

Key topic

MHLW's Interim Report on Points of Controversy regarding Employment-like Work Styles

The Ministry of Health, Labour and Welfare (MHLW) released the interim report on June 28 on issues of protection of workers in employment-like forms of work such as through personal business contracts. There are various controversial points on the protection of these workers. Discussion will continue focusing on prioritized issues such as the clarification of contract conditions and seek the direction of future responses in the final report.

Number of workers in need of protection estimated at 1.7 million

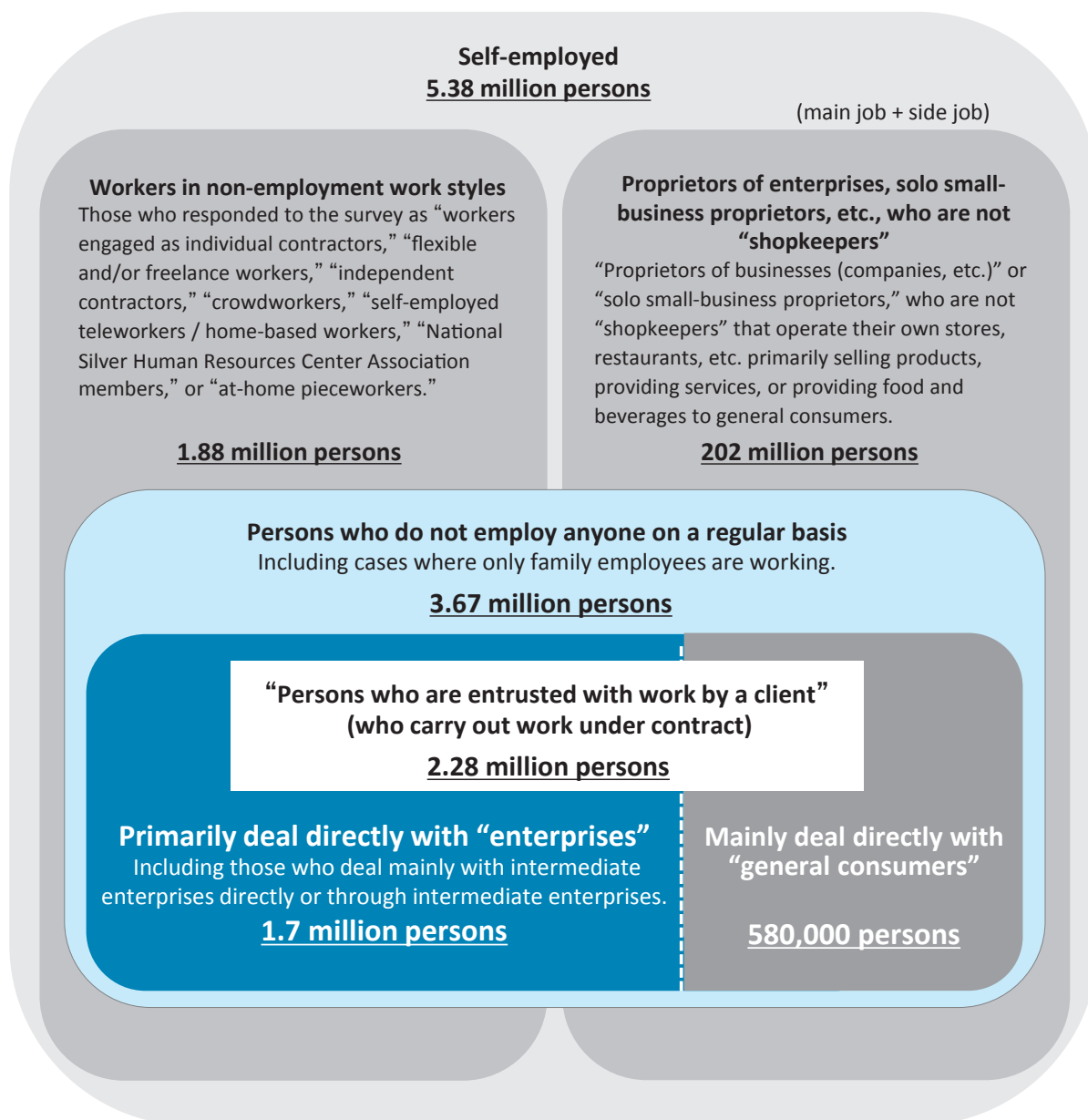
The Council for the Realization of Work Style Reform (Prime Minister Shinzo Abe's personal advisory body), when finalized the Action Plan for the Realization of Work Style Reform (later enacted on March 28, 2017), called for the establishment of a panel of experts to examine the issue over the medium to long-term on employment-like work styles including the necessity of legal protections. Thus, in October 2017 the Meeting on Employment-like Working Styles was established within the MHLW. The actual status of employment-like work styles was ascertained and analyzed there, and a report was compiled on March 30, 2018. Then as a panel of experts, the Meeting on Points of Controversy regarding Employment-like Working Styles (hereinafter the Meeting), chaired by Koichi Kamata (Professor Emeritus of Toyo University), was set up in October 2018, where the further survey has been conducted to grasp actual conditions. It estimated the number of persons affected by the issue and discussed controversial points and challenges regarding their protection.

