15 million drivers may be providing their services through DIDI, in a so-far unclear legal status (employee, independent contractor, or any other classifications).



Note: The figure shows the number of drivers provided services from different web platforms and DIDI is clearly in a dominant position.<sup>2</sup>

Figure 1. Amount of drivers provided services through major web platforms in China.

1. The full text of the report (in Chinese) is available at <http://www.sic.gov.cn/archiver/SIC/UpFile/Files/Htmleditor/201602/20160229121154612.pdf>.

2. Figure 1 is from *Report on Sharing Economy in China 2016*, <http://www.sic.gov.cn/archiver/SIC/UpFile/Files/Htmleditor/201602/20160229121154612.pdf>. (translated by author).



## II. The current test of employment in China

### A. The dominant test of employment in current Chinese law

The dominant test governing the classification of employees in China is not codified by statute. Instead, it is set in a regulation issued by Department of Labor and Human Resources of China in 2005. It is a three-factor test. It says that “Without signing any written employment contracts, while the situations below exist, there is an employment relationship between the parties:

- (1) Both the “employer” and the “employee” have the necessary qualification required by laws,
- (2) The employee is subject to the labor rules and regulation formulated by the employer. The employee provides its service under the management of the employer. The employee is paid by the employer to work, and
- (3) The service provided by the employee is part of the business of the employer.”<sup>3</sup>

### B. Analysis of the dominant test

This test has received widespread criticism from the scholars and lawyers, for it fails to provide useful guidance in most cases. It looks more like some general principles telling people what an employment is rather than a test telling lawyers and judges what makes constitutes an employment relationship (for instance, the Control Test or Economy Reality Test applied by American courts, which provides a set of factors to determine the classification).

The first factor of the test is about the parties’ qualification. It is unclear what the “qualification” in this context refers to and why it is a consideration for employment. It is probably to make sure that both parties of the employment are legally qualified, like the employee needs to fulfill the minimum age (16 years old) to be employed, or the employer should be legal business entity fulfill the requirements in Chinese Corporate Law. But whether one is eligible to do business and whether one is eligible to hire someone are separate questions under Chinese law. It does not have to be a legal business entity to hire someone. Imagine a group of people intending to register a company, which need to hire some accountants and in-house lawyers to process the necessary paper work for registration. Those accountants and lawyers are clearly employed, but they might fail to be classified as employees if the corporate registration is not complete.

On the second factor, it does reflect some aspects of the fundamental nature of employment, namely, the right to control. Yet still, it lacks the necessary specifications to be applied, like what factors would ultimately determine that the employee is “subject to” the labor rules and regulations, and what factors would prove there is some “management” between the two parties and thus the employer is *in fact* control the employee. Chinese scholars have identified several factors that could be used to recognize the existence of control, like the employee is asked to dress in employer’s uniform and follow certain behavior code, the work is done with the detailed instruction from the employer or its agency, the employee is paid on the basis of how much the job has done instead of the accomplish of the task, and the employer has the authority stipulated in the manual or the contract to transfer, demote or even penalize an employee.<sup>4</sup>

The third factor of the test often fails to distinguish the employment from other alternatives in Chinese law, like outsourcing, staff leasing or temporal help. For instance, outsourcing is when companies outsource work to independent contractors. Although the independent contractor’s service is part of the principal’s business, there is still no employment relationship between the two parties. Another example is the temporal help (labor dispatch), a popular alternative of direct employment used in China. Although the Chinese Labor Contract Law has put many limitations on temporal help (could only be used on the temporary, seasonal or replaceable positions), it is not rare that many big enterprises use it as their major form of hiring, using temporal help on its key, important and permanent positions. Under the current Chinese law, there could be no employment between

3. The full text of the regulation is available at [http://www.mohrss.gov.cn/ldgxs/LDGXzhengcefagui/LDGXzyzc/201107/t20110728\\_86296.htm](http://www.mohrss.gov.cn/ldgxs/LDGXzhengcefagui/LDGXzyzc/201107/t20110728_86296.htm).

4. See Jianfei Li, *Labor Law and Social Security Law of China*, Renmin University of China Press, 2014, 98-103.

the temporal help staff and the employer. When cases like this come to the court, the three-factor test offers seldom useful guidance to the judges.

Another point needs to be noticed is that the linking word used in this statute is “AND,” which means all three requirements should be fulfilled to establish an employment relationship. Compared with the “Control Test” or “Economy Reality Test” used by American courts, which lists 13 or more factors for the court to judge and weigh between different factors and come to a conclusion,<sup>5</sup> there is no such flexibility in the test in Chinese law for the judges to use their discretion. It is a very rigid and strict test that either the employee meets the three factors or there is no employment relationship at all.

### C. When the current test meets the web platforms and gig economy<sup>6</sup>

The lack of clarity of the test mentioned above is amplified when it is applied to the cases concerning the legal status classification of people provide service through web platforms. Many jobs that used to be easily recognized in the factory now need to be re-defined in the “Internet Plus” era. Like the rules and regulations made by the employer, do the rating stars system used by most web platforms constitute “rules and regulations”? Should the instructions that ask the DIDI drivers to provide bottled water and all kinds of phone chargers be taken as a factor of control? These issues are brand new to the judges. Although the leading case about the classification of employee like *O’Connor v. Uber* in America has not happened in China yet, it is just the momentary calm before the storm because in those cases involving torts and vicarious liability, courts have made their judgment on issue of the classification of workers who provide services through web platforms.

One of the biggest problems in those cases is the inconsistent results under the same facts. For instance, in *E-Daijia* case, involving the issue of the classification of designated drivers sent by the web platform, the facts normally would indicate the drivers are employees since they are required to wear the uniform of company and follow certain behavior code made by the company. However, the intermediate court in Beijing concluded that the designated drivers are independent contractors, not the employees of *E-Daijia*, so the drivers themselves are liable for the traffic accident caused by them during the work. The courts determined that the web was no more than a data collector collecting and sending data and information to match up the designated drivers and the customers. The uniform, the behavior code and the payroll are just some necessary business maneuvers to make sure the partnership between the web platform and drivers run smoothly.<sup>7</sup>

However, things are different in Shanghai. Under similar facts, the intermediate court in Shanghai, comes to an exact opposite judgment. A designated driver in Shanghai brought a lawsuit to the court to ask the *E-Daijia* to reimburse the damage to the third party caused by the driver. Although the facts are almost identical to the cases in Beijing, the Shanghai intermediate court concluded that these facts are not different from the traditional factors that indicate strong control between the workers and the web platform. Thus it does not escape the domain of traditional employment.<sup>8</sup>

The inconsistent and unpredictable results under the same facts in different courts may well prove that the court is in no better position than anyone else to classify a platform worker under current law. It seems that the test and the theory behind it have failed to catch up with technological changes. China has a civil law system, so it is the National People’s Congress that has the power to make and change the law, which usually takes a long time and is a complicated process. Courts at different levels, especially the courts in the big cities, could have a crucial role to develop the law, fixing the defects in the current test of employment by its power to interpret the regulations in cases. Many scholars and lawyers are looking forward to hearing the judicial opinion on the question of how the

5. See *S.G. Borello & Sons, Inc. v. Department of Industrial Relations*, 48 Cal. 3d 351, 1980.

6. Web platforms provide job opportunities and make profits is the most representative form of gig economy in China. Some other forms of gig economy, like catering, house-keeping, baby-sitting through staff-leasing company or service agency are also popular in China.

7. The full text of the judgment (in Chinese) is available at <http://wenshu.court.gov.cn/content/content?DocID=8f1b7a8d-161c-4020-9ab5-9fcb797380d5&KeyWord=%E4%BA%BF%E5%BF%83%E5%AE%9C>.

8. The full text of the judgment (in Chinese) is available at <http://wenshu.court.gov.cn/content/content?DocID=ac2ba5e5-ef8e-451f-932f-b96b85477515&KeyWord=%E4%BA%BF%E5%BF%83%E5%AE%9C>.

current test is applied in the new situation. Unfortunately, Chinese courts have only provided inconsistent answers, instead of the reasoning leading to them. No court has answered the questions that might influence the outcome of a case such as when no traditional (written and published) rules and regulations have been made, does a rating system constitute the “rule and regulation” in web platform cases. They just jump right to the conclusions of the case, leaving behind many questions that need to be further explained.

### III. The actual working condition of web platform workers in China

Like their unclear legal status, the actual working condition of most web platform workers, is not looking as good as we imagined. Their actual working condition put them in an awkward situation: On the one hand, their working environment is much worse than those of employees (e.g. DIDI drivers versus taxi drivers). On the other hand, they are not as independent as contractors (e.g. the designated cooks versus the caterers).

#### A. The worrying working environment

DIDI proudly claims in their website and TV commercials that their drivers could earn as high as 10,000 yuan or more per month if they work hard enough. This is partly true. On its early stage, to recruit more drivers to join them and compete for market share, DIDI promised a high bonus (they call “subsidy”) to their drivers. Normally, the daily income of a driver who finishes 30 orders is about 450 yuan. So it is true that a hard-working driver could earn 10,000 yuan a month. However, it does not include the cost of purchasing a car, the gasoline, the depreciation and the possible penalty laid by transportation administration.<sup>9</sup> Most importantly, DIDI has stopped paying extra bonus to their drivers for each order finished. Now the normal income of a DIDI driver could be reflected by Picture 1.



Picture 1. A DIDI driver who have been working for 10.8 hours until 20:16 on March 27, and his gross income that day is 123.59 yuan.<sup>10</sup> (The cost of purchasing the vehicle, the gasoline and the depreciation of the vehicle are not included.)

9. News about the administrative penalties laid to DIDI drivers, see [http://www.sohu.com/a/126912869\\_119659](http://www.sohu.com/a/126912869_119659).

