The Fissured Workplace and Predicaments and Breakthroughs in Taiwanese Labour Law

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I. Introduction

In Chapter 3 of his book *The Fissured Workplace,* David Weil writes: 'The large corporation of days of yore came with distinctive borders around its perimeter, with most employment located inside firm walls. The large business of today looks more like a small solar system, with a lead firm at its center and smaller workplaces orbiting around it. Some of those orbiting bodies have their own small moons moving about them. But as they move farther away from the leading organisation, the profit margins they can achieve diminish, with consequent impacts on their workforces.'[1] This poetic statement mirrors both the painful experiences[2] of Taiwan and the fruits of its economic growth.

Weil goes on to explain: 'During much of the twentieth century, the critical employment relationship was between large businesses and workers. ... However, most no longer directly employ legions of workers to make products or deliver services. Employment has been actively shed by these market leaders and transferred to a complicated network of smaller business units. Lower-level businesses operate in more highly competitive markets than those of the firms that shifted employment to them.' This passage examines not only the case of the United States domestic market, but also production in the international market. Economic globalisation is defined as the increasing economic interdependence of national economies across the world through a rapid increase in cross-border movement of goods, service, technology, and capital. Labor law scholars have addressed 'fissured workplaces' within individual countries, but Immanuel Wallerstein's world systems theory[3] must also be discussed. He has rightly pointed out a major flaw in the world economy that international resolutions have not yet discussed in-depth.

However, Taiwan is a special case in the world systems theory. Taiwan almost completely lacks important minerals and other raw materials, and must rely on a large amount of international trade with 'core' (developed) countries in order to maintain its

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[1] David Weil. *The Fissured Workplace: Why Work Became So Bad for So Many and What Can Be Done to Improve It*, 2014, p. 43.

[2] The author gives an example of a painful experience: sex tourism in developing countries. See Chyong-Fang Ko and Han Pi Chang, "Is the 21st Century World-Economy a Passport to Development or to Sexual Exploitation?" in *Emerging Issues in the 21st Century World-System*, edited by Wilma A. Dunaway, pp. 34–35.

[3] Immanuel Wallerstein wrote an article discussing world systems in the 21st century. See Wallerstein, "Structural crisis, or why capitalists may no longer find capitalism rewarding" in Wallerstein, Collins, Mann, Derluguian, Calhoun, *Does Capitalism Have a Future?*, Oxford, 2013, pp. 9–10.

economy and the livelihoods of its people. Fissured workplaces are not uncommon in Taiwan; most industries must maintain this state in order to cope with fierce competition in the international market. Taiwan has transitioned from the 'periphery' (developing countries) to the 'semi-periphery' in past decades, and currently plays an occasional role as a core country.[4] I mention this phenomenon not to provoke international controversy over the idea of worldwide socialism. I simply hope that readers understand why Taiwan has so many fissured workplaces. Please allow me to dispense with that tongue-twisting term in this paper, because many developing countries function as large-scale fissured workplaces for developed countries, as described by David Weil in *The Large Business*.[5] I will discuss certain questions within a Taiwanese context, emphasising that its industrial structure is different from those of other countries.

II. The phenomenon of fissured workplaces in Taiwan

Many countries, such as the U.S., Japan, Germany, France, Korea, the UK, Spain, Hong Kong, and even Mainland China have powerful companies which have fissured their powerful and centralised business bodies into various forms, such as multi-layered subcontracting, outsourcing, franchising, and supply chains.[6] By contrast, the Taiwanese economy was formerly supported by medium and small enterprises. Unfortunately, before 1980 most small business owners had relatively little knowledge of how to form effective supply chains, and did not even understand basic economics or management theories. However, they learned by doing. They inadvertently developed companies that operated similarly to fissured workplaces to cope with the drastic economic changes that occurred during the period of rapid globalisation in the 1990s.

1. The industrial ecology of small and medium enterprises

The Taiwanese Ministry of Economic Affairs, in its Standards for Identifying Small and Medium-sized Enterprises, establishes the following conditions for a business to qualify for this category:

'The enterprise has been established in the manufacturing, construction, mining or quarrying industry with either paid-in capital of NT$80 million or less, or has hired fewer than 200 regular employees.

