

Japan Labor Issues

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● REPORTS

Japan COVID-19's Impact on Labor Market and Policy Responses in Japan

Koji TAKAHASHI

India Strengthening India's Social Protection Architecture for the Informal Sector: Lessons from the Covid-19 Crisis

Radhicka KAPOOR

Indonesia The Social Security and Unemployment Trends during COVID-19 Pandemic in Indonesia

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Beatrice Fui Yee LIM

Australia COVID-19 and Australian Labour Regulation: An Overview Impacts, Policy Responses and Future Directions

Adriana ORIFICI

China Resilience and Its Reinforcement: How China's Labor Market Resists the COVID-19 Epidemic and Policy Efficacy

Tianyu WANG

Korea Giving a New Present or Returning the Original Share: New Insight about Law and Policy for Working People in Korea

Sukhwan CHOI

New Zealand Added Pressure: Exploring the Impacts of Covid-19 on Workers and Labour Laws in Aotearoa New Zealand

Dawn DUNCAN

Philippines Mitigating the Covid-19 Pandemic Impact on the Philippine Labor Market

Ronahlee A. ASUNCION

Taiwan COVID-19 and Labor Law in Taiwan

Wanning HSU

SPECIAL ISSUE

The 5th JILPT Tokyo Comparative Labor Policy Seminar 2022

"The Impact of COVID-19 on Labor Market and Policy Responses — Strengthening Social Protection for Vulnerable Workers"



Japan Labor Issues

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CONTENTS

The 5th JILPT Tokyo Comparative Labor Policy Seminar 2022

The Impact of COVID-19 on Labor Market and Policy Responses – Strengthening Social Protection for Vulnerable Workers

<i>Preface</i>	3
REPORTS	
Japan	
COVID-19's Impact on Labor Market and Policy Responses in Japan Koji TAKAHASHI	4
India	
Strengthening India's Social Protection Architecture for the Informal Sector: Lessons from the Covid-19 Crisis Radhicka KAPOOR	19
Indonesia	
The Social Security and Unemployment Trends during COVID-19 Pandemic in Indonesia Ike FARIDA	27
Malaysia	
Impact of the COVID-19 Pandemic on Malaysian Labour Market and Policy Responses Beatrice Fui Yee LIM	37
Australia	
COVID-19 and Australian Labour Regulation: An Overview Impacts, Policy Responses and Future Directions Adriana ORIFICI	45
China	
Resilience and Its Reinforcement: How China's Labor Market Resists the COVID-19 Epidemic and Policy Efficacy Tianyu WANG	53

Korea	
Giving a New Present or Returning the Original Share: New Insight about Law and Policy for Working People in Korea Sukhwan CHOI	59
New Zealand	
Added Pressure: Exploring the Impacts of Covid-19 on Workers and Labour Laws in Aotearoa New Zealand Dawn DUNCAN	68
Philippines	
Mitigating the Covid-19 Pandemic Impact on the Philippine Labor Market Ronahlee A. ASUNCION	75
Taiwan	
COVID-19 and Labor Law in Taiwan Wanning HSU	86
<i>Seminar Outline</i>	89

* Entries are arranged based on the seminar program.

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

Preface

The global COVID-19 pandemic, which began in 2020, has had a major impact on work, life, and public awareness in countries and regions around the world. The lockdowns and business closures imposed in the early stages of the outbreak has affected the labor market, resulting in reduced work hours and unemployment. ILO estimates as well as various surveys including panel surveys conducted by JILPT show that these impacts on vulnerable workers have been significant, with women being more affected than men, and informal workers more impacted than formal workers. On the other hand, some reports indicate that during these employment crises, government policies to support companies to maintain employment had an effect of preventing further large-scale employment losses from occurring.

Bearing this in mind, we, JILPT, held the 5th JILPT Tokyo Comparative Labor Policy Seminar online on March 9, 2022, addressing the topic of “The Impact of COVID-19 on Labor Market and Policy Responses – Strengthening Social Protection for Vulnerable Workers.” Focusing on job retention schemes, the participants shared views and experiences, and provided a new direction for future policy such as the enhancement of social protection for vulnerable workers and the development of working environments along with the increasing adoption of teleworking and other such changes in ways of working.

This special issue carries ten excellent reports presented by researchers from Asia-Pacific regions. They provide useful, up-to-date information on the latest labor policy issues and a valuable opportunity for comparative studies of circumstances and policy responses in each region for discussion in the future. Taking this opportunity, JILPT would like to express our sincere gratitude to Prof. María Emilia Casas Baamonde and Dr. Stéphane Carcillo for their insightful keynote lectures. Furthermore, JILPT is grateful to two chairpersons, Prof. Yanfei Zhou and Prof. Chikako Kanki for their outstanding comments. JILPT also would like to deeply thank Prof. Takashi Araki for his significant contribution to conclude the discussions. All of them provided rich comparative analysis and future policy suggestions to strengthen social protection for vulnerable workers in the age of upheaval.

COVID-19's Impact on the Labor Market and Policy Responses in Japan

Koji TAKAHASHI

- I. Introduction: Distinctive aspects of Japan's labor market
- II. COVID-19's impact on the labor market
- III. Government policy responses
- IV. Directions of employment and labor policies

I. Introduction: Distinctive aspects of Japan's labor market

As we set out to analyze the impacts of the COVID-19 pandemic on Japan's labor market and the related policy responses, it is helpful to begin by outlining the distinctive aspects of employment in Japan. Firstly, the practice of long-term employment—while no longer as common as it once was—has typically been adopted by Japanese enterprises. Men have a particularly high average number of years of continuous employment in comparison with averages from other advanced nations (MHLW 2013). Under secure employment relationships, they remain with the same employer, accumulating experience and developing their skills within that one enterprise.

At the same time, the personnel management approaches pursued by Japanese enterprises draw a clear distinction between regular employees and non-regular employees (such as part-time workers, fixed-term contract workers, and temporary staff dispatched from an agency), and it is regular employees who enjoy the benefits of long-term employment (Sugeno 2002). Non-regular employees are excluded from the practice of long-term employment and tend to be the first to face dismissal or non-renewal of contract when personnel cutbacks need to be made (Inagami and Whittaker 2005). It is also notable that some non-regular employees are also not enrolled in employment insurance.

Non-regular employees include married women, young people (including students), elderly people, and so on. A considerable proportion of non-regular employees are married women who work part-time. While in many cases such women work to supplement their household income and would not be directly at risk of poverty if they were to lose their employment, they may in some cases become unable to maintain their existing standard of living. Non-regular employees of restaurants or other such establishments serving food and drink (“restaurants, etc.”)—which have been severely affected by the pandemic—are largely students pursuing jobs alongside their studies (*arubaito*). Some may struggle to continue their studies if they lose that source of income.

While the examples above all refer to workers who are *employees* of a company or other such entity, there are of course also people who work without being in an employment relationship. In addition to the traditional self-employment roles such as farming or running a shop, this also includes people whose status lies between employee and self-employed, such as freelancers or platform workers. Although Japan's Labor Standards Act, Labor Union Act, and Employment Insurance Act are generally not applied to workers who are not in an employment relationship, in recent years protection for people who fall between employee and self-employed has become an important policy issue.

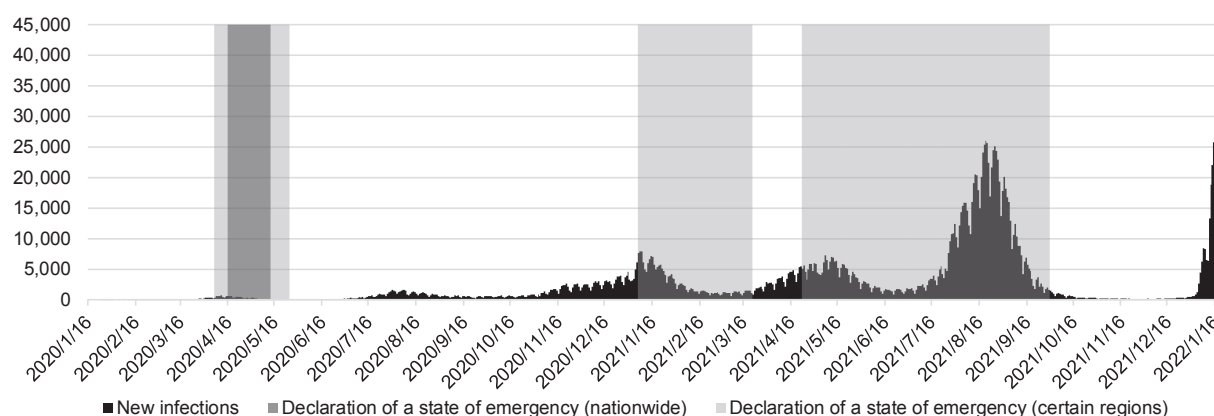
II. COVID-19's impact on the labor market

1. Current developments in employment and labor

Japan has tackled six waves of COVID-19 infections since the onset of the pandemic. During this time, there

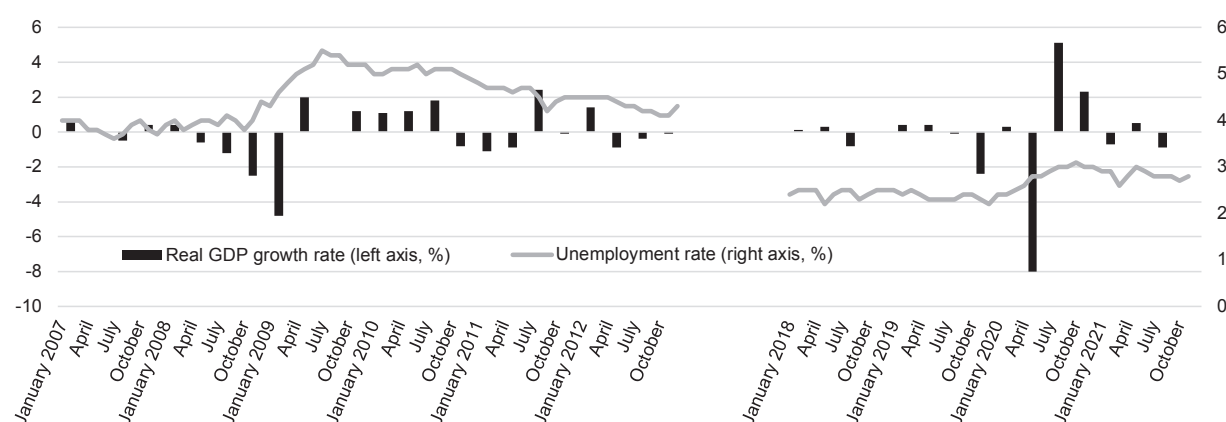
have been three declarations of states of emergency, which restricted economic activity with the aim of preventing the spread of infection. Among them, the first declaration from April to May 2020 exerted a particularly severe impact on the economy. From April 16 to May 13 the declaration was expanded to cover the entire country, with restrictions placed on the operation of restaurants, etc. and calls for the public to voluntarily refrain from leaving home and avoid long-distance travel (Figure 1).

With the impacts of the nationwide declaration of a state of emergency, the real GDP growth rate (quarterly) recorded a decline of 8.0% in the second quarter of 2020. This severe blow exceeded that of the 2008 financial crisis. However, in comparison with the 2008 financial crisis, the pandemic has seen an unemployment rate that is both low and has increased only slightly. The highest unemployment rate during the pandemic was only 3.1% in October 2020 (Figure 2).



Source: NHK website, <https://www3.nhk.or.jp/news/special/coronavirus/data-all/> (in Japanese) (accessed on January 20, 2022).

Figure 1. Daily number of new infections and the timings of state of emergency declarations (persons)

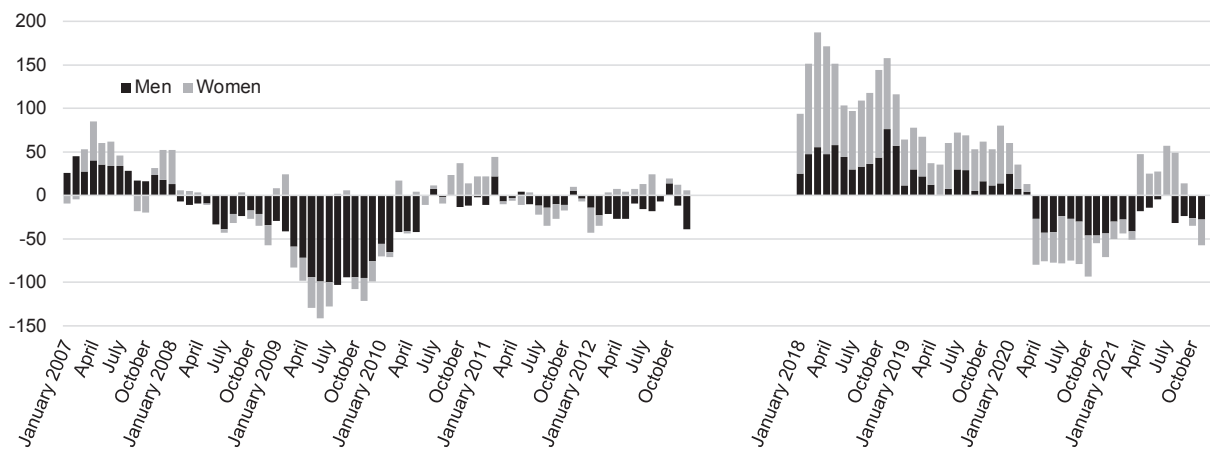


Source: Cabinet Office, Government of Japan. *System of National Accounts*; MIC Labor Force Survey.

Figure 2. Trends in the real GDP growth rate (quarterly) and unemployment rate (monthly)

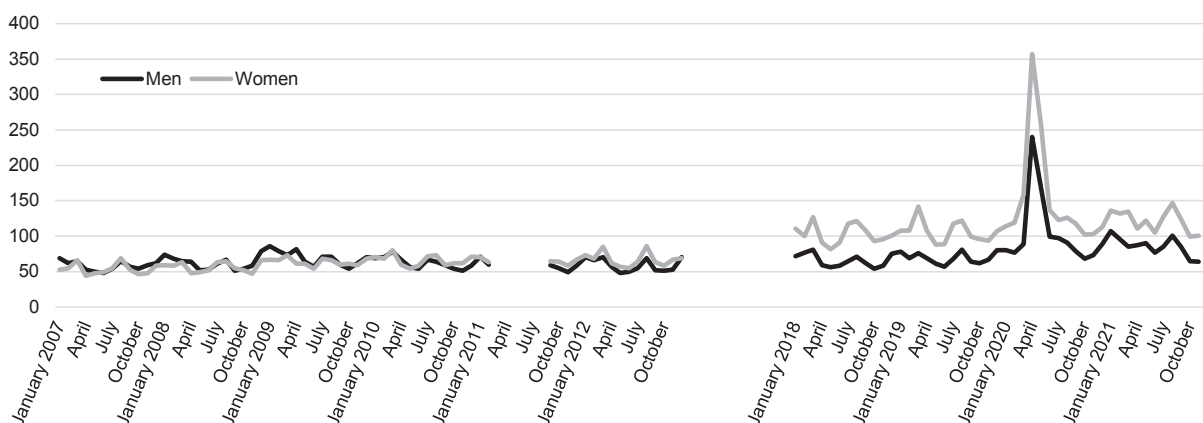
The relatively low impact on employment is also indicated by the trends in the number of employed persons (Figure 3; “employed persons” covers employees, self-employed workers, and family workers). While in 2009, following the onset of the financial crisis, the number of employed persons declined by over 1.4 million people on the same month of the previous year, during the pandemic in 2020 the decline was by no more than around 900,000 people.

While there has been relatively little decline in the number of employed persons, there has instead been a significant increase in the number of people on leave from work during the pandemic. Data from the *Labor Force Survey* by the Ministry of Internal Affairs and Communications (MIC) shows that in April and May 2020, respectively, as many as 5.97 million and 4.23 million employed persons did not work a single day in the last week of the month (Figure 4). This indicates that the primary response from enterprises in the pandemic was to adjust working hours, as opposed to reducing employment.



Source: MIC Labor Force Survey.

Figure 3. Trends in the number of employed persons (difference from the same month of the previous year, 10,000 persons)

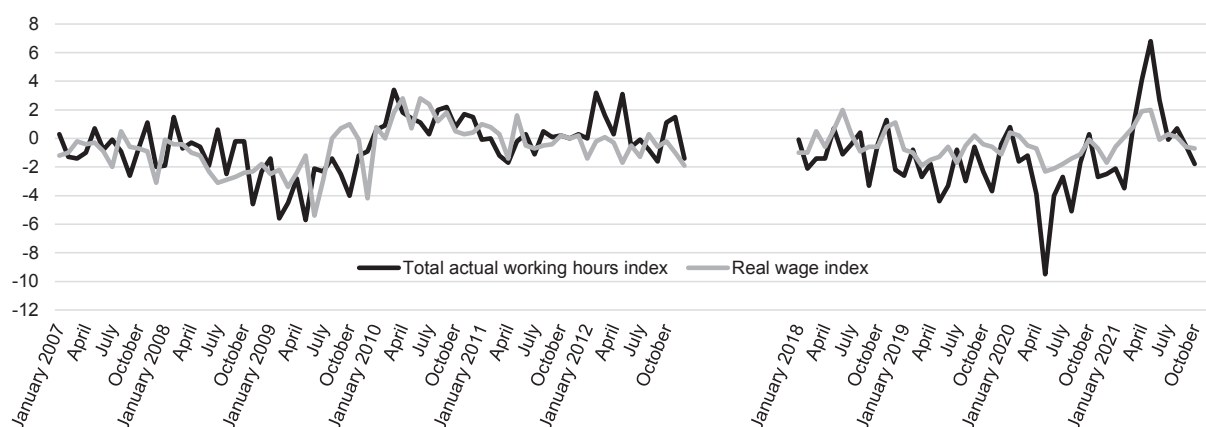


Source: MIC Labor Force Survey.

Figure 4. Trends in the number of employed persons who did not work a single day in the last week of the month (actual figures, 10,000 persons)

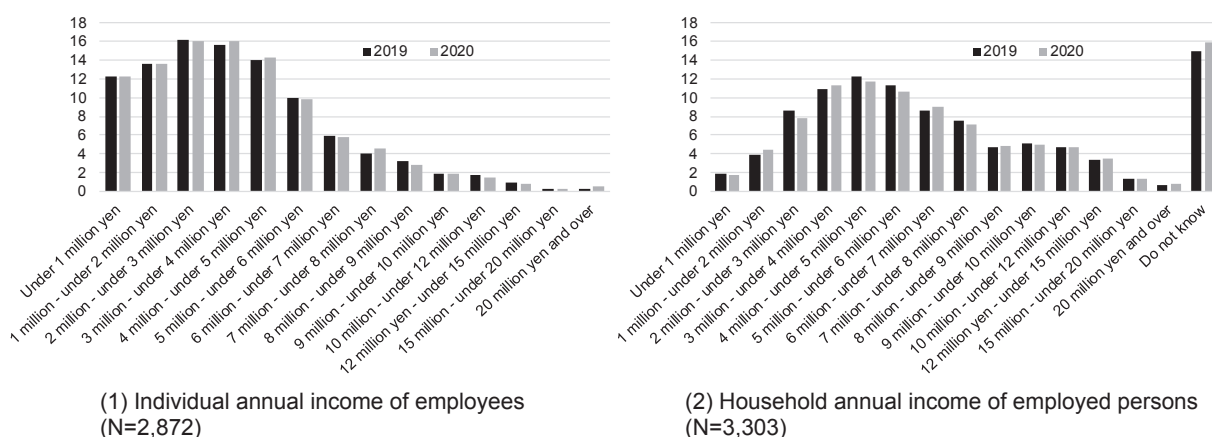
Detailed figures on the actual trends in adjustment of working hours can be drawn from the Ministry of Health, Labour and Welfare (MHLW)'s *Monthly Labour Survey* (Figure 5). According to these figures, the actual working hours index during the 2008 financial crisis declined around 5% on the same month of the previous year, in contrast with an almost 10% decline during the pandemic. On the other hand, the real wage index shows a smaller drop on the same month of the previous year than that during the 2008 financial crisis. This indicates that during the pandemic many workers received wage compensation, as employers generally adopted approaches such as paying leave allowances or treating leave as paid time off.

How have individual and household annual incomes changed amid such employment and labor conditions? Figure 6 shows a comparison of annual income distributions in 2019 and 2020 using data from the “JILPT Panel Survey on the Impact of COVID-19 on Work and Daily Life.” Figure 6 (1) presents the changes in distribution of individual annual income for people who were employees as of April 1, 2020, while Figure 6 (2) covers the



Source: MHLW *Monthly Labour Survey*.

Figure 5. Trends in total actual working hours index and real wage index (on the same month of the previous year, %)



Source: Tabulated by the author using data from the “JILPT Panel Survey on the Impact of COVID-19 on Work and Daily Life.”

Notes: 1. Survey subjects are people registered with an online survey company.

2. “Employed persons” in the figure (2) includes people working as freelancers.

Figure 6. Changes in annual income (%)

changes in distribution of household annual income for people who were an employee or freelancer as of April 1, 2020. This shows that there were no significant changes in individual or household annual income.

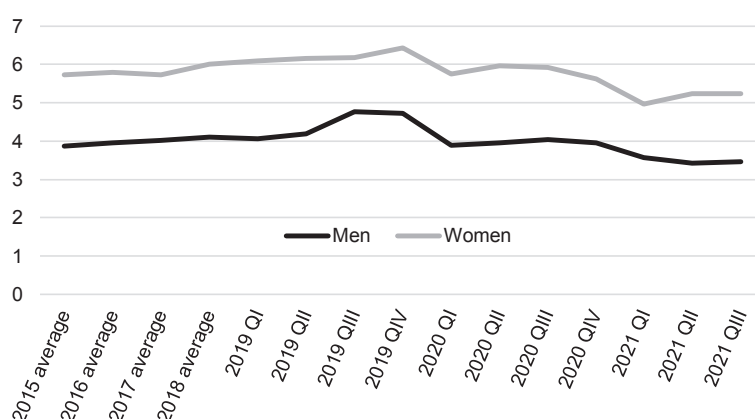
It is important to note that alongside the lack of significant change in annual income distribution, there has also been relatively little labor turnover in the pandemic. Figure 7 utilizes data from the MIC's *Labor Force Survey* to show trends in the job change rate (percentage of workers who changed employers). This reveals that the job change rate, which previously had been rising between 2015 and 2019, has been on the decline since 2020. The decline appears to be a result of the decrease in job openings at enterprises due to the stagnation of economic activity during the pandemic.

2. Trends by segment

As noted above, the pandemic has generally had limited impact on household incomes due to the fact that employers' responses have largely entailed adjustment of working hours as opposed to reduction of employment, and that in the event of such adjustment of working hours, wage compensation has also often been provided.

However, analysis focusing on trends by gender, age, industry, and employment type reveals that certain groups have experienced significant impacts. Figure 8 presents the changes in employment rate (number of employed persons as a percentage of the population aged 15 and older) by gender and age group. This shows that the employment rates for both men and women in the 15 to 24 age group have declined in comparison with 2019, likely due to loss of employment among student side-job workers at restaurants, etc. Likewise, there has also been a decline in the employment rate among women in the 35 to 44 age group. This is thought to be the result of such women facing difficulty pursuing employment due to a need to devote greater amounts of time to caring for their children during temporary closures of childcare facilities and schools (Zhou 2021).

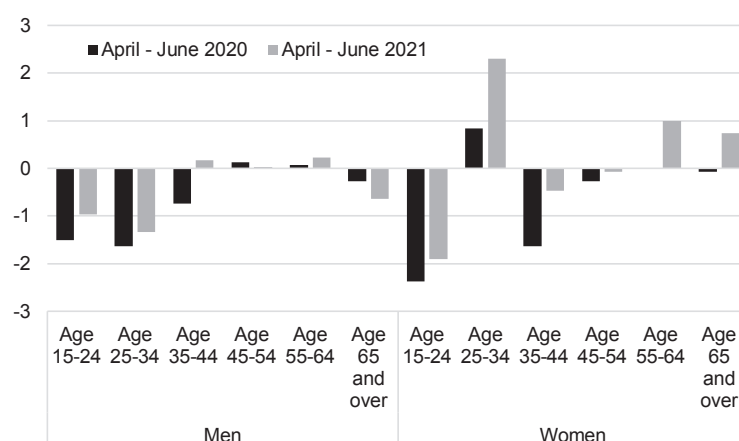
Figure 9 shows the changes in the number of employed persons by industry. As touched on above, the pandemic has seen restrictions on the operation of restaurants, etc. and calls for the public to refrain from leaving home and to avoid long-distance travel. This has led to a considerable decline in the number of employed persons in the accommodation and food services industry in comparison with 2019. In contrast, there have been increases in the number of employed persons in the medical, health care, and welfare industry, which was already a growth industry due to population aging, and the information and communications industry, which has seen increased



Source: MIC Labor Force Survey.

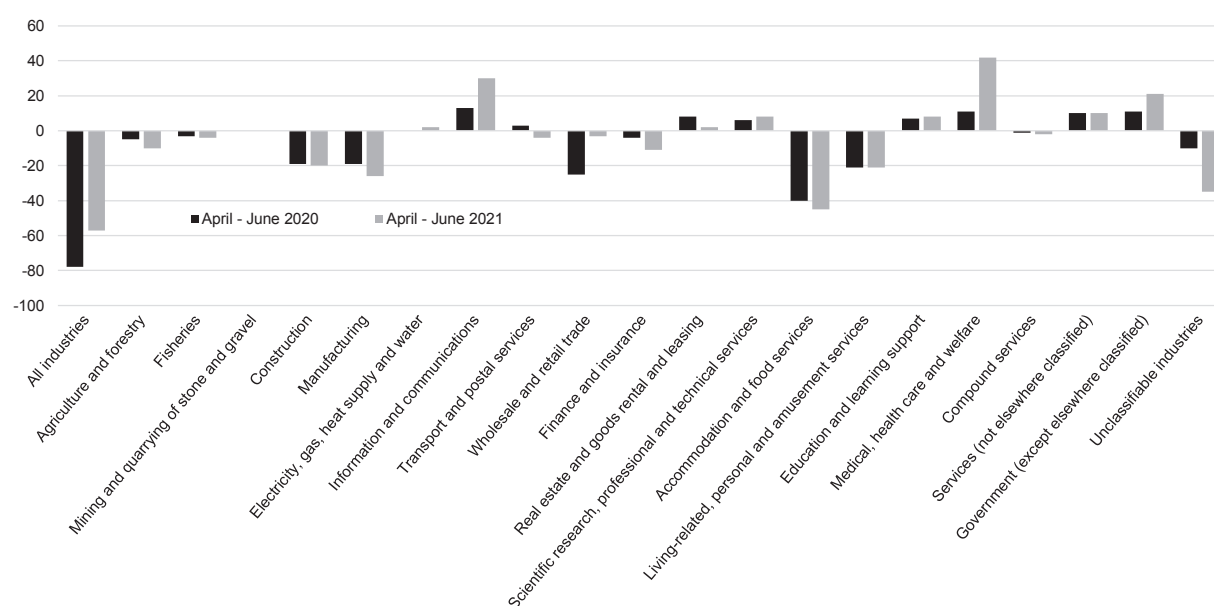
Note: The figure shows the number of people who changed jobs (changed employers) as a percentage of the number of employed persons at each survey timing. As “people who changed jobs” are defined as those who left their original employment and started their new employment within the previous year, in some cases the actual timing of the job change was a year previously.

Figure 7. Trends in job change rate (%)



Source: MIC Labor Force Survey.

Figure 8. Changes in employment rate by gender and age group (difference from April to June 2019, percentage points)



Source: MIC Labor Force Survey.

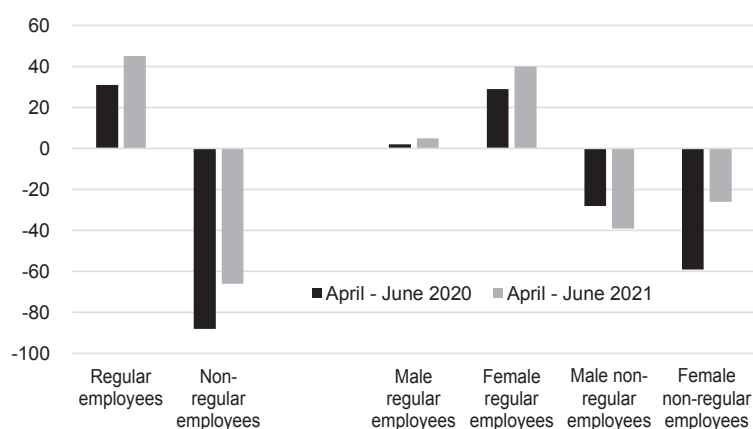
Figure 9. Changes in the number of employed persons by industry (difference from April to June 2019, 10,000 persons)

demand due to the greater adoption of teleworking.

Figure 10 shows the changes in the number of employees by employment type and gender. Looking firstly at the changes in the figures for male and female employees combined, while there has been a rise in regular employees in comparison with 2019, there has been a significant decline in the number of non-regular employees. Although the decline in employment during the pandemic has been low overall, among the non-regularly employed, a considerable number of people have been dismissed from their employment or not had their contract renewed. Figures by gender show a striking decline in the number of female non-regular employees in 2020. The

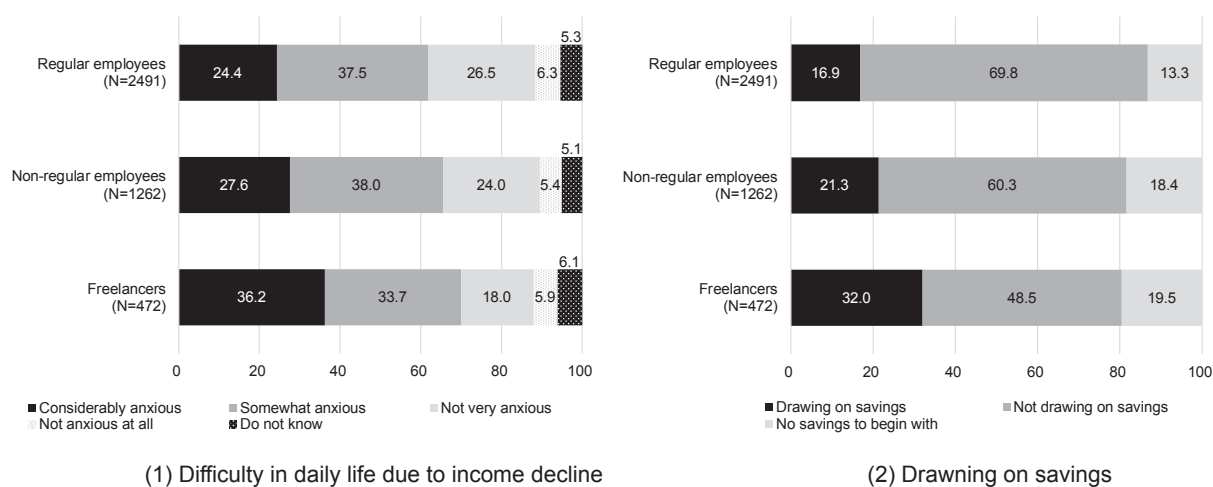
factors behind this are thought to include the strong tendencies among non-regularly employed women to work for restaurants, etc. and other such businesses providing services directly to customers, and to leave employment voluntarily in order to care for their children.