10. Picture 1 is from <http://news.china.com/news100/11038989/20170510/30506621.html>.

Another big concern is the long working hours. Due to the hard competition caused by increasing number of drivers joining DIDI, it takes much longer waiting time or on-call time for drivers to “grab” an order than before. The drivers have to extend their working hour to maintain a decent income. It is not rare that a DIDI driver would drive 16 or 17 hours a day to increase their incomes and get some reward from DIDI. The extreme long working hours are both harmful to the drivers’ health and a potential threat to public safety.

Things are even worse in another major group of web platform workers in China—the takeout delivery riders, or “Delivery Buddies.” Unlike the DIDI drivers, who are mostly made up of white collar people (because at least, to be a DIDI driver, one must be able to afford a car, estimated at 100,000 yuan, =US\$13,000), the barrier to become a takeout delivery buddy is much lower, which basically only requires an electric bicycle worth about 1,000 yuan (=US\$150).



Picture 2. Three delivery buddies working for different web platforms are lining up to pick up takeout meals.<sup>11</sup>

It is not unusual that a delivery buddy works 12 hours or more every day (from 10:00 to 24:00). Compared with the working condition of DIDI drivers, or other web platform workers, delivery buddies are in a much worse place. They have to complete their job regardless of how bad the weather is. In summer, they have to suffer the high temperature (37°C-42°C) when delivering lunch without the high temperature subsidy guaranteed in Chinese Labor Law. In winter, they have to deliver food on frozen roads. It is often seen that a delivery buddy fell on the ice and get up immediately without any treatment to catch the tight schedule. Besides, they also have to suffer the potential accident risk since they have to drive really fast in order to keep them on time to complete the job.



Picture 3. A delivery buddy is on his way to the customers in heavy rain.<sup>12</sup>

11. Picture 2 is from <https://baijiahao.baidu.com/s?id=1564462953516866&wfr=spider&for=pc>.

12. Picture 3 is from <https://baijiahao.baidu.com/s?id=1564462953516866&wfr=spider&for=pc>.



The delivery buddies are also skeptically underpaid. It normally takes 30 minutes to one hour to finish an order. That means their hourly rate is 7-14 yuan. That could hardly beat the average minimum rate in most cities of China. The average working hour for the delivery buddy is about 13 hours per day,<sup>13</sup> exceeding the maximum working hour in Chinese Labor Law (8 hours per day). They have no overtimes or any other forms of subsidy paid by the web platforms. Plus, they are constantly being penalized by web platforms for various reasons. (See Picture 4.)



Picture 4. The “penalty list” of a food delivery web platform. It shows that the food delivery riders would earn 7 yuan for each completed assignment, but the penalty of every 10 minutes’ late delivery for each assignment is 5 yuan. If they receive negative reviews from the customer, they will receive a penalty of 300 yuan from the “company,” which would make them take 43 more orders to cover it.<sup>14</sup>

## B. The “invisible hands” behind—The right to punish

In *O’Connor v. Uber*, one of the defenses used is that Uber is a technology company not a common carrier, and it has no *control* over the work of its drivers. Many scholars agree with that.<sup>15</sup> A distinction between an independent contractor and employee is that the independent contractor is free from the control by the “employer.” Or in other words, no dependency exists between the two parties. However, for the web platform workers in China, they are dependent on web platforms. In *Uber*, the court applied the *Borello Test*: include whether there are requirements to wear a uniform, freedom to pick up or reject an order, or whether negative outcomes result when the star rating is under a certain threshold. Many Chinese scholars followed this test and concluded that no overall control exists between Uber and the drivers in their researches.<sup>16</sup> Since the leading

13. [https://news.fh21.com.cn/jksd/765834\\_3.html](https://news.fh21.com.cn/jksd/765834_3.html).

14. Picture 4 is from <https://baijiahao.baidu.com/s?id=1564462953516866&wfr=spider&for=pc>.

15. See Brishen Rogers, *The Social Costs of Uber*, 82 U. Chi. L.Rev. Dialogue 85, 2015-2016.

16. The representative viewpoint of Chinese scholars, please see WANG Tianyu, *On Labor Relationship Recognition of Providing*

case like *O'Connor v. Uber* has not happened yet, the following analysis is more of a prediction from author himself rather than a description of reached conclusions in Chinese scholarship.

Web platforms in America and China do share certain similarities, however, many Chinese scholars have ignored one of the biggest differences between China and America, and this might be the deal breaker in relevant cases—Chinese web platforms’ powerful right to punish or penalize. For instance, DIDI drivers are asked to dress neatly, keep their cars clean and fragrant, open the door and carry the luggage for the passenger and provide bottled water and phone chargers in their cars. To make sure all the drivers are compliant, DIDI sends staff disguised as “secret passengers” to order a ride and check the conditions of drivers and cars. If the driver failed the secret test, DIDI would decrease the number of orders assigned to this driver or even “deactivate” his account for an indefinite period.<sup>17</sup> A DIDI driver’s account could be deactivated for other reasons also, like average rating below 4.5 stars, reject orders assigned by the web platform too many times, caused car accident or received citation by transportation officers.<sup>18</sup>

The right to punish is even more powerful and “visible” in food delivery web platforms cases. The delivery buddies have no discretion to reject an assignment if the assignment happens to be on the route of the current assignment. Each violation of rules made by web platforms is priced, like Picture 4 shows: late delivery—5 yuan per 10 minutes, argue with customers—50 yuan per time, negative reviews—300 yuan per time, no helmets—500 yuan per time, click the “finish” button before actual delivery—1,000 yuan per time. The penalty does not distinguish whether the violation is caused by delivery buddy’s fault. Although most web platforms provide an appeal procedure, it is barely used due to its complicated process and low success rate. After the penalty paid to web platform, it could be often seen that the salary of a food delivery buddy that month is “negative.”<sup>19</sup>

The web platform’s right to punish impacts the actual working condition of most web platform workers. The extreme asymmetry in power between the web platform and its workers, plus the penalties, makes it unnecessary for the web platform to exert detailed control on the minutia of the work. In other words, under the threats of severe penalty, the workers would automatically finish the job in the fashion the web platform wants them to. The superficial freedom the workers enjoy comes with a price—you do have the full discretion to log off and reject an order dispatched by web platform, but you have to suffer low wages; the web platform stays out of the way with regard to how you perform the assignment, as long as the right to fine each violation is preserved by the platforms in the partnership agreement. Compared with Uber or Grubhub drivers, the DIDI drivers or Delivery Buddies in China might be in a more vulnerable place and need to be protected under Chinese labor laws.

#### IV. The future of web platform workers in China: A third option breaking the binary divide

It is understandable that web platforms are reluctant to be classified as employers. It would kill the sharing-economy, they claim. The comparative edge of web platforms over the traditional business model is that they can save the human resources cost by using the form of “sharing” but not “hiring.” It might be true, yet unjustified.

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Service Through Web PlatformU+2014—From Judgment of E-Daijia Case in Beijing, Shanghai and Guangzhou, Law Science, no. 6, 2016.

17. <http://finance.sina.com.cn/chanjing/2017-11-15/doc-ifynshev6247191.shtml>.

18. Whether DIDI has the qualification to be engaged in public transportation business (which needs special permission) is still in debate so their legality is in some kind of grey area in China. Many DIDI drivers are caught and penalized by administrative departments for “illegally run business of public transportation.” The amount of penalty could be as high as 20,000 yuan. Sometimes DIDI would reimburse the fine to the drivers, sometimes would not. In January 2015, a DIDI driver is fined 20,000 yuan in Jinan, Shandong Province. Although the driver later won the administrative lawsuit against the transportation department, it is not rare that DIDI drivers are fined in high amount by administrative plants (regulatory authorities) and choose not to go to court. See [http://www.sohu.com/a/126912869\\_119659](http://www.sohu.com/a/126912869_119659).

19. <https://baijiahao.baidu.com/s?id=1564462953516866&wfr=spider&for=pc>.



### A. Attitude from Chinese regulatory authorities

In August 25, 2016, seven departments of the central government issued a temporary regulation for the web platform riding business. It suggests that “web platforms should sign *employment contract* or *other kinds of agreement*, to specify the rights and obligations of both parties,” to encourage sharing economy development rapidly and healthily.<sup>20</sup> Many experts believe this regulation make it clear that employment is just optional, not mandatory and it is totally legal for DIDI or other web platforms to keep the current arrangement (no written employment contract signed).

However, that might be a misreading of the regulation. It looks like that the regulation makers have no intention to answer the question of web platform workers’ classification. The government departments encourage different forms of service to be provided, only if that legal form does reflect the nature of their relationship. There might be partnership between the drivers and the web platforms if the drivers are free or independent enough to be independent contractor.<sup>21</sup> In other words, if the nature of the relationship is outweighed by the employment factors, it is still employment. The attitude from administrative plants does not help much with regard to classification.

### B. An opportunity to break the binary divide—A third option besides employee and independent contractor

The system of classification in China is not much different from the one in America, a binary one. Once you are classified as employee, all the benefits are automatically attached—the minimum wages, overtimes, protections from wrongful discharge, financial compensation after the termination, and social security benefits etc. Or nothing, if they “wound up” being classified as independent contractors.

Chinese scholars have discussed the possibility of a third option besides employees and independent contractor—“intermediate employee,” or “atypical worker.”<sup>22</sup> The basic idea is that considering the remedial purpose of Chinese labor laws, the classification does not necessarily have to be binary, and the protections afforded by labor laws, particularly the social security benefits, should be unbound with the identity of the employee.<sup>23</sup> There might be room for a third option because the protections afforded by Chinese labor laws could be prioritized. For web platform workers, the minimum wages, the flexible hours and social security benefits are the protections they cherished. Other protections are “waiveable” to them, like the terms of employment, or the economic compensation for termination. The workers and web platforms might thus “split the half” and reach a satisfying deal.