'The enterprise has been established in an industry other than those mentioned in the previous paragraph and either had a sales revenue of NT$100 million or less in the previous year, or has hired fewer than 100 regular employees.'

In 2014, there were 1,353,049 small and medium enterprises in Taiwan, respectively, accounting for 97.61% of entrepreneurs. Approximately 80% of these enterprises were in the service industry, nearly half (49.40%) were in the wholesale and retail trade, and

[4] Chinese scholars have also considered the reorientation of China in the modern world system. For example: De-Ming Lu, *Development of China in the Modern World System*, Singapore, 2010, pp. 151–202. There are some interesting and persuasive arguments in this book, such as that with the international transfer of technical advancement, management learning and institutional evolution changed the economic position of Mainland China in the modern world system.

[5] Weil, David. *The Fissured Workplace: Why Work Became So Bad for So Many and What Can Be Done to Improve It*, 2014, p. 43.

[6] Weil, David. *The Fissured Workplace: Why Work Became So Bad for So Many and What Can Be Done to Improve It*. 2014, pp.10–11.

55.04% were involved mining operations. Key characteristics of small and medium enterprises include their flexibility and ability to quickly cycle in and out of the market. The majority (50.67%) of small and medium enterprises operate for fewer than 10 years.[7] Total employment in Taiwan is 110,719,000, with employment in small and medium enterprises accounting for 78.25%.[8]

The huge number of small and medium enterprises constitutes a powerful chain of industries. Some are able to function independently, filling both domestic and foreign orders, and others may ally themselves with leading companies such as Taiwan Semiconductor Manufacturing Co., Ltd (TSMC, one of the largest wafer manufacturers in the world), allowing for greater competitiveness in international markets. For example, a TSMC factory was severely damaged during a 6.5 earthquake on 6th February, 2016 in Tainan, a city in southern Taiwan. TSMC organised its subsidiaries around the world to assist in emergency rescue operations, repatriating a total of 500 engineers who worked alongside employees from 30 allied small and medium enterprises. After 7 days of recovery efforts, TSMC was able to resume its regularly scheduled shipping to customers around the world.[9]

2. The popularity of amoeba organisations in Taiwan

'Amoeba organisations' are similar to fissured workplaces. Prof. Warren Bennis and Henry Mintzberg created academically the theory of 'Amoeba organisations', This management theory were developed and put into practice by Inamori Kazuo, founder of the Kyocera Corporation, eventually earning him the moniker of the 'new Japanese god of business' (taking up the mantle of the 'old god of business', Konosuke Matsushita).[10] Many Taiwanese entrepreneurs believe strongly in Inamori's business philosophy.

Many Taiwanese enterprises of all sizes have cultivated flexible design approaches to adapt to environmental changes. In a globalised environment, enterprises must develop and adjust their organisational patterns to maintain and improve their competitiveness, and strive for innovation in addition to other aspects that contribute to success, such as manpower, equipment, processes, and marketing.

The amoeba organisational design possesses two forms. The first form involves the structure of the organisation itself, which consists of many groups operating independently or as units within task groups. They create competitive products according to the changing business environment, and are immediately reorganised after tasks are completed or if they cannot maintain competitiveness.

The second form involves mutually dependent alliances forged between organisations, which can create considerable profits. Once the business environment changes, however, they are rapidly dismantled and each enterprise forms new alliances. Because these alliances create organisations that do not physically exist, they are also known as virtual organisations.

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[7] Ministry of Economic Affairs of Taiwan, 'White paper on small and medium enterprises in Taiwan', 2015, pp. 16-17.

[8] Ministry of Economic Affairs of Taiwan, 'White paper on small and medium enterprises in Taiwan', 2015, p. 18.

[9] A report from the Central News Agency, Feb. 12, 2016, see: http://www.cna.com.tw/news/afe/201602120240-1.aspx

[10] Ishida, Hideki , "Amoeba Management at Kyocera Corporation", *Human Systems Management*, vol. 13, No. 3, p. 183, 1994.