The interim report defines those in employment-like forms of work as “persons who are entrusted with work by a client (orderer, or similar), provide services, and receive remuneration while operating primarily as individuals.” It estimates this cohort to be 2.28 million persons (main job: 1.69 million, side job: 590,000). Considering disparities in quality and quantity of information and bargaining power, those of the above individuals who primarily “deal directly with enterprises” in the course of their work were singled out as particularly needing protection, and their number was estimated at approximately 1.7 million (main job: 1.3 million, side job: 400,000) persons (Figure 1).

38.4% say remuneration is “determined unilaterally and formulaically by the ordering enterprise”

Regarding the current status of employment-like work styles, the issues were organized according to nine aspects based on the results of questionnaire surveys and interviews as follows:

- (1) clarification of working conditions, and clarification of rules for concluding, modifying, and terminating contracts, etc.
- (2) guaranteed payment of remuneration and more appropriate payment amounts
- (3) terms and conditions of employment
- (4) skill improvement and career advancement
- (5) measures against sexual harassment, etc. by the client
- (6) consultation service in the event of a dispute
- (7) collective bargaining with clients
- (8) safety net related issues



Source: Excerpted from reference materials for “Interim Report by the Meeting on Points of Controversy regarding Employment-like Working Styles, 2019.”

Notes: 1. Estimated number of persons who are entrusted with work by a client, provide services, and receive remuneration while operating primarily as individuals. It must be noted that discussions of employment-like work styles are still underway in the Meeting on Points of Controversy regarding Employment-like Working Styles, and at this point consensus has not been reached on the scope of workers requiring protection.

2. Results of estimation, based on the conditions identified in the survey contents. It is necessary to note that the survey is based on the Internet, and the survey estimates the number of respondents who answered that they meet the requirements of each question.

- Target group consists of persons “regularly engaged in some kind of income-earning activity.”
- Contents of income-earning work verified (if there is more than one, including jobs up to the second highest income-earning job).
- Here, “self-employed persons” is defined as those who responded to the survey as “proprietors of businesses (companies, etc.),” “solo small-business proprietors,” “workers engaged as individual contractors,” “flexible and/or freelance workers,” “independent contractors,” “crowd workers,” “self-employed teleworkers / home-based workers,” “National Silver Human Resources Center Association members,” “at-home pieceworkers,” or “engaged in agriculture or fishing.”

Figure 1. Results of estimates regarding those in employment-like work styles (number of workers engaged as individual contractors)

(9) matching support

Regarding (1) above, for example, the questionnaire survey found that the most common response from 38.4% of respondents was that remuneration for the work is “determined unilaterally and formulaically by the ordering enterprise (with no scope for decision-making on the part of the worker, or negotiation)” (main job: 33.3%, side job: 55.2%), followed by “I am offered job contents and payment amount by the ordering enterprise, but I make decisions or negotiate if necessary” (overall: 34.2%, main job: 36.4%, side job: 27.0%). As for items where public support and improvement of systems is sought (multiple answers possible, see Figure 2), while more than half of respondents answered “nothing special” at 54.8% (main job: 54.4%, side job: 56.2%), there were relatively high percentages calling for “clarification of rules for determining or changing contents of contracts” (overall: 9.4%, main job: 9.9%, side job: 7.8%) and “development of rules for clients to clarify contract conditions in writing” (overall: 9.2%, main job: 9.4%, side job: 8.5%).

In the interviews with related parties, it was learned that there are cases when contract details are not clarified and that troubles associated with such situations occur. For example, interviewees stated that “almost no templates are used” and that “freelancers are rarely presented with contract documents when receiving orders, and in many cases monetary amounts are not specified.”

Proposals for means of protecting workers who have not been granted worker status

Based on these survey results, the interim report presents the basic concept relating to the protection of those in employment-like work styles. It states that a person who, even if described as providing a service under a “contract” may in reality be treated like an employee of the client—taking instructions and commands, and receiving remuneration in return—and thus may qualify for worker status under the Labor Standards Act (referred to below as “worker status”), should naturally be subject to individual labor laws as a worker under the Act. It was pointed out that operations should be carried out

rigorously based on this concept, and the provision of necessary information should be enhanced.

