

Labour Policy on Fixed-Term Employment Contract in Korea

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I. Introduction

1.1. Research Objectives

As of March 2008, according to a report entitled “Research on economically active people”¹ by the Korea National Statistical Office (Statistic Korea), the number of temporary employees in Korea totals 5,638,000 and accounts for 35.2 percent of total salaried employees (15,993,000 people). Fixed-term workers total 2,293,000 or 40.7 percent of total temporary workers. Compared to the statistics of March 2007 before the enforcement of the Act on the Protection, etc. of Fixed-Term and Part-Time Employees (hereafter referred to as the Irregular Workers Protection Law), the number of both fixed-term employees who have relatively good working conditions and temporary employees who are able to repeatedly renew their contracts has declined. However, the number of temporary employees, those who have relatively inferior working conditions or who cannot expect to have continuous work, has increased sharply. Therefore, it can be interpreted that since the enforcement of the fixed-term employee Act, the overall circumstances of employment have deteriorated.

Among total salaried employees,² an irregular employee’s wages are 65.3 percent of a regular employee’s salary. Furthermore, only 40 percent of irregular employees receive social insurance. The conditions faced by irregular employees such as employment insecurity, low wages, increments in the intensity of labor, and exclusion from social insurance or company welfare, are inferior compared with those of their regular employee counterparts. This makes it difficult for an irregular employee to lead a decent life. These problematic situations bring about not only the competition of low wages among employees, but also perpetuate the gap and conflicts between the rich and poor or regular and irregular workers.

¹ Salaried workers are categorized into regular, temporary and day-workers in “Research on economically active people” by Statistic Korea. Since the economic crisis of 1997, in accordance with increase of temporary employees and day-workers, it was requested to conduct a detailed analysis on these workers and grasp new types of working arrangements such as a dispatched or contract company worker. Moreover, due to rapid changes, the situation of industrial and occupational employment transfers must be understood. Therefore, since 2000, new items have been included in the existing “Research on economically active people” and further research has been conducted.

² The ratio of temporary employees to total salaried workers varies between organizations which publish this statistic since each organization bases the statistic on different criteria. As of August 2006, the Ministry of Labor stated that ratio is 35.5 percent, Statistic Korea reports it to be 46.3 percent and according to Korea Labour and Society Institute, the ratio is 55 percent (the Ministry of Labor (2006/12), *Explanation of the Irregular Workers Protection Law*, p.3; Kim, Yoosun (2006/11). “Actual situation and Size of temporary employee”; Statistic Korea, *Research on economically active people*; Korea Labour & Society Institute (2006/8), *Labor and Society*, No.115).

To settle these situations and problems, the Korean government has enacted legislation which protects irregular employees. The Economic and Social Development Commission (formerly called the Korea Tripartite Commission) has discussed and collected diverse opinions from all of society since 2001 and then submitted the bill to the National Assembly. After several years of controversy, the Irregular Workers Protection Law was passed by parliament in November 2006 and came into effect from July 2007. The main purpose of this new law is to reduce the discrimination and abuse of temporary employees amid a deepening polarization of the labor market.

1.2. Research Scope and Methodology

This research will compare and analyze the diverse legal issues that are involved in the Irregular Workers Protection Law, which has been in effect since 2007. This research also has the purpose presenting remedial measures for legislative policy. To achieve these research purposes, the contents of the Irregular Workers Protection Law and the actual management of the discrimination correction system will be analyzed here. I will then discuss the peculiarities and problems with this law and offer some suggestions related to future remedial measures.

This research constitutes five chapters. The first chapter introduces the research questions. Chapter 2 (II) considers the issue of discrimination against temporary employees. We will first examine the general concept of an irregular employee and then look at various categories of irregular employees. Chapter 3 (III) examines each law in relation to the prohibition of discriminatory treatment as a review of the revised Irregular Workers Protection Law. This chapter also provides a deeper look into the characteristics and main contents of the discriminatory prohibition legislation for irregular workers and then inspects the problems regarding all legislation pertinent to existing temporary employees. As the main discourse of this research, Chapter 4 (IV) pinpoints the problems with the existing the Irregular Workers Protection Law and offers logical solutions. The Conclusion, Chapter 5 (V), summarizes the main arguments and offers suggestions for new legislation for discriminatory prohibition regulations.

The significance of this research is that it provides an examination of the problems connected with discriminatory prohibition regulations of temporary employees and then suggests relevant solutions.

II. Present conditions and aspects of discrimination of temporary employees

2.1. The Present Conditions of Temporary Employees

2.1.1. The Actual Situation of Temporary Employees

According to the data of the Ministry of Labor, which is based on “Research on economically active people”³ of March 2008 by Statistic Korea, the number of temporary employees accounts for 33.8 percent compared to regular employee counterparts (66.2 percent) within the same period. This is the lowest ratio since the beginning of the investigation in August 2008, and shows us that the increment of the number of irregular workers, which had been sharply increasing by approximately 800,000 every year since 2002, has lessened.

³ Statistic Korea (2008/3), *Research on economically active people*.

Meanwhile, although the number of irregular employees has slightly increased (26,000 people, 1.1 percent), the percentage of temporary employees among salaried workers has gone from 36.6 percent in 2005 to 35.5 percent in 2006. This is a result of the increase in wage earners (383,000 people, 2.6 percent).

Then, while the size and ratio of irregular work is decreasing little by little from the peak of 2005, the size and ratio of dispatched workers, contract company workers, and home based workers are rising. Intra-subcontract work is also increasing, though the exact statistics are unknown.⁴

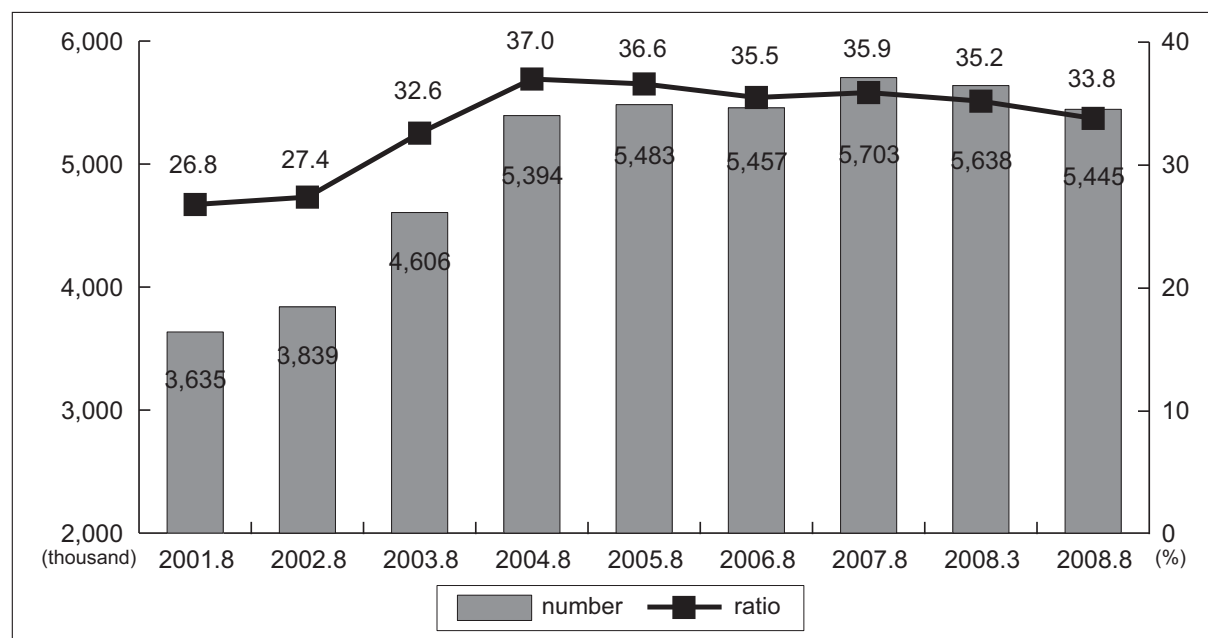
Table 1: Changes of Regular and Irregular Employees