3. OEM-based businesses in Taiwan

Although Taiwan lacks its own major brands, numerous enterprises are involved in original equipment manufacturing (OEM)[11] and some are able to undertake more complex tasks as original design manufacturers (ODMs).[12] The IT company Foxconn and the wafer manufacturer TSMC are both internationally famous and are able to engage in OEM as ODMs. Foxconn made several attempts at becoming an OBM (Original Brand Manufacturer)[13], but its performance was not satisfactory.

Taiwanese companies entered the OEM footwear business almost 40 years ago. The athletic footwear industry had a vertical division of labour, with international brands focused only on product design and brand marketing, and the other production processes outsourced to specialised factories. Adidas and Reebok originally structured their factories according to a vertically integrated model, but after continual attempts, they were unable to maintain it. Nike began as an importer for the Japanese company Onitsuka. Later, Nike began designing its own sneakers, but still received help in the production stage from Japanese trading companies which used a vertical division of labour. Adidas, Reebok, Converse, and Nike eventually transferred their production bases to Taiwan. The relationship between Taiwanese factories and multinational companies led to the formation of a huge supply chain involving many small and medium enterprises.[14] In 1994, research published by the MIT Sloan School of Management stated that major American businesses relied heavily on suppliers in Taiwan and Mainland China through strategic outsourcing and the retention of only essential technology. The report analysed Nike as an example of this strategic outsourcing from 1984 to 1993. During this period, Nike increased turnover and profit after tax by 20%.[15]

These supply chains were usually pyramid-shaped, with the main company located at the top and the employees of small enterprises at the bottom. Some of these employees worked at home rather than in factories or workshops. I remember helping my mother with a part-time job of this type when I was 15 years old. After 35 years, I still remember how to bind an insole to the inside of a sneaker.

Because Taiwan for the most part lacks its own international brands, numerous companies rely on OEM to stay competitive. Certain companies even integrate design orders; for example, the Pou-Chen Group is one of the most successful OEM and ODM sneaker companies in the world, and was responsible for the development of the Nike Air Jordan series. Many of these small and medium enterprises do not earn favorable or even adequate profits from these major multinational companies. Taiwanese small and medium business owners must therefore develop cost-saving production techniques. These enterprises use the amoeba management theory to maintain their existence and pay their

[11] OEM (Original Equipment Manufacturing): a system where production is entrusted to the party that provides requests and authorisation, according to the specific conditions involved.
[12] ODM (Original Design Manufacturer): an enterprise involved in product design and development activities, via high-performance product development and a competitive manufacturing performance to meet the needs of the buyer.
[13] OBM (Original Brand Manufacturer): an enterprise that develops its own corporate image and brand and then reaps the maximum economic benefits.
[14] Zhen, Lu-Lin, *Taiwan: A Radical Quarterly in Social Studies*. Volume 35, September 1, 1999, p. 3-4.
[15] Quinn, James Brian; Hilmer, Frederick G., Sloan Management Review, summer 1994. July 15, 1994, p. 43.

employees relatively low wages. They generally do not outsource or use worker agencies, because these legal relationships are too complex for their purposes. If they aim to reduce labour costs, small and medium enterprises prefer to hire foreign or part-time workers. The alternative is to move their factories to Mainland China or Vietnam. By contrast, OEM factories that produce phones or computers receive large and unpredictable domestic and foreign orders. Non-fixed term employment contracts are a serious challenge for them, and for that reason they frequently employ agency workers.

III. Extension of employer responsibility in the fissured workplace

1. Historical background

The predecessor of the Taiwan Labour Standards Act is the Factory Act which was passed by the Nationalist government in 1939. The Factory Act had a narrow scope, and Taiwan did not have a truly comprehensive labour law until 1984. The Labour Standards Law of that year established minimum standards for working conditions, but its scope of application was limited to eight sectors. At that time, most enterprises were what would today be called micro-enterprises. The government even promoted an entrepreneurial slogan stating 'the living room is a factory'. Beginning in 1987 with the lifting of martial law, however, Taiwan has undergone gradual but substantial changes in its socioeconomic development. Workers began to gain rights consciousness, and in 1996 the Legislative Yuan decided to extend the application of the Labour Standards Law to all employees, with certain exceptions such as doctors[16] and teachers[17]. Overall, from 1988 onwards almost all workers were protected under the Labour Standards Law.