Although the theories and legislative suggestions brought up by scholars have their merits, they have long way to go before being made into law. As a matter of fact, there might be a realistic choice, or a shortcut for a third option, hiding in Chinese Employment Contract Law, Chapter V, Section 3, “Part-time Employment.” It provides the employees with flexible hours, multiple employer options, no trial period, and social security benefits, which many web platform workers would appreciate. It exempts the employer from certain obligations owed to employees in typical employment: no economic compensation, termination at will, paid by hours, etc.

20. The full text of the regulation is available at <http://www.miit.gov.cn/n1146295/n1146557/n1146624/c5218603/content.html>.

21. For instance, DIDI also provide private car owners carpooling services (顺风车). The customer could send their order to the web platform and the web platform will arrange a driver on the same route to pick up. The car owner and the “hitchhiker” will split the gasoline and the web platform will draw the commission from each successful match-up. This is clearly a form of partnership, instead of employment.

22. See XU Xinpeng, GAO Fuxia, and ZHANG Xinyu, Dispassion Thinking on Sharing Economy—From Laborer Protection Perspective, *Journal of Socialist Theory Guide*, no. 11, 2016; WANG Qian, The Issue of Benefit Protection of Practitioners in Internet Platform Economy, *Social Science in Yunnan*, no. 4, 2017.

23. See LIN Jia, The Study on the Equitable and Sustainable Social Insurance System, *Wuhan University Journal (Social Science)*, no. 4, 2017. See also LIN Jia and YU Hui, The Jurisprudential Discussion and Suggestions on Legalization of Medical Insurance, *China Health Insurance*, no.12, 2017.

Both parties give up some benefits, in exchange for what they truly care about. However, there is a statutory cap regarding the maximum hours of part-time employment, 4 hours per day and 24 hours per week. As long as the cap is removed by amendments in future, it might be a more suitable “Third Option” to workers and web platforms.

The destiny of web platform workers in China is still in flux, but it does give us an incentive to re-examine the existing but forgotten questions in Chinese labor laws, like the test of classification, the flexibility of forms of employment and the possibility of breaking the binary divide. Hopefully this report is a humble start to further discussion, but not an end.

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# Trade Union Strategy and Responses to Changes in Employment Structure and Forms in India

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- II. Introduction
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## I. Abstract

Decline in trade union membership is a global phenomenon, particularly in the era which is impacted by the free movement of production, capital and labour. However, unions have revitalized themselves by shading their evolutionary role of confrontation between capital and labour and adopting various strategies to survive and grow. The strategic response includes organizing new members, extending cooperation, focusing on up-skilling of their members, ensuring productivity and protecting consumer interest. Against this backdrop, this paper tries to evaluate the major trade unions of India and their response to the changes in the employment structure in India.

## II. Introduction

The world is experiencing the fourth industrial relations which have a focus of creating the cyber physical system, a step ahead of the computer and automation. The industrial relations is in transition with the globalized economy, and free movement of capital and labour, profound changes in the production system, occupational and organizational structure and forms of labour institutions and approach of government. Thorough analysis of the secondary data, this paper tries to analyse whether trade unions in India are trying to seek new roles and methods of working in this changing economic, social and political conditions.

Payne (2001) defines this modern environment as a new economic condition where globalized capitalist transformation has forced the trade unions to find common cause with the national government and national arms of the transnational firms to prevent shift of production from one country to other. Globalization has increased the pressure of productivity which the trade unions find it impossible to resist. On the other hand, there is a growth of small and medium sized enterprise, only a few of which have organized trade union has added to the peril. Blyton et al. (2001) while studying airline industry found that decentralization has created fragmentation and detachment which involves shifting responsibility for employment and industrial relations to external suppliers. This disintegration has created a peripheral or dual workforce typically with inferior terms and conditions. Thus the status of trade union has reduced at a global level with decline in the membership, and power.

This paper tries to review the current status of trade unions in India and their strategy and responses to the structural changes in the labour policy and labour market.

## III. Trade unions in India

Trade unionism in India is passing through a critical phase and facing unprecedented challenges in the liberalized, privatized and global economy. Labour is being pushed from the organized sector to unorganized sector leading to an increase in casual and contract labour. Downsizing, organizational restructuring, labour

laws, the apathetic attitude of government, and gap in the knowledge and skill-base are the major factors responsible for this state of affairs (Dhal and Srivastava, 2000). Bhattacharjee (2001) while reviewing the evolution of industrial relations divided the era into four phases.

The first phase (1950 to 1960s) was highlighted with public sector unionism dominated by political unions and 'state pluralism.' The second phase (mid-1960s to 1979) which is associated with industrial stagnation, falling production, and employment associated with lower labour productivity affected the union activity and collective bargaining. This phase saw forms of protest such as go-slow and considerable increase in violence. The government responded with a national emergency by suspending the right to strike. The third phase (1980-1991) which is known for the partial industrial and import deregulation, financial liberalisation, exchange rate policy and through export incentives accompanied by failure of multiple governments led to structural adjustment. The 1982 amendment to the Industrial Disputes Act required the employers employing more than 100 employees (reduced from more than 300) to take permission from the government to lay off and retrench workers. The fourth phase which is the era of liberalization (1992-2008) achieved by devaluing the rupee, lowered tariff, reduced import quota led to growth of low-wage jobs, casual and contract workers. Trade unions were considered as representing a declining 'sectional interest group' while government tried to uphold consumer interest over union rights. The fifth phase of industrial relations (2008-2017) which features the growth of globalized transnational organization and boom in the service economy was marred by the recession. This has forced the trade unions to cooperate with the employers who were adopting innovative human resource policy and practices with the individualization of employment relations. While the trade unions experienced the bottom low as marginalized by the growth of informal sector, and lack of strategy, the IT and ITES (IT Enabled Services) industries saw the dawn of new form of unionism.

The emergence of factory system in India in the 1850s was portrayed as unhealthy working conditions, and longer working hours with deplorable conditions of work. The credit for the first association of Indian workers is generally given to the Bombay Mill-Hands Association founded by N. M. Lokhande in 1890. The Trade Union Act, 1926 provided the rights to the workers for organizing. The second and third phase of industrial relations (discussed above) gave rise to multiplicity of trade unions. The politicalization of trade union and multiplicity of registration in a single unit led to the growth which saw a decline post recession. Figure 1 reflects the growth of trade union in numbers and the average number of members from 1952 to 2013.

Before getting into the discussion on the strategy of trade union it is also imperative to know the major trade unions functioning in India.



Source: Compiled from indiastat.com.

Figure 1. Number of trade unions and its membership in India

Table 1. Major central trade unions and their membership (arranged as per the year of establishment)

Name of Trade Union	Year of Establishment	Political Affiliation	Membership (in million)
All India Trade Union Congress (AITUC)	1920	Communist Party of India	14.2
Indian National Trade Union Congress (INTUC)	May 3, 1947	Indian National Congress	33.3
Hind Mazdoor Sabha (HMS)	Dec. 24, 1948	Samajwadi (Socialist)—Independent	9.1
Bharatiya Mazdoor Sangh (BMS)	July 27, 1955	Bharatiya Janata Party	17.1
All India United Trade Union Centre (AIUTUC)	April, 1958	Socialist Unity Centre of India (Communist)	4.7
Centre of Indian Trade Unions (CITU)	1970	Communist Party of India (Marxist)	5.7
Trade Union Coordination Centre (TUCC)	1970	AIFB	1.6
Self-Employed Women's Association (SEWA)	1972	Unaffiliated	1.3
All India Central Council of Trade Unions (AICCTU)	May 1989	Communist Party of India (Marxist-Leninist) Liberation	2.5
Labour Progressive Federation (LPF)		Dravida Munnetra Kazhagam (DMK)	0.6
National Front of Indian Trade Unions (NFIU)		Unaffiliated	
United Trade Union Congress (UTUC)		Revolutionary Socialist Party	0.38
Independent Labour Union (ILU)		Unaffiliated	

Source: Compiled by author from various sources.

### **Central trade unions in India**

Trade Unions in India are registered and file annual returns under the Trade Union Act (1926). Statistics on Trade Unions are collected annually by the Labour Bureau of the Ministry of Labour, Government of India. Congress associated, the Indian National Trade Union Congress (INTUC) is assumed as the biggest of the seven central trade unions, with a membership of 33.3 million. The central government recognizes the trade unions based on their membership. As per the present criteria a union to be eligible for the recognition of a central trade union must have a minimum of 500,000 members and must have presence in four states and four industries. Table 1 represents the major central trade unions in India. The data clearly reveals the political linkage of the union and their direct involvement in the government. The membership of the union also keeps varying depending on the political parties in power.

Though the numbers of registered trade unions are very high, only few are submitting the annual returns. While trade unions started their operation from the manufacturing sector, they could not find their way into the other sectors, particularly the sectors which comprised of large number of informal workers. India has almost 92% of the labour force operating in the informal and unorganized sector. Apart from manufacturing, the other sectors which experience high unionization in India are transport and storage; agriculture, forestry and fishing; construction; information and communication; and financial and insurance activities. Table 2 showcases a detailed picture of the industry division-wise trade union and its membership.

### **IV. Trade union strategy**

Trade union strategy is defined as the 'characteristic way' of interaction of union with its environments (Boxall, 2008). It's a myth that trade union will use formal methods or strategic planning. Unions use a range of administrative structures and political process to evolve strategy—standing committees, annual conferences, informal deals among power-brokers, management directives, direct action and so on.