	2005	2006	2007	2008 (August)
Total				
Regular	63.4%	64.5%	64.1%	66.2%
Irregular	36.6%	35.5%	35.9%	33.8%

Notes: “Research on economically active people” by the Korea National Statistical Office.

According to Table 1, as of August 2008, we can see that irregular workers account for 33.8 percent of the total salaried workers, and the number of this type of worker is roughly 5,455,000. Since 2004 (37.0 percent), the ratio of irregular workers compared to wage workers is smoothly changing from 34 to 36 percent.

Figure 1: Size and Ratio of Temporary Employees



Notes: “Research on economically active people” by Korea National Statistical Office.

⁴ Eun, Soomi (2007), “Strategic Choice of Labor and Management to Solve the Problems of Temporary Employee, the Issue and Problem in accordance with Enforcement of the Irregular Workers Protection Law”, Korea Industrial Relations Association-Korea Society of Labor Law-The Korean Labor Economic Association joint policy debate, pp.59-62.

2.1.2. The Actual Employment Situation and Main Peculiarity of the Temporary Employee Situation

A. Necessity to Recognize the Actual Situation

Although the main objective of the Irregular Workers Protection Law is to protect an irregular worker, under the existing conditions, this objective is not being carried out. Furthermore, contrary to this law's purpose, irregular workers are visibly suffering damage as a result of the law.

Only a law which precisely reflects social reality and is then enacted to improve societal problems could be considered valid. The situations surrounding the Irregular Workers Protection Law, however, are the reverse owing to a lack of proper reflection on social reality. In other words, while the law can remedy some social problems, it might be useless if it is greatly removed from the social reality. Therefore, having an accurate understanding of the social reality is an essential element in order to create a law which is necessary and relevant to the bettering of society.

B. The Actual Situation of Labor and Management and the Category of Temporary employees

a. The actual situation of labor and management and the reasons behind the increase of temporary employees

Enterprises make efforts to adjust in order to take advantage of radical changes in the environment and overcome fierce competition. Therefore, one of management's main objectives is to be flexible and prompt.

Enterprises already have the know-how to survive in the current worldwide competition, they have enforced the core competence that enables them to lead the economy, and they have restructured their businesses through decisive outsourcing and the disposal of non-core business. This kind of effort can also be seen in the personnel restructuring of companies, which stresses the recruitment and maintenance of the best employees in order to achieve core competence as the strategy to differentiate themselves. Non-core competence is disposed of through cost reduction, and scarce competence is made up strategically by enhancing productivity and securing a flexibility of manpower. This consolidated corporate and personnel management strategy is a "must" to survive in a competitive period.⁵ The utilization of the temporary employee under the current situation meets the demands of the times and is realistic for survival. Thus, the increase of irregular work reflects a limitless competition arising from globalization and is part of a trend that we cannot afford to ignore due to the dramatic changes of technology and market environment. This is also an immediate cause of social polarization.⁶

b. Reasons for the Difficulties of Conversion into Regular Employees

There are five reasons why irregular employees have difficulties in being converted into regular employees.

First, as compliance with employment adjustments and cost are the primary factors that influence the utilization of temporary employees, a low number of temporary employees are converted into regular workers. In other words, from the viewpoint of the enterprise, it is

⁵ Lee, Jingyu (2007/7), "The Solution of the Discrimination Problems against Temporary Employee from the Management and HR", *Labor Legislation*, No.194, p. 43.

⁶ Lee, Dalhyu (2006), "The Polarization solution from Social Law and Law School", *Treatise on Labor Law*, Vol.9, Korea Society of Comparison Labor Law, p.12.

difficult to convert an irregular worker into a regular worker since this would involve an increase in wages and the added cost of welfare benefits. Thus, if the enterprise cannot discriminate against an irregular employee in accordance with the Irregular Workers Protection Law, this eventually leads to the ascension of personnel expenses and the deterioration of corporate competitiveness. Owing to this problem, we can see not only the deterioration of corporate competitiveness but also the possibility of corporate bankruptcy.

Second, if an irregular employee is converted into either an employee with a non-fixed term contract or a regular employee, according to the Irregular Workers Protection Law, an enterprise will not be able to adjust or easily cut down the number of employees during difficult times. This will be a burden to an enterprise in the end. At the same time, the recognition of employees regarding this is vital to solving these kinds of problems. If it is possible to replenish these rising costs and prevent the deterioration of competitiveness (due to lack of flexibility over employment), with the improvement of technology and productivity, these problems will be solved.

Third, temporary employees are usually employed in vulnerable and less competitive businesses such as small businesses or medium-sized enterprises, so this is a factor which renders their jobs insecure. In addition, some factors, such as low education levels, low technical skills, low individual competence (foreign language or computer skills, etc.), a less competitive age spectrum and the like, make it hard to convert them into regular employees.

Fourth, the rate of participation in job training of temporary employees is very low, and the opportunity for career development, which could help them to convert into being a regular employee, is also very scarce. This is because the policies for the active labor market as they apply to irregular employees, such as free education for prompt re-employment, employment support services for less employable people, etc. are insufficient.

Lastly, as in the case of Germany and France, the practice of converting employees (based on an evaluation) into regular employees after they have been employed as temporary workers, has not been set up in Korea. This is because temporary employees, such as interns or unilateral contract workers, have been abandoned as “disposable” workers due to the economic recession and the youth unemployment problem.

c. Main Characteristics of Temporary Employees

When examining the most representative working conditions, such as wages and working hours, we can learn more concerning the actual employment situations of temporary employees. The average working hours per week of a temporary employee is 90.4 percent of that of a regular employee in 2005, and there is no actual difference between regular and irregular employees in terms of working hours except for part-time employees, whose working hours are clearly shorter. Nevertheless, there is a huge difference in wages between temporary and regular employees.

The main characteristics of temporary employees are as follows: first of all, the percentage of fixed-term employees which accounts for highest proportion (44.4 percent) among the types of irregular employees shows a tendency to become permanent, though this figure is higher than in other countries.⁷ At the same time, the amount of part-time work is increasing.⁸ However, the percentage of part-time work is lower than that of other countries.⁹

⁷ Korea: 14.7% (2008/8), US: 4.0% (2003), Japan: 12.8% (2003), Germany: 12.7% (2003).