2. Legal sources of basic worker protection standards

A. Employment agreements and the Labour Standards Law

The primary legal source of the employer-employee relationship is the agreement concluded between both parties, as established by the Labour Standards Law (although some contracts avoid this law by using freelance workers, as I will explain later). In general, the employer and the employee are free to determine the provisions of their employment agreement. Yet in practice, these agreements merely supplement binding statutory law and collective agreements. For example, Article 21 of the Labour Standards Law states: 'A worker shall be paid such wages as determined through negotiations with the employer, provided, however, that such wages shall not fall below the basic wage. The basic wage referred to in the preceding paragraph shall be prescribed by the basic wage deliberation committee of the Central Competent Authority and submitted it to the Executive Yuan for approval.' The Labour Standards Law is the most important statutory law on working conditions in Taiwan. Whether the employer operates an independent enterprise or an amoeba organisation (such as fissured workplaces) affiliated with a large company, so long as an enterprise hires an employee directly, then the enterprise is the employer of the employee as defined in the Labour Standards Law.[18] The employer shall

[16] See the executive order, Council of Labor Affairs, reference number: (87), word 1 of Lao- Dong No. 059 605. Paragraph 2, No. 7

[17] See the executive order, Council of Labor Affairs, reference number: (87), word 1 of Lao- Dong No. 059 605. Paragraph 2, No. 2.

[18] Article 3 of the Labor Standards Law.

provide the worker with conditions that meet or exceed the standards of the Labour Standards Law.[19]

Furthermore, the Courts claim the right to review the content of an individual employment contract with respect to fairness, pursuant to Article 247-1 of the Civil Code. For this reason, and for the purpose of efficiency, employers often use standard employment contracts for all employees and only amend them as necessary, particularly in the case of higher-level employees. Article 247-1 of the Civil Code stipulates: 'If a contract has been constituted according to the provisions which were prepared by one of the parties for contracts of the same kind, the agreements which include the following agreements and are obviously unfair under that circumstance are void.

(1) To release or to reduce the responsibility of the party who prepared the entries of the contract.

(2) To increase the responsibility of the other party.

(3) To make the other party waive his right or to restrict the exercise of his right.

(4) Other matters gravely disadvantageous to the other party.'

Taiwanese courts have affirmed that an employment contract is a standard contract that shall be governed by the principle of equity restrictions, referring to the terms of the contract that one of the parties has prepared in advance. The other party can only be made to work in accordance with the terms of the contract, and the legal principle of equity should be applied to exclude unfair unilateral interest clauses that would economically disadvantage the non-contracting party. If the other party does not accept the terms of a vertical contract, it should be considered invalid and in violation of the principles of equity, equality, and mutual benefit.[20]

B. Non-fixed term contracts and unfair dismissal

Employment contracts are divided into two categories: fixed term contracts and non-fixed term contracts. Fixed-term contracts are appropriate for temporary, short-term, seasonal, or specific work, but not for continuous employment.[21]

Temporary, short-term, seasonal, and specific work are defined as follows:

1. Temporary work shall mean work of an unexpected and non-continuous nature, and is not to exceed 6 months.

2. Short-term work shall mean work of a non-continuous nature that is expected to be completed within a short period of time and is not to exceed 6 months.

3. Seasonal work shall mean work of a non-continuous nature which is influenced by seasonal raw materials, the sources of materials, or their sale in markets, and is not to exceed 9 months.

4. Specific work shall mean work of a non-continuous nature which can be completed within a specific period. If the length of work is to exceed 1 year, it should be reported to the competent authority for approval and inclusion in employment records.'[22]

The Labour Standards Law requires that employers provide reasonable cause for the termination of an employment contract, otherwise it would be considered an unfair dismissal and therefore invalid. Employers must also provide severance pay and notify the employee before their termination.