Like other organization unions exhibit strength and weakness of existing structure and process which expose the unions to the risk that their strategy—their characteristic way of behaving will drift further and

Table 2. Major industry division-wise number and membership of workers unions in India, 2012

Industry Section	No. of Unions Submitting Returns	Membership		
		Men	Women	Total
Agriculture, forestry and fishing	273	1,875,018	1,023,493	2,898,511
Mining and quarrying	51	87,917	4,185	92,102
Manufacturing	1,774	1,151,433	477,587	1,629,020
Electricity, gas, steam and air conditioning supply	113	179,531	9,180	188,711
Water supply; sewerage, waste management and remediation activities	55	21,190	4,059	25,249
Construction	281	825,815	399,502	1,225,317
Wholesale and retail trade; repair of motor vehicles and motorcycles	197	188,567	45,012	233,579
Transportation and storage	652	985,284	183,441	1,168,725
Accommodation and food service activities	75	14,421	3,473	17,894
Information and communication	217	109,822	4,632	114,454
Financial and insurance activities	216	134,891	59,074	193,965
Professional, scientific and technical activities	138	82,522	71,867	154,389
Administrative and support service activities	40	44,516	10,456	54,972
Public administration and defence; compulsory social security	181	87,456	37,040	124,496
Education	58	7,156	66,226	73,382
Human health and social work activities	82	58,504	28,825	87,329
Arts, entertainment and recreation	54	25,528	1,963	27,491
Other service activities	270	218,865	80,774	299,639
Activities of households as employers; undifferentiated goods- and services-producing	12	579	852	1,431
Activities of extraterritorial organizations and bodies	46	371,146	200,582	571,728
Total	4,785	6,470,161	2,712,223	9,182,384

Source: indiastat.com.

further away from challenges actually presented by their environment. This syndrome is known as ‘strategic drift’ which will undermine and may fatally compromise a union’s economic viability and its social legitimacy (Boxall, 2008).

How a union engages with its own members is one among the principal dimensions of strategic choices. Union-management “partnership” is receiving greater attention in UK employment practice and in the academic literature as growing numbers of unions and employers enter into formal agreements to build long-term relationships based on cooperation rather than adversarialism (Haynes and Allen, 2000). Conflict of interest are resolved through personal relationship which is based on trust, mutual commitment and certain kinds of information sharing which are confidential to each other. ‘Common interest committee’ was also formed to promote union management cooperation.

While studying the trade union strategy in Spain Köhler and Jiménez (2015) experienced that union revitalization strategy primarily requires a change in the orientation of collective action. Trade unions assume a role of social movement for social change focused on the interests of the working class and extended to other issues of citizenship. It is an appropriate approach to contemporary challenges in broadening and enriching the role of the labour movement. A review of Poland’s union reveals that post-colonial state has put the



<p><b>Classic Unionism</b></p> <ul style="list-style-type: none"> <li>• Worker relations: servicing plus solid organizing</li> <li>• Employer Relations: Robust adversarialism, no incorporation</li> </ul>	<p><b>Partnership Unionism</b></p> <ul style="list-style-type: none"> <li>• Worker relations: servicing plus solid organizing</li> <li>• Employer Relations: credible adversarialism with extensive cooperative practices</li> </ul>
<p><b>Paper Tiger Unionism</b></p> <ul style="list-style-type: none"> <li>• Worker relations: servicing only</li> <li>• Employer Relations: formalistic adversarialism</li> </ul>	<p><b>Consultancy Unionism</b></p> <ul style="list-style-type: none"> <li>• Worker relations: mostly servicing, limited organizing</li> <li>• Employer Relations: routine adversarialism with some cooperative practices</li> </ul>

Source: Boxall and Haynes (1997).

Figure 2. Four patterns of trade union strategic choices in New Zealand

Polish union on the sidelines of pre-accession and post-accession debates. Trade union leaders have taken up the initiative to redefine the national interest in order to gain support at the EU level (Lis, 2014). Unions in neo-liberal context, strategy can be described in terms of the nexus between two complex dimensions: union-worker relations and union-employer relations. The critical choices in worker relations are associated with distinction between the servicing and organizing model. In the servicing model, workers are seen as consumers of union services such as advocacy in collective disputes and individual grievances, legal advice and a range of non-industrial benefits. Boxall and Haynes (1997) while studying the strategic choices among trade unions in New Zealand identified four broad patterns of union strategic choices: classic, paper tiger, consultancy and partnership unionism. Figure 2 explains the details of these four strategic choices.

Payne (2001) found that trade unions are using ‘lifelong learning’ as a strategy to keep them abreast with the changing job market. The provision of education and training within the workplace now seen a key bargaining issue, both to seek future jobs and to ensure that union members have those skills which are most in demand in the labour market. The union leaders find it challenging to persuade the members of the advantage of learning new skills before redundancy hits them. The trade unions were found to be the drivers of social change and member empowerment not seen as the passive victim of global forces. Unions are partnering with training and educational agencies to develop new learning opportunity for members.

## V. Strategic choice of trade union in India

Trade unions in India have not changed their strategy and approach to manage the work relations and employer relations. Despite the massive portion of the labour force (around 92%) still employed in the unorganized sectors, the unions have not put enough endeavour to organize the casual and contract labour. All available evidences point to failure of trade union to protect the interest of organized sector leading to emaciated labour. After liberalization, the rate of economic growth increased significantly despite the labour market witnessed a steady slowdown in the rate of employment generation in India which declined from 2% in 1961-80 to around 1% in 1990-2000. There is also huge difference among the states in India in terms of labour market flexibility (Mahmood, 2016).

Unionism in India is in decline. The numbers of strikes were recorded high during 1961-74 at all India level. However, the post-liberalization era has also experienced a number of nationwide strikes, demonstration

Table 3. Strategy adopted by Indian trade unions

Name of Trade Union	Operation Strategy
All India Central Council of Trade Unions (AICCTU)	Revolution, conflict, legal battles.
All India Trade Union Congress (AITUC)	Communism.
All India United Trade Union Centre (AIUTUC)	Communism.
Bharatiya Mazdoor Sangh (BMS)	Nationalism, productivity, consumer interest and collective bargaining.
Centre of Indian Trade Unions (CITU)	Communism, protest, strike.
Hind Mazdoor Sabha (HMS)	Industrial democracy, workers' education, cooperative movement.
Indian National Trade Union Congress (INTUC)	Industry under national ownership and control, promote social, civic and political interest of the workers, non-violent protests.
Self Employed Women's Association (SEWA)	Exclusive focus on unorganized women workers. Development. Confluence of three movements: the labour movement, the cooperative movement, and the women's movement for self-employed workers.
Trade Union Coordination Centre (TUCC)	Fight, workers participation in management.

Source: Compiled by author.

and struggles protesting against neo-liberal policies of the government. Nevertheless, most of them were in public sector units and were successful. The docile status of trade union is attributed to the introduction of new labour practices such as recruitment-freeze, outsourcing, increasing use of contract workers, freedom to hire and fire, liberty to close industrial undertakings, soft labour inspection system, permissiveness to introduce labour saving technologies, repeal of legal provisions regarding bonus, voluntary retirement schemes—VRS, and privatization of non-viable public enterprises (Patel, 2016). Industries started to increasingly utilize contract workers both in perennial and non-perennial work. They utilize contract labour not only for flexibility but also for reducing production cost (Kumar, 2015).

Trade Union Act, 1926 provides the provision for union registration only whereas the law is silent about the process of union recognition and collective bargaining. Due to no clear rule regarding union recognition in India, the collective bargaining institutions are relatively weak (Balasubramanian, 2015).

Today trade union is also showing a new trend of association along with international interaction. Union for Information Technology and Enabled Services (UNITES) is one of the earliest trade union in India in the IT sector to fight against the overnight layoff by the employers (Bisht, 2010). By analysing the narratives available in the website and critically evaluating the way of their operation the author tried to prepare an extract of the way of operation of the major central unions of India (See Table 3).

Using the lenses of Boxall and Haynes (1997) the above unions can also be categorized into groups based on their strategic response. Trade Unions such as AICCTU, AITUC, AIUTUC or TUCC are mostly following the paper tiger unionism as their way of operation is rooted in the adversarialism, protest, strike and revolutionary changes. Though CITU has a similar approach, it can be termed to be exhibiting classic unionism as benefit may be given to them for their organizing activities. INTUC, one of the oldest unions in India, has not performed much in revitalizing itself though they try to balance between cooperation and confrontation. INTUC follows a consultancy unionism. BMS and HMS can be categorized to adopt partnership unionism as these unions has moved beyond the dispute mechanism and focus on market relevant factors such as industrial democracy, productivity, consumer interest, workers' education and cooperative movement. HMS is the union which follows a socialist attitude and not affiliated to any political party. Although other unions have taken up workers education as an initiative, it is there in the central agenda for HMS which believes in tripartite relationship and regularly conducts vocational and sensitization workshops for trade union activists

and members.

The other major trade union which has grown as a social movement is Self-Employed Women's Association (SEWA). SEWA has a membership of 1.3 million. The movement is to empower the self-employed women and organize themselves for full employment. This movement has completely changed the direction of unionism and can be a lesson for the other unions which are struggling for membership. SEWA has an approach of development with two goals—Full employment, and Self-Reliance.

## VI. Structural reforms and response of trade union

As per the McKinsey report (Woetzel et al., 2017), India's economy grew at an average of about 6.6% per year between 2011 and 2017. Multiple stresses and strains, such as a rising fiscal deficit, high consumer inflation, the collapse of the mining sector, and a logjam in infrastructure projects, led to a macroeconomic slowdown from 2011 to 2013, when GDP growth fell to an average of 5.6% per year. From 2013 to 2017, growth recovered to 6.9% per year, making India one of the fastest-growing major economies in the world. Based on the annual surveys, the total number of jobs in India from 2011 to 2015 grew by about seven million, from 455 million to 462 million. However, the apparent sluggishness in job creation disguises significant structural change: agricultural employment fell by 26 million and non-farm employment rose by 33 million, or by more than eight million jobs a year. In fact, the pace of non-farm job creation dipped during the economic slowdown years of 2011 to 2013 to as low as eleven million, and rose sharply to 22 million during the following two years. Labour moved out of agriculture into construction, trade and hospitality, and transport, the mainstays of the non-farm labour market in many developing countries; these three sectors generated 36 million jobs from 2011 to 2015. By contrast, mining and manufacturing lost jobs during the slowdown, although manufacturing jobs seem to have grown between 2013 and 2015.