⁸ From 807,000 (2002) to 1,229,000 (2008/8).

⁹ Korea: 12.6% (2008/8), US: 13.0% (2003), Japan: 24.9% (2003), Germany: 17.6% (2003).

Atypical work is also increasing slightly¹⁰ and contract company work, in particular, shows a continuous increase.¹¹

2.2. Discrimination problems of Temporary Employees

2.2.1. Statement of the Problems

From the aspect of an enterprise, hiring a temporary employee rather than employing a regular one can secure employment flexibility and contribute to cost efficiency. On the other hand, although there are positive aspects of rendering employees a flexible time schedule at their work, low wages and inferior working conditions cause serious problems not only to the individual worker but also to society as a whole. In spite of having equal or similar work to that of regular employees, temporary employees have been treated with discrimination in terms of their wages and other working conditions. Thus, such low wages and employment insecurities form a class of poor laborers, which causes the labor market to polarize. This, in turn, worsens the income distribution system as well. These factors act to impede social integration, as can be seen in recent examples such as Ssangyong Motor and Kumho Tire.

Employers prefer to hire temporary employees due to the attractive low personnel expenditure of pay and dismissal costs. The employer ends up discriminating against irregular employees owing to these factors. Moreover, it is obvious that the management-labor disputes resulting from the controversy about equality will have a negative influence on corporate management from a long-term point of view. Despite these factors, discrimination against temporary employees has persisted. To address these problems, we will discuss working conditions and employment insecurity, which are the main areas of discrimination of temporary employees with a focus on time-fixed employees.

2.2.2. Problems of Discrimination in Working Conditions (the Problems of Equal Pay for Work of Equal Value)

The term “working condition” refers to any treatment of workers such as the prohibition of discriminatory treatment in relation to a labor contract. Conditions such as wages, working hours, accident compensation, safety and health, fringe benefits, and dismissal, are included in working conditions.¹² The most crucial of these is wages. If a worker is discriminatorily and unfairly paid, it threatens their security in terms of supporting their dependent family. It also means a devaluation of certain workers in the labor force - the damaging of a worker’s dignity and a violation of their human rights. Therefore, the core factor of equal treatment is “the principle of equal pay for work of equal value.”¹³ Article 32, Clause 4 of the Constitution stipulates that employers shall not discriminate against workers on the ground of gender, and that equal wages must be paid for equal work to male and female workers. Article 6 of the Labor Standards Act also prescribes that employers pay equal wages for work of equal value. The principle of equal pay for work of equal value also stipulates that workers be paid equal wages not only for equal work but also for work which is evaluated as being equivalent. This originated from the concept that female workers should be paid the same wages as males for work that is considered to be of equal value. In other words, when male

¹⁰ From 12.6% (2001) to 13.3% (2008/8).

¹¹ 332,000 (2002) → 413,000 (2004) → 431,000 (2005) → 499,000 (2006) → 584,000 (2007/3) → 593,000 (2007/8) → 617,000 (2008/3) → 641,000 (2008/8).

¹² Lee, John (2009), *The World of Labor Law*, HUFSS Press, p.80.

¹³ Korean Confederation of Trade Unions (2004), *White Paper on Infringement of Basic Labor Right of Temporary Employee I-II*, p.11.

and female workers are conducting different duties, if their duties have a value that is equal, employers have to pay them equal wages. This provision has enlarged the sphere of the equal treatment principle as regards workers' wages and has affected labor relations.¹⁴

III. Main contents of the irregular workers protection law

3.1. The Scope of Application and the Limitation of Employment Period in the Irregular Workers Protection Law

3.1.1. Scope of Application in the Irregular Workers Protection Law

The term "fixed-term employee" refers to an employee who has signed a labor contract whose period is fixed (Article 2, Clause 1). The fixed-term employee is opposed to the notion of regular employee, and temporary employee, part-time employee and contract employee are included in this fixed-term employee.

A fixed-term employee is also an employee. Therefore, he/she is applied to not only Labor Standards Law and the Trade Union and Labor Relations Adjustment Act which basically apply to an employee to but also the Irregular Workers Protection Law.

This law shall apply to all businesses or workplaces employing not less than five workers: Provided that this law shall not apply to a business or workplace which employs only relatives living together and to a worker who is hired for domestic work (Article 3, Clause 1). However, with respect to businesses or workplaces employing four workers or less, some of the provisions of this law may apply to them as prescribed by the Presidential Decree (Article 3, Clause 2), and then with respect to State and local government agencies, this law shall apply to them regardless of the number of workers they ordinarily employ (Article 3, Clause 3).

3.1.2. Limitation of Employment Period in the Irregular Workers Protection Law

To protect a fixed-term employee, an employer may hire a fixed-term employee for a period not exceeding two years. If an employer hires a fixed-term employee for more than two years, the fixed-term employee shall be considered as a worker who has made a labor contract with no fixed term.

Therefore, as well as in the case of the labor contract which is signed more than two years, in the case of the sum of the periods which exceeds two years as a result of repeated fixed-term labor contracts shall also be a labor contract which has made a labor contract with no fixed-term. However, if an employer hires a fixed-term employee by setting a certain period of time, this case is not applicable to the restriction of two years.

On the contrary, an employer may hire a fixed-term employee for a period in excess of two years where: (1) The period needed to complete a project or particular task is defined; (2) The fixed-term employee is needed to fill a vacancy arising from a worker's temporary suspension from duty or dispatch until the worker returns to work; (3) The period needed for a worker to complete schoolwork or vocational training is defined; (4) The fixed-term labor contract is made with the aged as defined in Article 2 Subparagraph 1 of the Aged Employment Promotion Act; (5) The job requires professional knowledge and skills or the

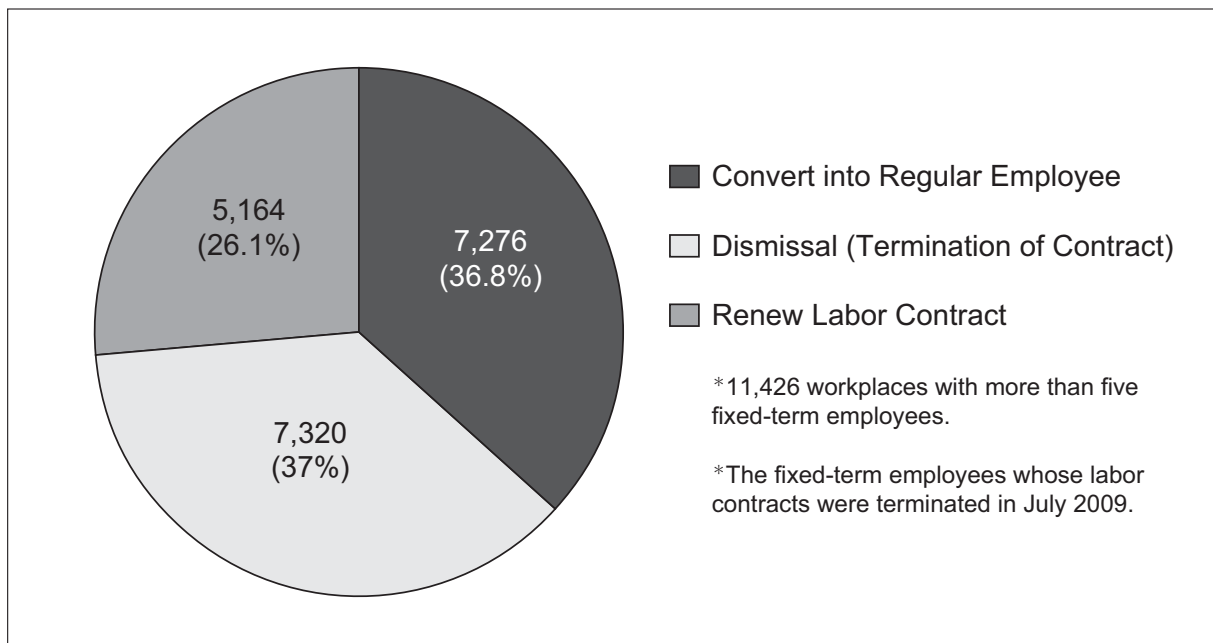
¹⁴ Kim Ellim (2003), "The Issue on the Principle Equal Pay for Work of Equal Value", *Labor Law*, Korea Society of Labor Law, p.6.