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[19] Article 1 of the Labor Standards Law

[20] Taiwan High Court, Civil Judgment 2014, *Labour Affairs*, No. 6.

[21] Article 9 of the Labor Standards Law.

[22] Article 6 of the Enforcement Rules of the Labor Standards Law.

C. Collective agreement

Collective agreements are contracts concluded between a single employer or an employers' association on one side and a trade union on the other, according to Article 2 of the Collective Agreement Act. Collective agreements generally regulate a large number of key working conditions, such as working hours, remuneration, the notice period prior to termination, number of vacation days, and overtime bonuses. They have an immediate and binding effect on individual employment relationships, pursuant to Article 19, paragraph 1 of the Collective Agreement Act, if the employer is bound by the collective agreement and the employee is a member of the union which concluded the contract.[23] Although collective agreements have considerable power, there are few which are currently in effect.

In recent decades, no more than 40 collective agreements have been concluded each year, and the number of collective agreements has diminished in tandem with the privatization of nationalised businesses. The main reason for this is the lack of a mechanism to ensure bargaining in good faith.[24] As a result, employers often disregard requests from unions to engage in negotiations. Moreover, union bargaining is often in vain because labourers have difficulty launching collective industrial action. Consequently, the amendments to the Collective Agreement Act in 2011 attempted to promote good-faith practices. Article 6 stipulates: 'Both the labourer and the employer or employer's association shall proceed in good faith when bargaining for a collective agreement.' This provision clearly states that any party cannot reject the collective bargaining proposed by the other party without justifiable reasons; if employers pretend to bargain, prolong or boycott the bargaining process, or refuse to offer any necessary documents, those actions will be defined as an unjustifiable rejection. According to the Settlement of Labour-Management Disputes Act, employers who are determined to have unjustifiably rejected proposed collective bargaining will be subject to fines.[25] Beginning in 2012, the number of concluded collective agreements grew quickly. As of the third quarter last year, there are more than 300.[26]

D. Working rules

In practice, the most common legal tool with which business owners manage their employees are 'working rules'.

'An employer hiring more than thirty workers shall set up working rules in accordance with the nature of the business, and shall publicly display the said rules after they have been submitted to the competent authorities for approval and record. The rules shall specify the following subject matters:

1. Working hours, recess, holidays, annual paid leave of absence and the rotation of shifts for continuous operations,
2. Standards, method of calculation and pay day of payable wages,
3. Length of overtime work,

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[23] Liu, Shih-Hao, 'An Analysis of the Amendment of the Collective Agreement Act', *Journal of New Perspectives on Law*, Volume 9, 2009, pp.18–20.

[24] Huang, Yao-Zhan, The Research of the new Collective Agreement Act, Taiwan Labor Quarterly, No.12, 2008, pp48-49.

[25] The decision system see Article 35 and Article 45of the Settlement of Labor-Management Disputes Act

[26] The Statistics of Labor Affairs, the Ministry of Labor Affairs in Taiwan. see: http://statdb.mol.gov.tw/html/mon/23040.htm

4. Allowances and bonuses,
5. Disciplinary measures,
6. Rules for attendance, leave-taking, award and discipline, promotions and transfer,
7. Rules for recruitment, discharge, severance, termination and retirement,
8. Compensation and consolation payment for accident, injury or disease,
9. Welfare measures,
10. Safety and health regulations to be followed and observed both the employer and the worker,
11. Methods for communication of views and enhancement of cooperation between employer and worker, and
12. Miscellaneous matters.'