While it has been noted that the pressure to reduce employment has primarily affected non-regular employees, freelancers—namely, workers not in employment relationships—are thought to have experienced even harsher conditions. Figure 11 presents the daily living conditions in August 2020 of regular employees, non-regular employees, and freelancers as of April 1, 2020. This shows that the percentage of respondents who are “considerably anxious” or “somewhat anxious” about difficulty in daily life associated with decreased income and respondents who have drawn on their savings are higher among freelancers than among non-regular employees.



Source: MIC Labor Force Survey.

Figure 10. Changes in the number of employees by employment type and gender (difference from April to June 2019, 10,000 persons)



Source: Tabulated by the author using data from the “JILPT Panel Survey on the Impact of COVID-19 on Work and Daily Life.”
 Note: Survey subjects are people registered with an online survey company.

Figure 11. Conditions experienced by freelancers (%)

3. Summary of labor market impacts

Japan's real GDP growth rate recorded a significant decline in the second quarter of 2020 during the declaration of a national state of emergency. The unemployment rate, however, has seen only a small increase, and the extent of the decline in the number of employed persons has also been limited. This is thought to be due to enterprises' efforts to adjust working hours as opposed to reducing employment. These efforts can be attributed to the reluctance of Japanese enterprises to let go of valuable human resources after having long struggled with personnel shortages, alongside responses related to the Employment Adjustment Subsidy—a government subsidy to supplement payment of employee leave allowances—which saw relaxation of the eligibility criteria and increased payment levels.

However, analysis by segment reveals groups that experienced considerable impacts. Firstly, the figures show a decline in the employment rates among students in side jobs and women raising children. Trends by industry show a decline in the number of employed persons in the accommodation and food services industry, with trends by employment type revealing a significant decrease in employment among non-regular employees. Moreover, freelancers—that is, workers not in employment relationships—experienced even greater deterioration in their daily living conditions than non-regular employees. These trends are thought to be attributable to the restrictions on the operation of restaurants, etc. that were introduced as part of measures to prevent the spread of COVID-19 infections, as well as to factors such as the preponderance of women assuming family care responsibilities, the distinctions drawn between regular and non-regular employees in personnel management approaches that follow typical Japanese employment practices, and the disparity in the guarantee of living conditions between employees and those who are not in an employment relationship.

III. Government policy responses

1. Employment Adjustment Subsidy

The efforts by many enterprises to adjust working hours rather than reducing employment can be attributed not only to preexisting chronic personnel shortages, but also to the relaxation of the eligibility criteria and increase in payment levels for the Employment Adjustment Subsidy to supplement the leave allowances paid to employees.

The Employment Adjustment Subsidy (*koyō chōsei joseikin*; EAS), which is drawn from the employment insurance fund and paid to enterprises, is aimed at enabling enterprises to maintain employees' jobs when developments in the economy necessitate a reduction in business activity. The Labor Standards Act obliges enterprises to pay a leave allowance equivalent to at least 60% of the employee's average wage to each employee who has been sent on leave at the convenience of the enterprise. The EAS supplements a portion of these leave allowances in order to support enterprises who send employees on leave and thereby prevent the dismissal of the employees.

While it is rarely utilized when the economy is stable, in economic crises the EAS tends to be paid in vast amounts, as special exceptions are introduced to relax the eligibility criteria and to raise the payment levels. One such example was around the time of the 2008 financial crisis, when huge amounts of the EAS were paid in FY 2009 and FY 2010.

In the pandemic, special provisions prescribed an even greater easing of the eligibility criteria and increase in the payment levels than those introduced in the 2008 financial crisis. More specifically, these steps included: (1) reducing the eligibility requirement based on an enterprise's production index from a "decline in production index of at least 10% in the last three months" to "a decline of at least 5% in the last month," (2) increasing the proportion of leave allowance covered by the subsidy from "two-thirds for small and medium-sized enterprises and half for major enterprises" to "four-fifths for small and medium-sized enterprises and two-thirds for major enterprises," and (3) raising the upper limit for subsidy amounts from "8,370 yen per person per day" to "15,000 yen per person per day." At the time of compiling this paper (late January 2022), these special provisions were

due to remain in place until the end of March 2022.

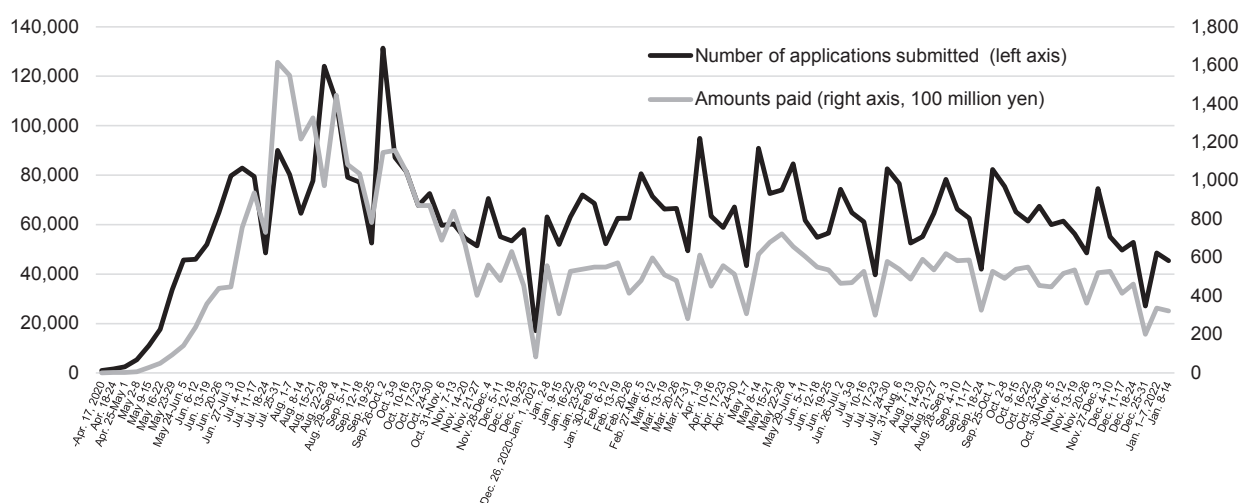
EAS payments have consequently reached an unprecedented scale. Figure 12 presents the (weekly) trends in the number of applications for the EAS and the amount of EAS paid. This indicates that even after the peak in mid-2020, there have been around 60,000 to 80,000 applications a week, and payments continue to total around 50 billion yen per week. As of January 14, 2022, the cumulative number of applications was 5.65 million, and the cumulative amount of EAS paid was 5.22 trillion yen. These increases in applications and payment amounts—which are causing funds to dwindle—may be due not only to the relaxation of eligibility criteria and increase in payment levels, but also to the simplification of the application process.

There are two more key developments with regard to the EAS in the pandemic. Firstly, a subsidy is now provided to supplement leave allowances for workers who are not enrolled in employment insurance. More specifically, where part-time workers who work less than 20 hours a week, students in side jobs, and other such workers who are not insured under the employment insurance program are made to take leave, the “Emergency Subsidy for Job Security” (*kinkyū koyō antei joseikin*) is paid according to the same criteria as the EAS.

The other is that workers at small and medium-sized enterprises who were not paid a leave allowance during the period for which they were on leave are now able to receive a leave allowance directly paid by the government (“Support Fund and Allowance for the Leave Forced to be Taken under the COVID-19 Outbreak” [*kyūgyō shienkin/kyūfukin*], referred to here as “government leave allowance”). This is because, despite the simplification of the EAS application process during the pandemic, there are nevertheless still enterprises—in particular, small and medium-sized enterprises—that neither apply for the subsidy nor pay leave allowances.

As described above, measures to maintain employment by providing leave allowances have been adopted in the form of general mobilization of special provisions to the existing system. Estimates by MHLW (2021) indicate that payments of the EAS effectively decreased the unemployment rate by 2.6 percentage points.

Even so, despite this, there are people who have slipped through cracks in the system. Firstly, there are non-regular employees. Analysis in Takahashi (2021) shows that in the pandemic non-regular employees were more likely than regular employees to face the issue of being sent on leave but receiving neither a leave allowance from their employer nor a government leave allowance. While the introduction of the Emergency Subsidy for Job Security should have ensured that leave allowances for non-regular employees are also supplemented without



Source: MHLW website, <https://www.mhlw.go.jp/stf/covid-19/open-data.html> (in Japanese) (accessed January 24, 2022).

Figure 12. Trends in the number of applications and amounts paid (weekly) of Employment Adjustment Subsidy (EAS)

exception, public awareness of the scheme seems to be insufficient. Another group of people not receiving assistance are freelancers and other such people not in employment relationships. As the EAS is a safety net drawn from the employment insurance fund, it naturally does not apply to those who are not in an employment relationship. To some extent, this is surely a factor in the difficult daily living conditions of freelancers as noted in the previous section.

2. Subsidies and financing to support business activities

Although they are beyond the category of employment and labor policy in the narrow sense, the various forms of subsidies and special financing provided to business operators to support business activities during the pandemic are also noteworthy. There is an undeniable possibility that such measures have contributed to maintaining employment.

The foremost of such measures is the Ministry of Economy, Trade and Industry's "Subsidy Program for Sustaining Businesses" (*jizokuka kyūfukin*). This subsidy, which can be used for all forms of business activity, is paid to business owners who have seen a decline in sales of at least 50% on the same month of the previous year. Maximum payments are 2 million yen for leading medium-sized enterprises, small and medium-sized enterprises, and small business operators, and 1 million yen for freelancers and other such self-employed people. In the period up to January 2021, benefits were paid to 4.24 million applicants to a total of 5.5 trillion yen.

While an exact tabulation is not available, various forms of subsidies and grants for cooperation with COVID-19 response measures have also been provided by local government bodies to business operators such as those whose business has deteriorated and those who reduced business hours in the pandemic.

By providing financial contributions and grants to public financial institutions and private financial institutions, the national government has also enabled low-interest or interest-free special financing for small and medium-sized enterprises, small-scale business operators, freelancers, and other such self-employed people struggling with cash flow. The government budget for such financial contributions and grants totals several trillion yen.

3. Subsidy for leave to fulfill childcare or long-term care responsibilities

Returning to employment and labor policy, several types of subsidies have also been provided for leave to fulfill childcare or long-term care responsibilities.

The first of these is the "Subsidy for Working Parents on Temporary Closure of Elementary Schools" (*shōgakkō kyūgyō nado taiō joseikin*). This subsidy was paid to business operators who granted paid leave to workers needing to take time off work to care for their children during elementary school closures due to COVID-19 measures. The maximum daily payout was 15,000 yen.

Following public discussion highlighting the unfairness of protecting only employees—given that freelancers are just as likely to be unable to work if their child's elementary school is closed—a similar fund for freelancers, with a maximum daily payout of 7,500 yen, was introduced under the title "Support Fund for Working Parents on Temporary Closure of Elementary Schools" (*shōgakkō kyūgyō nado taiō shienkin*; "Support Fund for Working Parents"). This is notable as an example of a framework of support for employees also being extended to those not in employment relationships.

Secondly, the pandemic saw the introduction of assistance aimed at ensuring that workers who need to provide long-term care to relatives do not leave employment, as part of the existing "Subsidy for Supporting Work-Life Balance" program. Such assistance was provided in cases where employers granted workers paid leave to provide long-term care to a family member as part of COVID-19 response measures.

Thirdly, assistance under the Subsidy for Supporting Work-Life Balance program has also been provided for expecting mothers taking time off as a maternal health care measure associated with COVID-19. This has been

paid to employers who granted pregnant female workers paid leave in the event that these workers took time off work with the aim of avoiding COVID-19 infection.

4. Promoting telework

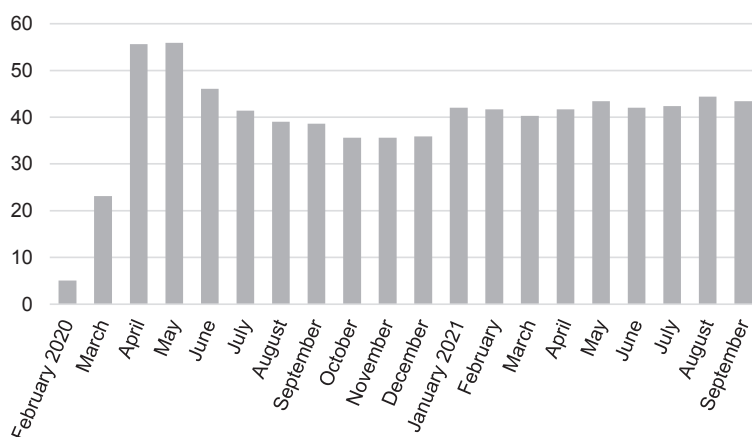
The pandemic has prompted an increasing number of Japanese enterprises to adopt teleworking (namely, the use of information and communication technology to work from home or another such location outside the default place of work) as a means of ensuring that workers avoid close contact with other people while commuting or at the office. The government has also been pursuing initiatives aimed at furthering such efforts.

Firstly, the MHLW revised its guidelines on teleworking. The guidelines on teleworking that were originally compiled in 2018 were entirely focused on curbing long working hours. In contrast, the guidelines revised in March 2021 bore the new title “Guidelines to Promote the Appropriate Introduction and Implementation of Telework,” emphasizing their aim to “promote” telework. Likewise, the guidelines themselves declared that it is possible to implement telework in all working hours systems prescribed in the Labor Standards Act, as well as encouraging review of work duties in order to allow as many workers as possible to pursue telework.

Secondly, enterprises that adopted telework received the “Subsidy to Support the Promotion of Work Style Reform.” This subsidy, which already existed prior to the pandemic, has been expanded and seen a sharp rise in applications during the pandemic.

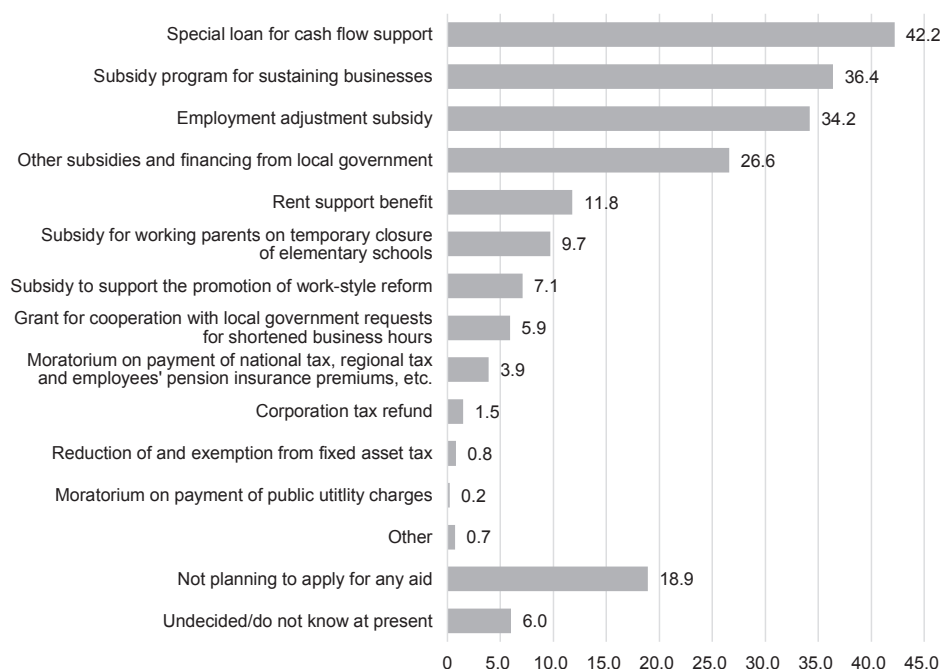
Although not exclusively attributable to the effects of such policies, there is no doubt that the pandemic prompted the widespread adoption of telework in Japanese enterprises. Figures from the JILPT panel study show that the percentage of enterprises implementing telework rose from around 5% in February 2020 to over 50% at the time of the declaration of a national state of emergency in April to May, before settling at around 40% in 2021 (Figure 13).

Sections 1 to 4 above introduced some of the COVID-19-related support measures provided for enterprises. While it includes some measures not covered above, Figure 14 below is intended as a reference to show the extent to which the various support measures have been utilized. This reveals that high percentages of enterprises have drawn on the subsidies and funding to support business activities, such as the “Special loan for cash flow support” and the “Subsidy program for sustaining businesses.” If these measures are excluded, the EAS shows the highest percentage of enterprises that draw on its assistance.



Source: JILPT “JILPT Panel Survey on the Impact of COVID-19 on Enterprise Management,” 5th wave, October 2021 Survey.
 Note: Survey subjects are enterprises registered with an online survey company. Tabulation includes only data from enterprises that responded to all waves of the panel study.

Figure 13. Trends in the telework implementation rate (N=295, %)



Source: JILPT "Survey on the Impact of COVID-19 on Enterprise Management," 2nd wave, October 2020.

Note: Survey subjects are enterprises registered with an online survey company.

Figure 14. Use of COVID-19-related support measures as of October 2020 (N=1,458; multiple responses allowed; %)

5. Support for individuals and households

Let us go on to look at the major support measures for individuals and households in the pandemic. Firstly, with a rising number of people losing their work and income in the pandemic, in 2020 the government paid a handout for citizens (those who opted to receive it) fixed at 100,000 yen per person. This benefit was a centerpiece of policy in the initial stages of the pandemic and was ultimately paid to over 99% of citizens.

Secondly, support measures were also developed for people whose income declined during the pandemic, including measures such as a loan of emergency funds (800,000 yen), rent subsidies (equivalent to generally three months, to a maximum of nine months' rent), a moratorium on payment of national or local taxes, reduction of and exemption from payment of social insurance, and a moratorium on payment of public utility charges.

Thirdly, support was also provided for households raising children. This initially entailed a benefit of 50,000 yen per child for households raising children. Additionally, following the formation of a new administration in October 2021, the upper income limit for receiving this benefit was raised, such that most households raising children received a benefit of 100,000 yen per child.

Fourthly, in light of the decline in work for students in side jobs during the pandemic, the Ministry of Education, Culture, Sports, Science and Technology paid an "Emergency Student Support Handout for Continuing Studies" of 100,000 yen per person, with the aim of supporting students who pursue their studies while working side jobs. Measures to support students facing financial hardship were also introduced, such as new systems for scholarships (*kyūfugata shogakukin*; financial aid that does not need to be repaid) and reduction of and exemption from tuition fees.

6. Protection of freelancers

In previous sections we found that the daily living conditions of freelancers—namely, those not in employment relationships—deteriorated during the pandemic. Although they do not all relate to COVID-19, protection measures for freelancers are currently being expanded as if in response to such a trend.

Firstly, in March 2021 the Cabinet Secretariat, Fair Trade Commission, Small and Medium Enterprise Agency, and MHLW jointly formulated the “Guidelines for Secure Working Conditions for Freelancers.” These guidelines draw on discussions that were already being pursued by the Fair Trade Commission prior to the onset of the pandemic. More specifically, on the basis that freelancers are defined as “self-employed people and sole proprietors with neither a physical business location nor employees, who utilize their experience, knowledge and skills to earn an income,” the guidelines specify a number of rules, including: (1) the ordering party (client) is obliged to set out written terms for a business transaction with a freelancer, (2) a client’s abuse of their superior bargaining position is subject to regulation under the Antimonopoly Act, and (3) certain regulations also apply to business operators who mediate transactions between freelancers and their clients.

Secondly, the routes for freelancers to receive special enrollment (voluntary enrollment) in industrial accident insurance have been expanded. That is, in September 2021 business operators using bicycles to transport goods (including Uber Eats) and IT freelancers were added to a list of occupations that are able to voluntarily enroll in industrial accident insurance.

7. Summary of government policy responses

Looking at the support provided for enterprises in the pandemic in terms of budget scale and expansion of coverage reveals the vast scale of the subsidies and financing to support business activities. Such support may have indirectly contributed to maintaining employment.

At the same time, such support measures did not have a specified intended usage. As a subsidy with a clearly defined purpose, the EAS has played an overwhelming role. With the relaxation of eligibility criteria for receiving payments, increases in payment levels, and the simplification of application procedures, the EAS was paid on an unprecedented scale. This undoubtedly contributed to maintaining employment and preventing unemployment during the pandemic.

When considering the EAS, it is also important to note the steps to expand its scope of eligibility, such as payment of the subsidy also being made for leave taken by workers not enrolled in employment insurance (part-time workers working less than 20 hours per week and students working side jobs, etc.) and the direct payment of government leave allowances to workers who did not receive leave allowances while on leave. However, it must be noted that it was nevertheless difficult for some non-regular employees to receive support.

On the other hand, the government had already been making efforts to address support for child-rearing and long-term nursing care responsibilities. In addition to these efforts, as the pandemic has increased the burden of care for children or elderly family members, subsidies for childcare leave or nursing care leave have also been paid. These include interesting developments such as the expansion of support that was initially targeted for employees in order to cover persons who are not in employment relationships (freelancers) to some extent in response to public opinion.

Turning to benefits for individuals and households, alongside the across-the-board handout for all citizens and support for households that experienced income decline, of course considerable support was provided to households raising children. Moreover, amid recognition of the difficulties faced by students in side jobs during the pandemic, efforts were also made to provide support for students experiencing financial hardship.

In addition to such subsidies and benefits, two sets of guidelines regarding employment and labor were formulated during the pandemic. The first set of guidelines was aimed at promoting telework in the context of the pandemic, while the other sought to protect freelancers at risk of decline in daily living conditions during the

pandemic. While it must be noted that efforts to protect freelancers are in response to ongoing discussions that predate the pandemic as opposed to exclusively in response to the pandemic, elements of this protection do supplement weaknesses in the freelancer safety net that have been exposed by the pandemic, and it is worth following future developments.

IV. Directions of employment and labor policies

This paper has looked at the impacts of COVID-19 on the labor market and the government's corresponding policy responses. What kinds of insights do these provide regarding the potential directions of employment and labor policy in the future?

Firstly, the pandemic saw vast amounts of EAS paid in order to maintain employment, as a means of ensuring that unemployment rates remained at a low level. In Japan, policies are steadfastly directed at prioritizing the stability of employment in an economic crisis, although promoting worker mobility is an important policy agenda in normal times. The same direction is very likely to be adopted in future economic crises. However, the extremely large sums of EAS payments are causing funds to run low. It is essential to investigate whether such payments during the pandemic were appropriate and effective.

Secondly, the Emergency Subsidy for Job Security was introduced for the leave of workers other than those enrolled in employment insurance (part-time workers who work less than 20 hours a week and students in side jobs). While this was only a temporary system, it may serve as a stepping-stone for expanding the categories of workers eligible for employment insurance. If part-time workers who work less than 20 hours a week and students in side jobs become able to enroll in employment insurance, the rate of non-regular employees enrolled in employment insurance will in turn rise.

Thirdly, while not necessarily a result of the impacts of the COVID-19 pandemic, there were successive developments toward protecting freelancers during the pandemic. These included the formulation of the "Guidelines for Secure Working Conditions for Freelancers" in light of previous discussions, and the expansion of the list of occupations for which freelancers are eligible for special (voluntary) enrollment in industrial accident insurance. There were also examples of the frameworks for supporting employees being extended to cover those not in employment relationships, such as the Support Fund for Working Parents. Debate regarding the protection of and safety nets for freelancers is very likely to gain momentum in the future, given the interest in the decline in the daily living conditions of freelancers during the pandemic.

Fourthly, employment and labor policies in recent years have placed increasing importance on supporting workers to balance work with responsibilities of caring for children or family members. This policy direction was also reflected in the emergency measures adopted during the pandemic. Support for balancing work with child and family care responsibilities will undoubtedly remain an important cornerstone of employment and labor policy in the future.

Fifthly, the pandemic has prompted a rise in the necessity of telework and also seen efforts by the government to promote it. In 2021 the percentage of enterprises implementing telework remained far higher than that prior to the pandemic. While the telework implementation rate may decline slightly once the pandemic is over, it is unlikely to revert to its level prior to the pandemic. The "Guidelines to Promote the Appropriate Introduction and Implementation of Telework" has dealt with issues regarding working hours systems. In the future, labor and management will need to focus their efforts on preventing the erosion of workers' private lives, as well as addressing issues such as work allocation, human resources development, and personnel evaluation.

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Strengthening India's Social Protection Architecture for the Informal Sector: Lessons from the Covid-19 Crisis

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- I. Introduction
- II. The unequal effects of the pandemic on the labour market
- III. Policy responses to the Covid-19 shock
- IV. Strengthening India's social protection architecture: Lessons from the Covid-19 crisis
- V. Conclusion

I. Introduction

The Covid-19 pandemic imposed a significant shock on the Indian economy with GDP contracting by 7.3% in 2020–21. While GDP is set to return to pre-pandemic levels in 2021–22, evidence suggests that this recovery is far from uniform. While the formal sector has recovered rapidly the informal sector has largely been left out of the recovery process. A new Pew Research Center analysis (Kochhar 2021) finds that the middle class in India is estimated to have shrunk by 32 million in 2020 as a consequence of the downturn, compared with the number it may have reached absent the pandemic. Additionally, the number of people with incomes of \$2 or less a day is estimated to have increased by 75 million because of Covid-19. What is more, a disproportionate burden of the pandemic has been borne by the economically more vulnerable, the less-educated, the young and women. Many of these individuals were engaged in contact intensive sectors, which have been hit the hardest by the Covid-19 shock.

When the first wave of the pandemic hit in March 2020, the government put in place, a series of policy packages using existing the social protection programmes to provide relief to the poor. While these were effective, several challenges pertaining to targeting, enrollment, interstate portability, inadequate entitlements and delays in payments have arisen. Based on this experience, this article argues that protecting the poor and vulnerable from uncertain adverse shocks requires strengthening safety nets by addressing the above-mentioned gaps and also putting in place a social protection architecture which has components that can behave as automatic stabilizers without any discretionary interventions or requirement for legislative actions. This is important to avoid delays in reaching out to those in urgent need of support during downturns.

The purpose of this article is three-fold. First, to assess the impact of Covid-19 on the labour market and examine who bore the greatest impact of the pandemic. Second, to provide an overview of the policy responses by the government. And third, to outline the future direction of social protection policies in the post Covid-19 period.

II. The unequal effects of the pandemic on the labour market

The impact of the Covid-19 crisis on the labour market has varied across workers depending on the nature of the employment arrangement and the sector of employment. Using data from Periodic Labour Force Survey (PLFS), an annual labour force survey conducted in India, Kapoor (2020) argues that the effects of the pandemic and lockdown shocks were particularly harsh on less-educated workers who are typically engaged in informal employment (characterised by lack of access to social security, low pay and precarious work arrangements) in sectors where the first order effects of the pandemic were strongest due to inability to move work online. In contrast, the more educated workers who are engaged in formal work that offers a steady source of income and

some degree of social security and were engaged in sectors amenable to online work were relatively better off. The former accounted for a disproportionate share of the pandemic-related job losses.

Table 1a and 1b show that less educated are typically employed in sectors where the first order effects of the pandemic have been severe and the options for remote work are limited. Outside of the agricultural sector, which accounts for 42.4% of total employment, the three sectors which cumulatively account for approximately 36% of total employment are manufacturing, construction and trade, and hotels and restaurants. These sectors have been significantly affected by the pandemic and the lockdown and collapse of demand. These sectors are a critical source of employment for the less educated (Table 1a).

What is more, as the statistics in Table 1b suggest, the above-mentioned sectors are also dominated by informal and non-standard work arrangements (such as self-employment, casual work and regular informal work) making them highly vulnerable to layoffs. In the construction sector over 80% of the workers are in casual employment and can be fired easily. In the manufacturing sector almost 85% are in informal work arrangements. In the trade, hotels and restaurant segment, less than 5% are in regular formal jobs. In contrast, high-end services sectors which generate employment for the educated and are more amenable to remote work have a higher share of regular formal employment. Given that these sectors offer higher wages, workers had a greater financial wherewithal to cope with any loss of earnings or periods of unemployment. However, the contribution of these sectors to total employment is low (approximately 14%).

Importantly, many of the less educated informal workers who lost employment in the non-agriculture sector found themselves pushed into the agricultural sector resulting in its emergence as an ‘employer of last resort.’ Data from the PLFS for the period 2019–20, which captures the period of the first lockdown in India shows that the share of the workforce engaged in agriculture rose to 45.6% from 42.5% (2018–19). This increase is significant as it is the first time that the share of agriculture in total employment (in percentage terms) has increased. Importantly, even within the agricultural sector, much of the increase is coming through the category of unpaid family helpers/workers i.e. those who are engaged in their household enterprises, working full or part time but do not receive any regular salary or wages in return for the work performed (considered as poor quality

Table 1a: Distribution of workers across sectors by educational qualification

(%)

Sectors	Not literate	Literate without formal education	Literate below primary	Primary	Middle	Secondary	Higher secondary	Graduates and above	Total
Agriculture	37.50	0.42	6.80	15.21	19.77	9.96	6.64	3.71	100
Mining and Quarrying	20.91	0.07	10.31	12.02	21.33	12.54	10.66	12.15	100
Manufacturing	14.00	0.33	5.70	15.79	25.71	14.62	13.89	9.96	100
Electricity, Gas and Water supply	13.33	0.35	3.00	8.15	18.29	15.08	20.29	21.53	100
Construction	27.72	0.62	6.60	18.35	25.86	11.25	6.51	3.10	100
Trade, Hotels and Restaurants	11.13	0.30	4.55	11.98	24.73	17.09	15.86	14.35	100
Transport, Storage and Communication	9.94	0.33	3.85	12.97	25.58	15.05	12.30	19.99	100
Finance, Business and Real Estate	3.00	0.12	1.35	4.61	11.71	10.41	16.08	52.73	100
Health, Education and Public Administration	10.30	0.21	2.68	7.31	13.67	11.45	15.11	39.28	100
Total	24.30	0.38	5.56	13.88	21.28	12.09	10.30	12.22	100

Table 1b: Sectoral share of employment in total employment and breakdown of employment by employment category

						(%)
Sectors	Share of employment in total employment	Regular formal	Regular informal	Self-employed	Casual workers	Total
Agriculture	42.43	0.08	1.12	74.13	24.67	100
Mining and Quarrying	0.42	28.56	23.66	9.25	38.52	100
Manufacturing	12.03	16.49	27.17	42.95	13.38	100
Electricity, Gas and Water supply	0.56	45.27	31.51	19.44	3.78	100
Construction	12.14	1.60	3.88	10.83	83.68	100
Trade, Hotel and Restaurants	12.63	4.69	23.02	67.72	4.57	100
Transport, Storage and Communication	5.95	20.37	29.76	38.39	11.47	100
Finance, Business and Real Estate	3.37	41.53	26.55	30.08	1.85	100
Health, Education and Public Administration	10.48	36.98	38.82	20.15	4.04	100
Total	100	9.66	14.13	52.04	24.16	

Source: Kapoor (2020).

Note: Sectors above are based on National Industrial Classification 2008 (NIC 2008).

employment). The share of this category of workers in the agricultural sector has increased from 25.7% to 29.7%. Often when job seekers are unable to find work, they resort to such work reflective of underemployment.

Additionally, data from multiple independent surveys at the local and national level have shown continuing low employment rates, reduced incomes, increased food insecurity, and elevated debt levels (Azim Premji University 2021). Significant amongst these is the Centre for Monitoring Indian Economy (CMIE), a private data source which provides high frequency household data. Based on this data, analysis by Abraham and Basole (2022) show that in April 2021, incomes as well as employment remained below their pre-pandemic levels when the second wave arrived, causing more distress. As of the middle of 2021 (after the second wave), the employment rate remained 3 percentage points below its pre-pandemic value. Household incomes too had not fully recovered, but were stagnant at around 80% of their pre-pandemic levels. The authors also point to the increased level of informality with, the share of self-employed and casual wage workers in the total workforce increasing to 80% in 2020–21 from 78% in the years prior to the pandemic as per CMIE data.