job¹⁵ is offered as part of the government's welfare or unemployment measures as prescribed by the Presidential Decree; or (6) There is a rational reason equivalent to those described in subparagraphs 1 through 5 and prescribed by the Presidential Decree.

3.1.3. Conversion into Workers under a Contract without a Fixed-Term

If an employer intends to make a labor contract without a fixed term, he/she shall make efforts to preferentially hire fixed-term employees who are engaged in the same or similar kinds of jobs in the business or workplace concerned (Article 5).

Figure 2: The Actual Situation of Fixed-Term Employee (As of September 2009)



According to the Ministry of Labor, out of the fixed-term employees (19,760 people) whose labor contracts were terminated in July 2009 (second year of the enforcement of IWPL), 36.8% (7,276) were converted into regular employees, 26.1% (5,164) are working continuously by renewing their fixed-term labor contracts and 37% (7,320) lost their employment because of the termination of labor contract. The targets of this statistics were 14,331 workplaces where more than five fixed-term employees are employed, however, 11,426 workplaces responded to this survey.

¹⁵ Article 3, Clause 1 of Enforcement Decree of the Irregular Workers Protection Law:

The “cases in which a job requires professional knowledge and skills as prescribed by the Presidential Decree” refer to those falling under any of the following subparagraphs:

1. In cases where a person, who holds a doctoral degree (including those obtained in a foreign country), is engaged in the relevant field;
2. In cases where a person, who holds a national technical qualification of a technician level is engaged in the relevant field; or
3. In cases where a person, who holds a professional qualification specified in qualified architect, controller, certified public accountant, certified public labor attorney, patent agent, lawyer, certified public appraiser, tax accountant, doctor and aerial navigator etc., is engaged in the relevant field.

3.2. Main Contents and Characteristics of the Application of the Discriminatory Prohibition Law to Irregular Workers

3.2.1. Characteristics of the Application of the Discriminatory Prohibition Law to Irregular Workers

Next, we will examine some characteristics¹⁶ of the Discriminatory Prohibition Law in regards to irregular employees. First, the discriminatory prohibition regarding a temporary employee is stipulated as a special law. That is to say, this discriminatory prohibition became regulated for the protection of temporary workers as a matter of legislation.¹⁷

Second, discriminatory prohibition is applicable to matters concerning wages but has the potential of being applied to a larger sphere of working conditions as well. The larger sphere of working conditions will be applicable to money or valuables but wages, education or transfer orders, promotion and retirement or dismissal and the like, which is applied with the gender equal employment and legal sexual discrimination. And yet the scope of recruitment and employment are not matters of concern for discriminatory prohibition since these factors belong to stages that precede contracting.

Third, the number of applicants requesting a redress and the subjects of application for the redress of discriminatory treatment¹⁸ are limited. The applicants for a redress are limited to temporary employees and the subjects of application are also limited to the unfavorable treatment on the ground of being a temporary employee. Therefore, if regular workers are treated with discrimination, they cannot apply for a redress in accordance with this regulation of the law.

Fourth, the laws relating to temporary employees stipulate that an employer cannot discriminate against a worker on account of their being a temporary employee, and also prescribe the cause-and-effect relationship as the essential condition. These discriminations result from the reason for hiring irregular workers in the first place, and the discrimination directly influences this causal relationship from an objective view. Therefore, the discriminatory treatment is judged on the basis of the existence of discriminatory treatment which consequently resulted, without reference to whether the employer has a subjective intention to discriminate or not. Thus, the employers have to prove the existence of a justifiable reason for the discriminatory treatment.

Finally, the regulation of discrimination prohibition on fixed-term or part-time employees and dispatched workers is abstract. Thus, depending on how this regulation is interpreted and operated, it will be a potent influence on labor-management relations. This is closely related to how to handle the judgments toward the selection of workers who are able to compare with other workers and justifiable reasons for discrimination. For instance, to judge the discrimination prohibition toward dispatched workers, other worker who is employed in an equal or similar kind of works is needed to compare with dispatched worker. Therefore, it is paid close attentions to examine the justifiable reasons to judge.

¹⁶ Park, Jonghee (2006/11), "A Study on Criteria of Judgment of Discrimination Prohibition against Temporary Employee and its operation", *Journal of the National Labor Relations Commission*, p.61.

¹⁷ Act on The Protection, etc. of Fixed Term and Part-Time Employees, amended by Act No. 8372, Apr. 11, 2007.

¹⁸ The period of application for discrimination correction is limited to three months from the date when the discriminatory treatment occurred (exclusion period, Article 9 Clause 1 of the Irregular Workers Protection Law). For more details, see Park, Jonghee (2006), *op. cit.*, p.261.

3.2.2. Main Contents of the Discriminatory Prohibition Law as it Applies to Irregular Workers

A. Act on the Protection, etc. of Fixed-Term and Part-Time Employees

a. The Significance of Article 8, Clause 1

The term “fixed-term employee” refers to an employee who has signed a labor contract whose period is fixed regardless of the contract period. The essence of a labor contract is to fix terms regarding matters such as the continuation and termination of a contract. Matters such as setting a revision period for wages and the use period are not related to the core purpose of a contract and therefore cannot be considered as part of a fixed-term labor contract.¹⁹ On the other hand, Article 8 of this law stipulates that “an employer shall not give discriminatory treatment against fixed-term employees on the ground of their employment status compared with other workers engaged in the same or similar jobs under a labor contract without a fixed term in the business or workplace concerned.”²⁰ Article 8, Clause 1 of this law states that the status of fixed-term employee in this type of contract is recognized, so the contract itself is not discriminatory. This means that an employer shall not discriminate against a fixed-term employee on the grounds of employment status. Given this, we can examine the definition of “discriminatory treatment” through Article 2, Clause 3 of the law.