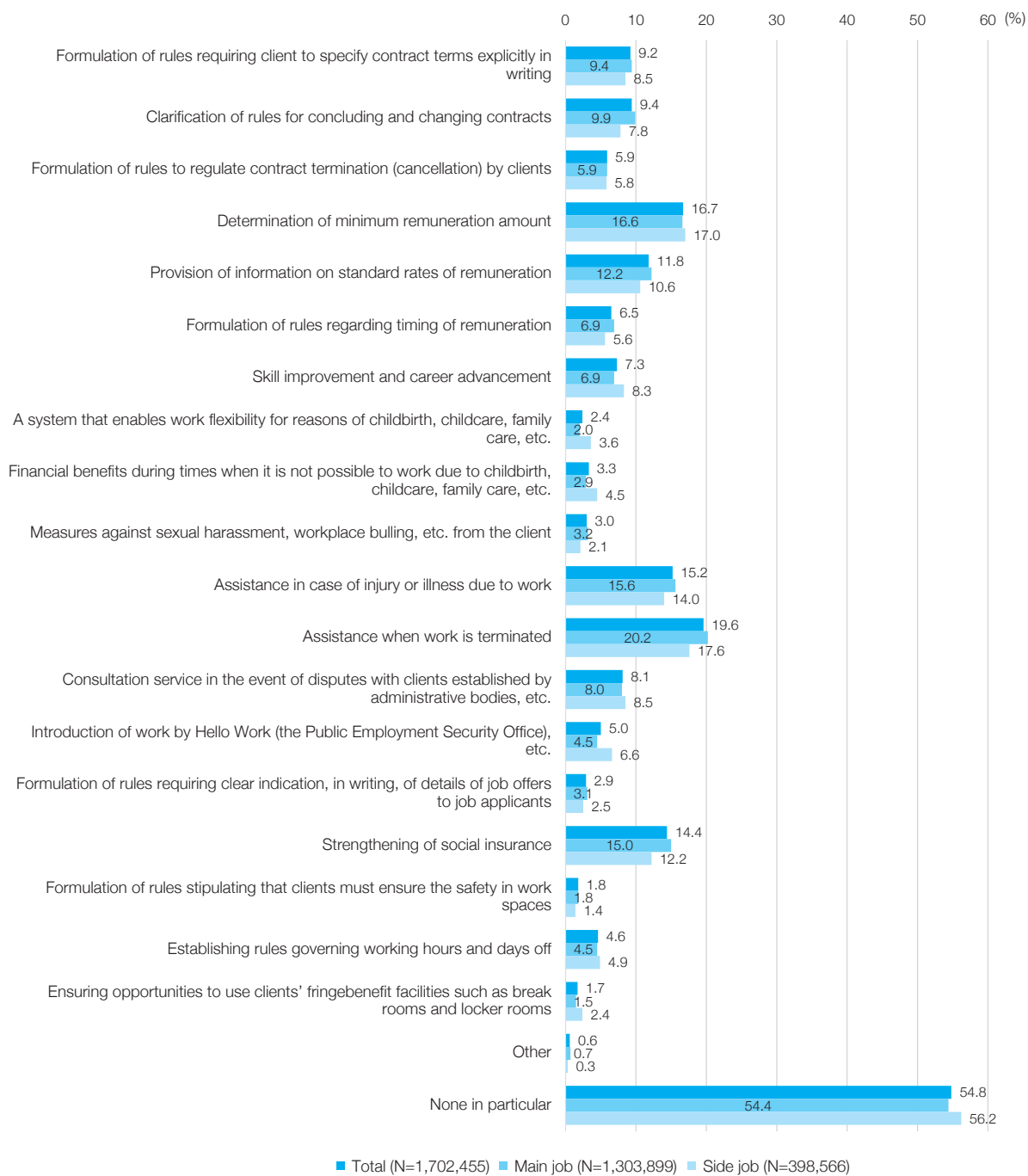
On the other hand, the report indicates that there are cases of labor policies governing protections should be considered even for those who are self-employed and thus do not qualify for worker status in objective terms but work in a manner similar to workers. As for their protection, potential measures cited includes:

- (1) measures to expand the scope of protected worker status
- (2) defining self-employed persons in need of protection as occupying an intermediate category between employees and the self-employed, and partially applying labor-related laws to cover them
- (3) introducing necessary measures for self-employed persons who require a certain level of protection, considering the contents of protections, rather than expanding the notion of worker status