III. Policy responses to the Covid-19 shock

Since the announcement of the first lockdown in March 2020, both the Central and State governments announced a series of relief measures. These programmes were based on existing social protection programmes such as Public Distribution Systems (PDS) which provides subsidised food rations, cash transfers, Mahatma Gandhi National Rural Employment Guarantee Programme (MGNREGA), PM-KISAN payments, and pension payments. This section outlines the measures undertaken under the two key relief packages announced by the Central Government.¹ The first relief package of Rs 1.70 lakh crore, the Pradhan Mantri Garib Kalyan Yojana [Prime Minister's Poor Welfare Scheme] (PMGKY), was announced in March 2020 and included the following measures reach out to the poorest:

1. A detailed list of support announced at the state level is available online: <https://Covid19socialsecurity.wordpress.com/relief-measures/>.

- 80 crore poor people to get 5 kg wheat or rice and 1 kg of preferred pulses for free every month for the next three months - *extended to November 2021*
- 20 crore women Jan Dhan account holders to get Rs 500 per month for next three months
- Increase in MGNREGA wage to Rs 202 a day from Rs 182 to benefit 13.62 crore families
- An ex-gratia of Rs 1,000 to 3 crore poor senior citizen, poor widows and poor disabled
- Government to front-load Rs 2,000 paid to farmers in first week of April 2020 under existing PM Kisan Yojana to benefit 8.7 crore farmers
- Central Government has given orders to State Governments to use Building and Construction Workers Welfare Fund to provide relief to construction workers

Thereafter, the government announced a special economic package of Rs 20 lakh crore (equivalent to 10% of India's GDP) with the aim of making the country independent against the tough competition in the global supply chain and empowering the poor, labourers, migrants who have been adversely affected by Covid-19. Some of the key features of this project referred to as Atmanirbhar Bharat [self-reliant India] included:

- Support for businesses and Micro Small Medium Enterprises (MSMEs)
 - Rs 3 lakh crores Collateral-free Automatic Loans for business including MSMEs
 - Rs 20,000 crore Subordinate Debt for MSMEs
 - Rs 50,000 crore equity infusion through MSME Fund of Funds
- Support for migrants and urban poor
 - Government of India permitted State Governments to utilise State Disaster Response Fund for setting up shelter for migrants and providing them food and water etc.
 - Hygienically prepared three meals a day provided for the residents of Shelters for Urban Homeless during the lockdown
- MGNREGA support
 - Additional MGNREGA allocation of Rs 40,000 crores in FY2020–21
 - Drive undertaken to enroll returning migrants
 - Planning for continuing MGNREGA works in monsoon as well: plantations, horticulture, livestock related sheds
- Free food grain supply to migrants for two months
 - Migrants who are neither National Food Security Act (NFSA) or State Card beneficiaries in the state they were stationed in, provided 5 kg of grains per person and 1 kg Chana per family per month for two months
- Support for informal sector workers
 - Rs 1,500 crores Interest Subvention for MUDRA-Shishu Loans
 - Rs 5,000 crores Special Credit Facility for street vendors

In the absence of official government data, multiple independent surveys have sought to understand how effective the above-mentioned programmes were in providing relief. Given the wide coverage of the PDS, which legally entitles up to 75% of the rural population and 50% of the urban population to receive subsidized food grains, this programme stands out in its performance in providing a safety net for the poor. Across multiple surveys, 90% of surveyed households reported having a ration card. For instance, in a rapid phone survey of 50,000 households across 15 states undertaken by Dalberg (2020), PDS emerged as the best performer in terms of accessibility with 91% of entitled households reporting that they had availed of free rations announced under the PMGKY in May. Evidence from a World Bank study (Bhattacharya and Sinha Roy 2021) which examines enrollment and access across various schemes also points to the larger reach of PDS as compared to cash transfer

schemes. The study notes that while 90% of rural and 80% of urban households were enrolled in PDS prior to the pandemic, only 60% of rural and 34% of urban households were enrolled in cash transfer schemes. They find that 74% of all households received food through PDS but only 40% of households received cash-transfers.

Cash transfers are likely to have had a limited effect given the widespread exclusion of the vulnerable and needy from these programmes as well as the small size of the transfers. Pande et al. (2020) compute that more than half of all BPL (below poverty line) women were not covered under Pradhan Mantri Jan Dhan Yojana (PMJDY) to begin with. Further, Somanchi (2020) shows that 56% of all women and 46% of all households are likely to be excluded from cash transfers if delivered via Jan Dhan accounts. Extending transfers to women with non-PMJDY accounts would have substantially increased inclusion. Nevertheless, Bhattacharya and Sinha Roy (2021) find that overall, conditional on eligibility, 80% of households who had members with PMJDY accounts received benefits. In terms of cash transfers to construction workers, only one third of construction workers received any direct benefit transfers (Jha 2020). This was due to problems of low registration rates, non-updation of identity cards, enrolment of non-construction workers as beneficiaries and the fact that a large number of construction workers are migrant labourers working in different states far away from their native places. The issue of portability of their registration and benefits has remained unresolved.

Finally, like the PDS, MGNREGA which provides at least 100 days of wage employment in a financial year to every rural household whose adult member volunteers to do unskilled manual work has played a vital role as a safety net in rural areas during the pandemic. In 2020–21 a total of 3.89 billion person-days of work were generated, an increase of 47% over 2019–2020 (2.65 billion person-days). 111.9 million individuals worked under the programme in the pandemic year, up 42% from the previous year (78.8 million individuals). However, the ‘rationing rate’ (percentage of households who demanded work but did not get it) in the May to August 2020 period was 22.7% (15% for the same months of 2019). Thus the level of fiscal support provided to the programme remains short of making it a truly demand-driven programme, and the extent of rationing worsens as the financial year progresses.

IV. Strengthening India’s social protection architecture: Lessons from the Covid-19 crisis

The above-mentioned discussion indicates that while the support packages provided relief to the vulnerable, they fell short on some dimensions. There is an urgent need to strengthen India’s social protection architecture to not only help India’s vulnerable informal workforce recover from the Covid-19 crisis but also provide a cushion during future crises. This requires a two-fold approach. One, augmenting and expanding existing social protection programmes to ensure exclusion errors are overcome and adequate support is made available. And two, putting in place effective automatic stabilizers which help reduce the welfare cost of macroeconomic fluctuations to the poor and prevent households from resorting to coping strategies that have long term adverse impacts which impede economic growth and poverty reduction.

To begin with, we discuss the importance of expanding the coverage of existing programmes. In the context of PDS, for instance, a key challenge is the exclusion of a large number of deserving vulnerable households. Since the percentages mentioned in the National Food Security Act under whose ambit the PDS comes (75% in rural areas and 50% in urban areas) have been applied to 2011 population numbers, it is estimated that 100 million households are left out of the system (Khera and Somanchi 2020). Failure to update the population numbers has meant that, a large number of deserving households are not entitled to subsidised grains (Trivedi 2020). Another significant problem vis-a-vis PDS is that migrant workers are not entitled to PDS entitlements in their places of work even if their names are on ration cards in their home state. Over the last few years gradual reforms have been carried out with the aim of ensuring inter-state portability. However, when Covid-19 struck, the concept of ‘one nation one ration card’ was yet to be realised. Given the important role PDS has played during this epochal crisis, it is important to expand the list of eligible beneficiaries, ensure inter-state portability

and concomitantly allow households which previously may not have been eligible for food support to become eligible and receive support in a timely manner during downturns. Additionally, the expansion of entitlements beyond wheat and rice to include food items such as protein source, soaps and masks needs to be considered.

The speed at which these changes are implemented during a crisis is crucial. Establishing national and/ or state level triggers that enable automatic adjustments in the programme that remove uncertainty and speed up the use of the programme as both insurance to individuals and as an automatic stabilizer. Such triggers have been proposed for the Supplemental Nutritional Assistance Programme in the United States. Introduction of such triggers, contingent on availability of appropriate data, merit consideration in the Indian context.²

Cash transfers have become increasingly popular in India since the government embarked on a financial inclusion programme (namely PM Jan Dhan Yojana) in August 2014. This programme sought to provide banking services to every unbanked adult. It was argued that the Jan Dhan system in combination with Aadhar and mobile phones would provide the necessary infrastructure for delivering cash transfers. When the Covid-19 crisis struck, under the PMGKY package, the above-mentioned architecture was utilized to provide relief through cash transfers. However, as described above, these transfers were inadequate at the extensive margin as they are likely to have excluded as many poor households. Also, as pointed by the State of Working India Report (Azim Premji University 2021), they have also fallen well short at the intensive margin, offering only Rs 500 per month over three months at the Central Government level (Ibid.). The report notes that, India's transfer of Rs 1,500 (over three months) which amounted to 12% of monthly GDP per capita (as opposed to the global average of 32% of monthly GDP per capita) are likely to have fallen well short of compensating for the decrease in incomes that majority of informal workers have experienced.

Another key problem vis-à-vis coverage of cash transfer programmes in the context of the pandemic has been that there are many individuals who may not have been eligible for support under existing schemes but have witnessed a sharp decline in their income or lost jobs given the informal and insecure nature of their employment arrangement. Pushed into a dire situation they too will need income support. However, identifying such individuals will be a herculean task. In developed countries, unemployment insurance schemes which provide cash transfers to those who are rendered jobless and those who meet certain eligibility criteria serve as effective automatic stabilisers on the spending side. However, in India, given the predominance of informal work arrangements, unemployment insurance programmes are likely to have limited efficacy only. Therefore, to provide support to vulnerable households during downturns, it would be useful to put in place a programme that offers a minimum income guarantee in a timely manner for temporary periods during downturns.

The MGNREGA programme is one existing programme which given its self-targetting feature and demand driven nature can work as an effective automatic stabilizer for the economy. For this to happen, there is a need to enhance budgetary provision for the programme such that people are not rationed out during downturns as described above. Additionally, there is a need to extend the number of guaranteed days of work from 100 to 150 at a time of crises such as droughts or national calamities. Meeting this demand requires a large-scale opening of worksites and expanding lists of permissible works at such times (Drèze and Khera 2020). For the programme to provide an adequate cushion, wages paid under MGNREGA also need to be increased. Aggarwal and Paikra (2020) find that programme wage rates of at least 17 of the 21 major states are even lower than the state minimum wage for agriculture. In this regard, it is important that the baseline for MGNREGA wage indexation should be the current minimum wage rate for agricultural labourers.

A clear lesson from the Covid-19 crisis has been that India's social protection system functions better in rural areas compared to urban areas. This is partly due to better coverage (such as with PDS) and partly due to the existence of rural-only programmes (such as MGNREGA). Going forward, an expansion and strengthening of

2. For instance, the Supreme Court has issued orders on universalisation of PDS during droughts, though these have not been implemented: <https://scroll.in/article/810489/supreme-court-delivered-a-historic-order-on-drought-relief-but-who-will-ensure-it-is-implemented>.

the urban social safety net is highly desirable. To this end, the possibility of introducing an urban employment programme merits serious consideration.

Finally, a crucial dimension of creating a robust social protection architecture particularly for India's informal workers involves ensuring adequate protection to self-employed or casual wage workers in the informal sector, who are outside the ambit of standard employer-employee relationships. In August 2021, the government introduced the E-shram portal which aims to create a national database of unorganised workers, which is seeded with an individual's Aadhaar. The main objective is to create a centralised database of every construction worker, migrant worker, gig and platform worker, street vendor, domestic worker, agriculture worker which will help to implement the social security services to them and share their information with various stakeholders for delivering the welfare schemes. While mandatory registration of all unorganized workers is the need of the hour, two key issues vis-à-vis the design of social protection programmes merit attention. First, the structure of the programmes needs to be sensitive to the huge diversity in employment relations as well as incomes. For instance, those below the poverty (deprivation) line should not be expected to contribute. As incomes rise beyond a threshold, households above the poverty line can be expected to contribute towards their social security alongside the government. Second, the design of the programme also needs to be cognizant of the lack of standard employer-employee relationships in the labour market where workers either work with no employer or work with multiple employers. One possible approach to this challenge is the formation of national and state-level welfare boards for unorganised sector workers as proposed in the 2008 Unorganised Sector Social Security Act (Mehrotra 2020).

V. Conclusion

The Central and State governments have announced several relief packages over the course of the last two years. Despite these efforts, the pandemic has extracted a very large cost from those who are least capable of paying for it. A key learning from this crisis is the need to put in place a social protection architecture that can ensure timely and adequate support to those in urgent need. This will prevent future crises from extracting such a large humanitarian cost.

Strengthening the social protection architecture to make it more robust and effective will not just require an increase in entitlements during crisis, but also an expansion in coverage to support those who may previously not have been eligible for support but witness a sharp decline in their income or lose employment during downturns and therefore require support. The question of how social protection programmes can be designed to achieve these merits careful consideration. The Covid-19 crisis has highlighted the importance of automatic stabilizers in protecting people from losing jobs and income in the developing world. This is not just a promising route towards providing timely support without any administrative discretion but also in reducing macroeconomic volatility and building resilience against downturns (IMF 2021).

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The Social Security and Unemployment Trends during COVID-19 Pandemic in Indonesia

Ike FARIDA

- I. Introduction
- II. Labor market in Indonesia prior and post Omnibus Law
- III. The Impact of COVID-19 to the labor market in Indonesia
- IV. Government programs to protect the workers
- V. Conclusion

I. Introduction

The global COVID-19 pandemic has caused multifaceted issues to our society as well as affecting the global labor outlook that has been associated with unemployment and social security everywhere, including Indonesia.¹ In particular, low-skilled and/or unskilled workers are the most vulnerable when COVID-19 spreads, with them being forced to reduce their work hours, thus reducing their salary or even experiencing something as severe as losing their jobs permanently.² According to the latest data³ from the Indonesia Central Bureau of Statistics [Badan Pusat Statistik (BPS)], the open unemployment numbers as of August 2021 are dominated by low-skilled labors (senior high school or lower) and vocational graduates, which comprises around 88% of Indonesian workforce. With already low bargaining power, these workers become even more vulnerable as a result of the reduction in working hours, work rights went unprotected, even reaching to the point of mass termination of employment due to pandemic. These factors threaten their livelihoods and further bounce the number of unemployment rates that have already sit at 4.1% in 2020, above the average unemployment rate in the Southeast Asia.⁴ Not to mention that the labor market is dominated by workers in the informal sector which are typically characterized by unstable income and lack of access to social security and health insurance.⁵

To improve labor protection, the Indonesian government has taken a number of measures such as reforming the labor law as well as introducing additional social safety net programs streamlined into the Law No. 11 of 2020 regarding Job Creation. The new legislative change initially aims to improve the labor market competitiveness as well.⁶ Further, the government has also introduced programs such as the 12-year compulsory education program⁷ for children, education aid⁸ for adults, and internship

1. Based on statistics of unemployment during pre-crisis, peak and most recent among 36 countries. See: OECD. 2021.

2. Rahman et al. 2022.

3. Indonesia Central Bureau of Statistics [Badan Pusat Statistik (BPS)]. 2022.

4. TheGlobalEconomy.com. 2020.

5. Octavia, Joanna. 2020.

6. House of Representatives of Republic of Indonesia. 2022.

7. The 12-year compulsory education program, formally known as “*Program Pendidikan Menengah Universal*” [Universal Middle Education Program] is regulated in the Ministry of Education and Culture Regulation No. 80 of 2013 regarding Universal Middle Education Program.

8. Non-Formal Education Equalization School or locally known as “*Kelompok Belajar*” [Study Group] is a program aimed to expand the opportunities of society members, especially the poor to improve the knowledge, skills and mental attitudes needed to develop themselves and to work for a living. The two legal standing of Non-Formal Education Equalization Program are regulated within the Law No. 20 of 2003 regarding the National Education System and Ministry of Education and Culture Regulation No. 81 of 2013 regarding the Establishment of Non-Formal Education Units.

programs⁹ for tertiary students; aiming to upskill the labor force in the long term. However, when COVID-19 reached a global scale in early 2020, it caused a significant disruption in the social, political, and economic order, especially since the newly introduced Job Creation Law did not factor in the pandemic. The data in this report is prepared using normative research methodology by compiling information from official government instances, NGOs and think-tank organizations. This report aims to address the following research issues:

1. Evaluating the implementation of the security programs and its contribution towards workers' welfare especially during the pandemic.
2. Evaluating the trends of employee termination during the times of pandemic, especially the cause and how the officials are trying to weather the bad influence caused by it.

At the end, the report will outline the current state of government policy and how it fares so far. This report is hoped to contribute in the evaluation of social policy affecting the working class so that contingent factors such as the pandemic could be factored in its design.

II. Labor market in Indonesia prior and post Omnibus Law

A. Prior the implementation of the Omnibus Law

Before the passing of Law No. 11 of 2020 regarding Job Creation, known as the Omnibus Law, it was preceded by Law No. 13 of 2003 regarding Employment. Prior to this, complaints concerning welfare of the workers have been prevalent. As an example, religious holiday allowance is often disputed each year. On one side, the law was too rigid and burdensome for the companies as the sum of the payment does not correlate with the productivity or achievement of the worker. Henceforth, a number of aspects of the law still need to be reviewed to reach a better balance for employers and employees. Another presented challenge for the Indonesian government is that the current labor law is not competitive enough comparatively to other countries based on the following aspects:

a. Severance payment

The regulations regarding severance payment are still considered rigid, making Indonesia a country that is avoided by footloose industries¹⁰ as opposed to countries such as Vietnam or the People's Republic of China. In Indonesia, the regulation regarding severance pay is a maximum of 9 months of wages for the working period of 8 years and over.¹¹ Compared to Vietnam, workers are entitled for 1.5-month severance pay for each year of work without a maximum value.¹² As for China, workers with the working period of 5 to 10 years are entitled to a 5-month salary severance pay; workers with the working period of 10 to 20 years are entitled to 10-month salary severance pay; and workers with the working period of over 20 years are entitled to 20 months of severance pay.

9. This program, locally known as "*Kampus Merdeka*" [Independent Campus] is a breakthrough program pioneered by the Ministry of Education and Culture in cooperation with state universities with the purpose of providing opportunities to hone students' interests and talents. By participating in the various programs provided, students are expected to be able to develop their potential according to their passions and talents more flexibly, <https://kampusmerdeka.kemdikbud.go.id/web/about/kata-pengantar-direktur-belmawa>, accessed on January 27, 2022.

10. Footloose industry is a general term for an industry that can be placed and located at any location without effect from factors or production such as resources, land, labor, and capital. These industries often have spatially fixed costs, meaning that the costs of the products do not change despite where the product is assembled and generally non-polluting. Examples of products from these industries are diamonds and computer chips.

11. Article 40 of Government Regulation No. 35 of 2021 regarding Fixed Term Employment Agreement (FTEA), Outsourcing, Working Hours and Resting Hours, and Termination of Employment.

12. Article 46 of Labor Code 2019 Vietnam. Article 8 of Decree 145/2020/ND-CP regarding On Working Conditions and Labor Relations.

b. Termination of employment

Indonesia needs to reassess the amount of severance pay, years of service and compensation of rights that are burdensome for employers. In addition, workers are also entitled other payment such as service payment and compensation pay. The regulations related to the termination in Indonesia require a bipartite process if the worker refuses to be laid-off. If an agreement was not reached through the bipartite process, then the authority for the settlement shifts to the tripartite process such as mediation, reconciliation, or arbitration. In case of failure at the stage of tripartite process, either side can go to Industrial Relations Court. In Industrial Relations Court, the usual civil court procedures will be taken which requires long time and cost for the settlement. Those factors in the ruling are making foreign investors having higher risk of the cost in case liquidate the company. In Vietnam, termination of employment must be through mutual agreements, except for voluntary dismissal or redundancy. Severance pay is excluded for workers that have committed a crime, are absent for five days in a month, and workers with repeated offenses. Furthermore, the termination of employment decisions being legal or not is not within the jurisdiction of the court. In Thailand, the court has the authority over termination issues as well as deciding the amount of compensation of which the workers are entitled.

B. Post the implementation of the Omnibus Law

As Law No. 11 of 2020 regarding Job Creation was passed in November 2020 and its derivative regulations were passed in February 2021, it has brought a new look to the application of law in Indonesia. The labor cluster in the Omnibus Law was one of the most crucial issues as the ramification of economical and operational restriction for businesses as a response to the pandemic.

Regardless, the Job Creation Law and the implementing regulations created polemics concerning to the derivative regulations, particularly Government Regulation (“Gov Reg”) No. 35 of 2021 regarding Fixed Term Employment Agreement (FTEA), Outsourcing, Working Hours and Resting Hours, and Termination of Employment, as well as Gov Reg No. 36 of 2021 regarding Wages. Other than being considered as lacking formality and being non-concrete, Job Creation Law is also thought to be improperly ratified in the middle of the pandemic. In relation to Gov Reg No. 35 of 2021, it is also stipulating the responsibilities for employers to monetarily compensate FTEA employees, previously this was not stipulated in the Law No. 13 of 2003 regarding Employment. Overall, Gov Reg No. 35 of 2021 regulates requirements, technicalities, and the amount of the monetary compensation but does not classify the premise regarding which party ends the FTEA; only that if the FTEA is over, then the worker is entitled to a compensation amounting one month salary if the worker works for one year continuously. Meanwhile if the working period is less than one year, the amount will be adjusted in pro-rata.

Other than the above compensation, referring to Article 62 of Law No. 13 of 2003, the party which ends a FTEA in the middle of the contract period, must pay for compensation amounting to the remaining balance of the contracted period. Considering these two factors, if the employer is in the position of the party that ends the FTEA, then it will result in the ambiguity that the workers have an absolute claim for compensation, potentially burdening and even harming the employers. In substance, the dispute that occurs between employees and employers is not a new thing, but with the Gov Reg No. 36 of 2021 regarding Wages, the phenomenon known as the “effort to turn life around” returned with workers seeking for a wage increase with a higher value compared to the formula that has been implemented within the regulation. Additionally, the salary slip and composition of the salary can be disclosed to a third party such as labor union which can assess the salary and its evaluation of the amount.

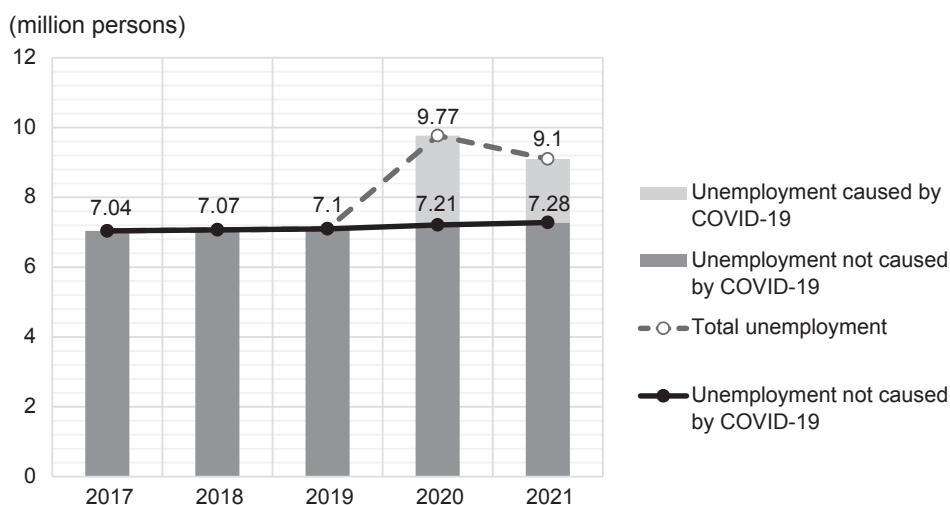
There are a number of significant differences in Gov Reg No. 78 of 2015 and Gov Reg No. 36 of 2021 although both have specifically regulated wages in relating to the minimum wages to be calculated. The main difference is that in Gov Reg No. 78 of 2015, the minimum wage was stipulated using Decent Living Component (DLC). The use of DLC itself was previously regulated in Law No. 13 of 2003 and its components were regulated in the Ministry of Manpower Regulation No. 18 of 2020 regarding the Ministry of Manpower Regulation No. 21

of 2016 Amendment regarding DLC. The calculation was amended on Gov Reg No. 36 of 2021 using the upper threshold and lower threshold calculation of the components. The labor union judged that to achieve fairness, the regulation regarding wages should have kept including DLC because it reflects the needs of the party receiving pay to continue a livable life.

When DLC is not used as a part of the wage calculation formula in Gov Reg No. 36 of 2021, then this will result in a massive pushback from the worker side because it will be considered as not fulfilling the value of fairness. For workers, the absence of DLC will be significantly felt especially for workers who are impacted by the reduced working hours as a result of operational hour restriction because of the pandemic.

III. The Impact of COVID-19 to the labor market in Indonesia

As the employment sector was hit by the pandemic the government started enforcing a large-scale social restriction¹³ and community activities restrictions enforcement,¹⁴ which were derived from World Health Organization's (WHO) social restriction policy. These restrictions then led to a 'new normal' - a state of adjustment by multiple layers of the community to adapt towards changes caused by COVID-19 in order to control the spread.¹⁵ In the workplace, one of such adjustment includes the remote working mode. However, not all companies in Indonesia could equally implement and/or follow the new normal trend due to the vast variety of occupations. Some are also forced to lay off their employees to reduce operational costs. As a result, there is a hike of unemployment between 2019 and 2020 which deviated from the previous years' trend caused by the pandemic¹⁶ (Figure 1).



Source: Official Statistic News [*Berita Resmi Statistik*], November 5, 2021.

Figure 1. Unemployment in Indonesia before and after COVID-19

13. "Pembatasan Sosial Berskala Besar" or simply known by the acronym PSBB, is a term of health quarantine in Indonesia which is defined as "Restriction of certain activities of residents in an area suspected of being infected with a disease and/or contaminated in such a way as to prevent the possibility of spreading the disease or contamination." It is regulated within Law No. 6 of 2018 regarding Health Quarantine.

14. "Pemberlakuan Pembatasan Kegiatan Masyarakat" or simply known by the acronym PPKM, is a policy enforced in several areas that became the center of COVID-19 spread, namely on the islands of Java and Bali. It is regulated within Instruction of the Ministry of Home Affairs No. 1 of 2021 regarding The Implementation of Activities Restriction to Control the Spread of Corona Virus Disease (COVID-19).

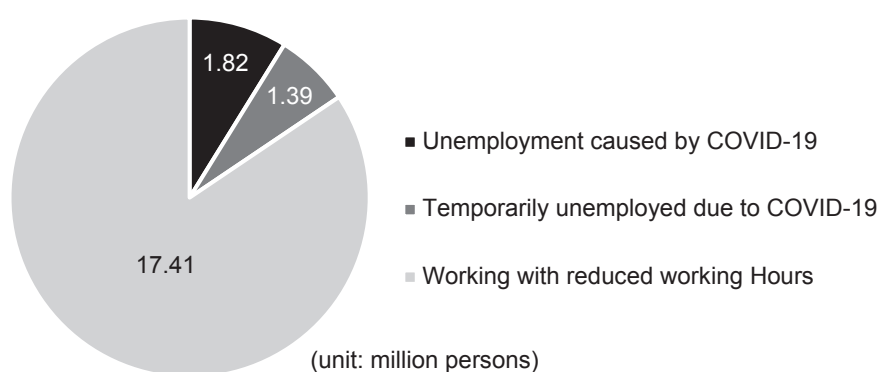
15. WHO, "New Normal."

16. Indonesia Central Bureau of Statistics [BPS], 2021.

Technological developments that ease remote working also have the potential to cause laying off workers. Along with technology development that aims to ease human work and performance, various automation using artificial intelligence (AI) technology have begun to spread. Future projections by World Economic Forum (WEF)¹⁷ are that there will be approximately 43.2% of global companies conveying that they will reduce their workers as a response and integration towards the ever-evolving technology.

Typically, remote working jobs are associated with mid- to high-skilled labors. These labor groups are also associated with higher disposable income, hence higher savings which are likely ease the transition to the 'new normal.' On the opposite, low-skilled groups are more likely to subject to redundancy and termination during the pandemic, as their nature of work renders remote working impractical.

Beside of its contribution to the unemployment hike, the pandemic has also affected the labor condition for the working age population. In 2021 alone, there are 17.41 million workers who are underworked due to COVID-19, comprising 84% of the total working population affected by the pandemic (Figure 2). Henceforth, while this group is technically employed, it is not out of possibility that a portion of this group who are working a minimum wage would end up living under the poverty line due to the reduced income in addition to the typically low disposable income.

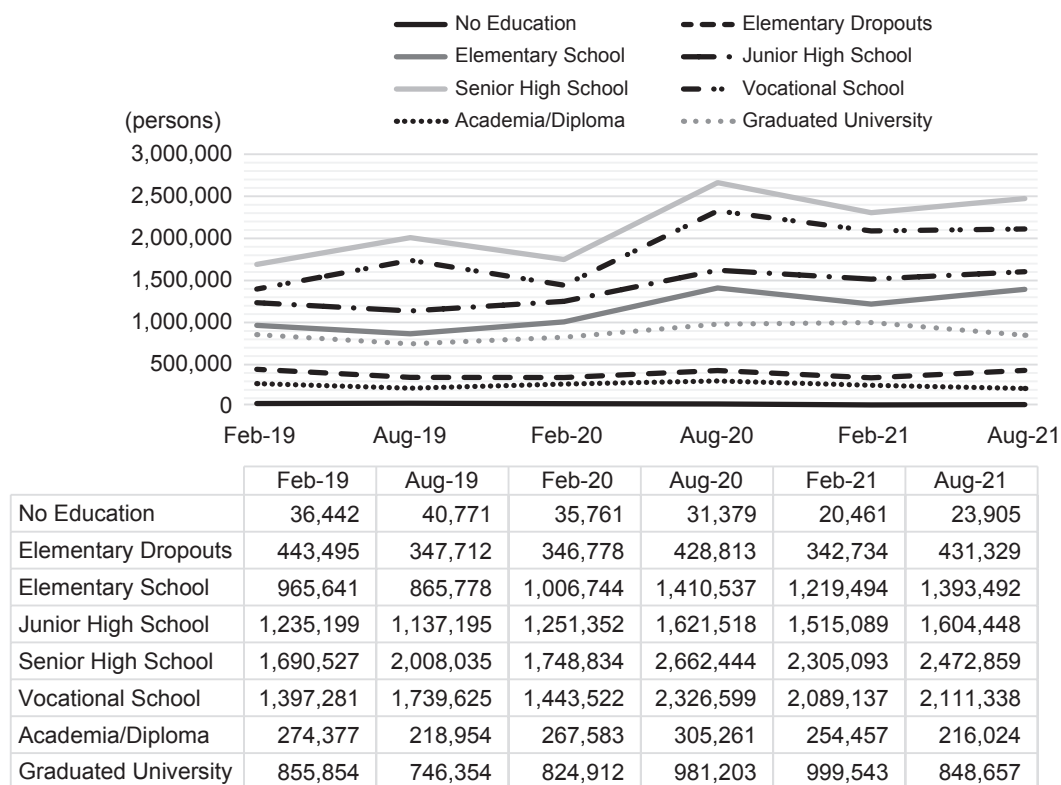


Source: Official Statistic News [*Berita Resmi Statistik*], November 5, 2021.