The term “discriminatory treatment” refers to unfavorable treatment in terms of wages and other working conditions that is given without any justifiable reason. Therefore, discriminatory treatment as prohibited by Article 8 of the law would be (1) a discriminatory treatment against a fixed-term employee, (2) on the ground of their being a fixed-term employee, (3) with no justifiable reason for this discrimination. Thus, if an employer discriminates against a fixed-term worker, it would necessitate other justifiable reasons, not the reason of a fixed-term worker. In Korea, there are diverse aspects of systematic discrimination such as wages, position, and group of occupation, so it would be difficult to determine and enumerate the detailed criteria called for in the legislation.

b. The Examination of Article 8, Clause 1

Whether a discriminatory treatment has occurred is determined from the stance of the fixed-term employee, and whether there is a justifiable reason is judged from the stance of the employer. The justifiable reasons which employers can legitimately insist on regarding wages and the differences of working conditions are general conditions such as duty, competence, skill, qualifications, responsibility, authority, achievement, career, educational background, seniority, and age. Moreover, these are the factors related to the evaluation of labor and they also determine wages. To consider justifiable reasons beyond these sorts of factors, it is

¹⁹ A worker who is in a trial period or on probation is not a fixed-term employee. However, a worker would be a fixed-term employee when he/she makes a contract as a fixed-term worker and whether the purpose of working is trial or probation. In short, it would be judged whether the purpose to set the period in labor contract of a trial or probation worker is for a continuance period or for a trial or probation period. And then, a worker would be a fixed-term worker, although the purpose of setting the period is not only for a continuance period but also for another reason.

²⁰ **Article 8 (Prohibition of Discriminatory Treatment)**

(1) An employer shall not give discriminatory treatment against fixed-term employees on the ground of their employment status compared with other workers engaged in the same or similar jobs under a labor contract without a fixed term in the business or workplace concerned.

(2) An employer shall not give discriminatory treatment against part-time workers on the ground of their employment status compared with full-time workers who are engaged in the same or similar kinds of jobs in the business or workplace concerned.

essential to check factors which determine or reflect the wages and working conditions in the business or workplace. As a result, if the differences of wages and working conditions occur due to certain factors that are relevant to the determination of wages and working conditions, they may be deemed as rational reasons. On the other hand, if an employer treats a fixed-term employee unfavorably compared with a regular employee based on factors which are irrelevant to the particular factors which determine wages and working conditions, it would be considered that there is no rational reason for such treatment.

c. The Significance of Article 8, Clause 2

Article 8, Clause 2 of this law stipulates that an employer shall not give discriminatory treatment to part-time workers on the ground of their employment status compared with full-time workers who are engaged in the same or similar kinds of jobs in the business or workplace concerned. This is same way that an employer is prohibited from giving discriminatory treatment against fixed-term employees on the ground of their employment status in Article 8, Clause 1.

Incidentally, this law does not aggressively protect the right of equal treatment of a fixed-term and part-time employee, and rules inactively prohibiting undue discriminatory treatment against a fixed-term and part-time employee compared with a regular employee. In short, this provision essentially takes the form of a prohibition rule.

To prohibit a discriminatory treatment means that a legal action of employer or employer's introduction which is based on the legal action would be invalidated, there is some problem how to create legal relations after the invalidation. This connotes various probabilities, so it cannot be solved just by granting the right of equal treatment to fixed-term or part-time employees. In most cases, it can be accomplished by guaranteeing a temporary employee the benefits of equal treatment which would be equivalent to those granted to a regular worker. In some cases, however, the legal effect of discrimination prohibition would be practiced by replacing a regular worker's unreasonable benefits which he/she gets compared with a temporary employee.

d. Consideration on Article 18 of the Labor Standards Act

The criteria or other matters to be considered for the determination of working conditions of part-time employees are stipulated in the labor contract, calculation of wages, overtime work, leave and application of leave, the making and changing rules of employment, and the like. However, working conditions for part-time workers shall be determined on the basis of the relative ratio of their working hours computed in comparison with those of full-time workers engaged in the same kind of job in the same workplace. Thus, although the protection of working conditions of part-time employees by the principle of relative ratio of their working hours is not contained in Article 8, Clause 2 of the Irregular Workers Protection Law, it is guaranteed in Article 18 of the Labor Standards Act.

In this manner, what is important is that the protection of the relative ratio of working hours of part-time workers is taken to grant their right of equal treatment. A part-time employee is able not only to raise an objection to an employer in respect to the unfair treatment, but also to protect the equal treatment which is based on Article 18 of the Labor Standards Act and to demand a benefit in return for the labor service offered.²¹ Therefore, it is important that Article 18 of this law be applied to the Irregular Workers Protection Law as

²¹ Article 8, Clause 1 of Act on Equal Employment and Support for Work-Family Reconciliation stipulates that an employer shall pay equal wages for work of equal value in the same business.

this article explicitly secures the right of equal treatment in legislation toward a part-time employee in contrast with a fixed-term employee or a dispatched employee.

In short, Article 8, Clause 2 of the Irregular Workers Protection Law aims to prohibit the discriminatory treatment of a part-time employee. However, since Article 18, Clause 1 of the Labor Standards Act is based on the relative ratio of working conditions, when discriminatory treatment is inflicted upon a part-time worker on the grounds of working conditions, a part-time worker would be able to exercise the right of equal treatment in accordance with Article 18, Clause 1 of the Labor Standards Act.

3.3. Actual Management Situation and Evaluation of the Discrimination Correction System

3.3.1. The Procedures of Discrimination Correction against Temporary Employees

The National Labor Relations Commission (NLRC)²² is in charge of cases relating to the discrimination of temporary and fixed-term employees. The LRC (the Labor Relations Commission) is a consensus-based administrative body composed of tripartite representatives of employees, employers, and public interest committees respectively. The LRC is an independent quasi-judicial body that concentrates mainly on mediating and adjudicating labor disputes between labor and management regarding interests and rights. Its sphere of undertakings has been enlarged to cover individual disputes such as dismissal disputes since the revision of labor law in 1987. Recently, the LRC has been dealing with the redress of discriminatory treatment against temporary employees in companies as part of the implementation of the Irregular Workers Protection Law.

When a discrimination case is accepted, the LRC organizes a Discrimination Correction Committee (DCC) composed of three public interest commissioners and an investigator in charge to investigate the real question at issue. It then has the DCC judge whether or not an actual discriminatory treatment occurred. If it has, the DCC orders the redress of discrimination through an inquiry.

Before the adjudication, the DCC refers to the opinions from the employee's and employer's commissioners who attend this inquiry, and then issues a redress order if it adjudicates that the application of discriminatory redress in question has validity. If it determines that the application of discriminatory redress is unfounded, it dismisses the application for redress.

As part of the redress procedure in a discrimination case, a mediation may be conducted by the application of both parties or one party concerned, or one's authority. When a party agrees to follow the arbitration decision in advance and applies to the LRC for arbitration, it can then receive an arbitration procedure. Furthermore, when both of the parties concerned accept a mediation proposal once they have arrived at the mediation or when they get the arbitration decision, it shall have equal weight to a conciliation reached in the courts in accordance with the Civil Procedure Act. At this point, when it fails to reach arbitration, the DCC shall make a decision through an inquiry.