The Supreme Court regards the clauses of working rules as the contents of employment contract by default, if the employer has publicly display said rules after they have been submitted to the competent authorities for approval and record.[27] But the High Courts and District Courts regard the clauses of working rule as standard contracts; meaning that the courts can claim the right to review the clauses of working rules with respect to fairness, pursuant to Article 247-1 of the Civil Code.[28]

E. Laws protecting subcontracted workers from occupational accidents

According to Article 62 of the Labour Standards Law, in the case of an 'owner of a business entity who contracts his/her work to a subcontractor who subsequently subcontracts, the contractor, the subcontractor, and the last subcontractor shall be jointly and severally liable to pay the compensation prescribed in this Chapter for occupational accidents related to the work performed by the workers hired by the contractor and the subcontractor.

'When a business entity or contractor or subcontractor pays compensation for occupational accidents in accordance with the provisions of the preceding paragraph, each may claim reimbursement from the last subcontractor for the portion borne.'

'Furthermore, where a contractor's or subcontractor's work site is located within the scope of work site of the original business entity or is provided for by the same, the said original business entity shall supervise the contractor or subcontractor to provide their hired workers with such labour conditions as prescribed in applicable statutes and administrative regulations.

In accordance with Article 63 of the Labor Standards Law, a business entity shall be jointly and severally liable with the contractor or subcontractor for the compensation of occupational accidents caused to workers hired by the contractor or subcontractor for having violated the provisions of the Labour Safety and Health Act pertaining to obligations which the contractor or subcontractor are required to perform.

3. Reform of the Occupational Safety and Health Act

A. Expanding the scope of protection to all workers

The new Occupational Safety and Health Act requires employers to protect not only

[27] Wang, Neng-Gin, "Working Rules", in Taiwan Labor Law Association, The Interpretation of the Labor Standards Law, 2009, pp407-409; Highest Court, in Civil Judgment, 1999, Tai Shag Zhi, No. 1696.
[28] Taipei Court, in civil Judgment, 2002, Lao Shu Zhi, No. 6; Taipei Court, in civil Judgment, 2002, Lao Shu Zhi, No. 105; High Court, Civil Judgment, 2003, Lao Shu Zhi, No. 5.

their employees but also other people in their workplaces who are directed or supervised by employees. These workers are described in Article 2, subparagraph 1 of the Occupational Safety and Health Act as those 'who have no employment relationship with the business entity, but engage in work or for the purpose of learning skills or receiving occupational training at such business entity's workplace.'

B. Expanding the scope of protection to entire workplace

The Occupational Safety and Health Act expanded the scope of protection to the entire workplace. According to the Enforcement Rules of the Occupational Safety and Health Act, the workplace can be defined as any of the following places:

1. For the duration of the labour contract, the place where the employer assigns labourers to carry out work services to fulfill the terms of the contract.
2. The actual place where self-employed workers engage in work.
3. The actual place where other people engaged in work and directed or supervised by supervisors engage in work.

4. Reform of the Gender Equality in Employment Act

The Gender Equality in Employment Act was enacted to protect gender equality in the workplace, implement thoroughly the constitutional mandate to eliminate gender discrimination, and promote the spirit of gender equality. The 2014 Amendment expands the scope of protection to agency workers. According to Article 2 of this act, an 'employer means a person, a public or private entity or authority that hires an employee. A person who represents an employer to exercise managerial authority or who represents an employer in dealing with employee matters is deemed to be an employer.' Client entities employing agency workers are deemed to be employers that must prohibit gender discrimination and sexual harassment, as well as instituting preventive and corrective measures.

5. Lack of protection for special workers

A. Lack of complete protection for agency workers

Agency work is common but controversial in Taiwan, because although it is legal under the Civil Code and the Labour Standards Law,[29] there are no specific protections in place for laborers in this system.

Agency work is carried out within a triangle of contractual relationships involving the agency (agency employer), agency worker, and client. Thus, there are two contracts involved:

1. A service contract between the agency and the client.
2. An employment contract which regulates the employment relationship between the agency worker and the agency.