Figure 2. Impact of the COVID-19 pandemic to the working age population in Indonesia (2021)

In the past three years, the open unemployment rate in Indonesia had experienced an increase, as shown in Figure 3. Specifically, there is an upward trend among low-skilled group (senior high school and lower). Workers of these education levels are the most likely to end up as low-skilled and/or unskilled workers, hence they are the most negatively affected by the spread of the pandemic. As this group comprised the majority of the workforce, there is an urge for upskilling, particularly as automation cannot be avoided.

17. World Economic Forum, 2020.



Source: Official Statistic News [*Berita Resmi Statistik*], November 5, 2021.

Figure 3. Unemployment based on education level before and after COVID-19

IV. Government programs to protect the workers

In the effort to safeguard the national economy and the welfare of its workers, the Indonesian government has championed a number of social programs. These programs are designed to not only focus only on the working class, but all layers of Indonesian society in general. There are five kinds of assistance that are specifically aimed to help workers, that is:

a. Job Loss Security (JLS)¹⁸

The Job Loss Security (JLS) program, implemented with Gov Reg No. 37 of 2021, is actually not specifically meant to aid during the pandemic, but it happens to be passed during the time of pandemic. It aims to assist workers who are terminated to survive and able to achieve employment again or create a new employment opportunity. The JLS program itself is supervised under the Indonesian Employees Social Security System¹⁹ (ESSS) as one of its programs. Unfortunately, this program has not yet been able to be fully implemented up to one year after Gov Reg No. 37 of 2021 was passed. The benefit receiver requirement for JLS are shown in Table 1.

18. Government Regulation No. 37 of 2021 regarding The Job Loss Security Program.

19. "Badan Penyelenggara Jaminan Sosial Kesehatan Ketenagakerjaan," locally known by the name "BPJS Ketenagakerjaan" is a government entity that provides protection to all Indonesian workers, no matter in formal and informal sectors, and also for foreigners who worked in Indonesia for at least 6 months. The legal standing is regulated within the Law No. 24 of 2011 regarding Social Security Administrator.

Table 1. Benefit receiver requirement for the Job Loss Security²⁰

	Conditions required
1	Indonesian citizen
2	Less than 54-year-old when registering
3	Formally employed
4	Registered in both Social Security Administrator for Health (SSAH) ²¹ and ESSS programs
5	Paid for at least six months of them consecutively before the termination of employment in the past 24 months

Source: Compiled by the author.

Those eligible are entitled to cash benefits of a total of 45% of monthly salary for the first three months and 25% for the next three, as well as job market information and training.²² The benefits of the program will be provided when the worker is terminated and the current maximum amount of the salary for calculating the contribution is IDR 5 million (USD 347.67).

However, since the benefit can only be claimed by those who have been registered in the ESSS program for at least 12 months, with half of the duration paid consecutively, workers terminated before they meet the eligibility will not be able to claim the benefit.²³ This is concerning as low-skilled workers, as the most vulnerable group during the pandemic, are the most likely group to be negatively affected. Moreover, low-skilled workers comprised the majority of Indonesia labor force. Hence, there is a potential that the safety net itself will not provide the necessary security to the group that needs the most.

Therefore, due to its restrictive administrative requirement, JLS failed to be a safety net for the affected workers during crisis due to pandemic. This could be attributed to the fact that the program itself was designed pre-pandemic era and has not yet been properly adjusted to the current situation. To add, as of October 2021, there are only around 52.41 million workers registered to the ESSS. Hence, as COVID-19 arise, the program was rendered ineffective due to its administrative restriction and failed the current need. The ideal law is supposed to be developed and aligned with the society needs but in the case of JLS, it's the opposite.

The interests of workers who are under contract for less than 12 months and with job insecurity cannot be optimally accommodated by this program. In addition, there is a need for flexibility in terms of payment for 6 consecutive months because workers who have been laid off before they have been paid cannot claim this program. Another concern is that the JLS program is, as of now has yet to be fully implemented. The government spokesperson has mentioned that they hoped JLS will be implemented for the social securities' participants on this February of 2022.²⁴ Taking this into consideration, it is too late because the legal basis has already set a year before, and the workforce are already struggling because of the pandemic.

b. Wage subsidy²⁵

Wage subsidy aims to ease the burden of day-to-day life of workers, other than that, wage subsidy will also help employers who are having difficulty in paying the wage of their workers during the pandemic, in

20. Article 18 of Government Regulation No. 37 of 2021 regarding The Job Loss Security.

21. "Badan Penyelenggara Jaminan Sosial Kesehatan," locally known by the name "BPJS Kesehatan" is a government entity that provides national health insurance for all Indonesian people, especially for civil servants, pensioners of civil servants and Indonesian National Police, veterans, pioneers of independence and their families and other business entities or ordinary people. The two legal standing are regulated within the Law No. 40 of 2004 regarding the National Social Security System and Law No. 24 of 2011 regarding the Social Security Administrator.

22. Article 21 of Government Regulation No. 37 of 2021 regarding The Job Loss Security.

23. Article 19 of Government Regulation No. 37 of 2021 regarding The Job Loss Security.

24. Ministry of Coordination on Human Capital Development and Culture of Republic Indonesia. 2022.

25. Indonesia Employees Social Security System. 2021.

addition to the responsibilities for holiday bonus that has to be fulfilled by the employers in Indonesia. This program was last implemented in 2021, but up until now there is still no certainty if the aid will be continued in 2022 or not. This program aims to protect, maintain and improve the economic capacity of workers in handling the impact of COVID-19 pandemic. The distribution of subsidy is given to workers in the amount of IDR 500,000 (USD 34.77) per month for 2 months, which will be given as a lump sum of IDR 1,000,000 (USD 69.54). The terms are as follows:

1. Workers whose termination of employment happened after July 2021 still have the rights for wage subsidy if it complies with the provisions of the Ministry of Manpower Regulation No. 16 of 2021.
2. Workers registered as active participants of the ESSS of Employment program and have paid for their membership dues until June 2021, are entitled to receive the 2021 wage subsidy.
3. Workers who were proposed/designated as the receiver of 2021 wage subsidy are able to independently check their status at the official website of the Ministry of Manpower Republic of Indonesia.

c. Tax incentives²⁶

The Indonesian government, through the Ministry of Finance has issued Regulation No. 9/PMK.03/2021 regarding Tax Incentives for Taxpayers Affected by COVID-19 Pandemic. For the workers with a salary below 200 million rupiah yearly (roughly USD 14,000 per year), the income tax will be paid by the government.

However, there are several terms and conditions that must be fulfilled which includes: must possess a tax identity number and receive or earn income from certain employers. These incentives are given for the tax period of January 2021 up to December 2021.

d. Free vaccination programs²⁷

The Indonesian Ministry of Health, has established the free vaccination program in order to encourage the masses get vaccinated without worrying about the cost. Through this program, all brands of COVID-19 vaccines used for government programs must be free of charge.

e. Subsidy for electricity²⁸

Electricity subsidies can be interpreted as a form of assistance from the government so that people can pay electricity rates that are cheaper than their economic rates, especially during the times of pandemic where the amount of unemployment rates increase and people are struggling for their livelihood. Currently, the economic tariff for electricity is around IDR 1,400–1,500/kWh (roughly 9.8 cents/kWh). However, with the subsidy from the government distributed through PT PLN (Perusahaan Listrik Negara [State Electricity Company]), those who receive the subsidy only need to pay around IDR 400–IDR 600/kWh (roughly 2.8 cents/kWh), depending on the type of power used.

26. Ministry of Finance Regulation No. 9/PMK.03/2021 regarding Tax Incentives for Taxpayers Affected by COVID-19 Pandemic.

27. Article 3, Paragraph 4 of Ministry of Health Regulation No. 23 of 2021 regarding the Third Amendment to the Ministry of Health Regulation No. 10 of 2021 regarding The Implementation of Vaccinations for Corona Virus Disease 2019 (COVID-19) Prevention.

28. Law No. 30 of 2007 regarding Energy and the Law No. 30 of 2009 regarding Electricity. As of now, all 450 VA (volt-ampere) household customers are still receiving electricity subsidies and the government is working to continue the reform of subsidy for electricity. See: <https://fiskal.kemenkeu.go.id/fiskalpedia/2021/10/06/17-subsidi-listrik>.

V. Conclusion

The report has outlined a number of profound impacts as a result of the pandemic towards Indonesian employment sphere, with several points that requires special attention are as follows:

1. To address the increasing unemployment and social security issues due to the pandemic, the Indonesian government has implemented a number of programs and amended its labor law. Among other programs, Job Loss Security is pivotal as a safety net. However, vulnerable workers, such as low-skilled workers, are less likely to enjoy the benefit due to its restrictive administrative requirement. Whereas, this group comprised around 65% of Indonesian labor force. Henceforth, the government needs to build a safety net aimed for working group with low job security, low bargaining power, and low skilled. In addition, easing the administrative requirements, particularly in contingent situation such as the pandemic would also increase the accessibility of the aid for low skilled labor.
2. Although the pandemic has also impacted middle and high-skilled workers as well, emerging technologies and new patterns of work (remote working) have significantly reduced the impact. These groups, particularly high-skilled workforce, enjoy a degree of working flexibility which has assisted them in minimizing loss of productivity while also reducing costs associated with fixed costs, thus securing the projected employment growth even amid the pandemic restriction. Therefore, training more workers to achieve these skills would be essential in addressing unemployment and job security in the future. In addition, with the increasing trend of automation and digitalization with the assistance of AI, low-skilled workers are more likely to be faced with inevitable obsolescence in the future. Due to COVID-19 alone, therefore, there is a merit for the government to identify and project sectors and skills that will have increasing demand in the future, particularly in the tech industry, and focus on training programs that would equip the labor force with the necessary and in-demand skills in the future.

The unemployment trend in Indonesia peaked in 2020, just as the pandemic hit. It was one of the worst in the past decade. The government even had projected the rate to increase entering to 2021. However, the number started to decrease in 2021. The reduction can be attributed to the mass vaccination program which was positively received by the public. In addition to that, the pandemic restriction has either compelled employers to deploy remote work, or go through redundancies, which both have forced the working population to remain indoor although the latter contributed to the spike in the unemployment rate.

*Laws and regulations mainly mentioned in this report are as follows.

Indonesia. Government Regulation No. 35 of 2021 regarding Fixed Term Employment Agreement (FTEA), Outsourcing, Working Hours and Resting Hours, and Termination of Employment.

Indonesia. Government Regulation No. 36 of 2021 regarding Wages.

Indonesia. Government Regulation No. 37 of 2021 regarding The Job Loss Security Program.

Indonesia. Law No. 11 of 2020 regarding Job Creation.

Indonesia. Law No. 20 of 2003 regarding The National Education System.

Indonesia. Law No. 24 of 2011 regarding Social Security Administrator.

Indonesia. Law No. 30 of 2007 regarding Energy.

Indonesia. Law No. 30 of 2009 regarding Electricity.

Indonesia. Ministry of Finance Regulation No. 9/PMK.03/2021 regarding Tax Incentives for Taxpayers Affected by the COVID-19 Pandemic.

Indonesia. Ministry of Education and Culture Regulation No. 80 of 2013 regarding Universal Middle Education Program.

Indonesia. Ministry of Education and Culture Regulation No. 81 of 2013 regarding The Establishment of Non-Formal Education Units.

Indonesia. Ministry of Health Regulation No. 23 of 2021 regarding The Third Amendment to the Ministry of Health on No. 10 of 2021

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Impact of the COVID-19 Pandemic on Malaysian Labour Market and Policy Responses

Beatrice Fui Yee LIM

- I. Introduction
- II. Restricted movement order
- III. Impact of the COVID-19 pandemic on Malaysian labour market
- IV. Policy responses
- V. Conclusion

I. Introduction

The COVID-19 pandemic has affected labour markets around the world, resulting in job losses and reduction in working hours. According to the most recent global estimates and country-level data, the crisis has resulted in a severe employment shortfall that has persisted in most nations (International Labour Organization 2021). A report from the ILO estimates that the global employment-to-population ratio decreased from 57.6% in 2019 to 54.9% in 2020 (Ibid.). In Malaysia, there is a significant decline in employment and a rise in unemployment rate. The gross domestic product (GDP) in 2020 contracted by 5.3% as compared to 4.3 percent point growth in 2019.

As of 11 February 2022, a total of 2,956,332 cases and 32,065 death were reported in Malaysia (Johns Hopkins University and Medicine 2022). The pandemic is not only a public health crisis, but it has socio-economic consequences. This unprecedented crisis and the various disease mitigation measures that have been implemented in many countries, including Malaysia, have further affected the country's economic activities. There are significant reductions in income, reduced productivity, a rise in unemployment, loss of life, business closures, trade disruptions and reductions in transportation, services, and manufacturing activities (Pak et al. 2020) as well as risk of increased poverty and long-term systemic damage to our socio-economic fabric (Ministry of Finance Malaysia 2020). The Malaysian economy is reported to lose an estimated RM2 billion¹ every day while restricted movement was imposed. In the process of recovery, the Government launched the 6R Strategy, comprising six stages of Resolve, Resilient, Restart, Recovery, Revitalise and Reform (Ibid.).

II. Restricted movement order

In Malaysia, the first COVID-19 case was reported on 25 January 2020, and the number of cases remained low until localised cluster began in March 2020 (Li et al. 2021). In order to flatten the infection curve, the Government imposed a nationwide Movement Control Order (MCO) between 18 and 31 March 2020. The MCO was further extended to 3 May 2020.

During the MCO, only essential services including water, electricity, energy, telecommunication, oil, gas fuel, broadcasting, finance, banking, health, pharmacy, security, defence, food supply and retail remained open. Other non-essential activities including manufacturing and education services were restricted, thus affecting working hours and businesses revenue (Department of Statistics Malaysia 2021b). During these periods, employees were encouraged to work from home. However, workers in the services sector and other sectors that require workers to be physically present at work to complete their jobs were severely affected (Li et al. 2021).

Between 4 May 2020 and 9 June 2020, Conditional MCO was introduced as the number of COVID-19 daily cases started to decline. More economic activities were allowed to resume with standard operating procedures in

1. On 6 November 2020, 1.0 USD is equivalent to 4.14 Malaysian Ringgit (MYR).

place. However, inter-state and inter-district travel was restricted (Department of Statistics Malaysia 2021c). The restriction of travelling activities had a big impact on the economy as it was one of the country's main sources of income. Then the country moved into Recovery Movement Control Order (RMCO) between 10 June 2020 and 31 March 2021. The country was placed into total lockdown between 1 and 28 June 2021 due to the rise of the number of COVID-19 cases. Then, on 15 June 2021, the Prime Minister announced the National Recovery Plan, which consists of four-phase exit strategy to transition out of the crisis. The key threshold indicators for the recovery plan are (i) average number of new infections (ii) capacity of the healthcare system based on the occupancy of intensive care units (ICU) beds, and (iii) vaccination rate. The opening of the borders depends on when each achieved the threshold indicators.

According to a report from the International Monetary Fund (2020), the first seven months of the pandemic indicates that while government lockdowns succeeded in lowering infections, the restriction has contributed to recession and affected vulnerable groups such as young people, women, middle- and low-skilled workers and migrant workers. However, the recession was also driven by people voluntarily refraining from social interactions as they feared contracting the virus. As a result, relaxing lockdowns is unlikely to result in a significant and long-term economic recovery if infections remain high, as voluntary social separation is likely to persist.

III. Impact of the COVID-19 pandemic on Malaysian labour market

This section discusses the key trend and characteristics of the Malaysian labour market following the pandemic. The number of employed persons in Malaysia is approximately 14.95 million persons in 2020 as compared against approximately 15.07 million persons in 2019. However, the number edged up to 15.61 million persons in November 2021. The number of unemployed persons increased between 2019 and 2020 from 508,200 to 711,000. As the economy gradually recovers, the number of unemployed persons decreased to 694,400 as shown in Table 1.

The labour force participation rate declined from 68.7% in 2019 to 68.4% in 2020, before increasing slightly to 68.9% in 2021. There is also a significant increase in the unemployment rate, from 3.3% in 2019 to 4.5% in 2020. Unemployment raises the risk of poor mental health and other stress-inducing factors such as lack of resources including monetary, limited opportunities and low self-esteem, which are further worsened by fear and worries of family being infected (Nga et al. 2021).

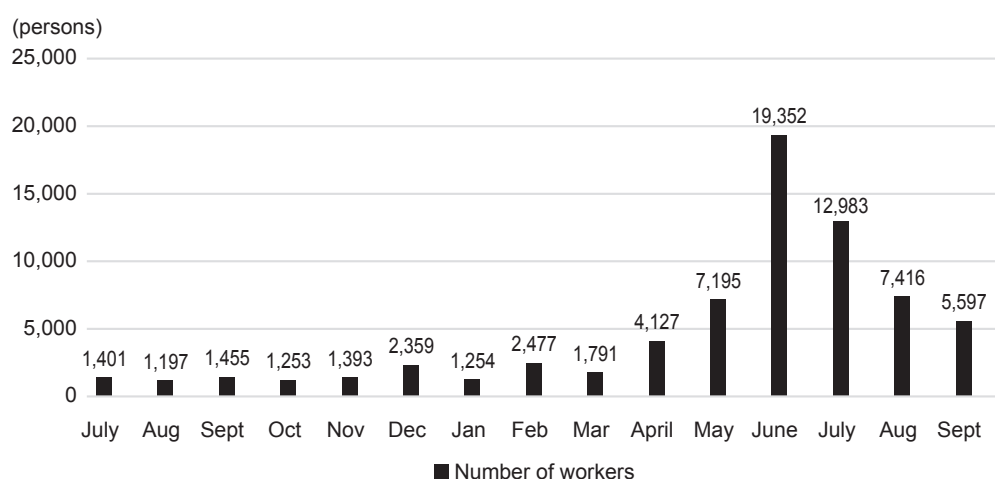
A record number of workers were retrenched due to the pandemic and the resulting lockdowns. Between July 2019 and September 2020, 71,250 workers were terminated as shown in Figure 1. Before the pandemic, average 1,510 workers were terminated each month. However, beginning from April 2020, the number of workers terminated from work increased, and the figure peaked in June 2020 (19,352). Between January and September 2020, the total workers terminated is 62,192 persons. Among those terminated from work during these nine

Table 1. Labour force statistics in Malaysia

(Unit: persons in thousand, %)

	2019	2020	November 2021
Working age population	22,685.2	22,893.3	23,640.0
Labour force	15,581.6	15,667.7	16,300.0
Outside labour force	7,103.5	7,225.5	7,340.0
Employed persons	15,073.4	14,956.7	15,610.0
Unemployed persons	508.2	711.0	694.4
Labour force participation rate (%)	68.7	68.4	68.9
Unemployment rate (%)	3.3	4.5	4.3

Source: Department of Statistics Malaysia 2021a and 2022.



Source: Yasmin and Munira Balkis 2021.

Figure 1. Number of workers terminated, July 2019–September 2020

months, 47,109 persons were given termination notice, while the remaining 15,083 persons were given the voluntary separation scheme option. Close to 60% of the termination involved employers in the capital city Kuala Lumpur and Selangor state, where most businesses and industries are concentrated. The number of individuals who lost their jobs during the global financial crisis in 2007/2008 was half of this figure (Yasmin and Munira Balkis 2021), indicating the strong impact of the COVID-19 pandemic on the labour market.

According to the ILO (2020), the pandemic affected the labour market differently, with specific sectors bearing more negative impacts. The most affected sectors are wholesale and retail trade; repair of motor vehicles and motorcycles; manufacturing; real estate; business and administrative activities; and accommodation and food services (as shown in Table 2). Meanwhile in Malaysia, the top five affected sectors include manufacturing, accommodation and food and beverage services, wholesale and retail trade, repair of motor vehicles and

Table 2. Workers at risk: Sectoral perspective

Economic sector	Current impact of crisis on economic output
Wholesale and retail trade; repair of motor vehicles and motorcycles	High
Manufacturing	High
Real estate; business and administrative activities	High
Accommodation and food services	High
Transport; storage and communication	Medium-high*
Arts, entertainment and recreation, and other services	Medium-high*
Mining and quarrying	Medium
Financial and insurance activities	Medium
Construction	Medium
Agriculture; forestry and fishing	Low-Medium*
Utilities	Low
Public administration and defence; compulsory social security	Low
Human health and social work activities	Low
Education	Low

Source: International Labour Organization, 2020, pp.4–5.

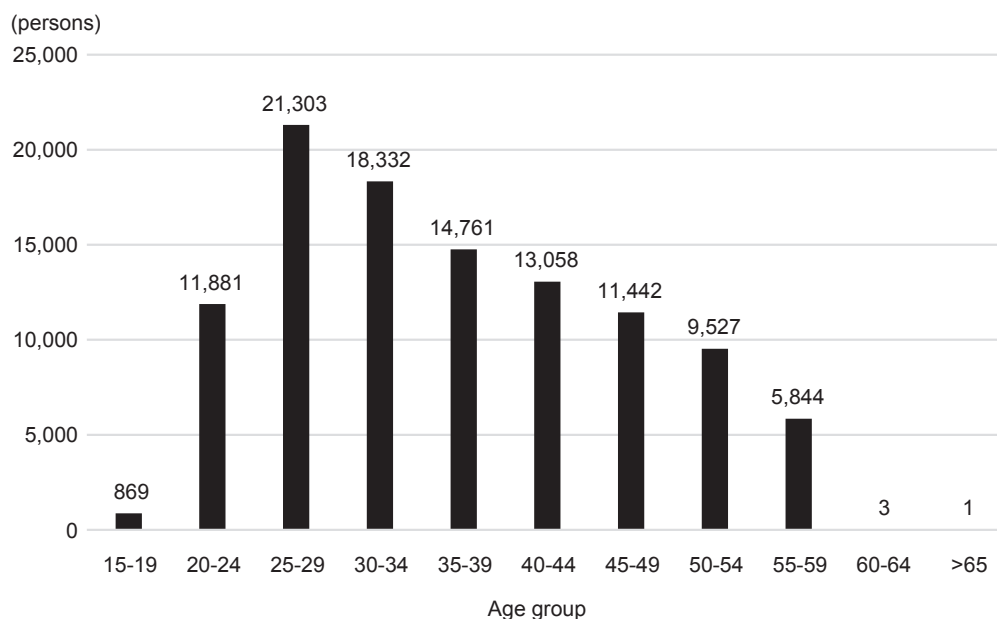
Note: *denotes sectors that include subsectors that have been affected in different ways.

motorcycles, administrative activities and support services, and financial and insurance activities (Yasmin and Munira Balkis 2021).

Non-standard workers such as self-employed, casual workers (gig workers), owners of small businesses and family workers are more affected than standard workers. In the second quarter of 2020, the employment of non-standard workers declined significantly, approximately 252,000 persons (Bank Negara Malaysia 2020). The loss of employment resulted from the concentration of these workers in economic sectors serving consumers (high-touch sectors), with disease prevention measures and standard operating procedures which require distancing in business premises. Non-standard workers who have the tendency to be included in small and micro business categories are more susceptible to economic shocks. The slowdown in domestic demand also affected their incomes (Ibid.).

In 2020, a total of 107,024 loss of employment was reported to the Social Security Organization (SOCSO) office (Employment Insurance System Office 2020). Loss of employment (LOE) refers to any reasons by insured person who had lost his employment but does not include compulsory retirement, voluntary resignation, expiry of a fixed-term contract, and retrenchment due to misconduct. Individuals who have paid a minimum amount of contributions to the Employment Insurance System (EIS) and are actively seeking work are entitled to five types of benefits namely (i) job search allowance, (ii) early re-employment allowance, (iii) the reduced income allowance, (iv) training allowance, and (v) training fee (Ibid.).

In terms of gender, more males than females reported a loss of employment. From 107,024 loss of employment reported in 2020, 57.1% or 61,157 are males and 42.9% or 45,867 are females. A report from United Nations Conference on Trade and Development (UNCTAD) stressed the negative impact of the pandemic on both men's and women's employment (Zarrilli and Luomaranta 2021). However, the magnitude of the impact differs at different stages of the crisis due to the gender segregation of economic activities in many countries. The early measures to curb the transmission of the virus affects jobs held predominantly by women in the services sectors. In Malaysia, female workers in the tourism industry declined 2.0% from 50.3% in 2019 to 48.3% in 2020 (Bernama 2021). In 2019, employment in the tourism industry recorded 3.6 million persons which contributed



Source: Employment Information and Analysis Services (EIAS), Employment Insurance System Office, 2020.

Figure 2. Loss of employment by age group

23.6% to the total employment (Ministry of International Trade and Industry 2020). In addition, women bear the role of caring for family and young children due to the closure of schools and childcare centres during the pandemic.

However, when the crisis worsened and cross-border value chains were disrupted, men's employment was affected since they tend to work in industries and jobs that are more dependent on international trade (Zarrilli and Luomaranta 2021). A greater concern is that women may leave the market permanently which threatens to reverse decades of progress on women's empowerment (Ibid.).

Figure 2 shows the loss of employment in 2020 according to age group. Individuals between 25 and 29 years old are the most affected followed by individuals between 30 and 34 years old. In general, the number of individuals affected declined with age.

The data estimated by Bank Negara Malaysia [the Central Bank of Malaysia] reported a quarter-by-quarter increment in unemployment rate for youth aged 15 to 24 years old. Youth employment in Q4 2020 is 12.7% compared to 9.9% in Q4 2019. Previous study has shown that youth entering the labour market during recession is more likely to experience reduction in income up to 10 years after graduation. Youths who become unemployed, usually with less experience, may face more competition in finding jobs in other less affected industries (Ibid.). Therefore, youths may benefit more if they enrol in training programme supported by the Government.

In October 2020, when the total daily COVID-19 cases were at its peak in several states, a total of 776,135 of 3.1 million workers in the manufacturing, services and construction sectors were directed to work from home. A maximum of 10% was allowed to work from office, however, workers were only allowed to be physically present at work for 4 hours per day between 10 in the morning and 2 in the afternoon, three times a week (Maisarah 2020). In Asia and Pacific, it is estimated that working hours declined by 7.2% (ILO 2020). This implies loss of income and may pushed individuals into poverty especially in developing countries with no solid social security system.

IV. Policy responses

The COVID-19 pandemic has affected the people, businesses and economy in general. The ILO recommends key policy responses that focus on two immediate goals: health protection measures and economic support on both the demand and supply sides (ILO 2020). Policy responses need to consider four pillars:

Pillar 1: Stimulating the economy and employment

Pillar 2: Supporting enterprises, jobs and incomes

Pillar 3: Protecting workers in the workplace

Pillar 4: Relying on social dialogue for solutions

Malaysia launched several stimulus packages including electricity discounts, monetary assistance scheme for employees, direct cash payments for 4 million low-income households, wage subsidies, grants and loans for small and medium-sized enterprises (SMEs) and tax deductions (Li et al. 2021) totalling to RM295 billion, which is equivalent to 17% of the national gross domestic product (GDP) (Prime Minister's Office of Malaysia 2020). The recovery plan consists of National Economic Recovery Plan [Pelan Jana Semula Ekonomi Negara] (PENJANA), the Prihatin Rakyat Economic Stimulus Package or PRIHATIN, an enhancement to the Economic Stimulus Package (ESP), and the PRIHATIN PKS+ Economic Stimulus Package for SMEs. One of the main initiatives, National Economic Recovery Plan (PENJANA) was given a fund of RM35 billion. The programme focuses on three key thrusts, which is to empower people, propel businesses, and stimulate the economy.

The Wage Subsidy Programme (PSU) was launched on 1 April 2020 until 30 September 2020, with an allocation of RM13.8 billion, benefiting 331,950 employers with over 2.72 million employees. Then the Wage

Subsidy Programme 2.0 was extended from 1 October 2020 to 31 December 2020. Financial assistance amounting to RM600 were given to employees who are earning RM4,000 or less. A total of 96,566 employers and 975,413 employees benefitted from the programme. At the same time, the Employment Retention Programme was implemented to financially support workers who were forced to take unpaid leave during the MCO. This programme benefitted 37,901 employers and 350,252 employees. The EIS Plus Programme is launched temporarily for retrenched insured persons. The eligible applicants receive RM600 per month for three months.

In addition, there were also the implementation of Hiring Incentive Programme and Training Assistance as well as Reskilling and Upskilling Programme. These programmes were designed to reduce unemployment. A total of 15,721 employers and 128,779 employees benefitted from the programmes. Mobility assistance in terms of financial support was also given to workers who have to relocate more than 100km for a new job. A total of 1,517 employers and 7,104 employees benefitted from this programme.

In order to assist businesses, the Government executed various grant and financing programmes among others were PRIHATIN Special Grant, PENJANA SME Financing Scheme, PENJANA Tourism Financing, Bumiputera [Malays and other indigenous peoples of Malaysia] Relief Financing, Agrobank Micro Credit Financing, Technical and Digital Utilisation Support Initiative, and TEKUN Business Recovery Scheme. These initiatives had assisted many affected individuals and businesses especially SMEs in the pandemic.

The pandemic unveils the social protection gap in Southeast Asian countries including Malaysia (Asian Development Bank 2021). Before the pandemic, a large proportion of workers especially workers in the informal sector, the poor, single mothers, children and others not in the labour force were not covered by social insurance nor social assistance. These vulnerable groups suffered the most during the pandemic as a result of loss of jobs and income. The social protection for gig workers were also relaxed. The pandemic is expected to widen inequalities in labour market outcome and living standards in a country. Therefore, there is a need to build a more comprehensive, inclusive and sustainable social protection (Ibid.).

V. Conclusion

The COVID-19 pandemic has affected work and labour market. In addition to the threat of public health, the devastating economy threatens the livelihoods and well-being of individuals. The rolling out of vaccination plans in countries around the world allow the reopening of local economy and to slowly return to our activities prior to the pandemic.

COVID-19 is reshaping ASEAN's digital landscape in the labour market by changing the way of how work is done. The crisis has forced companies and organisations to adopt remote work or work from home (WFH) (Li et al. 2021). During the restricted movement order, individuals were asked to work from home. While this form of work arrangement is not new in Malaysia, the practice is limited to few government agencies and multinational companies. More than two years after the pandemic, there is still risk of infection and more recently the number of COVID-19 cases increased again. Teleworking will become a new norm in ASEAN countries as it allows social distancing. Corporations may resort to flexible work arrangements for its employees and at the same time promoting a positive family and work life balance (Ibid.). A flexible work arrangement may increase labour participation in Malaysia.

While it is important to adjust to the new normal, the pandemic has given individuals new ideas and opportunities to carry out their work and businesses. Digital platform has become an important medium for doing businesses. The pandemic may have caused us to realise that there is and will be disruption in our daily activities. Therefore workers must be agile and adapt to the changes. The gig economy promises a lot of potential especially for non-standard workers.

The pandemic has also driven the growth of IR4.0. In a period where mobility is restricted, the availability of technology enables society to survive and thrive. Education and many other forms of services can be delivered

online, and this creates opportunities for more online services and programmes that can be offered across the globe. The advancement of the digital economy has led to the rise in the usage of telemedicine, digital learning in the education system and e-commerce during the pandemic (Ibid.). The potential of e-commerce platforms is unlimited. However, this is not without limitation. Issues on digital poverty may arise when there is a lack of infrastructure or connectivity especially in rural areas. This may create and widen inequality between households with internet and without internet connection. The Malaysian economy is still in the recovery process. Policymakers should continue to support the lives and livelihoods of the vulnerable groups and the population as whole.