3.3.2. The Present Condition of Redress of Discrimination against Temporary Employees

The discrimination correction system has been conducted from 1 July 2007 to 30 June

²² The National Labor Relations Commission (2009), *The LRC settles labor disputes*.

2009 with a total of 2,152 cases accepted and handled. Among them, 588 cases (27.5 percent) arrived at a redress order or mediation; the number of rejected or dismissed cases was 684 (32.0 percent); and the cases which ended in a withdrawal of the case totaled 867 (40.5 percent). The main reasons for the rejection of cases are: (1) that there is no employee compared with other employee and (2) that there is a rational reason for the discrimination. The reasons for dismissal are mostly because: (1) there is disqualification as applicant requesting a redress and (2) the application is being made past the deadline of the application period. Of the 867 cases which withdrew, 765 withdrew with an amicable settlement and 102 made a simple withdrawal. The number of employees who applied for this discrimination correction system is 4,747 (the NLRC calculation), the employees of 2,230 (49.4 percent) can improve their discrimination through a redress order or an advice (for more details, redress order (1,459), rejection (1,173), dismissal (174), mediation (771), withdrawal (939)).

Table 2: The Current State of Discrimination Correction

(2009.6.30)

	The number of applications	The Number of Cases Handled							Processing
		Total	Subtotal	Redress order	Rejection	Dismissal	Mediation	Withdrawal	
Total	2,152	2,139 (100.0%)	758	102 (4.7%)	594 (27.8%)	90 (4.2%)	487 (22.8%)	867 (40.5%)	13
NLRC (number)	61 (2,592)	58 (2,473)	51 (2,412)	21 (1,433)	20 (946)	10 (33)	2 (10)	5 (51)	3 (119)
RLRC (number)	2,091 (4,747)	2,081 (4,516)	734 (2,806)	80 (1,459)	574 (1,173)	80 (174)	485 (174)	862 (939)	10 (231)

Notes: The National Labor Relations Commission (2009).

NLRC= National Labor Relations Commission

RLRC= Regional Labor Relations Commission

(number) is the number of employees

As of 30 June 2009, when we look at the application cases for the correction of discrimination in terms of the forms of employment, of the total 4,747 applications (the RLRC calculation), the number of the fixed-term employees is 4,564 (96.1 percent); the number of the non-fixed-term employees is 122 (2.6 percent); and the dispatched employees total 61 (1.3 percent). The greater portion of non fixed-term employees are not fixed-term employees but employees under labor contracts without a fixed-term.

Lastly, we can classify the contents of discriminatory treatment in the applications for discrimination correction. Most of the complaints are in regards to a bonus or performance-related pay, and those account for 2,023; the issue of basic salary or various allowances is involved in 354 cases; and the number of complaints regarding fringe benefits is 37; retirement pension is involved in 8 cases; lastly, the contents of other working conditions account for 70 cases.

3.3.3. Evaluation

It has been two years since the discrimination correction system was enacted. Contrary to

all expectations, there have only been a small number of applications so far and the percentage of redress order decisions is very low. The reason for this is based on realistic and institutional factors. The realistic factors are that it is difficult for a temporary employee to apply for a redress of discrimination and maintain his/her employment relations. Moreover, a temporary employee might lose the chance of application due to seeking employment or re-employment after the termination of the employment relationship. The institutional aspects relate to the exclusion period, the scope of applicants, etc. In particular, there are also management reasons that the LRC did not take effective actions to handle discrimination correction in the early stage of the system's enforcement.

On the other hand, these days, discrimination correction decisions tend to be more active compared to earlier from the standpoint of the new legal principles in the NLRC. For instance, from the viewpoint of labor contract period, there are modified decisions from the stance denying a qualification as applicant. Also, the NLRC are gradually giving shape to the principle of judgment and the consideration factor in relation to the problem whether there is compared with an employee. Nonetheless, the objective standards by which to judge whether what is the main duty or core duty are insufficient for judging equality or similarity of work. Moreover, it is imperative to reconsider problems such as the existence of other employees compared with temporary employees.²³

VI. Problems with the irregular workers protection law and their solution

4.1. Problems with the Discrimination Prohibition Regulation against a Fixed-Term and a Part-Time Employee

4.1.1. Problems of the Discrimination Prohibition Regulation against a Fixed-Term Employee

Article of 8 of this law stipulates that an employer shall not give discriminatory treatment against fixed-term employees on the ground of their employment status compared with other workers engaged in the same or similar jobs under a labor contract without a fixed term in the business or workplace concerned (Clause 1). An employer shall not give discriminatory treatment against part-time workers on the ground of their employment status compared with full-time workers who are engaged in the same or similar kinds of jobs in the business or workplace concerned (Clause 2).

At this point, it is necessary to consider the characteristics of regulation. Regulation might be a confirmative regulation which regulates a concrete context of the principle of equal pay for work of equal value, or it might involve the regulation of policy. The problem of whether a fixed-term or part-time serves as a rational reason to discriminate, and to prohibit the discrimination against a temporary employee, though the labor productivity is low in proportion to the term, is a preferential policy toward a temporary employee. These problems bring to light the fact that regulation is compatible with the Korean Constitution.

Moreover, on account of this kind of regulation which considers as an employment actually, this factor renders a wage system to the system of allowance for long-service. In other words, an employer does not hire a fixed-term employee over two years, and then hire a

²³ Park, Sookun (2009/12/4-5), "Temporary Work and Law in Korea: Focusing on Contract Employee and Dispatched Employee", Forum of Temporary Employee in Korea and Japan.

fixed-term employee repeatedly at stated intervals and apply a salary class system to the temporary employee. On all such occasions, the temporary employee would be a new recruit, so her/his career cannot be acknowledged. The salary class system is actually a rational wage system, so the temporary employee cannot assert discrimination concerning this.

In the end, there are problems as regard to how these regulations can be applied in reality. The enterprises which can endure these sorts of wage increases can protect a temporary employee pursuant to these regulations of discrimination prohibition. However, the enterprises which cannot endure wage increases might dismiss a temporary employee or force the employee to work under previous working conditions. These kinds of problems worsen the polarization of workers.

4.2. Solutions for a Fixed-Term Employee

4.2.1. Fair Compensation for Work

The occurrence of conflict in dialectical community relations in the effort to realize the personality as worker of labor and management is an inevitable phenomenon. However, the cross recognition between labor and management is indispensable to minimizing this conflict. Thus, the fair compensation of the labor value of the worker is a prerequisite. This is why the Labor Law is the law with which to fairly secure the value of labor under capitalism.