As a major drive for bringing structural changes to the labour reform the government of India has already proposed 'Industrial Relations Code' bill in 2015. The pivotal changes suggested in this bill include allowing companies employing up to 300 workers (increased from 100) to lay off workers without any government permission. All the central trade unions unanimously opposing to the proposal as 85% of the companies will be thrown out of the ambit of the act (currently covered under Industrial Disputes Act, 1947) enabling employers to hire and fire employees at will (*Economic Times*, Oct 15, 2015). The draft bill propose to recognize the trade union and provide the status of 'sole negotiating agent' if the union secures 51% or more votes. Because of the pressure from the trade union, the bill was also revised to include all the unions securing more than 15% votes to have their representative on the negotiating board in the absence of two third majority with any trade union at the time of voting. Overall, the trade unions have taken the stand of confrontation and are not found to be mature enough to protect the employment of their members and regulate the working conditions.

## VII. Conclusion

While trade union in a global scenario have shed the path of confrontation and extending their cooperation in order to achieve productivity among industrial workers, the Indian trade union leaders continue to believe in the revolutionary approach. This attitude have also forced the management to focus more on the restructuring process, using individualized HRM practices and aggressive use of automation, technology upgradation communication and adopting union avoidance strategy. This paper exposes the Indian trade union about their straight jacket approach to the industrial relations as well as the structural changes which might help the management being aggressive about outsourcing and mass use of contract labour. Trade unions, instead of opposing to the global changes which is an irreversible process should focus more on providing living wage, healthy working condition and ensuring social security measures. They must focus on bringing the massive unorganized sector under its ambit by mobilizing membership.

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# A System “On Life Support”? The Changing Employment Landscape and Collective Bargaining in Australia\*

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- I. Introduction
- II. Changing employment structures and arrangements
- III. Collective bargaining in Australia
- IV. Changing employment and organizational structures and the level of bargaining
- V. Changing employment forms and the scope of bargaining
- VI. Concluding observations and prospects for change

## I. Introduction

In Australia, as in many other industrialised economies, recent decades have seen significant shifts in the industries in which people work and the arrangements under which work is performed. This paper considers the extent to which, and how, Australia’s collective bargaining laws have been adapted to meet these evolving labour market realities. It starts with a brief snapshot of major changes to Australian employment structures and arrangements in recent decades. This is followed by an overview of the evolution of the legislative framework on collective bargaining and of the state of collective bargaining today. The paper then discusses three ways in which Australian law continues to significantly constrain the capacity of workers to collectively respond to the challenges that evolving labour market developments may pose to the attainment of decent wages and working conditions through collective bargaining, including by way of industrial action. These constraints go to the types of workers that are able to collectively bargain, the level at which collective bargaining may occur, and the scope of matters that can be included in collective agreements. The paper concludes with some observations as to the prospects for change.

Due to the brevity of this paper, the scope of the discussion below is subject to limitations and it is important to clarify these before proceeding. First, the paper focuses on bargaining in the private sector but does not extend to cover the specific regulatory framework that has existed in the building and construction industry in various form since 2005. Second, while of relevance to certain business practices such as outsourcing, this paper does not cover provisions within Australian law which provide for the transfer of a collective agreement in certain circumstances (see further Johnstone and Stewart, 2015). Finally, the paper focuses on the legislative framework at the federal level. There are of course other ways in which the state in Australia (at the federal and state/territory levels) can and does seek to influence collective bargaining processes and outcomes, such as through financial incentives and procurement (see further Howe, 2012).

## II. Changing employment structures and arrangements

Like many other industrialised countries, the structure of the Australian labour market has changed significantly in recent decades. There has been a relative and absolute decline in employment in the manufacturing industry, and significant growth in service intensive industries (Productivity Commission, 2015). Of the 11.8 million employed persons in Australia today, around 67% are engaged full-time (Australian Bureau of Statistics, ABS, 2017). Part-time work now accounts for close to a third of employment, compared with a little under a quarter two decades ago. After increasing rapidly in the 1990s, the rate of casual employment has now stabilized at around a quarter of all employees (Ibid).

\* The title of this paper draws on a metaphor used recently by the Federal Opposition Leader, the Hon Bill Shorten MP, to describe Australia’s collective bargaining system (Australian Financial Review, 2018).



Recent years have also seen developments in Australia broadly corresponding to what David Weil has described as the ‘fissuring’ of the workplace (Weil, 2014). While the precise nature and extent of this fissuring varies across sectors, empirical and anecdotal evidence suggests that increasing numbers of workers are engaged under work arrangements that lie ‘outside the firm’s legal boundary’: as contractors, or as employees of small subcontractors or franchisees, instead of as the direct employees of vertically organised large firms. Today, around 1 in 10 (1 million) workers in Australia are independent contractors (owner-managers with no employees), and around 134,000 workers are engaged by labour hire firms (ABS, 2017). In many cases, the outcome of this ‘fissuring’ is that a worker’s direct employer exerts limited, if any, control over the terms and conditions of employment. Those with the economic power in a sector or supply chain wield significant influence and, in some cases bureaucratic control, over the pay, working time and other conditions of workers engaged by other entities lower down in the supply chain (Johnstone and Stewart, 2015; Hardy, 2017).

Relevantly for this paper given its focus on collective bargaining (most of which is still done with union representation), recent decades have also seen a significant decline in union membership. In the 1990s, union density dropped faster than in most OECD countries, from 41% of the workforce in 1990 to just 25% in 2000 (Cooper and Ellem, 2011: 36-37). Today union density in the private sector is at record lows, at just 9.3% in the private sector (ABS, 2017).

### III. Collective bargaining in Australia

#### *The evolution of collective bargaining regulation*

Also like many other jurisdictions, the Australian industrial relations system recognises the benefits that collective bargaining may bring in terms of protecting and promoting the rights and interests of workers, as well as its potential to deliver efficiency gains (Creighton and Forsyth, 2012; Hayter et al, 2011). Official recognition of the practice as a feature of the Australian industrial relations landscape came in the early 1990s. Prior to this time, wages and minimum conditions of employment were set by way of industrial and occupational ‘awards,’ made by the federal industrial relations commission. While some bargaining at the workplace level occurred, this was done on an informal basis and limited in scope (Peetz, 2012). In 1993, the *Industrial Relations Act 1988* (Commonwealth, hereinafter Cth) was amended so as to provide a central role for workplace or enterprise-level bargaining. This transformative reform essentially involved two discrete shifts: from arbitration to bargaining, and from the determination of pay and conditions at a multi-employer level (by industry or occupation) to a single-employer level (Ibid: 244). The move away from centralized conciliation and arbitration towards bargaining at the workplace or enterprise level was supported by all major industrial actors at the time (the Federal Government, Australian employer groups and the Australian Council of Trade Unions).

Australia’s industrial relations framework has since been subject to multiple rounds of legislative reform. However, key elements of the bargaining framework have endured. Enterprise bargaining continued under the (conservative) Coalition Government between 1996 and 2007, although there was provision for a wider variety of forms of agreement and individual statutory agreements were promoted over other agreement forms. There were also increasingly onerous restrictions placed on trade unions and their capacity to take industrial action in pursuit of bargaining claims. Following a successful union-led campaign against the Howard Government’s industrial relations reforms, the Rudd Labor Government won power in 2007 promising a fairer and more balanced industrial relations system.

The introduction of the *Fair Work Act* (FW Act) in 2009 has widely been regarded as a return to collectivism (Stewart, 2009). This Act, which continues in force today, recognises the importance of collective bargaining as a means of ensuring fairness for employees, and of promoting democratic values (Forsyth, 2011). It seeks ‘to provide a simple, flexible and fair framework that enables collective bargaining in good faith, particularly at the enterprise level, for enterprise agreements that deliver productivity benefits.’ (Part 2-4, s. 171). The Act sets out a framework which promotes enterprise bargaining, underpinned by a safety net of minimum wages and conditions of employment by way of statutory minima and industry and occupation awards. Part 2-4 of the



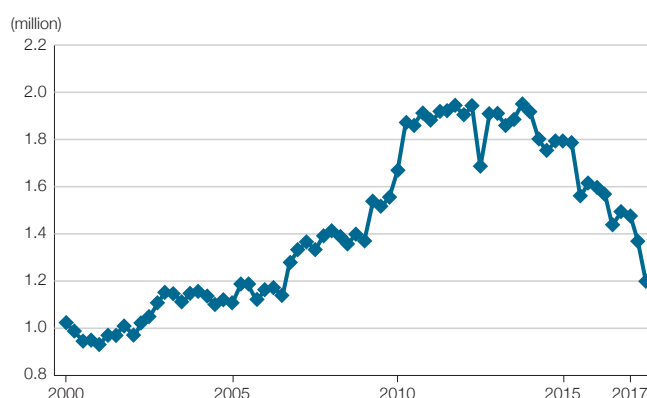
Act contains a number of mechanisms that seek to facilitate bargaining and open up the practice to previously excluded employees and workplaces, such as provision for representation during bargaining (including by unions), good faith bargaining requirements (supported by bargaining orders), majority support determinations and the low-paid bargaining stream (see further below).