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COVID-19 and Australian Labour Regulation: An Overview Impacts, Policy Responses and Future Directions

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Introduction

Part I. The impact of COVID-19 on labour markets

Part II. Policy responses by the governments

Part III. Future directions of labour policies in the post-COVID-19 era

Conclusion

Introduction

Commencing in March 2020, the Australian Commonwealth, State and Territory governments took measures to reduce the transmission of COVID-19, including via the imposition of ‘lockdowns,’ social distancing requirements and restrictions on local and international travel.¹ These restrictions were quite successful in minimising the transmission of COVID-19 in Australia in 2020 and 2021 (Australia. Department of Health 2021a). Restrictions were reduced once most eligible Australian adults became vaccinated against the virus.² In December 2021, the Commonwealth government changed its national strategy from ‘suppression with a goal of no community transmission’ to ‘living with COVID-19 where the community is able to function more normally and disruptions to society and the community are minimised’ (Australia. Department of Health 2021b). Government directions shifted to mandating that those who had contracted the virus, or were close contacts of known cases, complied with testing and isolation requirements (Morrison 2021a; Morrison 2021b; Kurmelovs 2021). Since January 2022, the prevalence of the Omicron variant of COVID-19 has led to wider-spread transmission of the virus (Jose 2021).

These events had a profound impact on the labour market in Australia, as elsewhere. The onset of the pandemic in March 2020 led the unemployment rate to increase from 5.3% (in March 2020) to 7.4% (in June and July 2020) (ABS 2021a). There was substantial growth in employment, the number of hours worked, and total wages between June 2020 and May 2021 due to low community transmission of the virus and reduced restrictions (Ibid.). However, between June and October 2021, subsequent COVID-19 outbreaks in the States of Victoria and New South Wales led to further significant losses in jobs and the number of hours worked in these regions (Nguyen 2021; Willingham et al. 2021; ABS 2021a: table 19). By December 2021, under the revised national strategy, the unemployment rate fell to 4.2% (ABS 2021b). Despite this recovery, the impact of the pandemic on the labour market is ongoing. There has been a lack of significant wage growth in 2020 and 2021 (Borland 2021). Recovery has been uneven, with fewer hours worked by casual employees in November 2021 than in February 2020 in industries hardest hit by the virus (ABS 2021c: chart 3b, 3c). Since January 2022, government

1. Australia is a federation of six States which, along with two self-governing Territories, have their own constitutions, parliaments and laws. The national government of Australia is usually called the Commonwealth Government or Australian Government. The Constitution gives the law-making power of the Commonwealth to the Parliament. The Parliament consists of the Queen, Governor-General and two Houses of Parliament (House of Representatives and the Senate). The Parliament passes legislation. Proposed laws are called Bills and have to be agreed by both Houses of Parliament to become law. Members of Parliament are democratically elected representatives (Ministers). Constitutions in each State and Territory also give the law-making power of the State/ Territory to the State/ Territory Parliament. Accordingly, throughout this article reference is made to the Commonwealth Government, State/ Territory Governments, Commonwealth Parliament and State/ Territory Parliaments. See further, Part II.

2. In February 2022, 93.5% of eligible Australian adults aged 16 years and over had been fully vaccinated against COVID-19: Australia. Department of Health 2022.

isolation requirements have also diminished worker availability and impacted supply chains (Butler 2022).

This article provides an overview of three key aspects of the impact of COVID-19 on Australian labour regulation. It examines groups of workers impacted by the pandemic in Australia, labour policy responses by the Australian Commonwealth, State and Territory governments and future directions in labour policies. Space does not permit a detailed analysis of these impacts. However, there is a growing body of Australian labour law literature that examines these matters in depth. Key contributions are highlighted in this article.³

Part I of this article discusses the impact of the pandemic on certain groups of workers, namely: casual and other insecure workers; essential workers; and workers with family and caring responsibilities who worked from home ('WFH'). Part II provides an overview of the policy responses to the pandemic by the Australian governments. Part III canvasses future directions of labour policies. It discusses the passage of the *Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Bill 2020* (Cth) ('**Omnibus Bill**') into law in March 2021.⁴ It is argued that the Coalition Government's reform agenda, as evinced in the *Omnibus Bill*, overlooked significant labour market challenges that have been amplified by the pandemic, including the prevalence and invidious consequences of insecure work.

Part I. The impact of COVID-19 on labour markets

This Part briefly discusses how three key groups of workers were impacted by the pandemic. In each instance, COVID-19 exacerbated existing deficiencies in Australian labour regulation that specifically affected these groups.

Casual and other insecure workers

Casual work has been a persistent feature of the Australian labour market (see further, Landau and Orifici 2021), with approximately 19% of all Australian employees engaged casually in November 2020 (ABS 2020a). At law, casual workers do not have an expectation of ongoing work nor do they receive entitlements such as paid annual or personal leave, notice of termination or redundancy pay (Stewart 2021: ch 4). Other forms of insecure work, such as within the 'gig economy,' are also growing in prevalence in Australia (see further, Victoria. Department of Premier and Cabinet 2020). The pandemic impacted casual and other insecure workers in a number of ways. For example, with no legal right to ongoing work, casual workers were the hardest hit by the job losses in 2020 and 2021 (ABS 2020a; Stanford 2021: 2). In addition, without paid personal leave entitlements, casual workers had to make invidious choices regarding attending work while ill (Robertson 2020).⁵ Thirdly, with lower weekly earnings than permanent employees (Stanford 2021: 3), many casual and other insecure workers were required to work multiple jobs during the pandemic, heightening their risk of exposure to and transmission of the virus (Wright 2021; Robertson 2020). As examined in detail by Dr Jim Stanford, despite these impacts, casual work has dominated the labour market recovery during the pandemic (2021: 1–3). Legislative changes during the pandemic that are aimed at clarifying the legal entitlements of casual employees, are likely to further encourage employers' engagement of workers on a casual basis into the future (Stewart et al. 2021b).

Essential workers

Essential workers (such as frontline health care and social assistance workers, teachers and early childhood education and care workers) were also significantly impacted by the crisis. These workers assumed additional

3. See, in particular, the special issue on significant developments in Australian labour regulation in response to COVID-19: Forsyth and Stewart 2021a.

4. *Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Act 2021* (Cth).

5. Notably, the Commonwealth and Victorian governments introduced temporary measures during the pandemic that went some way to addressing this issue, see further: Gilfillan 2020; O'Neil 2021: 422, 426.

workloads and faced heightened personal risk of contracting COVID-19 (Wood et al. 2021: 10). Early research suggests that these working conditions impacted the health, safety and mental wellbeing of essential workers (APS 2020; see also, Stubbs et al. 2021; AMWU 2021: 6). The reduced restrictions since December 2021 and the spread of the Omicron variant also increased health and safety risks to workers in essential sectors (Forsyth 2022; see also, Workplace Express 2022). The pandemic continues to raise difficult questions about employers' obligations to workers under work health and safety legislation, and workers' rights to refuse to attend work under these conditions (Forsyth 2022; see also, Workplace Express 2022).

Workers with family and caring responsibilities

Workers in office-based occupations (including professionals, most managers, and clerical staff) were required to WFH during the pandemic and suffered fewer job losses (Nahum and Stanford 2020: 2) but were nevertheless impacted by the pandemic. Many workers were required to balance WFH with family and caring responsibilities including home schooling.⁶ Family and caring responsibilities increased for many workers due to the pandemic (Nahum 2021: 6), and many more workers requested flexibility from their employers to enable them to address these increased responsibilities (Nahum 2021: 6; VEOHRC 2021: 4). Some employers continued to direct employees to WFH in 2022 due to the prevalence of the Omicron variant (see eg, Sier et al. 2022) and emerging research suggests that many employees will ask to WFH at least some of the time into the future (Nahum 2021: 6; see also, Wade and Rugari 2020). These working conditions raise challenges for labour regulation including in relation to: the rights of employees to 'disconnect' while WFH (Nahum 2021: 6; Golding 2021); remote monitoring and surveillance (Nahum 2021: 6); the scope of employers' obligations for workers' safety and wellbeing when they routinely WFH (Bluff and Johnstone 2021: 123–124); and whether legal regulation affords workers the capacity to request the flexibility they need to balance work and non-work commitments in a WFH environment (see further, Allen and Orifici 2021: 83–89; Allen and Orifici 2022).

Part II. Policy responses by the governments

Commonwealth government's response

In the early months of the pandemic, the Commonwealth government took a cooperative approach to implementing measures to respond to the crisis including by informally consulting with employer groups and unions (Forsyth and Stewart 2021b: 1). With the support of these parties, the Fair Work Commission ('FWC')⁷ varied Modern Awards to include a right to unpaid pandemic leave.⁸

To preserve employment during the pandemic, the Commonwealth government introduced the JobKeeper income support scheme in late March 2020. This scheme has been described as 'an urgent solution to an urgent problem' (Neil SC et al. 2021: 24). Under JobKeeper, employers that could demonstrate a requisite decline in turnover⁹ were eligible to receive a wage subsidy that assisted to preserve eligible jobs and businesses (Ibid.). The scheme operated for 12 months. Temporary legislative amendments to the *Fair Work Act 2009* (Cth) ('**FW Act**') were also introduced, which enabled employers to stand down workers, pay them only the JobKeeper

6. This situation was heightened in locations where 'lockdowns' resulted in schools, kindergartens and childcare centres being closed for extended periods. For a detailed discussion see Allen and Orifici 2021.

7. The FWC is Australia's principal industrial tribunal. It is established under s 575 of the FW Act.

8. *Variation of awards on the initiative of the Commission* [2020] FWC 1837 (8 April 2020). Modern Awards are legal instruments under the FW Act that outline minimum pay rates and conditions of employment for an industry or occupation. There are currently 121 industry or occupation awards that cover most people who work in Australia. See: <https://www.fwc.gov.au/awards-and-agreements/awards/modern-awards/modern-awards-list>. This is just one dimension of the role played by the FWC in initiating responses to the crisis, see further, Murray et al. 2021.

9. *Coronavirus Economic Response Package (Payments and Benefits) Act 2020* (Cth); *Coronavirus Economic Response Package (Payments and Benefits) Rules 2020* (Cth) Part 2; Neil SC et al. 2021: 24, 27–28.

amount, and preserve their employment.¹⁰ The FWC and courts were empowered to deal with disputes between employers, employees and unions about JobKeeper.¹¹ The Commonwealth government also introduced a coronavirus supplement for unemployed workers known as the JobSeeker payment, which also operated for 12 months.¹² To address the further lockdowns after June 2021, the Commonwealth government announced a COVID-19 Disaster Payment for workers who had lost work or income because of a COVID-19 lockdown,¹³ and a Pandemic Leave Disaster Payment for workers who had been directed by their employers to isolate due to having COVID-19 or being a close contact of a confirmed case. These payments ceased in November 2021.

In 2020, the Commonwealth government also relied on the cooperative approach from employers and unions in the early stages of the pandemic to initiate discussions for a revised agenda of labour law reform (Stewart et al. 2021b: 132–138). These discussions culminated in the *Omnibus Bill*. As discussed further in Part III, the *Omnibus Bill* largely reflected the government's pre-pandemic labour policy agenda.

State and territory governments' responses

Key State and Territory government policy responses to outbreaks of COVID-19 supplemented the policy response of the Commonwealth government (see further, Forsyth and Stewart 2021b: 5–6). Firstly, in response to outbreaks of COVID-19 in 2020–2021, State and Territory governments introduced WFH directives for relevant workers (see eg, Victoria. Department of Health and Human Services 2020; ABC News 2020). Secondly, in 2021, some State governments introduced 'hardship payments' for workers, such as casual employees and independent contractors, who did not have entitlements to paid personal leave (see, eg, Victoria. Department of Families, Fairness and Housing 2021). These payments provided support to persons who were not eligible for the Pandemic Leave Disaster Payments introduced by the Commonwealth government, discussed above. Thirdly, throughout 2021, State and Territory governments made public health orders that required certain workers to be vaccinated, unless a prescribed exemption applied to their circumstances.¹⁴

Part III. Future directions of labour policies in the post-COVID-19 era

The Omnibus Bill

The Coalition Government tabled the *Omnibus Bill* in Parliament in late 2020. This followed a consultative approach with employer and union groups (see further, Stewart et al. 2021b: 134–138; see also, Forsyth 2020). Despite the consultative process, the *Omnibus Bill* ultimately proposed reforms to the FW Act, which reflected matters previously raised by the Coalition Government and employer groups (see eg, Stewart et al. 2021).

The *Omnibus Bill* proposed significant amendments to the *FW Act* including with respect to enterprise agreement making (see further, Stewart et al. 2021b: 159–163), the legal definition of 'casual employment' (see further, Stewart et al. 2021b: 140–155), and forms of flexibility available to employers (see further, Stewart et al. 2021b: 155–159). Groups such as labour law scholars (Stewart et al. 2021a), and the union movement (see eg, Cruse 2021), expressed concern that some of the proposed amendments could negatively impact wage growth and job security.¹⁵ Due to negotiations with minor parties and a strict deadline for the passage of the *Omnibus Bill* through Parliament, however, most of its central provisions were abandoned. The provisions that were

10. *Coronavirus Economic Response Package Omnibus Act 2020* (Cth) Sch 13. On stand-downs see further, Forsyth and Stewart 2021c.

11. *Coronavirus Economic Response Package Omnibus (Measures No. 2) Act 2020* (Cth) Part 6–4C (repealed 29 March 2021).

12. For a detailed discussion, see O'Donnell and Arup 2021.

13. *Financial Framework (Supplementary Powers) Amendment (Home Affairs Measures No. 2) Regulations 2021* (Cth).

14. Eg, to date, in the State of Victoria, the government has issued *COVID-19 Mandatory Vaccination (Workers) Directions (Nos 1–8)* pursuant to the *Public Health and Wellbeing Act 2008* (Vic), s 200. For an overview of public health orders in each State and Territory see FWO 2022.

15. There was, however, support for some aspects of the *Omnibus Bill* from these groups, including proposals to improve enforcement of prohibitions against 'wage theft.' See Stewart et al. 2021a.

passed dealt only with the legal characterisation of casual employment.¹⁶

Labour law scholars conducted detailed examinations of the proposals in the *Omnibus Bill* and discussed their implications (eg, Stewart et al. 2021a). As Stewart et al. and others have observed, had the *Omnibus Bill* been passed in its original form, many legal rights of employees would have been substantially weakened (see further, Stewart et al. 2021b: 140–155; see also, Stewart and Forsyth 2021b: 8). The amendments that were passed also reinforced employers' reliance on casual labour (Stewart et al. 2021; see also, Stanford 2021: 2). In addition, the *Omnibus Bill* did not propose measures that would address fundamental problems facing the Australian labour market such as insecure work or wage stagnation (Stewart and Forsyth, 2021b: 9). Overall, this policy approach entrenched rather than addressed key labour issues amplified by conditions during the pandemic.

It is widely recognised that pre-existing inequalities, including those arising from insecure work and employers' reliance on casual employment, were compounded during the pandemic. COVID-19 worsened inequality in workforce participation and wages for vulnerable groups of workers. For example, women and young people are more likely to be employed casually, and so were disproportionately impacted by the loss of casual jobs in the crisis (Wilkins 2020: 2). In the State of Victoria, which was most affected by prolonged lockdowns, the crisis has left a wider gender gap in workforce participation than before the pandemic (Victoria. Department of Premier and Cabinet 2021: 19 [60]). As Foley and Cooper (2021) have argued, the significant reliance on essential workers in the crisis provides an opportunity to reevaluate how the value of highly feminised industries and occupations (such as nursing, aged care work and teaching) are assessed (citing, Milte and Ratcliffe 2021). The *Omnibus Bill* did not seek to address these issues. The development of labour policy that is effective in addressing the impacts of COVID-19 on the labour market requires consideration of positive and proactive steps towards addressing inequality at work in future.

Furthermore, alongside the crisis of COVID-19, other developments led to labour law reform in 2021. For example, in 2020, a ground-breaking report into sexual harassment at work was published following an extensive inquiry by the Australian Human Rights Commission (AHRC 2020). This report was followed by a several controversies and significant public speculation, which led to the Coalition Government publishing a response to the report in 2021, which accepted some of its recommendations (Australia. Attorney-General's Department 2021). Modest reforms, including to the FW Act, were passed in 2021, which were intended to address the prevalence of sexual harassment at work.¹⁷ Yet labour and equality law scholars widely argue that more needs to be done, including enshrining a positive duty on employers to eliminate sexual harassment at work in law (see eg, Gaze 2021). There has been a lack of cohesion with respect to these reforms and the broader labour law reform agenda of the Coalition Government.

Future directions

Looking to the future, labour policies may be a battleground in the Commonwealth elections, which are to take place later in 2022. The incumbent Coalition Government and the opposition (the Australian Labor Party or ALP) are yet to announce their election policies. However, in 2021, the ALP announced a policy committed to legal reforms intended to improve protections and conditions for casual and other insecure workers and those in the 'gig economy' (ALP 2021). This policy countered the reform agenda of the Coalition Government expressed in the *Omnibus Bill* (Ibid.). It remains to be seen whether the election will produce any significant shifts in policy regarding labour regulation.

Conclusion

The COVID-19 crisis profoundly impacted employers and workers in Australia. The pandemic will continue

16. *Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Act 2021* (Cth) (*Amendment Act*) Sch 1.

17. *Sex Discrimination and Fair Work (Respect at Work) Amendment Act 2021* (Cth).

to produce novel and pressing legal issues for the Australian government, as well as for employers and workers. While immediate legal challenges will continue to require reactive policy responses, it is also an opportune time to re-examine the structural barriers to fair and equal work in the Australian labour market.¹⁸

The Coalition Government pursued an agenda of substantial labour policy reform during the first year of the crisis. The cooperative approach that initially characterised the development of the *Omnibus Bill* signalled that employer and union groups could work together to update labour regulation to respond to contemporary challenges and reinforced the central role of the FWC. However, the legal reforms introduced in the *Amendment Act* ultimately reinforced rather than addressed the prevalence of casual work, only exacerbating insecurity for affected workers.

The passage of the *Omnibus Bill* has prompted renewed discussion about central issues impacting the Australian labour market and reflection on how the FW Act contributes to these issues. Contemporaneous inquiries and debates also revealed other deficiencies in labour regulation under the FW Act, including with respect to the promotion of equality at work and the elimination of sexual harassment. Current conditions provide a valuable opportunity for the Commonwealth government to develop a policy of future reforms to the FW Act that is cohesive and meaningfully balances flexibility for employers against broader rights and protections for all types of workers (Victoria. Department of Premier and Cabinet 2020). It remains to be seen whether the imperative to recover from the social and economic impacts of the COVID-19 crisis will provide the impetus for substantial labour law reform in Australia.

* This report is current, and describes the situation, up until March 2022. The author thanks Dr Ingrid Landau for valuable comments on a previous draft of this article and Renee Burns for excellent research assistance.

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18. On future directions see further, Howe et al. 2021: 139–145.

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Resilience and Its Reinforcement: How China's Labor Market Resists the COVID-19 Epidemic and Policy Efficacy

Tianyu WANG

1. Overall impact of COVID-19 on China's labor market
2. Impact of COVID-19 on different labor groups
3. Major employment policies of the Chinese government in response to the epidemic

When COVID-19 broke out in Wuhan city, China, in February 2020, the Chinese government quickly took effective quarantine measures, sealing off the epicenter of the epidemic and restricting the movement of people. This epidemic prevention policy quickly brought the spread of COVID-19 under control. At this time, it was the Chinese New Year, and the majority of workers were enjoying the Spring Festival holiday in their hometowns. As a result, the labor market was significantly impacted by the nationwide shutdown due to home quarantine during the initial phase of the outbreak.

Therefore, the government adopted several policies to stabilize the workforce and return to work to bring the labor market back to normal levels. During this process, the Chinese labor market showed a certain degree of resilience, with new work patterns playing an important role, such as teleworking and flexible employment relying on the internet. With the overall stability of the epidemic prevention and control, the Chinese government's policy choices show further strengthening the labor market's resilience and enhancing the protection of labor rights and interests in flexible employment to cope with the employment pressure and economic uncertainty in the post-epidemic era.

1. Overall impact of COVID-19 on China's labor market

The impact of the COVID-19 epidemic on the economy and employment had two main stages.¹

The first stage was from the outbreak of the epidemic to the end of the Spring Festival holiday. The transportation was blocked on a large scale in various places, and the returning labor force could not go back in time to resume work. The home quarantine order made people's consumption demand drop drastically, and the reduced demand and labor shortage caused enterprises to be unable to start work usually, and the national labor market faced unprecedented pressure.² Some industries were in a period of high seasonal demand, and the immediate nature of consumption in the service industry made the epidemic's impact on it more prominent. Data released by the National Bureau of Statistics showed that GDP growth in the first quarter of 2020 was -6.8%, and the urban survey unemployment rate reached 6.2%.

The second stage was the epidemic spread from domestic into international. China's epidemic was nearly cleared at this stage, most regions resumed work and production in batches. However, the impact of epidemic prevention and control on industries such as transportation, retail and wholesale had not yet recovered, and front-line production staff, raw materials, and sales channels had been hindered, and the import supply side had also suffered a significant impact. The importation of the epidemic from abroad had affected resuming work and production in a few regions. The prevention and control of overseas importation had delayed or even interrupted the economic recovery in some regions, increasing the uncertainty of economic operation. China's labor market

1. Du Yang. 2020. "Labor Market Responses to the COVID-19 Pandemic and Employment Policy," *Studies in Labor Economics* 2020(2).

2. Qiu Y, Chen X and Shi W. 2020. "Impacts of social and economic factors on the transmission of coronavirus disease 2019 (COVID-19) in China," *Journal of Population Economics* 2020 May 9: 1–46, doi: 10.1007/s00148-020-00778-2. Epub ahead of print. PMID: 32395017; PMCID: PMC7210464.

benefited from the effectiveness of epidemic control and employment support policies and returned to normal levels quickly. According to a study by Cai Fang's project team, the national rate of work resumption increased from 63.1% in early March 2020 to 84.2% in mid-June and recovered to 89.7% by the end of November; the unemployment rate decreased from 11% in mid-June to 4.4% at the end of November.³

2. Impact of COVID-19 on different labor groups

According to the data of resident monitoring and online survey of manufacturing enterprises conducted by the group of the Institute of Population and Labor Economics, Chinese Academy of Social Sciences, the impact of COVID-19 on different employment groups varied, mainly in the aspects of the industry, urban and rural areas, and gender.

(1) There were significant differences in the degree of impact of the epidemic on employees in different industries.⁴ According to the test data, the rate of work resumption in the construction, accommodation, and catering industries was low, with 43.4% and 39.6% of workers waiting to return to work in late February (as shown in Table 1). The proportion of those waiting to return to work still reached about 20% in late March, and the proportion of those actively hunting for work was also higher, so the risk of unemployment for workers in

Table 1. Work status of people employed in different industries⁵

	(%)					
	Late Feb		Late Mar		Late Apr	
	Work	Wait	Work	Wait	Work	Wait
Agriculture, forestry and fishery	26.2	9.8	67.2	3.3		3.0
Mining	41.7	25.0	73.1	3.9	66.7	10.0
Manufacturing	51.3	31.9	79.9	8.9	89.1	0.9
Electricity, gas and water production and supply industry	48.2	22.2	85.4	4.2	84.1	3.3
Construction	23.5	43.4	59.1	18.7	79.8	3.9
Wholesale and retail trade	33.0	22.8	64.5	7.9	69.3	2.7
Transportation, storage and post and telecommunications	51.7	18.8	71.2	6.4	80.6	1.3
Accommodation and catering	24.5	39.6	45.0	19.9	59.1	7.0
Information transmission, computer services and software	36.3	12.3	60.5	7.1	75.5	0.8
Finance	29.7	6.1	67.2	4.8	74.3	2.9
Real estate industry	43.9	19.5	69.2	5.3	77.8	2.8
Leasing and business services	18.4	22.9	69.3	5.3	60.5	3.7
Scientific research, technical services and geological exploration	16.9	7.7	63.8	3.8	73.5	1.7
Water, environment and public facilities management	51.3	18.0	79.0	10.5	93.2	2.3
Residential services and other services	49.4	21.7	61.3	9.8	79.1	4.1
Education	10.0	21.0	11.9	15.4	35.1	10.7
Health and social work	65.6	9.2	83.0	6.1	88.3	2.7
Culture, sports and entertainment	18.6	21.7	43.3	15.4	56.4	3.2
Public administration, social security and international organizations	67.3	4.3	84.0	2.5	92.5	0.8

3. Cai Fang, Zhang Dandan and Liu Yaxuan. 2021. "The Impact of COVID-19 on the Chinese Labor Market—A Comprehensive Analysis Based on the Individual Tracking Survey," *Economic Research Journal* 2021 (2).

4. Zhang Ping and Yang Yaowu. 2020. "The Impact of COVID-19 on the Growth Path of Chinese Economy and the Policy Response—An Analysis Based on the Unbalanced Impact on Enterprises," *Economic Perspectives* 2020 (3).

5. Qu Xiaobo and Cheng Jie. 2020. "Impacts of COVID-19 on the Labor Market and Policy Responses," *Journal of Hebei Normal University* (Philosophy and Social Sciences Edition) 2020 (4).

these industries was higher. The work resumption in the rental and business services, wholesale and retail trade, and culture, sports, and entertainment industries were also slow, and workers were at greater risk of unemployment.

(2) Rural migrant workers were hit harder by the epidemic. Although the epidemic mainly occurred in the cities, the impact on rural migrant workers was even greater. According to the monitoring survey, the proportion of rural workers waiting to return to work in late February was close to 30% (as shown in Table 2), which was significantly higher than that in urban areas, and by late March, the proportion of rural workers working normally had just reached about 50%, while the proportion of those still waiting to return to work was about 15%, while the proportion of urban workers fully returning to work had reached 2/3, with only about 7% waiting to return to work, and by late April, there was still a difference of about 15 percentage points between the proportion of rural workers and urban workers working normally. In late February, the proportion of unemployed people in rural areas was close to 9%, while the proportion in urban areas was only 2.6%, and in late March, the proportion of unemployed people in rural areas and towns exceeded 10%. Most of the rural unemployed people were migrant workers with poorer employment stability and quality of employment, inadequate employment protection, and more vulnerable to unemployment risk.

(3) From a gender perspective, women were relatively more affected by the epidemic. The proportion of women in the subject group who working normally was lower than that of men. By late March, the proportion of female workers who working normally was only 55.1%, and the gap with men widened from 3 percentage points in late February to 13 percentage points, and the proportion of women who were hunting a job increased significantly

Table 2. Work status of urban and rural employed people⁶

	(%)								
	Late Feb			Late Mar			Late Apr		
	Village	Town	City	Village	Town	City	Village	Town	City
Regular work	25.7	38.5	41.8	52.8	53.6	65.5	57.6	71.2	73.5
Flexible work / Rotating shifts	5.6	9.8	14.9	4.2	4.1	7.1	6.3	7.7	6.7
Work from home / Web based	11.3	18.3	22.9	9.8	13.1	13.0	7.8	8.4	8.7
Working, waiting to return to work	29.6	23.9	12.3	14.8	9.8	6.9	8.5	3.9	2.3
Trying to find a job	8.9	4.3	2.6	10.2	13.4	4.6	9.7	3.3	3.5
Freelance	18.9	5.2	5.4	8.2	6.0	2.9	10.2	5.5	5.3

Table 3. Work status of employed persons by gender⁷

	(%)					
	Late Feb		Late Mar		Late Apr	
	Male	Female	Male	Female	Male	Female
Normal work	39.4	36.2	67.9	55.1	76.8	66.0
Flexible work / Rotating shifts	13.0	11.1	5.6	6.6	5.4	8.2
Work from home / Web based	17.3	21.7	8.4	16.4	6.1	11.0
Waiting to resume work	18.0	18.2	9.1	8.4	3.2	3.3
Job hunting	4.3	4.2	5.3	8.6	4.1	4.2

6. Qu Xiaobo and Cheng Jie. 2020. "Impacts of COVID-19 on the Labor Market and Policy Responses," *Journal of Hebei Normal University* (Philosophy and Social Sciences Edition) 2020 (4).

7. Qu Xiaobo and Cheng Jie. 2020. "Impacts of COVID-19 on the Labor Market and Policy Responses," *Journal of Hebei Normal University* (Philosophy and Social Sciences Edition) 2020 (4).

from 4.2% in late February to 8.6% (as shown in Table 3), reflecting that the epidemic had a greater impact on female employment, and women were more vulnerable to external shocks in the labor market and suffered higher risks of losing their jobs. By late April, although the epidemic was under control and the resumption of work and production was accelerated, the gender gap in the employment situation still existed, as the proportion of women going to work normally still about 10 percentage points lower than that of men, and the proportion of women using flexible work was relatively higher.

3. Major employment policies of the Chinese government in response to the epidemic

(1) Promote enterprises to resume work and production. Adhere to zoning and grading precision prevention and control, improve the convenience of resumption of work and production services, cancel unreasonable approvals and unreasonable regulations that restrict workers from returning to work. Accelerate significant engineering projects, key enterprises to resume work. Take manufacturing, construction, logistics, public services, and agricultural production as the breakthrough, and make every effort to promote employment in critical industries and low-risk areas, and thus gradually drive employment in other industries and areas. Provide enterprises' daily protection materials in resuming work and urge them to implement preventive and control measures such in workplaces, canteens, and dormitories.

(2) Reduce labor cost and stabilize job positions. Accelerate the implementation of phased and targeted tax and fee reduction policies. To increase the unemployment insurance stabilization rebate, for small and medium-sized enterprises without layoffs or fewer layoffs, the rebate standard can be raised to a maximum of 100% of the unemployment insurance premiums paid by the enterprise and its employees in the previous year; for the participating enterprises with temporary production and operation difficulties and recovery prospects, insisting on no layoffs or fewer layoffs, the criteria for determining the stabilization rebate policy are appropriately relaxed, with emphasis on enterprises affected by the epidemic. The rebate standard can be determined according to the local monthly per capita unemployment insurance payment and the number of insured employees for not more than six months, or according to the social insurance premiums payable by the enterprise and its employees for not more than three months. Before the end of June 2020, engineering construction projects are allowed to suspend the deposit of migrant workers' wages, and enterprises with good payment records can be exempted from payment. Effectively implement policies such as fixed tax exemptions, guaranteed loans, interest subsidies, and employment subsidies for enterprises to absorb the employment of critical groups. Accelerate the implementation of the phased reduction and deferral of social insurance premiums policy, the period of social insurance subsidies for enterprises absorbing people with employment difficulties during the period of reduction and deferral can be extended.

(3) Improve the employment ability of investment and industry. Implement primary industrial employment impact assessment, clarify important industrial planning to drive employment targets, prioritize investment in industries with employment-driving solid capacity and conducive to local employment of rural labor and employment of college graduates. Accelerate the development and improvement of policies and measures to guide the transfer of relevant industries to the central and western regions. For the projects with strong employment-boosting capacity and controllable environmental impact, develop a positive list of environmental impact assessment approval, advance the environmental assessment "management and service" reforms.

(4) Optimize the market environment for independent entrepreneurship. Deepen the "separation of licenses" reform, promote "license reduction," simplify the approval, simplify the residence registration procedures. Give full play to the unique role of venture capital to promote business innovation and drive employment. Increase the

support for guaranteed business loans, expand policy coverage, prioritize support for critical groups affected by the epidemic, and waive counter-guarantee requirements for high-quality business projects. Government investment in developing incubation bases and other entrepreneurial carriers should arrange a certain percentage of sites, open to college graduates, migrant workers, and other key groups. All kinds of urban high-ranking projects should drive the employment capacity of the “small store economy,” the development of pedestrian streets as an essential condition.