The focus is on self-employed persons who resemble employed workers in practice

The interim report also indicates that it is necessary to question whether current judgments of worker status—centered on the nature of instructions and commands—is appropriate in light of an economic environment where work styles are diversifying. This will be an issue to be continuously examined. Nevertheless, reconsidering the notion of worker status will entail a fundamental review of the judgment criteria used thus based on extensive studies on examples from other countries.¹ It will be difficult to conclude in the short term. From the perspective of determining the direction of responses to the issue as quickly as possible, the report indicates that it is appropriate for the Meeting to focus, for the time being, primarily on self-employed persons whose working styles resemble those of employed workers, while maintaining the nature of worker status as an issue for discussion in line with economic conditions.

In doing so, it is inevitable to organize thinking about the necessity of protection. The interim



Source: Excerpted from reference materials for “Interim Report by the Meeting on Points of Controversy regarding Employment-Like Work Styles.” Prepared by the Employment Environment and Equal Employment Bureau based on JILPT “Report on Results of Survey and Estimates, etc. Regarding Employment-Like Working Styles, 2019.”

Note: Ns are for reference.

Figure 2. Items requiring public support and regulatory protection (multiple response) (those who primarily deal directly with “enterprises”)

report noted that further consideration is required on disparities in bargaining power, and quality and quantity of information, and on the aspect that self-

employed persons complete their work individually and receive remuneration for it without employing others just as those employed, as well as the fact

that some of them are closer in practice to those employed. Furthermore, there were opinions during the discussions to the effect that it is necessary to consider relationships with other laws and regulations such as the economic law (competition law, antitrust law, or antimonopoly law) and the Industrial Homework Act. With regard to the economic law, the opinions proposed are “there will be basically no problem as long as protections are in line with the law, such as requirements for written documentation,” and “in principle, workers’ activities under the Labor Union Act present no problems in terms of their relationship with the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade.” In light of these, it was agreed that further consideration is required.

Prioritizing issues

With regard to those in employment-like work styles for whom protections should be considered, the interim report indicates that it is appropriate to focus on “persons who are commissioned by clients to provide services, mainly as individuals, and receive remuneration for the work,” and that on that basis, specific criteria for the target group could be considered for each form of protection. According to the report, there were opinions in the discussions that when establishing protections, it would be necessary to have clear and uniform criteria for those eligible, and when establishing criteria for judging eligibility, etc., the negative aspects should be taken into account, such as the potential for workers in employment-like work styles and clients to change their previous behavior avoiding to meet protection standards. It also mentions two contrasting opinions. Some members proposed to limit eligibility to those with a high degree of exclusive affiliation, while others expressed that workers who have business relationships with multiple clients should also be considered, or that there was the necessity to consider workers’ economic dependency and organizational dependency on the clients.” In addition, some raised

a perspective regarding protection depending on the kind of workers’ dependency to clients; “there are some areas of protections that should be focused on in ‘person’ as a unit such as exclusive contracts, while other areas that should be focused on in ‘contract’ as a unit to judge eligibility for protection if contracts are with multiple clients.”

Based on these discussions, the nine issues listed above were categorized into three: (a) items that should particularly be prioritized at the Meeting, (b) items that should be prioritized in other professional and technical considerations, and (c) items requiring consideration as necessary, taking into account the status of (a) and (b) and the spread of employment-like work styles.

For example, clarification of contract conditions, and clarification of rules regarding the conclusion ((1) above), modification and termination of contracts falls into category (a). Many opinions are agreeing that it is necessary to clarify contract conditions in writing, and no particular objections were raised. In the case of workers in employment-like work styles, as with employed workers, it was assumed that there are differences in bargaining power and information provided, and therefore this was made a priority issue from the standpoint of preventing disputes. The interim report states that, based on the contents of the discussion so far, it is appropriate to move swiftly in further deliberations focusing on priority issues, including consideration on which means to take, guidelines or legal measures.

Note

1. “Another approach often contended is to introduce the intermediate category between employee and self-employed. In several countries, such as Germany (employee-like person [*arbeitnehmerähnliche Person*]), the UK (worker whose notion is broader than employee), Canada (dependent contractor), the intermediate category has already been introduced.” For more details, see Takashi Araki and Sylvaine Laulom, “Organization, Productivity and Well-Being at Work” in *Transformations of Work: Challenges for the Institutions and Social Actors*, Bulletin of Comparative Labour Relations 105, ed. Giuseppe Casale and Tiziano Treu (London: Wolters Kluwer, 2019), 326.