### *The state of collective bargaining in Australia today*

While the introduction of the FW Act saw a growth in collective agreement making (Cooper, Ellem and Todd, 2012), the most recent data available suggests collective bargaining coverage in the private sector is in decline. The number of employees covered by active enterprise agreements has fallen significantly in recent years (see Figure 1), and in the most recent September quarter, experienced one of the largest drops recorded (down by 170,000) (Australian Department of Jobs, 2017). These figures have led some commentators to foreshadow the ‘virtual extinction of collective bargaining in the private sector’ (Janda, 2018). The wage premium delivered through collective bargaining is also declining. Despite strong job growth in recent years, wage increases in private sector agreements approved in the September 2017 quarter were at a 25-year low of 2.4% (Ibid).

Today, just under one third of Australian employees are covered by federal enterprise agreements. This means that increasing numbers of workers (almost one in four) are reliant on awards to set their minimum pay and conditions of employment (see Table 1). This is of particular significance given the transformation in the role played by awards over the past several decades: from standardising wages and a broad range of terms and conditions of employment across particular industries or occupations to providing a narrow safety net of minimum wages and conditions of employment. As the gap between awards and enterprise bargaining has grown, so too has the incentive for employers to avoid bargaining and/or to engage workers through forms that fall outside the scope of the collective agreement (see further Part V below).

Collective bargaining is very unevenly dispersed across the Australian labour market, with employees in the private sector and in smaller enterprises less likely than those in the public sector and large enterprises to be covered by a collective agreement (ABS, 2014). Employees are least likely to be covered by a collective agreement in the accommodation and food services; administrative and support services; retail trade; and health care and social assistance industries (Ibid). A higher proportion of females and young workers are award-reliant than males (Productivity Commission, 2015: 1102). Permanent and fixed-term employees are more likely to be covered by an enterprise agreement than casual workers (Ibid). Around 30% of enterprise agreements do not involve a trade union (Ibid: 1108).<sup>1</sup>



Source: Centre for Future Work (2018: 14), based on Dept of Jobs and Small Business data.

Figure 1. Private sector employees covered by enterprise bargaining agreements, 2000-2017

1. This reflects a distinctive and longstanding feature of the Australian legislative framework in which collective ‘bargaining’ can take place without a trade union (Gahan and Pekarek, 2012: 217). Under the FW Act, a trade union must give notice to the Commission when it is approving an agreement that it wants to be ‘covered’ by the agreement (see ss.183(1) and 201(2) of the FW Act).

Table 1. Instrument providing rate of pay for all employees, 2010-2016

Instrument providing rate of pay	2010 (%)	2012 (%)	2014 (%)	2016 (%)
Award	15.2	16.1	18.8	23.9
Collective Agreement (Federally Registered)	31.5	32.0	32.6	30.2
Collective Agreement (State Registered)	11.9	9.8	8.6	6.2
Collective Agreement (Unregistered)	0.1	0.2	0.2	0.1
Individual Agreement (Registered and Unregistered)	37.3	38.7	36.4	36.2
Owner/managers of incorporated enterprises	4.1	3.3	3.4	3.5

Source: Department of Jobs (2017).

Table 2. Collective agreement approvals by year, 2013-2017

Type of agreement	Year			
	2013-14	2014-15	2015-16	2016-17
Single enterprise (s.185)	5,602	5,027	4,523	4,663
Greenfields	745	399	252	162
Multi-enterprise	56	55	26	33
Total	6,403	5,481	4,801	4,858

Source: Fair Work Commission (2017: 54).

Of those collective agreements in operation today, the vast majority are what are described in the FW Act as ‘single enterprise’ agreements (Table 2). Multi-enterprise agreements are few and far between.

#### IV. Changing employment and organizational structures and the level of bargaining

As noted above, recent years have seen significant fissuring of workplaces in Australia, in the form of greater commercialization of work relationships, along with increased diversity in organisational and employment arrangements. These developments have far-reaching implications for the capacity of workers to collectively negotiate improvements in wages and working conditions. The rise in supply chain and franchising arrangements, for example, may render it difficult if not impossible for workers to bargain for significant improvements in pay and working conditions at the enterprise level as the locus of economic power and control lies beyond the confines of the enterprise itself. This is particularly the case where enterprises are ‘price takers’ because of factors such as their position in the contracting chain and intense competition. In this context, multi-employer or other forms of more coordinated bargaining may be more suitable. Changes to employment forms—the rise of independent contracting for example—also presents challenges to collective bargaining (see further McCrystal, 2014).

Despite these changing business practices, Australia’s collective bargaining laws continue to focus overwhelmingly on bargaining at the enterprise or workplace level. Under the FW Act, bargaining is to take place primarily by way of the making of ‘single-enterprise agreements’ (FW Act, s. 172(2)), with an ‘enterprise’ defined as a business, activity, project or undertaking (s. 12). A ‘single enterprise agreement’ can be made by one employer (and its employees), or by two or more employers (and their employees) where they are related corporations or engaged in a joint venture or common enterprise (s. 172(5)). It can also be made by two or more employers specified in a ‘single interest employer authorisation’ from the federal tribunal, the Fair Work

Commission (FWC).<sup>2</sup>

Upon application, the FWC must make a single interest authorisation, providing it is satisfied that the employers agree to bargain together and are not ‘coerced’ into so agreeing (s. 249(1)), or where the FWC is satisfied that the employers carry on similar business activities under a franchising arrangement. A ‘single interest authorisation’ can also be granted to groups of employers covered by a ministerial declaration (s. 247). The Act provides the Minister with discretion as to whether or not to make such a declaration, although it identifies a number of factors that he or she must take into account. These include, for example, whether the employers have previously bargained together; the extent of their common interests, whether they are governed by a common regulatory regime or have a common source of public funding, and the extent to which it would be ‘more appropriate’ for each of the relevant employers to make a separate enterprise agreement. Notably, only employers can apply to the FWC or the Minister for a single interest authorisation.

The FW Act also provides for ‘multi-employer agreements.’<sup>3</sup> Unlike its predecessor, the *Workplace Relations Act 1996*, there is no longer any requirement for parties wishing to bargain above the enterprise-level to apply for prior authorisation.<sup>4</sup> However, the Act continues to promote bargaining at the enterprise level and restrict bargaining at higher levels in a number of ways. This reflects what Gahan and Pekarek (2012) describe as ‘a deep-seated suspicion—among employers, governments and the tribunal—of the consequences of more centralized or coordinated arrangements’ (Ibid: 206). It is also an approach that has made Australia the subject of consistent criticism by the ILO supervisory bodies for its non-compliance with freedom of association and collective bargaining conventions to which it is a party (Creighton, 2012).

First, the Act limits the availability of the statutory mechanisms intended to facilitate the bargaining process to parties seeking to reach, or bargaining for, a ‘single enterprise agreement.’ These include, for example, scope orders (to resolve disputes over the coverage of a proposed agreement), majority support determinations (to determine whether majority support for a collective agreement exists among employees and if so, to impose an obligation on an employer to collectively bargain) and bargaining orders (to enforce the good faith bargaining requirements).

Second, the FW Act constrains multi-employer bargaining through failing to provide statutory immunity for workers and unions who take industrial action in pursuit of a multi-employer agreement. This lies in contrast to the regime of ‘protected industrial action’ that exists in relation to single-enterprise agreements, under which employees and employers who wish to take industrial action in pursuit of a proposed agreement are afforded immunity from civil liability (providing they comply with the procedural requirements in the Act). By removing any capacity for workers to take protected industrial action in pursuit of a multi-employer agreement, Australian law severely limits the capacity for workers and unions to apply pressure to achieve their bargaining objectives. As others have emphasised, there is little if any genuine capacity to ‘bargain’ without such a right (Clegg, 1976: 5-6).

Third, a number of provisions in the Act essentially operate to preclude a union from lawfully taking industrial action when it is engaging in ‘pattern bargaining.’ Under s. 412, a person is engaging in ‘pattern bargaining’ if they are seeking common terms in two or more separate agreements, without ‘genuinely trying to reach agreement’ with each of those employers.<sup>5</sup> The FW Act does not go so far as to prevent unions from coordinate bargaining processes, goals and outcomes across multiple workplaces. However, the Act does not afford ‘protection’ to industrial action taken in support of it, and also enables employers to seek a court injunction order to stop or prevent the action (s. 422).

Fourth, the rules within the Act for the approval of proposed collective agreements favour the making of

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2. FW Act, s. 172(2), (5).

3. FW Act, s. 172(3)(a).

4. Under the former *Workplace Relations Act 1996*, multi-employer bargaining was subject to a public interest test.

5. The employee bargaining representative bears the burden of proving they were ‘genuinely trying to reach agreement’: FW Act, s. 412(4).

single enterprise agreements. A proposed multi-enterprise agreement will only cover an enterprise where a majority of employees within that enterprise has voted in favour of the agreement. Any enterprise in which there is not majority support for the proposed agreement will not be covered by it (ss. 182, 184). In comparison, a single-enterprise agreement is approved when it receives a majority vote of those employees across the relevant enterprise who have cast a valid vote (s. 182). The Act further gives primacy to enterprise agreements by providing that an employer covered by a multi-employer agreement can at any time enter into a single enterprise agreement (s. 58(3)). There is also no capacity to add additional employers to a multi-employer agreement once made.