(5) Support multi-channel flexible employment. Reasonably set the management mode of vendors without fixed business premises, set free street markets, stall groups, and other business outlets. Support workers to rely on internet platforms for employment. Platform employment personnel can apply for guaranteed loans and interest subsidies for business start-ups and necessary tools. Guide the platform enterprises to relax the conditions of entry, reduce management service fees, and establish institutionalized and normalized communication and coordination mechanisms with platform employment personnel on labor wages, working hours, labor protection. Abolish the provincial urban and rural household registration restrictions for flexibly employed persons to participate in the basic pension insurance for enterprise employees. Necessary social insurance subsidies should be given to the flexibly working persons with employment difficulties and college graduates who have not been employed within two years after leaving school.

(6) Guide the labor mobility orderly. Strengthen the guarantee of labor dispatching for key enterprises, provide “point-to-point, one-stop” return-to-work services for migrant workers, promote the mutual recognition of health information and other mechanisms, and enhance the ability to transport and guarantee workers returning to work in a concentrated manner. Guiding workers to seek employment in an orderly manner, collecting and releasing employment information in a timely manner, strengthening the docking of information between exporting and importing places, and encouraging migrant workers in low-risk areas to return to work as soon as possible. Support for the organization of centralized return to work, labor export involving transportation, health and epidemic prevention. Provide employment and entrepreneurship services subsidies to the human resources service agencies, labor brokers in operating cross-regional organized labor mobility.

(7) Support local and nearby employment. Using the spring agricultural production, vigorously develop new agricultural business entities, organize migrant workers who cannot go out temporarily to work in spring plowing and preparation, and engage in particular breeding, deep processing, ecological tourism, and other industries. In the county and central towns, local jobs could be supplied by urban infrastructure and public service facilities, agricultural infrastructures, rural habitat improvement projects, and other food-for-work projects.

(8) Give priority to support the employment of poor laborers. Enterprises should give priority to employ poor labor in starting significant projects and building logistics systems. Support leading enterprises and workshops for poverty alleviation to resume work as soon as possible. Provide more local and nearby employment opportunities through public welfare jobs for poor laborers. The government should increase support for the most poverty areas. Local government can give one-time incentives to enterprises with large-scale employment of poor laborers through special financial poverty alleviation funds.

(9) Broaden employment channels for college graduates. A one-time employment absorption subsidy will be given to small and medium-sized enterprises for recruiting college graduates in the graduation year and sign an employment contract for more than one year. State-owned enterprises should expand the recruitment scale of college graduates for two consecutive years this year and next. The ratio of special recruitment of college

graduates for vacant positions in all institutions will be increased this year and next year. Develop public and social service positions at the grassroots level, such as urban and rural communities. Expand the scale of recruitment for grassroots service projects. Expand the scale of enrollment of master's degree students and college graduates in public universities in 2020. Expand the scale of enlistment of college students into the military. Support enterprises, government investment projects, and scientific research projects to set up apprenticeship positions. For the temporary interruption of internship due to the epidemic, extend the subsidy period for internship units accordingly.

(10) Protect the primary livelihood of the unemployed. Smooth the channels for unemployment insurance claims, relax the deadline for unemployment insurance claims, and realize online claims for unemployment insurance benefits by the end of April 2020. For the unemployed people who are still unemployed after the expiration of unemployment insurance benefits and unemployed people without insurance benefits, a six months unemployment benefits will be granted at a rate not higher than 80% of the local unemployment insurance benefits. The unemployed people who are in living difficulties, could be promptly included in the scope of social assistance, such as minimum living standards and temporary assistance.

(11) Provide employment assistance for people in difficulty. Dynamically adjust the criteria for identifying employment difficulties, promptly include people affected by the epidemic. For those who have difficulties in employment through market channels, use public welfare jobs to support bottom placement. Develop some temporary public welfare jobs such as epidemic elimination, cleaning, sanitation, and give certain job subsidies and social insurance subsidies according to the work tasks and working hours.

(12) Conduct large-scale vocational skills training programs. Increase the unemployed, migrant workers, and other vocational skills training, implement special training for migrant workers and other key groups and appropriately extend the training period. Vocational training subsidies are provided to the enterprises who organize workers to participate in online and offline training, organize newly recruited migrant workers and college graduates to participate in pre-job training.

(13) Optimize employment services. Open online unemployment registration by the end of March 2020. Promote online applications for employment services and subsidy claims. Continuously carry out online recruitment services and play the role of public employment service agencies, college employment guidance agencies, and operating human resource service agencies to increase the supply of job information, career guidance, online interviews, and other services. Older and low-skilled workers could enjoy specialized job search and application services. Low-risk areas can orderly carry out small-scale labor supply and demand matching activities. Optimize employment guidance services, encourage enterprises to negotiate with workers to adopt salary adjustments, rotating shifts, flexible working hours, and other ways to stabilize positions, and regulate layoffs.



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Giving a New Present or Returning the Original Share: New Insight about Law and Policy for Working People in Korea

Sukhwan CHOI

- I. Introduction
- II. Present situation and requests for changes
- III. Policy responses
- IV. After the pandemic

I. Introduction

1. Death of a janitor

It happened at my university on June 26, 2021. A female janitor died of heart attack at a staff rest area in the university dormitory. One of the causes of her death said to be overwork. More and more students ordered food delivery because they could not go to the restaurants and cafeterias on the campus due to the business restrictions order by the government during the COVID-19 pandemic. Naturally, the garbage that needed to be cleaned up was growing in the dormitory, but the university did not hire additional persons for cleaning.

Actually, the janitors were not hired directly by the university. Complicated employment structure was accelerated in many divisions of the university, mainly in facility services such as cleaning, security, restaurants. People working there, including those who had been hired by the university, were outsourced. It is one of the popular ways for employers not to hire workers directly and to outsource certain jobs instead. Working conditions for workers engaged were not be delicately considered. They worked on campus as atypical workers sent from the outsourcing company under the fixed-term contract. Among them, female workers usually had to do housework for their families as well after returning home.

This is what happened at the university where I work. It was a dramatic incident symbolic of the impact to the vulnerable workers in the COVID-19 pandemic.

2. COVID-19 and vulnerable people

In Korea, 7,500 people have died of COVID-19 and a total of 2.4 million confirmed infected cases were reported at the time of writing in February 2022. Recently, the cases are increasing with the Omicron variant though its fatal risks are not yet known, and people are carefully talking about their lives after or with coronavirus. The impact to the economy was enormous in Korea likewise other parts of the world.

Coronavirus also revealed hidden realities which had been invisible before, and shed light on the vulnerable class in Korea. Many people such as janitors, care workers, workers for delivery services had to do more work than before the pandemic. In a sense, this could be a good chance for them to make more money and do better business, but at the same time, may lead to long working hours that could be a threat to their health and safety. Measures were taken to address these issues, including administrative policies and legislation to enact them. On the other hand, there are people who had their income or sales decreased due to the restrictions on business hours or who lost their jobs. In Korea, we have been adjusting business hours and the maximum number of persons at gatherings during the pandemic. For most of the time, business operating hours were until 2100 hours at latest and a maximum of four persons could be seated at one table at food services, though these regulations have been changing according to the situation of the pandemic as well as the course of action plan for social distancing. This is inevitably affecting income and employment especially in the industries where businesses are restricted.

While universal supports are available for all the people nationwide, there were different measures for various classes to deal with their specific difficulties. Economic policies such as remuneration of damages for small merchants struggling financially due to continued restrictions on businesses as a result of the ongoing crisis are included here. Measures for small-sized business were subsidies for them, advantage with tax, suspending loan payment, and other ways. Those who had lost their jobs or had suffered from a decline in their salary were also covered by various social policies such as compensation for their income, or vocational training to get new jobs. In the field of labor and employment, these policies for support are largely divided into two ways. One is expanding the concept of the employee. Traditionally, the concept of the employee was the key whether people are covered with full package protection of the labor and employment law. But in other way, we are gradually expanding our coverage of social security system, regardless of their status as an employee. Social welfare policies are targeting this issue as a new territory, making new laws for vulnerable workers in the pandemic age, even though they are not classified as employees in a traditional sense.

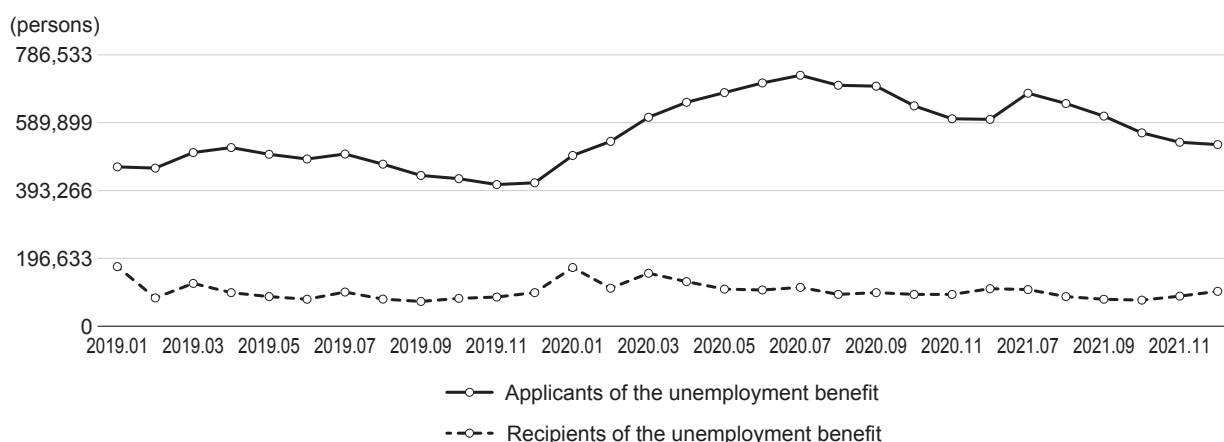
This paper aims at summarizing the situations in Korea in the age of COVID-19 and the responses to labor and social security issues. In Part II, I will describe the situations in Korea and make it clear that there appeared many problems, some of which were already dealt with and some still are pending. In Part III, I will explore policies and legal reaction to the issues exposed by COVID-19, including administrative measures and legislation. In Part IV, I will analyze responses and future expectations.

II. Present situation and requests for changes

1. Trends in Korea

Some figures and numbers will help to understand the situations in Korea. However, they are continuously changing and at the same time not so different from the global trends. The situations are not very good but gradually recovering. It varies according to gender, age, employment type and industry, which are making the gaps wider than before.

The unemployment rate recently appear to be a slight recovery, but it may be too early to say that it is back to the level before the COVID-19. Actually, the labor market in Korea continued a gradual recovery despite the spread of COVID-19. The number of employed persons in December 2021 rose by a large margin, from 553,000 to 773,000 year on year. In the service industry, the number is from 451,000 to 650,000, continued to improve



Source: KOSIS (Korean Statistical Information Service).

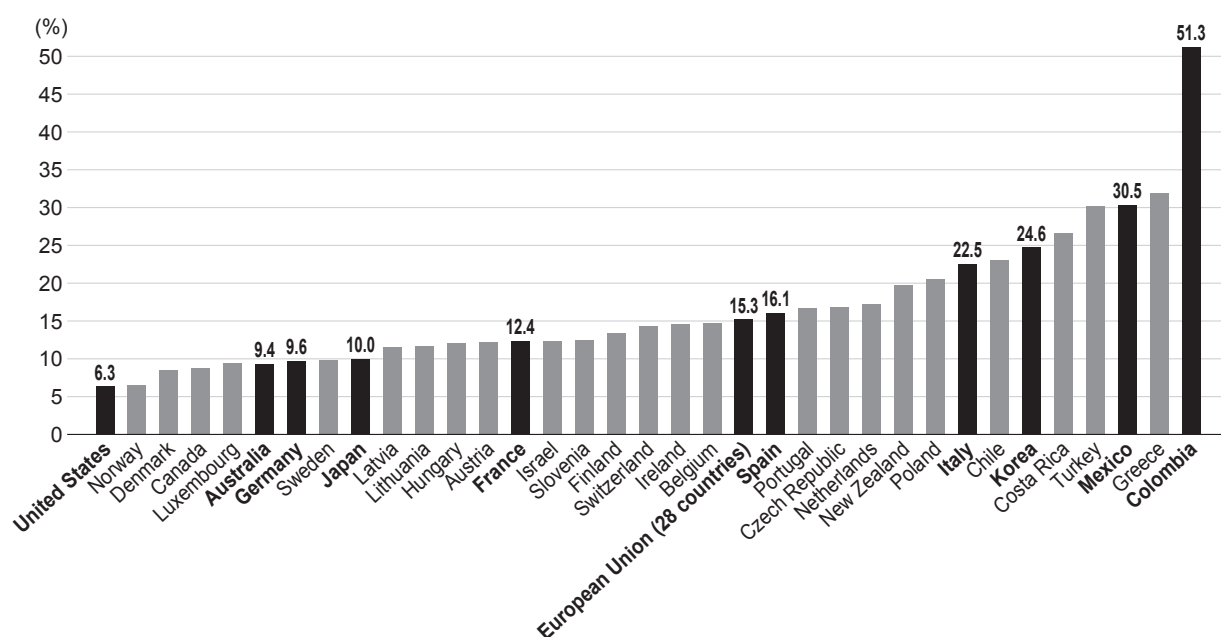
Figure 1. Change in numbers of applicants/recipients of the unemployment benefit

led by face-to-face businesses such as accommodations and food from -86,000 to 66,000, and arts, sports and recreation-related services, from -22,000 to 32,000. But in the manufacturing industry, the number is declining. This is mainly owing to the base effect of the sharp decline in 2020 during the spread of COVID-19. Some people say that it is because of the elderly, whose jobs are considerably suggested by the government. Many of them engage in kind of public service. It is strongly criticized that it should not be considered as recovery of employment, because many of the increased work are simple laboring jobs, far from decent work. It is rather welfare policy than employment policy.

2. Hard times

During the pandemic, quality of work has been deteriorated. Fulltime work had decreased, while the portion of part-time work had been increasing. Young people are suffering from serious unemployment. Unemployment rate in their 20's is 7.5%, 2.7 times higher than the average unemployment rate of all ages, 2.8%. As the Korean social security system is mainly based on employee protection, people do not appreciate much of the protection once they are outside of the employment relationship.

High rate of self-employed (especially without hired staff) is another unique feature of Korea, and this also was affected by COVID-19. The number of self-employed had decreased. For the year of 2020, self-employed with hired staff decreased by 1.65 million. Some of the self-employed without hired staff are near the borderline between independent contractors and employees. They work alone or with unpaid family members. This type of small-sized stores run by self-employed are typically vulnerable under the restriction of the government.



Source: OECD. Self-employment rate (indicator).

Note: Total, percentage of employment, 2020 or latest available.

Figure 2. Self-employment rate by country amid the COVID-19 pandemic

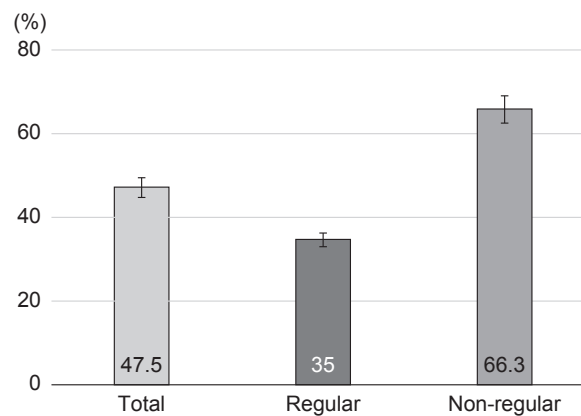


Source: "Center for Labor Trends Analysis," KLI working paper 2022-01, January 2022.

Note: Feb. 2020 = 100.

Figure 3. Change in numbers of wage workers and the self-employed amid the COVID-19 pandemic

Statistics also shows that labor market has been recovered in preference to highly educated workers. The unemployment rate of workers with education under elementary school rose by 3.6% compared with the previous year, while that of those with education of university graduate or over fall by 0.4% (as of January 2022). It is because while in information industry and financial and insurance industry, the professional scientific work had been recovered, simple labor in industries such as accommodation, restaurants, and retails are still under the hard time. An analysis indicates that atypical workers who had suffered from the worsened situation, e.g. unemployment



Source: HWANG, Sunoong. 2020. "Discriminatory Effects of the COVID-19 Shock by Employment Types," *Journal of Korean Industrial Labor* 26 (3): 5–34.

Note: The raw data are the results of a survey of 1,000 salaried workers conducted by a public interest group called Gapjil 119 in April 2020. The graph shows the percentage of respondents whose income and whose family's income decreased since the COVID-19 outbreak, with a 95% confidence interval. JANG, Insong, and Sunoong HWANG, "Dependent Self-Employed Contractors: Evaluating Working Conditions and Employment Insurance Coverage Based on Workers' Compensation Insurance Data," KLI working paper 2021-01, May 2021.

Figure 4. Probability of income decrease due to the COVID-19 pandemic by employment type

or income decrease, are twice as many as those of typical workers.¹ Intensification of two extremes is also a serious problem. Such situation can be called 'K-recovery' (the letter 'K' stands for Korea). It means that upper class workers with high level of education and protection are faster and easier to recover, while young workers, female workers, atypical workers, those working at small-sized companies, and the self-employed are still suffering and have not yet recovered. Climate was much chiller for the persons in the unstable stage.

III. Policy responses

1. Basic government's plans

There were various kinds of relief measures for the COVID-19 crisis in Korea. The emergency disaster relief fund was the representative of the measures for all Koreans, regardless of income and property. It was paid by the government to every single household based on resident registration twice; KRW 400,000 for one-person households, KRW 600,000 for two-person households, and KRW one million for households with four persons or more.² There were other employment support programs. Here are some examples. First, from January 1, 2021, the employment safety net became further strengthened with the implementation of the National Employment Support Program. It is called a "Korean-style unemployment assistance program" that provides employment support and livelihood support services to the vulnerable groups in employment, including low-income job seekers, newly unemployed young people, and career-interrupted women. The program is operated under two types. One is employment support services with job search promotion subsidy (KRW 500,000 a month for up to 6 months), and the other is services centered on employment support to cover partial expenses of job-seeking activity.

The government is expanding the employment stability incentives for periods of childbirth and childcare offered to small-sized business owners, which is granted when the employers allow reduced working hours for the employees during their childcare leave and childrearing. Previously, when an employer allowed their

1. HWANG, Sunoong. 2020. "The Heterogeneous Impacts of COVID-19 across Different Types of Employment Arrangements: Real Time Survey Evidence from Korea," *Korean Journal of Labor Studies* 26 (3).

2. http://ncov.mohw.go.kr/upload/viewer/skin/doc.html?fn=1589955353155_20200520151553.jpg&rs=/upload/viewer/result/202202/.

employees childcare leave for the first time, the employer could receive subsidies (KRW 300,000 a month) with an additional incentive of KRW 100,000 a month, and there were no incentives for allowing workers to reduce their working hours during the period of childcare. From 2021, when employers allow reduced working hours for childcare leave or childrearing, an additional incentive of KRW 100,000 shall be provided to the employers for the first to third employee that enjoys such benefits.

Also, the job stability funds program that provides labor cost support is in force, to relieve the burden of labor costs at micro businesses, and small and medium sized enterprises as a result of the minimum wage increase, and to address workers' job security. It provides support to businesses with less than 30 employees whose monthly wage is KRW 2.15 million or less. In 2021, as the minimum wage increased (by 1.5%), businesses with less than 30 employees whose monthly wage is KRW 2.19 million or less will be provided with labor cost support. The amount of labor cost support will be KRW 70,000 per employee per month for businesses with less than 5 employees, and KRW 50,000 per employee per month for businesses with 5 or more employees. Workers with less than 40 weekly work hours and day laborers will receive support in proportion to their work hours and work days.

There was an important policy plan for platform workers, "Measures to protect platform workers," in December 2020. The framework act for working and welfare was amended for the measures, including defining its coverage to the platform workers, even though they are not regarded as employees under the Labor Standards Act (LSA). This is a part of the attempt to protect working people as a whole. In Korea, the protection for working people had been rather an all or nothing system,³ but recent amendments are consciously expanding the coverage adding "persons who works for other people even if they are not regarded as an employee under LSA" (IACIA art. 125).

2. Expanding social insurance

This is a symbolic crossroad of Korean policies. With the total decline in the economy and employment, the government suggested continuous policies. Among them, the expansion of the social insurance through specially added coverage is noteworthy. The expanded protection although were for the persons not regarded as traditional employees before.

First, there had been amendment of the Industrial Accident Compensation Insurance Act (IACIA), expanding the coverage of the law. The IACIA in Korea restricts the coverage according to the definitions in LSA, and independent/dependent contractors were outside the traditional protection coverage of the employee by LSA, including that of the IACIA. Labor disputes over whether anyone is "an employee" according to LSA or not has been a controversial issue in Korea. And this was more common among some of the jobs so called a dependent contractor. It is partly because they were originally "employees" by LSA, changed into independent contractors, and also partly because their working conditions are poor, excluded from protection of labor law, which brought exclusion from social security law (mainly social insurance). This tendency was speeded up at the time of financial crisis, and there has been a social dialogue body called "Economic and Social Development Commission" (formerly "Korea Tripartite Commission") from 1998. This was a body that labor, management, government and public interest groups participated, making consultation for labor, industrial, economic and social policies. Its main goal is the labor and management participation in the formulation of government policies. A group in this commission looked for an appropriate answer for these independent contractors who had been totally excluded from labor law, and finally came up with the answer that would give some special protections to provide them. When these dependent contractors are working for the business which receives labor service, from persons who engage in jobs prescribed by Presidential Decree, among the persons who are not subject to the LSA, etc., even though they offer labor service similar to that of workers regardless of the type of contract, and therefore need

3. CHOI, Sukhwan. 2017. "A Step against All or Nothing Policy: The Scope of Industrial Accident Compensation Insurance for Independent Contractors in Korea," *Japan Labor Issues* 1 (3): 4–9.

protection from occupational accidents, and who also meet all the following requirements, the business shall be regarded as a business subject to IACIA (para.1): (i) Exclusivity: They mainly provide one line of business with labor service necessary for the operation thereof on a routine basis, and receive payment for such service and live on such pay; (ii) By yourself: They do not use other persons to provide such labor service.⁴ Insurance solicitors, home-visit tutors, drivers of ready-mixed concrete trucks, golf caddies were introduced into the coverage of the IACIA as dependent contractors, even though they are not regarded as employees in the traditional context in July 2008. When this special regulation was first introduced in 2008, there were four kinds of jobs: insurance solicitors, owner-drivers of concrete mixer trucks, learning-aid tutors, and golf caddies. After that, the jobs which can be covered by the IACIA with this exceptional way have been expanded. Recently, 14 jobs are protected by the IACIA: parcel delivery workers, quick delivery service couriers, credit card solicitors, loan solicitors, designated drivers, operators/drivers of construction vehicles, door-to-door salespersons, door-to-door rental equipment examiners, home appliance installers, and cargo truck owners.

There had been cases of abusing the system as the dependent self-employed can apply to be exempted from industrial accident compensation insurance regardless of their reasons for wanting to be excluded. When they request exclusion from the application of the IACIA according to para. 4, they shall not be deemed such workers (para.2). This is called “retreat by his own will” which is different from the compulsory feature of social insurance. Where a person in special type of employment does not want to be subjected to the IACIA, he/she may file a request for exclusion from the application of the IACIA. In this way, recent amendment was made to restrict the exemptions from industrial accident compensation insurance, so that it will be granted for the limited reasons such as suspension of work for one month or longer due to the worker’s sickness or injury, or pregnancy, childbirth, childrearing, suspension of work for one month or longer due to a cause attributable to the business owner, and other reasons similar to above prescribed by presidential decree. Cases other than these will be subject to mandatory enrollment to industrial accident compensation insurance.

There were many criticisms about this system, even though it was originally intended for the protection of the persons who work for other people not as an employee. More than anything else, it includes the exclusivity condition which cannot be fulfilled by many of the platform-based workers. They are consequently working for multiple employers who give them orders through platform application. Also “retreat by his own will” was utilized by both sides of parties of the contract.

Recently, the act was amended and will be enforced in July 2023. New legislation abolishes art. 125 of IACIA, and instead introduces the concept of “labor provider” (art. 91–15), who can get the protection of IACIA. “A labor provider” is a person who provides labor for other people, and receives reward for the labor. It doesn’t presuppose exclusivity to a specific business. It also regulates the concept of platform workers. This is an attempt to expand the protection from occupational accident to the working people as a whole, especially persons who work through the online platform.

Second, there had been amendment in unemployment insurance (art. 77–6) in January 2022. The amended law prescribes that, even though a person is not an employee under LSA, when the person is working in the designated jobs by presidential decree, and the person has a contract with other person(s) that the person directly provides labor to him/her, and he/she gives the person a certain reward, unemployment insurance is applied. This is similar to the structure of the old IACIA, with a little difference. First, for the unemployment insurance, they do not need to fulfill additional conditions of exclusivity and not-hiring other persons. Second, there is a slight difference about occupations. Caddies are excluded and after school tutors are included. Third, there are no clauses for “retreat by his own will,” which means workers engaged in these jobs must join the compulsory unemployment insurance.

What is very interesting for this amendment is that, if a person works for more than two employers inside a

4. CHOI, above at N 3.

platform, and the contracts are taken and finished frequently, then the office work for the insurance premium collection is obliged to the platform side (art. 77-4, special clause for platform business). The contract relations between the workers and employers in the platform are different from the traditional labor management relations, and social insurance mechanism also need to be changed, which was reflected in the amendment. 80% of the insurance premium is supported by the government for the workers in the small-sized companies.

Actually, this is a part of Korea's grand plan called "universal unemployment insurance for nationwide." As another part of this plan, unemployment insurance for artists were included in December 2020. As for the coverage of employment insurance program expanded to artists, artists became able to enjoy unemployment benefits and maternity benefits. The government is now exploring this plan to the unemployment insurance based on income, not based on salary.

3. Other legislative backups

There are other responses for the vulnerable workers, too. These are new attempts to give protections for wider range of working people. "Measures for protecting essential workers" were suggested by the government in December 2020. These measures are for people working for the care service, transportation business, medical-healthcare service, and cleaning work. For example, at the policy level, restrictions for the large-sized (100 liters) garbage bag, additional reward for the medical waste, guideline for the food delivery service, special labor supervision for the employment condition of on-line delivery workers, increasing nurses for the public medical center were proceeded. In November 2021, new legislation for essential workers has been enacted. There was support program for essential workers, for the protection of life and health of people and for the maintenance of society's function, in spite of the disaster. It is not specified yet, but a special committee led by secretary of employment and labor has just started a discussion on the range and detailed measures for them. Long awaited task of the action for the employment improvement of domestic workers was enacted in May 2021, promoting employment contract between domestic workers and dispatching companies.

IV. After the pandemic

1. Directions of policies

In the course of coping with the disaster, the government is searching for the measures to make it possible to provide the vulnerable workers a safety net in two directions: first, make the range of 'employee' qualified for the full package protection wider, and second, new approach for the safety net in the way of applying the laws not only for the employee but also for the working people as a whole. It is also connected to the ways of policies; the employment policy which are directed to more workplaces (mainly public works) and that to maintain present employment by supporting employers, as well as the welfare policy that give financial support for income loss due to the disaster. Policies by the Korean government has been covered for both ways. But recent responses seem more inclined to guarantee safety net for more working people, though they traditionally had been targeted for typical employees. Universal social security for all working people will be important in Korea. This trend was seen before the COVID-19 age, but it apparently was accelerated through this hard time. "Unemployment insurance for all citizens" is a good representation of this direction. Its impact was stronger among the class whose status were unstable from the viewpoint of traditional protection framework as employees. Korean social security system has been basically established on the basis of Bismarck model, mainly supposed on the working person and his/her family.

We can also view these struggles with COVID-19 from the viewpoint of 'in exchange for freedom' or a 'new present.' There have been more protections through the age of COVID-19, and they are still on the way. Some of them certainly look like remuneration in exchange for freedom, namely, compensation for the restricted business hours. But the Korea's future direction of labor policies in the post-COVID-19 era, including new

legislation especially social insurance shows a sign that policy making aims to enhance social security net for the vulnerable, which has not been enough for the people out of the coverage of social protection. It is also oriented to the persons working in various new ways such as platform working. More universal way of protecting working people as a whole and guaranteeing safety net for them also gives an inspiration for the new system for labor policy and social security.

2. Further to consider

We have further to go for this new situation. First, there are no considerable regulations for the teleworking, or working from home. More and more companies have started teleworking, or working in the Metaverse, and will continue working from home system, even after the fatal risk of COVID-19 disappears. It is especially popular among the IT related industry. However, long working hours of software engineers have been criticized in Korea, which is still at stake even they do their work at home.

Also, there are no regulations for multi-job workers, either. Amendment of the unemployment insurance act and policies for platform workers give us a slight inspiration for this matter. When the person works for more than one employer, risks and regulations can arouse different perspectives. With the developed technologies, some of the technical procedures such as collecting social insurance fee can be settled down. But we still have problems such as working hours, fiduciary duty, etc. What is more problematic is the status of those who are both employees and self-employed at the same time and do both jobs at home simultaneously.



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Added Pressure: Exploring the Impacts of Covid-19 on Workers and Labour Laws in Aotearoa New Zealand

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- I. Introduction
- II. The current state of the pandemic in Aotearoa New Zealand
- III. Overview of impacts on workers
- IV. Pressure on existing legal protections
- V. Conclusion

I. Introduction

In many ways the experience of workers in Aotearoa New Zealand (ANZ) has differed from those in other English-speaking countries. Due to the previous success of the elimination strategy pursued by the Government ANZ is only now seeing widespread community transmission of the virus and has so far enjoyed a very low infection and death rate. To date, the most significant negative effects on workers have come from the containment measures rather than the disease itself. However, this all looks set to change. The more infectious delta variant (Delta) and the omicron variant (Omicron) have prompted a significant change in strategy, constituting a new phase in the pandemic response, the implications of which are yet to emerge. This paper provides a brief review of the impacts of the Covid-19 pandemic on workers in ANZ as of mid-February 2022. The paper will briefly outline the relevant Government strategies, policies, and key interventions. It will then outline some of the key consequences for working people and highlight some of the areas of labour law under greatest strain.