Therefore, the active enhancement of an enterprise's productivity is required to guide the economic interests of labor and management in the direction of coexistence and co-prosperity. When a worker concentrates on productive growth and an employer puts forth his/her whole energy to this achievement, the labor and management can develop a cooperative relationship rather than one full of struggle. The employee's basic intention to work should be to accomplish the productivity growth of the firm and the employee should try to enhance the quality of products and productivity with a diligent and faithful attitude. The employer should make a greater effort to improve the quality of a worker's life and company's profits in order to positively influence their outcomes. Therefore, a fair compensation system must be constructed and the community and enterprises must take a leading role to achieve this system.²⁴

4.2.2. Prohibition of Intra-subcontract

An intra-subcontract could be prohibited for the effectiveness of the Irregular Workers Protection Law. However, this would be inharmonious with the economic order at which the Korean Constitution aims. In other words, the economic order of free markets, which is based on the private ownership of the means of production or the private property system, and the principle of free competition guarantee the free economic activity and creativity of an individual or a private enterprise to the maximum. Moreover, the maximization of efficiency through active free economic activities and free competition to pursue profits is appropriate to improving the economic situation and producing wealth.²⁵ Therefore, the prohibition of an intra-subcontract would contribute to the increase of personnel costs and further deteriorate the competitiveness of the company. It is possible to reject such a provision based on the logic of capitalism. However, if prohibiting the intra-subcontract yielded labor productivity high enough to offset the increase in personnel cost, such a prohibition might be permissible. As

²⁴ Choi, Jongtae (2005), *The Win-Win Relationship between Labor and Management and The Fair Compensation System*, SNU Press, p.21.

²⁵ Kye, Heeyeol (1995), *Constitutional Study (I)*, Pakyoungsa, pp.344-346.

mentioned above, if the prohibition of the intra-subcontract is an appropriate measure by which to promote public interest, it could also be recognized.

4.2.3. Relief System for Dismissal for Managerial Reasons (Solutions through the Structural Reform of Public Enterprise and Attracting Foreign Capital)

An enterprise usually wants to try to avoid the Irregular Workers Protection Law since it brings about inflexibility of the labor market and increases the cost burden. It would be a method to choose one between the flexibility of labor market and the cost burden increase to solve the problems of the regulation of discrimination prohibition in this law. In short, it is to delete the discrimination prohibition system or to erase the regulation to transfer from an irregular worker to a regular worker.²⁶

Or, it would be a method to relieve the regulation of dismissal for managerial reason, by keeping the regulations of discrimination prohibition and transferring to regular worker. The urgent managerial needs which are requisite for the dismissal for managerial reason do not need to be limited to avoid business bankruptcy, according to the fact that the downsizing measures in the enterprise is actually conducted by the economic reason which is the deterioration of business results, technical reason such as the improvement of productivity, the change of work form to cope with the recovery of competitiveness and the introduction of new technologies and the reason of industrial structural change which is brought from these technological innovations. And then there is the court's decision²⁷ that it shall be deemed that an urgent managerial need exists when the downsizing of employees is admitted to have rationality from an objective point of view.

In this way, the regulation of discrimination prohibition and the transfer regulation cause a burden to management²⁸ of an enterprise or business. Hence, if an employer can easily dismiss a worker for a managerial reason, it would not be a problem to adhere to the regulation of discrimination prohibition and the transfer regulation, particularly if a public enterprise has high costs and low effectiveness, such as a 30 percent reduction in labor productivity, while wages are 30 percent higher compared to their private enterprise counterparts. Moreover, since their retirement can be secured once they enter the company, the employees in a public enterprise have a tendency to hold onto their vested power rather than performance based work, so the efficiency declines compared to their private enterprise counterpart. Therefore, prior to the problem of discrimination prohibition toward a temporary employee, it is imperative to reform public enterprise to solve the problems of temporary employees and youth unemployment. Since this is also the reason²⁹ that a foreign company cannot invest in the Korea domestic market, not only public enterprises but also private enterprises have to try to deregulate the employee dismissal to create employment. That will permit a resolution to the problems of temporary employees and youth unemployment and

²⁶ According to "Research on economically active people by type of working" which is released in 26th October 2007 by Statistic Korea, the number of temporary employees of August 2007 accounts for 5,703,000 and it is increasing 4.5 percent (24,6000) compared with August 2006 (5,457,000). The reasons to increase are that more workers are choosing a temporary work. In other words, employers are thinking that it does not matter to raise employees' wages if they can ensure flexibility. On the other hands, employees are thinking that they do not care to be a temporary worker if they can get good treatment rather than to be a regular worker (Hankyung Newspaper (2007/10/26)).

²⁷ Supreme Court Decision 90Nu9421 Delivered on May 12, 1992, Supreme Court Decision 92Da16973 Delivered on August 14, 1992.

²⁸ Case of Samick Construction Co., Ltd., Supreme Court Decision 87DaKa2132 Delivered on May 23, 1989

²⁹ The Financial News (2006/12/19).

invigorate foreign investment in Korea's domestic market. Thus, if this kind of job creation can expand the amount of regular jobs, we can more realistically solve the problems regarding discrimination against temporary employees.

4.2.4. Concrete Social Insurance System for the Protection of Temporary Employees

Korea is based on the principle of capitalism and if we consider that human beings differ from each other in terms of ability, and we recognize the need for some methods by which to survive in a global economy in the age of limitless competition, generating the category of a temporary employee might be inevitable.

Similarly, if the appearance of temporary employees is an inevitable phenomenon, a concrete system should be put in place to settle the problem of poverty caused by the social polarization typically experienced by temporary employees. First of all, creating a definite system requires knowledge of what it takes to foster human dignity. The maintenance and continuation condition and the development condition are generally necessary to realize human dignity.³⁰

The former of the maintenance and continuation condition is realized by the public assistance system in the Social Security Law. In other words, this is "a minimum of material security" which is said by the Constitutional Court of Korea,³¹ the extent of a minimum of material security would be different according to the ability of nations; however, for the more specific instance, people should be secure beyond the level of material security of the army. Of course, health is also required at this level of material security.

The latter, the development condition calls for a system of self-development under the premise of the former system. Education is imperative for self-development in a specialized society which is complicated and diverse. Therefore, a free education system is needed and to settle temporary employee problems, it is necessary to provide the opportunity for a temporary worker to be promoted to a regular worker through education and training. In other words, the training of a temporary employee would be required in order for such an employee to change their status from an irregular worker to a regular worker. Moreover, an education system also needs to be in place for the education and making of a professional worker. Although a worker is participating in job training, her/his status is still that of a temporary worker, and if she/he does not get the potentiality of development, job training will not gain popularity. Thus, it is required to reward the wages according to the level of a worker's skill, which is procured through job training.³²

Finland serves as a good example of this. However, if a system like that of Finland were applied to Korea, there might be tax resistance. When we take a broad of view, however, tax is a measure through which to preserve human dignity and the stabilization or peace of the society. Therefore, it would be necessary for people to change their viewpoints regarding tax.

4.3. Legal and Institutional Improvement Measures of the Discrimination Correction System

4.3.1. Enlargement of the Scope of Workers who are Entitled to Application for Discrimination Correction

³⁰ Lee, Dalhyu (2000), "The Idea of Social Security Law in Constitution", *Research on constitutional study*, Vol.6 No.2, Korean Constitutional Law Association, p. 208.

³¹ Constitutional Court of Korea Decision 93Hun-ga14 Delivered on July 21, 1993.

³² Hankyung Newspaper (2008/6/4), Editorial.