The FW Act contains one important concession to the challenges that enterprise bargaining poses to certain segments of the labour market. The ‘low-paid bargaining stream’ in Division 9 of the Act was introduced with the explicit objective of facilitate bargaining among low-paid employees or employees who have not historically had access to the benefits of collectively bargaining due to factors such as low bargaining power, low skill levels, difficulties taking industrial action and absence of other incentives to bargain. The types of workers that it was envisaged might benefit from these provisions included, for example, those in community services, cleaning, child care, security and aged care. The low-paid bargaining stream diverges from the general bargaining regime outlined above in important respects. In order to access the stream, employees or their representatives must apply for a ‘Low-Paid Authorisation.’ To grant an authorisation, FWC needs to be satisfied in relation to a number of issues, such as that those covered by any proposed agreement are ‘low-paid,’<sup>6</sup> the history of bargaining and bargaining power of the workers, the likely success of collective bargaining, and the extent to which the terms and conditions of the employees are controlled by external parties or forces.<sup>7</sup> If FWC makes a low-paid authorisation, then the parties have access to bargaining orders. The FWC also has other powers to facilitate bargaining in this stream, including by providing assistance on its own initiative and directing third parties to attend conferences. If the bargaining reaches a stalemate, FWC is empowered to arbitrate an outcome by way of a ‘Low-Paid Workplace Determination.’<sup>8</sup>

While this stream was widely regarded as one of the most exciting and innovative features of the FW Act, its operation to date has largely been met with disappointment and frustration by those who have sought to use it, and others who hoped it may provide some way to improve wages and conditions of employment among key low-paid sectors (see further Cooper, 2014). Since its introduction in 2009, there have been five applications for a low-paid authorisation, by unions representing workers in aged care, nursing and in private sector security companies. These have resulted in one authorisation being made (dealing with two of the applications), two applications being dismissed and one withdrawn. In its application of the statutory provisions, the FWC has shown a marked reluctance to depart from the longstanding prevailing preference within the Australian system for enterprise agreements. This is reflected in its unwillingness to permit access to the stream by employees with existing agreements (irrespective of how low the pay and conditions in these agreements were or the conditions under which they were negotiated); and/or where it is unconvinced that the applicant union had made sufficient efforts to bargain with the relevant employers on an enterprise basis. There have been no applications lodged under this part of the Act in the past three years.<sup>9</sup>

## V. Changing employment forms and the scope of bargaining

A key feature of Australia’s evolving labour market is the increasingly diversity of ways in which workers are engaged to perform labour. To what extent has Australia’s collective bargaining framework evolved to reflect and respond to these developments? This section considers this question from two distinct angles. It first briefly considers the extent to which Australian law permits workers who are not engaged in an employment

6. There is no definition of ‘low-paid’ in the Act, with the statute leaving it open to the Fair Work Commission to determine its meaning.

7. FW Act, s. 243.

8. FW Act, s. 263.

9. Based on Fair Work Commission Quarterly Reports to the Minister under s. 654 of the FW Act.

relationship to bargain collectively with those to whom they provide services. It then turns to consider the extent to which those that are able to access collective bargaining under the Act may bargain over matters relating to the extent to which, and the conditions under which, their employer engages workers through various arrangements.

As noted above, there is evidence to suggest that work relationships in Australia are increasingly commercialized: that is, workers are providing their labour to another party through a commercial contract for services rather than an employment contract. While independent contracting is found in all sectors of the economy, these types of arrangements have been given particular impetus by the emergence and increasing popularity of digital platform work in the ‘gig economy,’ such as Uber and Airtasker. In Australia, while the law is still in flux, the general position taken to date is that these types of workers are ‘independent contractors’ rather than employees.<sup>10</sup> As contractors rather than employees, these workers are generally unable to access the collective bargaining regime in the FW Act (ss. 11, 13-14). The exception to this is contract outworkers in the textile and clothing industry, which have been deemed as employees for the purposes of the FW Act, including its collective bargaining provisions (s.789BB).<sup>11</sup> For all other self-employed workers, any efforts to collectively negotiate conditions risk running afoul of the restrictive trade practices provisions in Part IV of the *Competition and Consumer Act 2010* (Cth). While Australia’s competition regulator (the Australian Competition and Consumer Commission, ACCC) is empowered under this Act to authorise groups of self-employed workers to collectively negotiate the conditions under which they are engaged, applications for such authorisations are assessed through a competition law frame rather than an industrial one (McCrystal, 2014). Even where an authorisation is granted, there is no institutional supports for bargaining and a party is unlikely to be permitted to apply any form of concerted pressure on the other (Ibid).

Even where workers are in an employment relationship and so able to collectively bargain under the FW Act, they face significant constraints as to the extent to which they can bargain with their employer over issues going to the forms through which labour is engaged. These statutory constraints have existed ever since enterprise bargaining first received legislative imprimatur in 1993. Originally these parameters were informed by constitutional considerations, and more specifically by the requirement that there be an ‘industrial dispute’ which was defined as a dispute about matters pertaining to the relationship between employers and employees. This ‘matters pertaining’ formula has been carried through all subsequent iterations of federal legislation. The content of agreements was subject to further statutory restrictions by the *Workplace Relations Act 1996* and narrowed again with the passage of the *Workplace Relations Amendment (Work Choices) Act* in 2006. This latter statute enumerated a long list of ‘prohibited content’ that would attract penalties on all relevant parties if included. This included a range of union security-type provisions and, most relevantly for the purposes of this paper, terms seeking to regulate the conditions under which contractors or labour hire employees were engaged.

The FW Act abandoning the prohibited content provisions that existed under *Work Choices*. However, the former Labor Government reneged on its initial promise to the union movement that there would be no restrictions on the content of agreements (Stewart, 2018: 171). Most relevantly for the purposes of this paper and despite there no longer being any constitutional reason for doing so, the FW Act retained (although expanded) the ‘matters pertaining’ requirement.<sup>12</sup> Under the current regime, certain terms that do not pertain to the employment relationship are deemed ‘non-permitted’ (s. 172(1)). A non-permitted matter in a collective

10. The Australian approach is generally to apply the common law test (looking at the totality of the relationship between the parties and applying the ‘multi-factor test’) to determine whether, on a case by case basis, these workers are independent contractors or employees. See further *Kaseris v Rasier Pacific V.O.F* [2017] FWC 6610, and Stewart and Stanford (2017).

11. This provision was inserted by the *Fair Work Amendment (Textile, Clothing and Footwear) Act 2012* (Cth).

12. Under the FW Act, agreements may contain terms about matters pertaining to the relationship between the employer and the employees who will be covered by the agreement; matters pertaining to the relationship between the employer and any employee organisation that will be covered by the agreement; deductions from the wages for any purpose authorised by an employee covered by the agreement; and how the agreement will operate (s. 172). An agreement must not contain ‘unlawful terms’ (s. 186).



agreement is unenforceable (s. 253(1)(a)). Moreover, industrial action will not be protected where the union did not ‘reasonably believe’ the term to be about a permitted matter (s. 409(1)(a)).

The effect of all this is that parties can include and enforce certain terms regulating the extent to which and how non-standard forms of labour are engaged in their collective agreements but not others. Parties may enforce terms that regulate the wages and conditions of various forms of directly-engaged labour, including casual and fixed-term forms of employment. Parties may also enforce clauses that provide for the conversion of casual and fixed-term employees to permanent employment. Unions may indirectly regulate the wages and conditions of contractors and labour hire workers by way of including a ‘parity’ clause (also commonly referred to in Australia as a ‘sites rate’ or ‘jump up’ clause) within an agreement, which effectively extends employees’ wages and conditions under an agreement to contractors or labour hire workers engaged at the workplace where this relates sufficiently to the job security of the host’s direct employees.<sup>13</sup>

However, parties *may not* enforce terms that prohibit or limit the capacity of an employer to engage certain forms of labour (casual employees, fixed term employees, contractors or labour hire workers), on the basis that these types of provisions do not sufficiently pertain to the relationship between the employer and its own direct employees or their union.<sup>14</sup> Nor does it appear that parties can enforce any sort of clause requiring an employer to only procure goods or services from other businesses that adhere to certain stipulated standards (Stewart, 2018: 178).

## VI. Concluding observations and prospects for change

While support for collective bargaining has waxed and waned in Australia since the early 1990s, there has been an enduring consensus that collective bargaining should be actively constrained to the enterprise level. Following the former Coalition Government’s concerted attempts to de-collectivize Australian workplaces, the *Fair Work Act 2009* constituted a deliberate attempt to restore fairness and collective bargaining to the Australian industrial relations system. The Act introduced a number of important reforms which have gone some way in removing constraints on the capacity of parties to bargain on a multi-employer basis. It has not, however, decisively departed from the longstanding policy preference in Australia for enterprise bargaining. Not only does Australian law continue to promote enterprise bargaining, it continues to actively constrain the capacity of parties to bargain in more coordinated or centralized forms (Thornwaite and Sheldon, 2012: 256). While multi-employer bargaining is permitted, it is generally only where employers are already willing to do so: that is, the Act permits multi-employer agreement-making but not multi-employer bargaining.

The FW Act introduced an important, albeit to date unsuccessful, attempt by way of the low-paid bargaining stream to address the challenges that enterprise bargaining poses for fragmented business structures, and some sectors of the labour market where employment is scattered in small enterprises or where the characteristics of the workforce otherwise militate against bargaining at the enterprise level.

However, as pointed out recently, these reforms still effectively see the demands of the increasingly typical modern workplace as ‘an apparent afterthought’ rather than placing them at the centre of the system (Butler, 2018). With respect to collective bargaining and employment forms, this paper has highlighted the continuing reluctance of Australian law to recognise collective bargaining rights for self-employed workers, or to accept that it is legitimate for those workers in an employment relationship to seek to regulate the extent to which and how their employers engage various forms of labour. While in relation to the latter, the FW Act has seen some broadening of the scope of matters that can be included in collective agreements, it continues to impose constraints that have important implications for the wages and conditions of workers, both directly and indirectly-engaged.

Is there any prospect for change? The current Coalition Government has not foreshadowed any major

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13. *Asurco v CFMEU* (2010) 197 IR 364; and *Australian Industry Group v FWA* (2012) 205 FCR 339.