II. The current state of the pandemic in Aotearoa New Zealand

From February 2020, ANZ pursued a “go hard, go early” strategy focussed on eliminating the virus completely.¹ “Go hard, go early” is a phrase sometimes used in rugby, ANZ’s national sport, and refers to a team making a big effort early in the game to obtain a tactical advantage over the other side. This strategy involved closing the borders and imposing strict national and regional lockdowns as soon as the disease is detected in the community, supported by widespread wage subsidies and business grants and loans.² These measures were unprecedented, with ANZ having never closed its borders before or imposed such restrictions on its citizens. The Government’s elimination strategy involved four levels of restrictions, with lockdowns imposed at level three and four. Anyone entering the country was required to stay in a Government Managed Isolation and Quarantine (MIQ) facility.³ The country also ran a successful tracing programme, with all businesses and locations required to display a QR code and a high level of public use of the Government’s Covid Tracer smart phone application.⁴ This strategy was remarkably successful, with the virus eliminated from the community by May 2020 and any

1. For earlier updates on the Aotearoa New Zealand Covid-19 response and its impact on working people, see: Duncan, Dawn. 2020. “COVID-19 and Labour Law: New Zealand.” *Italian Labour Law E-Journal* 13 (1S). <https://doi.org/10.6092/issn.1561-8048/10956>, and Duncan, D. 2021. “The impacts of Covid-19 on Aotearoa/New Zealand’s working people: A report 12 months on,” *Noticias Cielo* (Número 3), http://www.cielolaboral.com/wp-content/uploads/2021/04/duncan_noticias_cielo_n3_2021.pdf. For earlier discussion of the impacts of Covid-19 on employment law in Aotearoa New Zealand, see Special Covid-19 issue of the *New Zealand Journal of Employment Relations*, <https://ojs.aut.ac.nz/nzjer/issue/view/2>.

2. See above at n 1.

3. Information about the MIQ facilities can be accessed on the MIQ website, <https://www.miq.govt.nz>.

4. Information on the Covid Tracer App and its use can be accessed at <https://tracing.covid19.govt.nz>.

new outbreaks quickly stamped-out, allowing long stretches of relative normality and very low rates of infection and death.⁵ The Government received high levels of public support for its response and the Labour Party was re-elected with a substantial majority in the 2020 general election.

Delta outbreak and Auckland lockdown

However, in August 2021 Delta escaped MIQ facilities resulting in an outbreak in Auckland (ANZ's largest city). Delta resulted in a three-week national lockdown and then a further three months of lockdown in Auckland, ending in mid-December 2021. Cases of Delta emerged in neighbouring regions resulting in lockdowns in those regions also. With Delta proving more difficult to eliminate, the Government began to aggressively promote vaccination. ANZ's vaccination campaign began in mid-2021, with limited initial availability. This increased from September, as additional supplies were sought in response to the Delta outbreak. As of 15 February, ANZ has about 95% of the adult population (aged 12+) fully vaccinated and is rapidly rolling out a campaign of booster shots for adults (18+) and paediatric doses for children aged 5–11.⁶

Current Omicron outbreak

ANZ is presently in the early stages of an outbreak of Omicron, which was first detected in the community on 23 January 2022, having escaped MIQ. The Government's strategy has changed from "elimination" to one of "management" resulting in a new three-tiered "traffic light system" to replace the previous four-level lockdown-based system.⁷ Under the traffic light system there are no lockdowns or restrictions on domestic travel, but there are limits on events and gatherings, restrictions on the freedoms of the unvaccinated, tracing, self-isolation and mask requirements. There are three phases in the Government's Omicron outbreak response plan, with the second phase coming into operation when the country reaches 1,000 new infections per day, and the third phase when the country reaches approximately 5,000 new infections per day.⁸ The new system also allows for the phased reopening of the borders.⁹ The country is currently operating under "red level," the most restrictive level of the traffic light system. As of 15 February, ANZ has had 21,573 infections and 53 deaths, (the population is just over 5 million people) with most of the infections occurring in the current Omicron outbreak.¹⁰ Omicron is predicted to result in a rapid acceleration of cases.

III. Overview of impacts on workers

While Omicron looks set to change things, the previous success of the elimination strategy means workers in ANZ have enjoyed a relatively "normal" life, with comparably low rates of infection and death. As such, the primary impacts on working people so far, have come from the measures to eliminate or contain the virus, rather than the virus itself. The most significant impacts have come from the border closures, restrictions on domestic travel and the strict lockdowns. Impacts have been both economic and personal, with worker mental health and rates of burn-out particularly an issue. Impacts have been unevenly felt, with the most vulnerable workers

5. A detailed timeline of New Zealand's Covid-19 epidemic is available on the Radio New Zealand website, <https://www.rnz.co.nz/news/national/437359/timeline-the-year-of-covid-19-in-new-zealand>.

6. ANZ vaccination data is available on the Ministry of Health website: <https://www.health.govt.nz/covid-19-novel-coronavirus/covid-19-data-and-statistics/covid-19-vaccine-data>.

7. Information on the "traffic-light" system can be accessed on the Government's Covid-19 website, <https://covid19.govt.nz/traffic-lights/covid-19-protection-framework/>.

8. Details of the three phases can be accessed on the Government's Covid-19 website, <https://covid19.govt.nz/news-and-data/latest-news/government-announces-three-phase-public-health-response-to-omicron/>.

9. Dates for when the borders will be reopened can be found on the New Zealand Government's website, <https://covid19.govt.nz/international-travel/travel-to-new-zealand/when-new-zealand-borders-open/>.

10. Information on infection and death rates can be accessed on the Ministry of Health website: <https://www.health.govt.nz/covid-19-novel-coronavirus/covid-19-data-and-statistics/covid-19-current-cases>.

suffering the most.¹¹

Lockdowns and wage subsidies

National lockdowns were imposed from 24 March to 13 May, with people required to stay in their homes, and avoid contact with anyone not from their household ‘bubble.’ Non-essential businesses were required to close their premises but could continue to have people working from home where possible. The list of “essential services” included hospitals and medical services, life-line utilities, supermarkets and petrol stations. The lockdown was strictly enforced, with wide-spread economic consequences, but received high levels of public support. In March 2020, a national wage subsidy scheme was established to prevent mass redundancies occurring. Employers that suffered a loss of expected revenue could apply for the subsidy on the condition they continued to retain their staff and pay at least 80% of their wages.¹² By mid-April 2020, over 40% of ANZ’s workforce was being supported by the scheme, protecting 1.65 million jobs and costing NZ\$9.9 billion (more than 10% of total core Crown revenue for the previous year).¹³ The wage subsidy scheme was extended until September 2020, and then also made available again to cover the resurgence lockdowns in Auckland.¹⁴ In response to Omicron and the move to the traffic-light settings a different set of wage subsidies have now been introduced, which are available to business that have been negatively affected by the pandemic despite being able to trade.¹⁵

While the wage subsidy scheme was successful in preventing mass redundancies, there were job losses in the early part of the pandemic, especially in sectors such as travel and tourism, hospitality and international education. The economy was heavily reliant on tourism prior to the pandemic making up 16.2% of export earnings and employing 8% of total workforce.¹⁶ Some opportunistic employers made staff redundant in the first few weeks of the pandemic and a large number of legal cases emerged (resolved mostly in the lower-level tribunal, the Employment Relations Authority).¹⁷ The impacts of those early pandemic job losses were not evenly felt, with 9 out of 10 jobs lost being previously held by women, reflecting both occupational differences and labour market patterns.¹⁸

Other Government support

In addition to wage subsidies, the Government introduced small increases to welfare benefit levels, an additional payment for winter heating costs, an increase in the minimum wage, and additional protections for tenants to prevent evictions.¹⁹ It is important to note that not all workers in ANZ enjoyed the same access to Government support. Workers on temporary work visas who found themselves effectively stranded in ANZ during lockdowns were not able to access social welfare benefits. Although the Government did introduce a

11. See Masselot, Annick and Maria Hayes “Exposing Gender Inequalities: Impacts of Covid-19 on Aotearoa New Zealand Employment” 2020. *New Zealand Journal of Employment Relations* 45(2): 57–69; also Duncan, above, at n 1.

12. The subsidy was initially available for 12 weeks and comprised a flat rate payment of NZ\$585.50 for employees working over 20 hours per week, and NZ\$350 for those working less than 20 hours.

13. Minister on Finance speaking on Radio New Zealand available at <https://www.mnz.co.nz/national/programmes/checkpoint/audio/2018743103/covid-19-wage-subsidy-bill-nears-10b-govt-starts-auditing>.

14. Details of the wage subsidy scheme and eligibility criteria can be found on the Government’s Covid-19 website here: <https://covid19.govt.nz/business-work-and-money/>.

15. For the latest information on the range of wage subsidies available, see <https://www.workandincome.govt.nz/about-work-and-income/news/2020/covid-19-financial-support-for-businesses.html>.

16. New Zealand-Aotearoa Government Tourism Strategy (May 2019), available at <https://www.mbie.govt.nz/immigration-and-tourism/tourism/new-zealand-aotearoa-government-tourism-strategy/>.

17. Early cases included *Sandhu v Gate Gourmet NZ Ltd* [2020] NZERA 259 (subsequently appealed to the Employment Court and Court of Appeal); *Raggett v Eastern Bays Hospice Trust t/a Dove Hospice* [2020] NZERA 266; *Aviation Workers United v Gate Gourmet NZ Ltd* [2020] NZERA 275.

18. See Masselot and Hayes, above at n 11.

19. The rates were increased to NZ\$40.91 per week for single people and NZ\$63.64 per week for couples and those with children. More information can be accessed at <https://www.workandincome.govt.nz/products/a-z-benefits/winter-energy-payment.html>. Protections for tenants were added through a new Schedule 5 to the Residential Tenancies Act 1986.

support package for migrant workers in response to union and media pressure, it wasn't equivalent, and these workers were at greater risk of exploitation.²⁰ It was reported that there were approximately 350,000 temporary visa holders onshore, including 70,000 students and 56,000 on visitor visas when the borders were closed.²¹

The current labour market

Although there were early job losses in certain sectors and an initial increase in unemployment, the labour market bounced back very quickly, with an increase in jobs and a decrease in unemployment compared to pre-pandemic position.²² The unemployment rate for the December 2021 quarter was 3.2% (with labour force participation at 68.8% and the underutilisation rate at 9.2%).²³ Labour shortages are a significant problem, with persistent understaffing exacerbating the stress levels of workers, heightening health and safety risks, and making sick leave and required self-isolation periods more difficult to manage. While ANZ had labour shortages prior to the pandemic, this had previously been ameliorated by relatively high rates of immigration over several decades. Border restrictions, the limited capacity of the MIQ system and the limited issue of visas have been blamed for the severity of current labour shortages.

As in other countries, workers are responding to their relative increase in market power, with more than half of the surveyed workforce intending to change jobs in 2022, leading to claims of a “great resignation.”²⁴ Union density increased over the pandemic and workers in a number of sectors are pursuing wage increases through collective bargaining and industrial action.²⁵ Strike action by workers in health and essential services has increased. While wage rates in ANZ have increased, so has inflation, peaking at 6.3% in January 2022 (inflation has been relatively flat at around 2% for decades).²⁶ Inflation and record high house prices, on top of ongoing supply chain issues look set to increase the cost of living, with the worst impacts to be felt by those at the bottom of the labour market.

Rising inequality

While the relative economic prosperity of ANZ through the pandemic is much lauded, it hides a massive increase in economic inequality. “[The] Covid-19 period has seen the greatest increase in inequality in the history of Aotearoa New Zealand.”²⁷ The official national accounts figures released for the September Quarter highlight that the Government policies introduced to prevent job losses and to stimulate and support the economy have resulted in a significant wealth transfer to businesses and the wealthy.²⁸ This wealth transfer sits alongside a substantial increase in asset prices, with house prices soaring as much as 25% per year over the pandemic.²⁹ At the other end, people on benefits, workers on low incomes and those in rental accommodation got significantly

20. Details of this package can be found on the Government's Covid-19 website, <https://covid19.govt.nz/business-work-and-money/financial-support/financial-support-foreign-nationals/>.

21. Figures provided in the Government press release that accompanied the passage of the amending legislation, <https://www.beehive.govt.nz/release/pragmatic-changes-immigration-act-respond-covid-19-passed>.

22. For a fuller labour market analysis see Blumenfeld, Stephen “Covid-19 and the Labour Market,” <https://www.wgtn.ac.nz/clew/news/covid-19-and-the-labour-market>.

23. Official Statistics New Zealand figures December 2021 Quarter: <https://www.stats.govt.nz/indicators/unemployment-rate>.

24. See results of the Employee Sentiment Index research released by HR software provider ELMO and a study by Jarrod Haar, discussed at <https://news.aut.ac.nz/news/the-great-resignation,-nz-style>; and <https://www.newshub.co.nz/home/money/2022/01/more-than-half-of-new-zealand-workers-considering-changing-jobs-in-2022.html>.

25. Union membership rates can be accessed at <https://www.companiesoffice.govt.nz/all-registers/registered-unions/annual-return-membership-reports/>.

26. See the New Zealand Reserve Bank for information on inflation, <https://www.rbnz.govt.nz/monetary-policy/inflation>.

27. Hickey, Bernard “Covid's big winners and losers revealed” *The Kākā* (newsletter), 26 January 2022.

28. Statistics New Zealand, September Quarter National Accounts data available at <https://www.stats.govt.nz/experimental/national-accounts-income-saving-assets-and-liabilities-september-2021-quarter>.

29. Latest figures discussed in Bell, Miriam “New Zealand's runaway housing market not unique globally,” *Stuff*, 23 January 2022, <https://www.stuff.co.nz/life-style/homed/real-estate/127530138/new-zealands-runaway-housing-market-not-unique-globally>.

poorer over the same period.³⁰ For example, rental prices increased by 6% per annum, with only around 2% wage growth. “The poorest are now NZ\$400 million more in debt and need twice as many food parcels as before Covid.”³¹ This pattern of rising economic inequality looks set to result in a K-shaped recovery, with long-term negative consequences for those at the bottom.

IV. Pressure on existing legal protections

The Covid-19 pandemic has highlighted pre-existing weaknesses in ANZ’s social policies and legal protections. The inadequate protections for migrant workers, those in non-standard working arrangements and those on low incomes have resulted in the most vulnerable members of society being the most negatively affected.

Minimum standards

The inadequacy of the minimum paid sick leave entitlement became apparent early in the pandemic, with many workers lacking sufficient paid leave to isolate or recover from Covid-19.³² The Government introduced a specific subsidy for sick leave in March 2020, and then amended the law to double the minimum paid sick leave entitlement for all employees in July 2021.³³ ANZ also lacks a minimum statutory entitlement to redundancy compensation, leaving some workers without financial support. This was initially responded to with the introduction of a new welfare benefit at a higher rate for those who lost their jobs due to the pandemic. The Government is now proposing to introduce a new state-run income insurance scheme that will be paid by employer and worker levies and provide compensation at 80% of the workers’ previous income for about seven months.³⁴ While this proposal is supported by both unions and employer groups it has come under criticism for offering greater support to middle-class men than to other groups in greater economic need.³⁵ The Government is yet to show any willingness to tackle the major problems in the social welfare system.

Health and safety

The Government’s strong use of mandatory public health measures required employers take specific actions to control infections (including closing many businesses down during lockdowns). As such, there was relatively limited business decision-making on how to respond to the infectious disease hazards of the pandemic. The new traffic light system allows more workplaces to operate during an outbreak, leaving daily decision making on health and safety measures to employers to a much greater extent. It remains to be seen how ANZ’s health and safety regime will hold up in these circumstances.

The largest gap in ANZ’s health and safety response is in relation to the mental health consequences of the pandemic and the measures introduced to combat it. While the Government’s required measures to stop the spread of disease were clear and comprehensive, guidance on how to respond to psychosocial hazards and stress were notably absent. ANZ’s health and safety system has long neglected worker mental health and chronic illness, with regulation and enforcement instead focusing on preventing accidental physical injuries.³⁶ As such, the law has struggled to cope with the increase in worker mental health issues and burn-out. On top of the

30. Hickey, above at n 27; and Statistics New Zealand, above at n 28.

31. Hickey, above at n 27.

32. The previous minimum paid entitlement was only 5 days per annum.

33. Holidays (Increasing Sick Leave) Amendment Act 2021.

34. For the new Income Insurance Scheme proposal see the Ministry of Business, Innovation and Employment website at <https://www.mbie.govt.nz/have-your-say/income-insurance/>.

35. See for example, Duff, Michelle “Where are the women in the social insurance scheme? On the benefit,” *Stuff*, 5 February 2022, <https://www.stuff.co.nz/opinion/300511079/where-are-women-in-the-social-insurance-scheme-on-the-benefit>.

36. Duncan, Dawn. 2018. “A Battle for Hearts and Minds: New Zealand’s Legal Response to Work-Stress-Related Depression and Cardiovascular Disease.” *New Zealand Journal of Employment Relations* 43(3): 3–17.

increased anxiety generated by the pandemic and lockdown measures, widespread working-from-home arrangements during lockdowns exposed many workers to isolation, role-conflict and hyper-connectivity, increasing worker stress levels and resulting mental health problems. Essential workers, such as those working in healthcare, retail and law enforcement also experienced an increase in workplace violence and harassment. New guidelines and a new specialist mental health team in the inspectorate have been established and enforcement action in these areas is starting to appear.³⁷ Despite this, the law continues to have significant deficiencies and an alliance of NGOs is currently calling for the Government to improve the law in this area and ratify ILO Convention 190.³⁸

Workers' compensation

Worker mental health is also a significant gap in the workers' compensation coverage. In ANZ the Accident Compensation Corporation (ACC) scheme performs the primary workers' compensation functions alongside the compensation of victims of non-work "accidents" (e.g. injuries as a result of traffic collisions, medical negligence, criminal victimisation or injuries while at home or playing sports).³⁹ While the ACC scheme has a wide scope and generous entitlements, it also has significant gaps in cover that impact on workers. The scheme excludes most work-related mental health problems and stress-related illnesses.⁴⁰ This leaves workers suffering from stress-related health problems due to their working conditions during the pandemic without suitable income compensation, treatment, rehabilitation and other support. This gap may be filled by the new income insurance scheme, which is proposed to provide cover to those forced to leave employment due to disability or long-term illness. However, the proposed requirement for six months of prior contributions in order to be eligible will likely still result in many workers affected by the pandemic being left outside the scheme.

The ACC scheme also excludes most infectious diseases and chronic health problems that fall outside of its narrow "occupational" test.⁴¹ The ACC scheme is currently choosing to provide cover to some health practitioners and border workers that contracted Covid-19 in the early stage of the pandemic. It is unclear how the scheme will behave when the disease is circulating in the community and cannot be easily attributed to a workplace exposure. With the current Omicron outbreak being allowed to circulate around the community this is a potential gap, leaving those workers who develop severe or long-term health consequences without that additional support. As above, the proposed income insurance scheme may provide cover to sufferers of a range of "long-Covid" type health conditions, assuming they fall within the eligibility requirements of the new scheme once established.

Vaccination mandates in workplaces

In mid-2021 the Government introduced vaccination mandates for workers in border security and MIQ facilities.⁴² Mandates were then extended to the health and education sectors, with all healthcare workers and teachers required to be vaccinated. There were legal challenges to these mandates, but these were unsuccessful.⁴³ The first case to rule in favour of workers challenging mandates was released in February 2022 and the implications of this are yet to be seen.⁴⁴ It is likely further cases will follow. In November 2021, the Covid-19 Response (Vaccinations) Legislation Act 2021 was passed, permitting employers to require their workers to be

37. Information on WorkSafe NZ's new mental health guidelines can be found on the WorkSafe NZ website, <https://www.worksafe.govt.nz/topic-and-industry/work-related-health/mental-health/>.

38. Coalition for a Safe World of Work website, https://www.together.org.nz/ratify_c190.

39. For more information on the ACC scheme, see ACC's website, <https://www.acc.co.nz>.

40. Accident Compensation Act 2001, section 30(5) excludes worker-related conditions caused by "non-physical stress." Cover is available under section 21B for a narrow range of single-incident trauma conditions.

41. Accident Compensation Act 2001, s 30 provides the test for the cover of occupational diseases.

42. Covid-19 Public Health Response (Vaccinations) Order 2021.

43. *GF v New Zealand Customs Service* [2021] NZERA 382.

44. *Yardley v Minister for Workplace Relations and Safety* [2022] NZHC 291.

vaccinated, ensuring paid time-off was provided to workers to be vaccinated or recover from vaccination side-effects, and to allow an employer to dismiss workers who refused. While the previous law did allow employers to require staff to be vaccinated, the legal position was complicated and uncertain. Many employers sought a clarification from the Government, and the legislation was enacted to clarify employer rights.

As a result, many workplaces across the public and private sectors have introduced their own vaccination requirements. There are no figures yet on the number of workers who have been dismissed for refusing to be vaccinated as the mandates are still being implemented. Vaccination mandates also apply to people entering workplaces as customers or students (other than essential services). At Red Level a vaccination pass is required for bars and cafes and can be used voluntarily in other types of businesses. For example, the commercial airlines operating within ANZ are requiring a pass to fly. Tertiary education providers have also required anyone attending campus or living in student accommodation to be vaccinated. This has an impact on workers that choose not to be vaccinated, as well as those required to enforce the mandates, with workers in hospitality reporting greater incidence of hostility by unvaccinated customers refused service.

While the Government's response to the Covid-19 pandemic has enjoyed high levels of public support, the introduction of vaccination mandates has seen more vocal opposition and protest action.⁴⁵ Groups of protesters have held small rallies and an occupation of the grounds in front of Parliament. Some protest groups seem to be heavily influenced by overseas "anti-vaccination" groups and "alt-right" media.⁴⁶ A number of Government and NGO organisations are worried about the effects of "overseas disinformation" spread by social media.⁴⁷ It is difficult to know how large the opposition to vaccination mandates in New Zealand is, with recent surveys and polling putting opposition to the mandates as high as 30%.⁴⁸

V. Conclusion

The impacts of the pandemic have not been evenly felt, with the most vulnerable groups in society hit the hardest. As Omicron cases increase, it is only now that ANZ is seeing large numbers of infections in the community, and it is these groups at most risk of poor health outcomes. For those people already under pressure, that pressure has increased. It also remains to be seen how our social policies and legal protections cope given the shift from elimination to "living with the virus." The pandemic has highlighted significant gaps in our labour laws. Some of these, such as inadequate sick leave and redundancy compensation look to be filled. Others, such as ANZ's poor health and safety and workers' compensation response to mental health problems still urgently need to be addressed. ANZ has already seen a rise in worker mental health problems and burnout, with the coming wave of Omicron infections, staff shortages and heightened stress likely to add to this further. In some ways, the pandemic is really only just beginning in ANZ and the true impacts are yet to fully emerge.



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45. Public polling has seen support drop from 90% approval in mid-2020, to only 70% approval in February 2022.

46. See Manhire, Toby "Figureheads and factions: the key people at the Parliament occupation," *Spinoff*, 18 February 2022, <https://thespinoff.co.nz/politics/18-02-2022/figureheads-and-factions-the-key-people-at-parliament-occupation>.

47. See the Disinformation Project, Te Pūnaha Matatini "Mis- and disinformation in Aotearoa New Zealand," <https://www.tepunahamatatini.ac.nz/2021/11/09/mis-and-disinformation/>.

48. Malpass, Luke "Parliament protest: New poll shows 30 per cent of Kiwis support anti-mandate protest," *Stuff*, 18 February 2022, <https://www.stuff.co.nz/national/politics/127808790/parliament-protest-new-poll-shows-30-per-cent-of-kiwis-support-antimandate-protest>.

Mitigating the Covid-19 Pandemic Impact on the Philippine Labor Market

Ronahlee A. ASUNCION

- I. Introduction
- II. The impact of Covid-19 pandemic on the Philippine labor market
- III. Policy responses of the Philippine government

I. Introduction

On 30 January 2020, the Department of Health (DOH) confirmed the first Covid-19 case in the Philippines. The patient was a 38-year old female tourist from Wuhan, China, where the virus was first detected. Two days later, her companion died due to the virus which was considered the first fatality outside China (BBC News 2020).

With the rising Covid-19 cases, the Philippines was placed in a state of public health emergency by President Rodrigo Roa Duterte under Proclamation No. 922 on 8 March, 2020. Soon, land, air and sea travel going to and from Metro Manila was suspended. Community quarantine for the entire island of Luzon then followed. Eventually, the whole nation was placed under a state of calamity for six months. Meanwhile, to fully enforce the home quarantine, more uniformed personnel were deployed to various parts of the country.

Mobility was limited. Each household was given one quarantine pass to buy essentials such as food and medicine. In addition to hospitals, only groceries, drugstores, and markets were allowed operations. Curfews were likewise implemented except healthcare workers, those working in the BPO (business process outsourcing) industry and those with health emergency needs. Otherwise, if caught, one runs the risk of being detained. Public gatherings were not allowed even religious gatherings.

Almost two years since lockdown was first imposed in the country, the Philippine government has implemented a new system based on the alert level system. The Covid-19 Inter-Agency Task Force for the Management of Emerging Infectious Diseases (IATF-MEID) released the “Guidelines on the Nationwide Implementation of Alert Level System for Covid-19 Response” on 14 December 2021. The following is the various alert levels and their corresponding description.

Alert Level 1 - refers to areas wherein case transmission is low and decreasing, total bed utilization rate, and intensive care unit utilization rate is low.

Alert Level 2 - refers to areas wherein case transmission is low and decreasing, healthcare utilization is low, or case counts are low but increasing, or case counts are low and decreasing but total bed utilization rate and intensive care unit utilization rate is increasing.

Alert Level 3 - refers to areas wherein case counts are high and/or increasing, with total bed utilization rate and intensive care unit utilization rate at increasing utilization.

Alert Level 4 - refers to areas wherein case counts are high and/or increasing, with total bed utilization rate and intensive care unit utilization rate at high utilization.

Alert Level 5 - refers to areas wherein case counts are alarming, with total bed utilization rate and intensive care unit utilization rate at critical utilization.

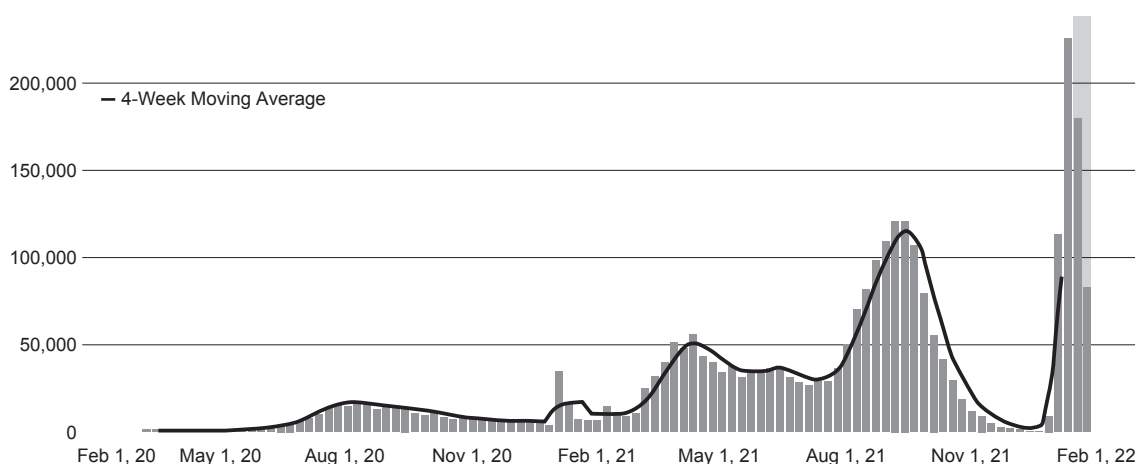
However, notwithstanding the alert level, an area may be put on granular lockdown or as described by the IATF on “a micro-level quarantine” depending on the evaluation of the Local Government Unit (LGU).

As the country struggles in its fight to allay the spread of the Covid-19 virus, its implementation of lockdowns has been dubbed as the world’s longest Covid-19 lockdowns (See 2021; Aljazeera 2021). And considering the surge of Covid-19 cases because of the highly transmissible Omicron variant, it seems that lockdowns will continue to be enforced. The Covid-19 tracker of the DOH shows the significant increase in the infections at the turn of the year as indicated in Figure 1. The DOH reported that as of 27 January 2022, there are 226,521 active cases bringing the total number of cases to 3,493,447. Of this number, 3,213,190 recovered and 53,736 died. With restrictions in mobility as well as limited business operations, these then put to question who are the most vulnerable workers affected by this situation.

II. The impact of Covid-19 pandemic on the Philippine labor market

The Philippine Statistics Authority (PSA) defines the working age population of the country as those who are 15–64 years old divided by those who are in the labor force and those who are not part of it.

Table 1 shows the annual increase in the working population from 2017 to 2021. The labor force participation rate and the employment rate decreased in October 2020 but made a slight recovery in November 2021 with 45.48 million employed persons out of 48.64 million Filipinos aged 15 years old and over. However, the PSA reported that the average weekly hours of employees decreased from 41.8 hours per week in July 2021 to 39.6 hours per week in November 2021. In the same period, the underemployment rate and unemployment rate remain high at 16.7% and 6.5% respectively. Underemployment as defined by the PSA is those who are employed but want to have additional hours of work, additional job, or a job with longer hours of work.



Source: Department of Health (<https://doh.gov.ph/>).

Note: Beside the numbers above, there are 590,377 cases with unreported date of onset of illness and date of specimen collection.

Figure 1. Weekly Covid-19 infection cases by date of onset of illness

Table 1. Labor force survey 2017–2021

	2017	2018	2019	2020*	2021 (Nov)*
Population aged 15 and over (in thousands)	69,891	71,339	72,931	73,733	74,805**
Labor force participation rate (%)	61.2	60.9	61.3	59.5	64.2
Employment rate (%)	94.3	94.7	94.9	89.7	93.5
Underemployment rate (%)	16.1	16.4	13.8	16.2	16.7
Unemployment rate (%)	5.7	5.3	5.1	10.3	6.5

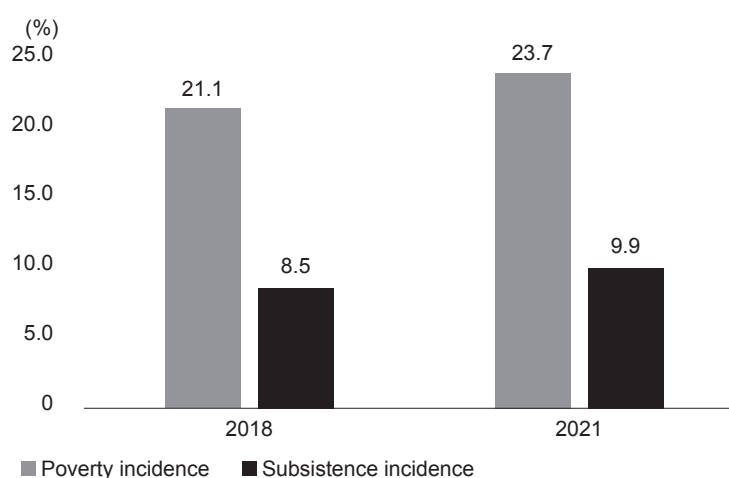
Source: Philippine Statistics Authority (<https://psa.gov.ph/>).

Note: *Estimates are preliminary and may change. **As of July 2021; estimates are preliminary and may change.

Consequently, reduced work hours mean decreased income to workers. The decrease in income, or worse, the loss of income, of millions of Filipino workers translate to higher poverty incidence as well as subsistence incidence in the country as shown in Figure 2. Poverty incidence in the first semester of 2021 was estimated at 23.7%, equivalent to 26.14 million Filipinos, while those in subsistence incidence was registered at 9.9 % or 10.94 million Filipinos. Poverty incidence according to the PSA is the proportion of Filipinos whose per capita income is not sufficient to meet their basic food and non-food needs, while subsistence incidence is the proportion of Filipinos whose income is not enough to cover even the basic food needs.

The impact of the Covid-19 pandemic has indeed hugely affected Filipino workers not only on their health but also on their jobs. It is interesting to note that in terms of age group, those aged 20 to 39 years old have the highest number of Covid-19 infections according to the DOH. Presumably, these are people who are active in the labor market. As of November 2021, the number of unemployed Filipinos has reached 3.159 million.