It is difficult for a temporary employee, who is in a vulnerable employment category, to demand the redress of discriminatory treatment and take the risk of employment insecurity. Therefore, to overcome the limitations of the discrimination correction system and enhance its effectiveness, the scope of the temporary workers who are entitled to apply for discrimination correction must be widened for the workers concerned or the labor union. If the duty of the non fixed-term worker (who is transferred from being a temporary worker) is similar to the former work which he/she was doing as a temporary worker, and if he/she experiences some form of discrimination compared to the other workers in the workplace of the employer, it would be able to improve the discriminatory practice of company by including the non fixed-term employee in question, who apply to a temporary worker, to the applicants who can apply for the discrimination correction on the grounds of the active meaning of the Irregular Workers Protection Law.

4.3.2. Reinterpretation of the Application Period of Discrimination Correction and Discriminatory Treatment

Article 9 of the Irregular Workers Protection Law stipulates that a worker shall not apply for discrimination correction if three months or more have passed since the day when the discriminatory treatment occurred. At this point, the clause “the day when the discriminatory treatment occurred” refers to the discriminatory treatment received by the worker compared with other workers. Since a temporary employee may have only a limited knowledge concerning what a regular worker’s wages or other working conditions are, it may take a considerable period of time for the temporary employee to recognize that he/she has been treated with discrimination. Therefore, it is necessary to revise “the day when the discriminatory treatment occurred” to “the day when he/she perceives that he/she has been treated with discrimination.” In addition, there must be some compensation for the deficit of this law until this provision comes to a legislative settlement.

4.3.3. Simplification to Elucidate Concrete Reasons when Applying for Discrimination Correction

In actuality, a temporary employee has some difficulties in gaining access to information regarding an employer’s complicated wage system, fringe benefits, and other working conditions. In addition, an employer can impede the effectiveness of the discrimination correction system by putting a greater burden on an employee when he/she applies for discrimination correction. In consideration of these points, a statement very clearly indicating that there has been discriminatory treatment against the temporary employee (the applicant) must be provided.

4.3.4. Flexible Management of the Area of Discrimination Prohibition Subjects

When the discrimination correction is judged, each Labor Relations Commission has a different interpretation regarding the problems of including money and other goods which are arbitrarily provided by an employer’s direction among the wages or other working conditions (objects which prohibit the discrimination against a temporary employee). Some Labor Relations Commissions passively interpret it. In general, although the payment regulation is not included in the rules of employment, a collective agreement, and the like (if the money and other goods are provided to all employees in accordance with custom so that it makes an employee anticipate that the payment will indeed be received by him/her as a socially accepted idea), it is deemed that the working condition is formed. Thus, money and other

goods arbitrarily provided to employees should be included when judging matters pertaining to the prohibition of discrimination against a temporary worker.³³

4.3.5. Omission of the Selection of Other Employees Compared with when the Discrimination is Obvious

Pursuant to Article 8 of the law, other workers engaged in equal or similar jobs under a labor contract without a fixed-term in the business or workplace concerned must be compared with temporary workers. However, when it is obvious that there is any discrimination against a temporary worker such as being excluded from treatment which has been applied to all workers, it should make it possible for the temporary worker to apply for discrimination correction, though other specific workers have not been selected as a basis of comparison.

V. Conclusion

The problems faced by temporary employees are no longer merely the problems of minority groups. Since the issues of temporary employees have been raised, there have been no conclusive solutions, though there has been a great deal of research and discourse conducted in diverse fields. It would be difficult to accomplish employment security by fixed legislation. If it were, the core issue would be that it is indeed very difficult to arrange secure working conditions for temporary workers in the Korean labor market.

The discrimination problems of temporary employees start from the discriminatory treatment they receive compared with regular workers even though temporary workers are performing equal or similar work or work similar periods. Temporary workers are given discriminatory treatment or disadvantages compared with regular workers, and when we see the actual employment situations of temporary workers, it becomes apparent that they are given an inferior status compared with their regular worker counterparts. Moreover, if an employer gives unreasonable treatment to a temporary worker such as lower wages or the limitation of welfare benefits on the grounds of the characteristics of a temporary worker's duty (which is considered to be relatively simple or repetitive), the temporary worker's position might degenerate to being deemed as an unwelcome job. As a result, the temporary employee who is working the job in question has to do tasks which are physically hard and dirty, and this can cause labor productivity to deteriorate. The temporary worker might also find it difficult to cooperate with labor and management since the work is recognized as an unwelcome job. Therefore, it is necessary to get a special judicial review regarding the appropriateness of the Irregular Workers Protection Law, although if there is a gap between wages level through a separation of occupation group according to occupational category. There should be no discrimination involved in legally employing a temporary worker in a business or workplace.

In particular, we must judge whether an employer discriminates against a temporary worker compared with a regular worker who is engaged in equal or similar work in terms of wages, working hours, legal allowance, bonus, pension, accident compensation, and allowance. However, the Ministry of Labor interprets that it is not applicable to unfavorable

³³ There are no legal grounds by which to interpret the working conditions that are the subject of application for discrimination correction by limiting the essential and important working conditions such as wages. Furthermore, by enlarging the area of discrimination prohibition in addition to wages, the current legislation needs to interpret that other fringe benefits can be the subject of discrimination correction.

discrimination reasons when the long service allowance is not provided to a temporary employee. If an employer provides differential performance-related pay which is based on a fair standard and differential incentive pay which is considered a gratifying reward or rewards for contribution to future work, the Ministry of Labor considers that it does not apply to unfavorable discrimination reasons as well.³⁴ Therefore, the purpose of the discrimination prohibition system is not that the working conditions of temporary employees have to be the same as the working conditions of regular employees. Rather, this system prohibits giving unfavorable treatment against a temporary employee without any rational reasons. In short, discriminatory treatment against a temporary employee is permissible if there are rational reasons such as the gaps of labor productivity and differences of expertise between a temporary and a regular worker. The problems of discriminatory treatment against a temporary worker would not occur if the equal wages system with regular workers were applied to temporary workers; if standard working hours and overtime work were equally applied to temporary employees and regular workers; if an employer applied the bonus and performance-related pay (based on a base salary or conservation payment except for retirement pension) equally to a temporary and regular worker; and if the conditions of social insurance or fringe benefits for regular workers were also applied to temporary employees. In other words, the overall working conditions, which include not only wages and working hours, etc., are what need to be improved - and this is the object of discrimination correction and social security allowances.

In conclusion, the problems of temporary employees are complex and there is more than one side to the issue. Therefore, it is problematic to merely consider temporary work as negative. Nevertheless, if a temporary employee is brought to the market without any protective devices, while there may be some advantages such as increased employment (dropping the unemployment rate in the short-term), in the long term, it runs a heavy risk of decreasing labor productivity and deteriorating the quality of a worker's life by substituting it for regular work. Thus, to settle these problems of temporary employees, each political party should avoid merely sticking to the political merits and demerits of advantageous legislation. A prompt revision of the Irregular Workers Protection Law, which was revised in 2007 to solve the problems of current temporary employees and to secure the temporary worker to lead a decent life, must be accomplished.³⁵

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³⁴ The Ministry of Labor (2007/6), *Introduction to the Discrimination Correction System*, p. 2.

³⁵ Lee, John (2006/4/6), *Is There No Solution Concerning the Temporary Worker Problems*, Seoul Economic Newspaper (editorial).

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