14. *R v Commonwealth Industrial Court; Ex parte Cocks* (1968) 121 CLR 313; *Australian Postal Corporation v CEPU* (2009) FWA 344; *AMWU v Visy Board* (2018) FWA 8.



relevant reforms. All three of these legal constraints—on the level of bargaining, the types of workers that can access bargaining and permissible content of agreements—are longstanding features of the Australian industrial relations landscape. They are also fiercely contested. Employer groups strongly resist any calls for greater liberalisation of the *collective* bargaining framework. Also militating against any changes in this regard is the Australian Productivity Commission, a federal independent statutory body responsible for providing research and advice to the government on economic and social matters. In its recent review of Australia's workplace relations system, the Commission concluded that there was 'insufficient evidence that the risks and challenges posed by new employment arrangements are sufficient to warrant a new bargaining framework.' (Productivity Commission, 2015: 708). While it recognised the challenges that enterprise bargaining posed to small enterprises, its proposed solution was a new 'enterprise contract' (Ibid: 1099), which would give small businesses greater flexibility but do nothing to increase the capacity of workers in these businesses to bargain collectively with their employers.

On the other hand, there are signs that the union movement will be pursuing major reforms to the collective bargaining rules in the FW Act. There is consistent criticism from the union movement as to the failure of collective bargaining rules to reflect 'the modern economy,' and they recently launched a major campaign directed at the need to 'Change the Rules' (Workplace Express, 2017; National Union of Workers, NUW, 2015). The details of any reform proposals, however, are not yet clear.

The Federal Opposition—the Australian Labor Party (ALP) —continues to express its commitment to strengthening 'the ability of workers to come together collectively and democratically to improve their living standards' (Butler, 2018). Again, however, details are hazy as the ALP is yet to release its workplace relations policy in the lead up to the next federal election. To date, it has only indicated support for putting 'the bargaining back into enterprise bargaining' (Shorten, 2018). It is unclear to what extent it will be willing to reconsider the low-paid bargaining stream or otherwise lift some of the restrictions on multi-employer bargaining. No doubt it will be under significant pressure from the Australian trade union movement to do so, however, it will face equal countervailing pressure from employers to the very least maintain the status quo.

Views as to appropriate limitations on the *content of agreements* are equally divided. Employers call for greater restrictions on the scope of bargaining, arguing that clauses that limit the extent to which and how they engage 'outside' labour constitute an unacceptable constraint on managerial prerogative. In this, they enjoy the support of the Productivity Commission, which recommended recently that it be unlawful for a collective agreement to restrict the engagement of casuals, independent contractors and labour hire workers, or to regulate the wages and conditions of workers not directly employed (including by way of parity clauses) (Productivity Commission, 2015: 820). In contrast, unions advocate for changes in the law so as to enable *all* workers that perform work at an enterprise, including those indirectly engaged through a labour hire provider and contractors, to be included in collective bargaining with a business (e.g. NUW, 2015). Enabling agreements at a host employer to cover labour hire workers has also been supported by state inquiries into labour hire at the state level.<sup>15</sup>

In the early 1990s Australia established a bargaining system predicated on the assumption that all workers were in an employment relationship, and that all employers enjoyed economic autonomy and engaged a relatively stable and secure workforce. This system—and in particular its commitment to bargaining at the enterprise level—endures. Yet the contemporary Australian employment landscape looks very different. As a result, the bargaining system is showing signs of increasing strain. The legal framework is not solely to blame for the collective bargaining malaise in Australia today, but it is an important contributing factor. To return to the Federal Opposition Leader's metaphor, enterprise bargaining would seem to be a patient warranting urgent attention. Whether an appropriate response will be forthcoming, however, is far from clear. The major players in Australian industrial relations can agree that the patient is in a parlous state, however, there is little clarity or

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15. See, eg, Recommendation 2 of the Victorian Inquiry into the Labour Hire Industry and Insecure Work (2016).

consensus as to appropriate treatment. In the meantime, Australia's collective bargaining system will continue to fail to deliver for many Australian workers, and simply continue to be out of reach altogether for many others.

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## The 2nd JILPT Tokyo Comparative Labor Policy Seminar 2018

### Organizer

The Japan Institute for Labour Policy and Training (JILPT)

### Date

March 28-29, 2018

### Venue

The Japan Institute for Labour Policy and Training (JILPT),  
Tokyo, Japan

### Seminar Theme

Looking Back at the Policy Responses to Changes in  
Employment Structure and Forms—The Future as Seen  
from Here



### Seminar Program

Session 1 Opening session

Welcome and Opening remarks: Professor Kazuo SUGENO, President, JILPT

Opening address: Professor Tiziano TREU, President, International Society for Labour and Social Security  
Law (ISLSSL)

Keynote speech: Keiichiro HAMAGUCHI, Research Director General, JILPT

Session 2 Country reports (Part 1)

\*Chairperson: Ryuichi YAMAKAWA, Professor, The University of Tokyo

- 1) Yanfei ZHOU, Senior Researcher, JILPT (Japan)
- 2) Ikomatussuniah, Members of Faculty of Law, University of Sultan Ageng Tirtayasa and Vice Chairman of Banten Province's Wage Council (Indonesia)
- 3) Phuong Hien NGUYEN, Associate Professor, Faculty of Economic Law, Hanoi Law University (Vietnam)

Session 3 Country reports (Part 2)

\*Chairperson: Takashi ARAKI, Professor, The University of Tokyo

- 4) Xiaomeng ZHOU, Lecturer of Jilin University of Finance and Economics (China)
- 5) Kanharith NOP, Attorney-at-Law, CBL Law Group (Cambodia)
- 6) Thatoe Nay NAING, Legal Consultant of SAGA ASIA Consulting Co., Ltd. (Myanmar)

Session 4 Country reports (Part 3)

\*Chairperson: Giuseppe CASALE, Secretary-General, ISLSSL

- 7) Tomohiro TAKAMI, Researcher, JILPT (Japan)
- 8) Praewa MANPONSRI, Attorney-at-Law, TNY Legal Co., Ltd. (Thailand)
- 9) Bo-Shone FU, Assistant Professor of Law, National Chung Cheng University (Taiwan)
- 10) Beatrice Fui Yee LIM, Head of Human Resource Economics Program and Senior Lecturer, Universiti Malaysia Sabah (Malaysia)

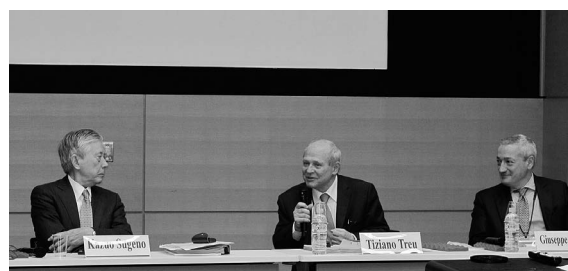
## Session 5 Country reports (Part 4)

\*Chairperson: Tiziano TREU, President, ISLSSL

- 11) Sukhwan CHOI, Associate Professor, College of Law, Myongji University (Korea)
- 12) Hui YU, PhD Candidate of Law, Renmin University of China, Law School (China)
- 13) Manoranjan DHAL, Associate Professor, Indian Institute of Management Kozhikode, Kerala (India)
- 14) Ingrid LANDAU, Lecturer, Monash Business School, Monash University (Australia)

## Session 6 Concluding panel

Panelists: Professor Tiziano TREU,  
President, ISLSSL  
Professor Giuseppe CASALE,  
Secretary-General, ISLSSL  
Moderator: Professor Kazuo SUGENO,  
President, JILPT



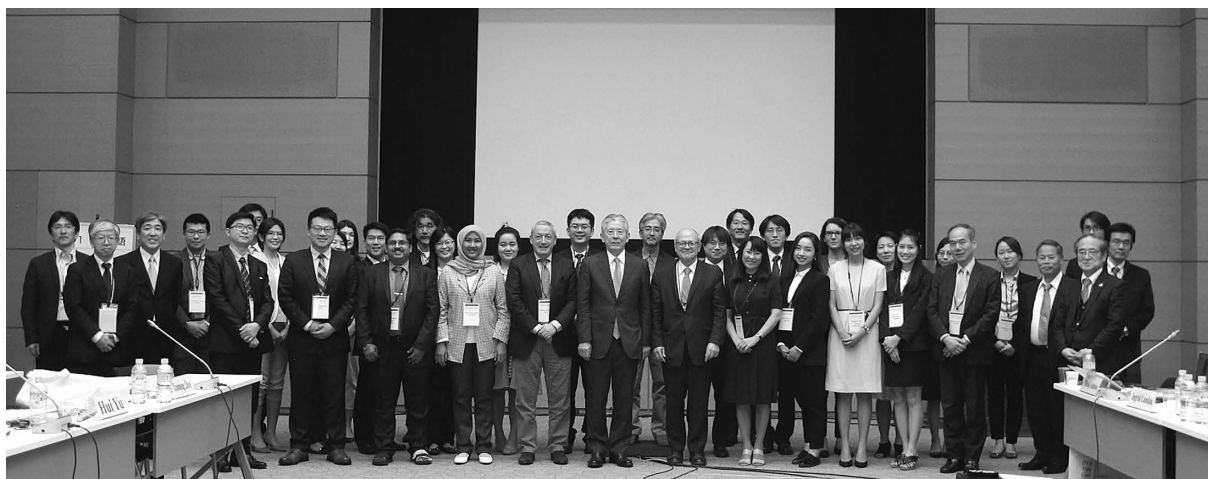
## Session 7 Closing session

Certificate of completion awarding ceremony  
Closure

## Participants

President and Secretary-General of ISLSSL, and several distinguished labor law scholars were invited by JILPT as chairpersons or panelists of the seminar.

About 14 promising researchers mainly from Asian countries and about 14 from Japan majoring in labor law and industrial relations were also invited as presenters and discussants.



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and Policy-Based Regulations for Equal or Balanced Treatment Koichi Tominaga

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