According to article 9 of the Labour Standards Law requires that employers of agency workers hire them under non-fixed term employment contracts, even if the employer has not had any dispatch work from client businesses. However, authorities have

[29] See the Executive Order from October 30, 1997, Tai-Lao-Dong 1 Zhe, reference number No. 047 494 which categorizes agency work as part of the manpower supply industry, according to industry standard classification(subclasses ID: 7901), and states that it falls under the purview of the Labor Standards Law.

difficulty regulating compliance with this aspect of the law, because there are no specific statutes governing this industry. Any company can run an agency-work business so long as it has registered with in the Ministry of Economic Affairs, and these businesses are increasing in number. As mentioned previously, cell-phones or IT factories often receive large domestic and foreign orders on an irregular schedule, rendering non-fixed term employment contracts a challenge to maintain. As a result, they frequently hire agency workers to avoid complying with the Labour Standards Act in areas such as contract termination procedures.

The Ministry of Labour has attempted to regulate agency work, but this legislation has been attacked by client businesses, agencies, and trade unions. After 20 years of unnecessary quarreling, the Council of Labour Affairs finally put forward a draft. Some aspects of this draft deserve praise, such as the requirement that agency work is based on the principles of Equal Pay and Equal Treatment. According to these principles agency workers are entitled to the same remuneration and benefits as comparable permanent employees of the client.[30] Also worth mentioning are the joint liabilities of agencies and clients in occupational accident compensation and wage arrears. As for limiting the proportion of agency workers to 3% of total employees, the draft completely ignores the reality of the Taiwanese business environment. Unfortunately, debates over this draft will likely drag on for years.

B. Lack of protections for freelance workers

Under Taiwanese law, the distinction between employees and freelance workers is of particular importance in determining the application of labour laws. A freelance worker performs services according to article 490, 492 Civil Code on an independent basis and assumes sole risk for their business. These services might include projects completed under a highly specific contract. Conversely employees, often have requirement to perform services under the directives of an employer.

The difference between employees and freelance workers is not only in employment law, as well as the payment of social security contributions and the obligations of employers to deduct income tax. For example, according to Article 6 Labour Insurance Act, an employee, who has a fixed employer, must be insured through their employer by the Labour Insurance Bureau. The employee pays only 20% of normal insurance premium. The employer must pay 70% of normal insurance premium and 100% occupational accident insurance premium for workers. Freelance can insure the labour insurance, but they shall pay 60% premiums by themselves, and the government pays 40% premiums for them.

On the other hand, if the relationships fall within the scope of employment law, which offers greater protection to employees than to freelance workers. Accordance with article 11, 12 of Labour Standard Law, the termination of an employment relationship must comply with restrictive employment law provisions which do not apply to a freelance relationship. They may be terminated at any time.

Central and local governments frequently hire freelance workers, because the Legislative Yuan and local councils control personnel budgets and staffing and often use laws or regulations to place strict limitations on the number of civil servants and governments. The reason behind this is that the central and local governments had formerly

[30] See the legislative reasons and Articles 16-20, of the Draft of Protection of dispatched worker Act.

abused their personnel budgets to hire excess employees. However, this limitation would prevent the various levels of the Taiwanese government from providing adequate public services under recent laws mandating increased access. This problem is often managed by hiring freelance workers under the operational budget instead. Although freelance workers in central and local governments can receive higher pay, they are not extended the same legal protections as normal employees.

IV. Conclusion

Legal ambiguities involving freelance and agency workers are serious problems in Taiwan, but the government is unwilling to face these phenomena related to the concept of the fissured workplace. After the national elections this year, a new Legislative Yuan was called into session on 1st February, and the new executive government will be sworn in on 20th May. I predict that the new administration will continue to avoid addressing these topics.

A famous Taiwanese proverb states: 'It is a shame that the state allows the officials to set fire to houses, but prohibits the people to light a candle.' Who are the main employers of freelance workers? Who are the main employers of agency workers? Actually, the central government and local governments hires a lot of freelance workers and agency workers. We have another proverb: 'The people are not clumsy enough to drop stones on their own feet.'

The government and parliament cannot avoid this issue, because dispatch workers and the freelance worker lack special protection of the law, it is vulnerable to exploitation of workers. They shall revise the drafts of protection laws for agency and freelance workers so that they are at least acceptable to every party. This might be the only method of solving the underlying legal problems I present in this paper.