While the Covid-19 pandemic affected all workers, it however exposed the vulnerability of some sectors. Jobs of vulnerable workers are unstable, lack formal work arrangement, and do not have social and legal protections, and thus their income is usually low. They are also described as having a higher risk of getting injured, harmed, or ill as a result of working in a more dangerous setting. These workers are usually associated



Source: Philippine Statistics Authority (<https://psa.gov.ph/>).

Figure 2. Poverty and subsistence incidence: First semesters of 2018 and 2021

with the informal economy which the International Labour Organization (ILO) defines as independent, self-employed small-scale producers and distributors of goods and services. A study by the ILO in 2020 on the impact of the Covid-19 to the labor market of the Philippines revealed that those working in manufacturing, transportation and storage, accommodation and food service activities, arts, entertainment and recreation and tourism industries have a higher risk of being displaced.

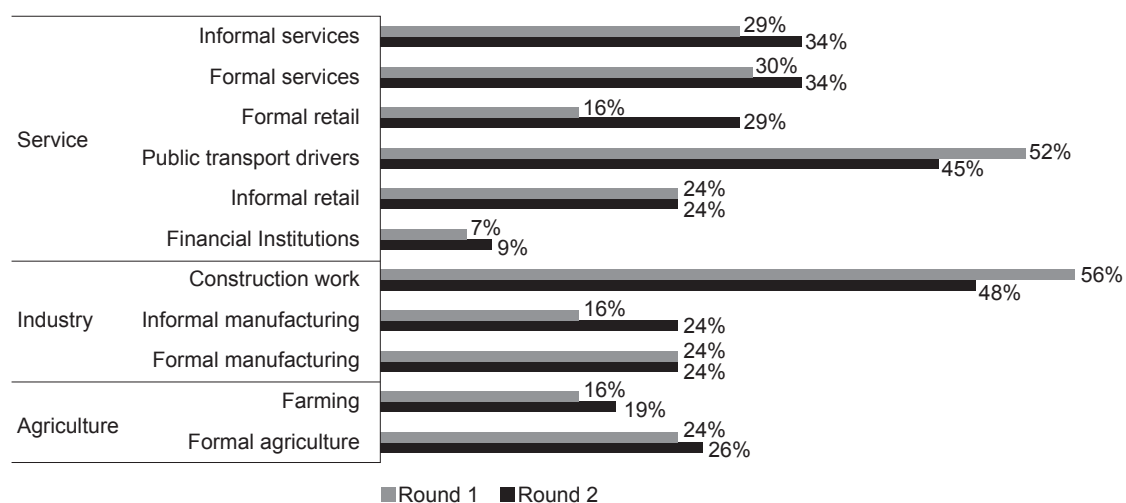
Construction workers

In the case of the construction industry, the lockdowns imposed in the country have severely affected its operations. This resulted in thousands of jobless construction workers. The monitoring survey conducted by the World Bank and the Department of Social Welfare and Development (DSWD) to poor and vulnerable rural communities, revealed that at both the first and second rounds, construction workers have the highest number of job losses as shown in Figure 3.

The construction industry is a main player in the Philippine economy. It contributed 18.5% of the growth of the gross domestic product (GDP) of the country in the fourth quarter of 2021 and 9.8% in the annual 2021 GDP (Philippine Statistics Authority 2021). However, in terms of employment, it still remains below the 4.2 million workers employed in the industry during the pre-Covid-19 pandemic. This can be attributed to the fact that: a) construction workers come from various parts of the country; b) the health measures being implemented by local governments such as permits and testing at the road border checkpoints; and c) the issue on who will shoulder the expenses incurred to comply with the health and safety protocols enforced by the government (Ibañez 2021).

Public transport drivers and delivery riders

Figure 3 shows that next to construction workers, public transport drivers experienced high job losses. With restrictions in mobility as well as strict health protocols in public transportation, air, land and sea travels operated on a very limited capacity. Alegado and Calonzo (2020) reported that around 600,000 jeepney drivers nationwide have either ventured on small online businesses or became delivery riders of on-demand delivery apps such as Grab, Lalamove, and Foodpanda. Considering the surge in demand in food delivery and courier services during the Covid-19 pandemic, this was seen as a silver lining by those who were able to engage in this work. In 2020, subscription to food delivery services increased by 61% and its gross revenue reached Php55 billion (Masigan



Source: The World Bank 2021 (<https://documents1.worldbank.org/>).

Figure 3. Incidence of severe job losses

2021). To ensure decent working conditions to these workers, the Department of Labor and Employment (DOLE) issued Labor Advisory No. 14 on 23 July 2021. Despite this, their working conditions still remain to be a major concern. Since they are not recognized as regular employees by these digital platform companies, their vulnerability is a two-edged sword. Because of their work arrangement, these workers have become subject to abuses and unfair labor practices. At the same time, in terms of health and safety, they are at high risk to road accidents, injuries, and Covid-19 virus infection and even death.

Aviation industry workers

The commercial aviation industry is another sector that incurred losses during the pandemic. For example, the Philippine Airlines (PAL) lost PhP73 billion in 2020 and PhP16.6 billion in the first half of 2021. With around 12,000 workers employed in PAL and in Cebu Pacific, Masigan (2021) reported that 40% of them have been retrenched, retired, or put on leave.

Informal workers

Street hawkers, small vendors and other self-employed individuals without paid employees are among those classified as informal workers. Based on the 2018 Informal Sector Survey, an estimated 15.68 million Filipinos are employed in this sector. Because of the Covid-19 pandemic, Simeon (2021) reported that the livelihood of 80% of those in the informal sector were adversely affected. These workers are the most vulnerable. The ILO describes them as workers who work long hours, whose income is low and irregular, whose skills and productivity are low, and whose working conditions are hazardous and unhealthy with very limited access to information, markets, finance, training, and technology. In addition, considering the informality of their work, they do not have social protection and are not covered by labor legislation. These are factors that further contribute to and perpetuate the poor living conditions of their families.

Tourism industry workers

In 2019, the tourism industry contributed 12.7% to the country's GDP. In that same year, the PSA reported that for every 100 employed Filipinos, 14 are in tourism-related businesses bringing their total employment to 5.71 million. In 2020, however, its GDP share significantly dropped to 5.4% as this sector also bore the brunt of the Covid-19 pandemic. Travel restrictions, border closures, and strict health protocols all contributed to the decline of its economic contribution to the country. A huge drop in the number of foreign tourists was experienced in 2020 at only 1.5 million as compared to about 8.26 million in 2019 (Statista 2021). As operations of tourism-related establishments are affected, many of their workers were laid off. In 2020, it was estimated that their workforce is down to 4.68 million which is considered the lowest since 2012 (Tirona 2021).

Health workers

The World Health Organization (WHO) estimates a 5.9 million shortage of nurses globally in 2018. The Philippines is a leading source of nurses in the world. From 2016 to 2019, an annual average of 16,000 Filipino nurses leave for employment abroad. With the Covid-19 pandemic, more and more countries are in dire need of nurses. Better pay, benefits, and working conditions have attracted nurses to work abroad. During the pandemic, the desire to work abroad has become more intense because of long work hours, low pay, low morale, delayed release of benefits, fatigue, burnout, stress, and heightened threat of Covid-19 infection. In fact, on 15 January 2022, 6,595 or 7.2% of the 91,838 healthcare workers in Metro Manila were under quarantine due to Covid-19 infection. These conditions have left these workers with no choice but to resign. Thus, mass resignation of healthcare workers then continues.

In 2020, the Private Hospitals Association of the Philippines (PHAP) estimated that 40% of palliative care

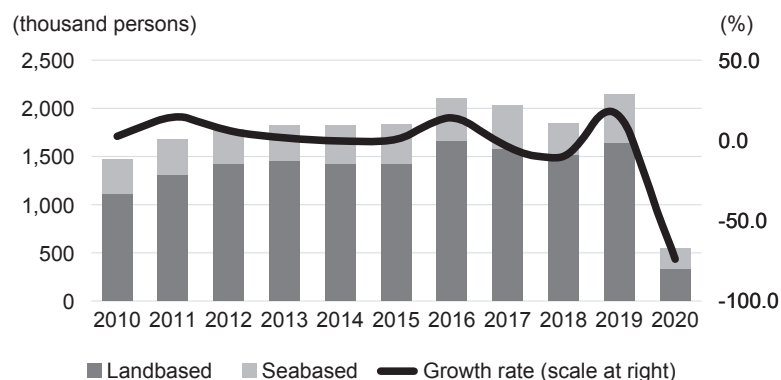
staff in private hospitals have resigned. Most of them intended to work overseas. Baclig (2021) reported that an addition of around 25% Filipino nurses have migrated to the United States to work as nurses in the midst of the Covid-19 pandemic. As a measure to prevent shortage of healthcare workers in the country, the Philippines put an initial annual deployment cap of 6,500 in June 2021. However, the clamor from nurses themselves prompted the government to increase it to 7,000 in December 2021.

Overseas Filipino Workers (OFW)

From 2.2 million in 2019 to 549,800 in 2020, a significant drop in the deployment of Overseas Filipino Workers (OFW) both landbased and seabased has been recorded by the Philippine Overseas Employment Administration (POEA) as shown in Figure 4. Travel restrictions by the Philippine government, the cap set on the deployment of healthcare workers, and the visa regulations with stringent medical requirements by receiving countries have all contributed to this decline.

Meanwhile, as the world struggles to combat the effects of the Covid-19 pandemic on the economy, thousands of OFWs were displaced. The DOLE reported a total of about 639,000 displaced OFWs as of 11 April 2021. It also estimated that this number may reach more than a million by December 2021. This is a major blow to the Philippine economy considering that OFW remittances account for 9.3% of its GDP from 2010 to 2019. However, a 5.1% increase in cash remittances in August 2021 alone amounting to US\$2.609 billion was recorded by the Bangko Sentral ng Pilipinas (BSP). And from January to August 2021, there is a 5.7% increase in cash remittances for a total of US\$20.38 billion. This is a welcomed development as it was previously predicted by the World Bank and the BSP itself that the country would suffer in 2020 from a 5% and 2% decrease in remittances respectively.

In September 2021, more than 4 million Filipinos were out of work, and two months later, it slightly recovered. However, job quality worsened considering that 7.617 million employed Filipinos were still looking for additional jobs or longer working hours (Yraola 2022). The ILO explained that job applicants may have difficulty in finding work because establishments are downsizing, reducing work hours and freezing hiring for business to survive the Covid-19 pandemic. Workers may also find their skills irrelevant because of digitalization. Lost skills also mean lost opportunities. Hence, workers are exposed to a double-tiered risk of job disruption due to digitalization and Covid-19 (ILO 2020). In light of this, it is important to future-proof Filipinos for higher employability. Dondi et al. (2021) identified a mix of foundational skills and attitudes which they call DELTAs or distinct elements of talent. Table 2 shows four general skill categories, their corresponding skill groups, and



Source: Philippine Overseas Employment Administration (<https://www.poea.gov.ph/>).

Figure 4. Overseas Filipino Workers deployment, 2011–2020

56 of foundational skills and attitudes.

BPO industry resilience

Not all industries however were adversely affected by the Covid-19 pandemic. The BPO industry for example proved its resilience during these times. The IT and Business Process Association of the Philippines (IBPAP) reported that in 2020 employment increased by 1.8% bringing the total BPO workers to 1.32 million and an increase in 1.4% revenue making its contribution to the GDP of the country a total of US\$26.7 billion. The employment forecast is also favorable in the next two years as IBPAP predicted that it will reach 1.46 million (The Manila Times 2021).

Rise of online business

Another positive development during the Covid-19 pandemic is the significant increase in online business. Filipinos are pushed to engage in online business either as their sole or additional means of livelihood. Aside from the need to earn, particularly to those who were displaced from work, the long lockdowns and the availability

Table 2. Foundational skills and attitudes needed in the future of work

Cognitive		Interpersonal	
Critical thinking <ul style="list-style-type: none"> • Structured problem solving • Logical reasoning • Understanding biases • Seeking relevant information 	Planning and ways of working <ul style="list-style-type: none"> • Work-plan development • Time management and prioritization • Agile thinking 	Mobilizing systems <ul style="list-style-type: none"> • Role modeling • Win-win negotiations • Crafting an inspiring vision • Organizational awareness 	Developing relationships <ul style="list-style-type: none"> • Empathy • Inspiring trust • Humility • Sociability
Communication <ul style="list-style-type: none"> • Storytelling and public speaking • Asking the right questions • Synthesizing messages • Active listening 	Mental flexibility <ul style="list-style-type: none"> • Creativity and imagination • Translating knowledge to different contexts • Adopting a different perspective • Adaptability • Ability to learn 	Teamwork effectiveness <ul style="list-style-type: none"> • Fostering inclusiveness • Motivating different personalities • Resolving conflicts 	
Self-leadership		Digital	
Self-awareness and self-management <ul style="list-style-type: none"> • Understanding own emotions and triggers • Self-control and regulation • Understanding own strengths 		Digital fluency and citizenship <ul style="list-style-type: none"> • Digital literacy • Digital learning • Digital collaboration • Digital ethics 	
Entrepreneurship <ul style="list-style-type: none"> • Courage and risk-taking • Driving change and innovation 		Software use and development <ul style="list-style-type: none"> • Programming literacy • Data analysis and statistics • Computational and algorithmic thinking 	
Goals achievement <ul style="list-style-type: none"> • Ownership and decisiveness • Achievement orientation 		Understanding digital systems <ul style="list-style-type: none"> • Data literacy • Smart systems • Cybersecurity literacy • Tech translation and enablement 	
<ul style="list-style-type: none"> • Integrity • Self-motivation and wellness • Self-confidence • Energy, passion, and optimism • Breaking orthodoxies • Grit and persistence • Coping with uncertainty • Self-development 			

Source: Dondi et al. (2021).

of courier services have given Filipinos an opportunity to engage in online business. The Department of Trade and Industry (DTI) recorded a dramatic increase in online business registration from 1,700 in the first quarter of 2020 to about 88,000 at the end of the year. A total of US\$12 billion or 3.4% of the Philippine GDP in 2020 came from e-commerce. This is a noteworthy accomplishment considering the vulnerability to economic shocks of micro, small and medium sized enterprises.

III. Policy responses of the Philippine government

Vibrant, robust, and dynamic were the words used to describe the Philippine economy in the pre-Covid-19 pandemic. The World Bank (2021) reported an increase in the average annual growth rate from 4.5% between 2000 and 2009 to 6.4% between 2010 and 2019. Inclusive growth was manifested in the reduction of poverty at 16.6% in 2018 from 23.3% in 2015 as well as the decline of Gini coefficient in the same period from 44.9 to 42.7. However, the Covid-19 pandemic hit the good economic performance of the country the hardest. The country experienced its first recession in 29 years as economic activities were severely hampered due to limited mobility of people and business operations. Establishments were either temporarily or permanently closed. According to the DTI, 25.9% of businesses they surveyed have stopped operations while some closure was just temporary. With more people out of work, household expenditures consequently went down.

The Philippine government then launched its economic recovery measures which are anchored on the following 4-pillar socioeconomic strategy:

Pillar I: Emergency support for poor and low-income households, small business employees, and other vulnerable groups through various assistance programs and wage subsidies.

Pillar II: Expanded medical resources to fight Covid-19 and ensure the safety of frontliners (health insurance coverage for all Covid-19 patients; special risk allowance, hazard pay, and personal protective equipment (PPE) for frontline health workers; increased testing capacity; etc.).

Pillar III: Monetary actions to keep the economy afloat and other financing support for emergency response and recovery initiatives.

Pillar IV: An economic recovery program to create jobs and sustain growth, including Bayanihan II (Bayanihan to Recover as One Act).

Source: Department of Finance (<https://www.dof.gov.ph/>).

To address the employment problem and help the country recover faster from the national crisis, the government used the “whole-of-society” approach to come up with solutions that are better, balanced, appropriate, inclusive, and more responsive to the needs of various constituents. To achieve these, focus group discussions (FGD) were conducted and were participated by employer groups, labor sector, government representatives and other stakeholders. The discussions focused on restarting economic activities, restoring business and consumer confidence, upgrading and retooling the workforce, and facilitating labor market access.

These sectoral dialogues helped in crafting the plan of action under the National Employment Recovery Strategy (NERS) 2021–2022. On 25 June 2021, President Duterte signed Executive Order No. 140 adopting the NERS and reinforcing job generating programs through the NERS Task Force. Under EO No. 140, the NERS is focused on: i) the creation of a policy environment that encourages generation of more employment opportunities with improved access to employment, livelihood, and training opportunities; ii) the improvement of employability,

wellness, and productivity of workers; and iii) the provision of support to existing and emerging businesses, ensuring the preservation of employment.

Economic relief programs were launched by the government such as the Social Amelioration Program (SAP) and the Tulong Panghanapbuhay sa Ating Disadvantaged/Displaced Workers (TUPAD). Both SAP and TUPAD programs target those who were affected by the Covid-19 pandemic and quarantines. The SAP beneficiaries are the 18 million poorest families in the country. They receive cash assistance from the government between PhP5,000 to PhP8,000 depending on the prevailing minimum wage on the place of residence of the beneficiary. The TUPAD program is an emergency employment assistance for displaced workers, underemployed and seasonal workers both from formal and informal sectors. Under this program, employment is for a minimum period of 10 days, but not to exceed a maximum of 30 days, depending on the nature of work to be performed. The DOLE reported that as of September 2021, 2.9 million have benefitted from the TUPAD program while according to the Department of Social Work and Development (DSWD), 14,289,997 poor families have benefited from the second tranche of the SAP program as of 3 December 2021.

The decrease in unemployment rate in November 2021 at 6.5% from the previous month of 7.4% is considered a significant improvement. However, during the 18th Congress of the Senate of the Philippines, Senator Joel Villanueva, Chair of the Senate Labor Committee noted that the 780,119 jobs created from the NERS Action Agenda are merely short-term employment and not regular employment as the figure included the Government Internship Program (GIP), the Special Program for Employment of Students (SPES), and TUPAD. He said that while the displaced workers need immediate employment, it is necessary that NERS provide regular, stable and dependable employment opportunities. The target of the NERS program is to generate one million jobs from the private sector and 200,000 jobs from the public sector.

Nonetheless, the Philippine government is optimistic that recovery is on its way. The World Bank (2021) reports that although the Covid-19 virus still remains as a major threat to its economic recovery, it projected a 5.8% average growth in 2022 and 2023. The gradual opening of businesses, government spending on infrastructure, and continued Covid-19 vaccination among others will contribute to faster economic growth. To further boost its growth, The World Bank (2021) stated that it is imperative to enhance private sector participation, upskill workers, and streamline administrative procedures. The Asian Development Bank (2021) is likewise optimistic in its forecast on the Philippine economy. It projects a 6.0% growth in 2022 from its 5.1% growth in 2021. The “Build, Build, Build,” the infrastructure development program of the country as well as the increase in vaccinated Filipinos are seen as the factors that will help spur its economic growth.

Undeniably, the Covid-19 pandemic has exposed the inequality and the vulnerability of some workers in the labor market. Considering this, being the champion of workers’ rights, it is fitting for labor unions to be at the forefront in ensuring and protecting the rights of workers during and in the post-Covid-19 era. And while everyone is affected by the Covid-19 pandemic, its consequence is not the same to all. It has a domino effect and spill-over effect in all facets of life. It has not only affected the health of humanity but certainly its quality of life. Hence, to say that the effect of the Covid-19 pandemic is only on the labor market is an understatement.

Indeed, mitigating the devastating impact of the Covid-19 pandemic to the Philippine labor market is not an easy task. In this VUCA world where things are volatile, uncertain, complex, and ambiguous, the road to economic recovery may be long, hard, and difficult. However, with the right actions and decisions of all stakeholders and armed with much optimism and determination, the country will eventually surmount this uphill battle.

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COVID-19 and Labor Law in Taiwan

Wanning HSU

As the COVID-19 pandemic is raging around the world, Taiwan's labor market is inevitably affected. Its impact on the economy and industry is mainly reflected on the tourism and retail industries, as well as consumption and exports.¹ According to the statistics from the Ministry of Labor, 7.3% of workers suffered from layoffs, pay cuts, absence of pay increases, or company closures due to the COVID-19 outbreak in 2020.² However, compared to other countries, the overall impact of the pandemic in Taiwan is mild. The unemployment rate has not increased significantly, and the people with reduced working hours through labor negotiations are mainly in the manufacturing industry.³

Upon the Coronavirus outbreak in Taiwan, although the national-level state of emergency declaration has already been issued, a nationwide Level 3 alert was announced from May 15 to July 26, 2021. During the nationwide Level 3 alert period, the government took on the following three main measures:

- Wear a face mask at all times when going out.
- Barring gatherings of more than 5 people indoors and 10 people outdoors.
- Only the business and public areas that are necessary for life support, order maintenance, essential services, medical treatment, and official business continue to operate, while the rest are closed.

The alert level was lowered to Level 2 on July 27, 2021, and has remained as such. Aside from that, the "Special Act for Prevention, Relief and Revitalization Measures for Severe Pneumonia with Novel Pathogens" (the "Bailout Act") was proposed by the Executive Yuan (i.e., the Cabinet) on February 20, 2020. The Bailout Act swiftly cleared the legislative floor on February 25, 2020, and was signed into law by the President on the same day.⁴ The measures taken by the government are mainly in accordance with the Communicable Disease Control Act.⁵ Under the Bailout Act, up to NT\$ 1,050 billion have been earmarked to provide assistance with respect to the prevention of COVID-19,⁶ and the key issues of wages, compensation and leave for those under quarantine are as below:

- For individuals assigned to home isolation, home quarantine, group isolation, or group quarantine, the authorities (agencies), enterprises, schools, legal entities, and organizations shall provide disease prevention isolation leave during the isolation or quarantine period and may not treat them as absence without a reason,

1. Su M, Chung C and Yueh C. 2020. "The Impact of COVID-19 on Industries in Taiwan and Strategies for its Mitigation," *Straits Business Monthly*, 340, 4, <https://www.sef.org.tw/files/6284/4257D21F-C8BE-4712-86CF-B6A4ACDD2BE8.pdf>.

2. <https://statdb.mol.gov.tw/html/svy09/0923menu.htm>.

3. Qiu Junrong. 2020. "Challenges and Responses to the Impact of the Epidemic on the Industry and Job Market," *TAIWAN LABOR QUARTERLY*, 63, 17.

4. <https://mohlaw.mohw.gov.tw/ENG/EngContent.aspx?msgid=1051&KeyWord=> (last visited June 11, 2022).

5. <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=L0050001>.

6. <https://www.ey.gov.tw/Page/9277F759E41CCD91/c9a4b4ca-8fae-4961-b024-16aef73ec873>.

force them to take personal leave or other leaves, deduct attendance bonuses, dismiss them, or impose other unfavorable penalties. The same shall apply to family members who take leave to care for isolated or quarantined individuals.

- While employers are not required to provide full-pay to employees on epidemic-prevention leave, employers that provide full-pay epidemic-prevention leave to their employees will enjoy an income tax deduction equivalent to 200% of the salary paid to those on epidemic-prevention leave. The same shall apply to salaries for employees who take leave due to response measures conducted in accordance with orders issued by the Commander of the Central Epidemic Command Center (CECC) during their leave period. On the other hand, employees who receive no pay or subsidy during epidemic-prevention leave (either for being quarantined or having to care for a quarantined family member who is unable to take care of themselves) may apply for “epidemic-prevention compensation” with the government, provided that the applicants are in full compliance with the quarantine regulations.

Ministry of Labor has formulated relief measures for workers affected by severe special infectious pneumonia as follows:

- Postponement of payment of labor insurance premiums, employment insurance premiums, or monthly contribution of labor pension (Article 3, 4).
- Providing living allowance for self-employed workers who have been insured under labor insurance by professional trade unions since April 30, 2020, and total personal income in 2019 or 2020 did not reach NT\$ 480,000 (Article 3, 5).
- Providing “low-interest loan for workers” (Article 3, 7).

There are also some guidelines and rules on these issues, which are as follows:

- For workers who are on unpaid leave, the Ministry of Labor has amended the “Recharge and Restart Training Program” to include communicable disease control reasons stated in Communicable Disease Control Act and raised the subsidy for labors and business entities. This makes the program applicable for both workers and employers that have agreed to take 16 or more hours of unpaid leave per 2-weeks due to this pandemic and have reported this agreement to the local labor administration. Accordingly, workers can attend vocational training held by business entities, regional branches, or commissioned organizations free of charge, and receive subsidizing allowances according to the attended training hours; business entities can receive up to NT\$ 3.5 million subsidy for holding vocational training.⁷
- Regarding the wage difference between before and after taking unpaid leaves, the ‘Work at Ease’ program provides a subsidy to stabilize employment. For the workers who are insured under the employment insurance system and have been sent on unpaid leave for 30 consecutive days, they are listed and reported by the local labor administration, and the program subsidizes them monthly with 50% of their wage difference. The maximum amount of subsidy is NT\$ 11,000 per month and can be received for up to 6 months.
- To decrease the impact of the pandemic on the employers and encourage the enterprises that send workers on unpaid leave to improve their equipment during that time, the Ministry of Labor formulated “Directions for Subsidizing Business Entities to Improve Workplace Environment and Workers’ Physical and Mental Health,” which prioritizes subsidizing those whose operations have been affected by COVID-19. The categories applicable for subsidization include measures taken for the improvement of the workplace environment and workers’ physical and mental health.

7. <https://www.wda.gov.tw/cp.aspx?n=E584F68256160487> (last visited Jan. 21, 2022).

- The Ministry of Labor set and published the “Guidelines on Workplace Safety and Health Protection Measure in Response to the Outbreak of COVID-19” to prevent the spread of COVID-19 in the workplace. According to the guidelines, employers shall implement measures for checking the temperature of all personnel accessing the workplace and identifying those who may have been infected by the virus, providing employees with training on preventing the spread of the virus at the workplace, ensuring the proper ventilation and cleanliness of the workplace, and conducting regular disinfection on the premises. The health and safety of employees should be the top priority of all considerations. Employers should avoid dispatching employees to the infected areas in China unless necessary. Employees who have recently traveled to virus-affected areas either for business or personal reasons shall be closely monitored for their health status and be subject to the necessary health tracking and management measures.

While the CECC has set the social distancing at 1 meter outdoors and 1.5 meters indoors, the Ministry of Labor systematically advertised to ‘work from home’ and set the “Occupational Safety and Health Reference Guide for Work from Home,” which advises employers to carry out hazard identification and risk assessment for working from home and illustrates safety and health management precautions. However, there are still many legal issues regarding working from home, such as whether there are obstacles in the Labor Standards Act for employers to implement telework, whether employers have the right to implement telework orders unilaterally, and whether employees have the right to telework when the employers ask them to return to the office. Moreover, the management of teleworkers’ working hours, the protection of employees’ privacy and private life, the right to disconnect, and the workers’ compensation such as when the employees are injured at work or acquire an occupational disease during the implementation of telework.

The characteristics of Taiwan’s industrial development after the epidemic are: (1) the information industry has considerable developing opportunities, (2) the traditional manufacturing industry must undergo a digital transformation as soon as possible, and (3) the digital and information industries will be more prosperous due to the drive of the market and policies.⁸ Therefore, in the post COVID-19 era, due to the increased demand for remote work, the government should review whether the current labor regulations are sufficient,⁹ provide assistance in the industrial transformation of enterprises, and try to meet the needs of digital software professionals through vocational training and other policies.



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8. Supra footnote 3.

9. Lai Weiwen. 2020. “Changes and Difficulties of Work Patterns in Taiwan’s Labor Market in the Post-epidemic Era,” *TAIWAN LABOR QUARTERLY*, 63, 58.

The 5th JILPT Tokyo Comparative Labor Policy Seminar 2022

Organizer

The Japan Institute for Labour Policy and Training (JILPT)

Date

March 9, 2022

Venue

The 5th Seminar was held online.

Seminar Theme

The Impact of COVID-19 on Labor Market and Policy Responses: Strengthening Social Protection for Vulnerable Workers

Program

Opening Ceremony and Keynote Lectures

Welcome and Opening Remarks: Yoshio HIGUCHI, President, JILPT

Keynote Lectures:

Stéphane CARCILLO, Head of Jobs and Income Division, Directorate for Employment, Labour and Social Affairs, OECD

María Emilia CASAS BAAMONDE, President, International Society for Labour and Social Security Law (ISLSSL)

Session 1: Research Presentations, Part 1

Chair: Yanfei ZHOU, Professor, Department of Studies on Contemporary Society, Faculty of Integrated Arts and Social Sciences, Japan Women's University

Presentation 1 (Japan) "COVID-19's Impact on Labor Market and Policy Responses in Japan,"

Koji TAKAHASHI, Senior Researcher, JILPT

Presentation 2 (India) "Strengthening India's Social Protection Architecture for the Informal Sector: Lessons from the Covid-19 Crisis," Radhicka KAPOOR, Senior Fellow, the Indian Council for Research on International Economic Relations

Presentation 3 (Indonesia) "The Social Security and Unemployment Trends during COVID-19 Pandemic in Indonesia," Ike FARIDA, S.H., LL.M, Doctor of Law, Founder and Managing Partner at Farida Law Office

Presentation 4 (Malaysia) "Impact of the COVID-19 Pandemic on Malaysian Labour Market and Policy Responses," Beatrice Fui Yee LIM, Senior Lecturer, Faculty of Business, Economics and Accountancy, Universiti Malaysia Sabah

Presentation 5 (Australia) “COVID-19 and Australian Labour Regulation: An Overview Impacts, Policy Responses and Future Directions,” Adriana ORIFICI, Lecturer, Department of Business Law and Taxation, Monash University and PhD Candidate, University of Melbourne

Chair’s Comments

Session 2: Research Presentations, Part 2

Chair: Chikako KANKI, Associate Professor, Graduate Schools for Law and Politics, Faculty of Law, The University of Tokyo

Presentation 6 (China) “Resilience and Its Reinforcement: How China’s Labor Market Resists the COVID-19 Epidemic and Policy Efficacy,” Tianyu WANG, Associate Professor, Institute of Law, Chinese Academy of Social Sciences

Presentation 7 (Korea) “Giving a New Present or Returning the Original Share: New Insight about Law and Policy for Working People in Korea,” Sukhwan CHOI, Associate Professor, School of Law, Seoul National University

Presentation 8 (New Zealand) “Added Pressure: Exploring the Impacts of Covid-19 on Workers and Labour Laws in Aotearoa New Zealand,” Dawn DUNCAN, Lecturer, Faculty of Law, University of Otago

Presentation 9 (Philippines) “Mitigating the Covid-19 Pandemic Impact on the Philippine Labor Market,” Ronahlee A. ASUNCION, PhD., Dean, School of Labor and Industrial Relations, University of the Philippines Diliman

Presentation 10 (Taiwan) “COVID-19 and Labor Law in Taiwan,” Wanning HSU, Professor, College of Law, National Taiwan University

Chair’s Comments

Concluding Session

Moderator: Takashi ARAKI, Professor, Graduate Schools for Law and Politics, Faculty of Law, The University of Tokyo

What's on the Next Issue

Japan Labor Issues

Volume 7, Number 41

January 2023

tentative

●Judgments and Orders

Commentary

Employers' Duty for Safety of
Multiple-Job-Holder Employee Who
Worked Long-Hours
The *Daiki Career-Casting Case*
Osaka District Court (October 28, 2021)

●Series: Japan's Employment System and Public Policy

Employment and Employment Measures
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