

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

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## 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.

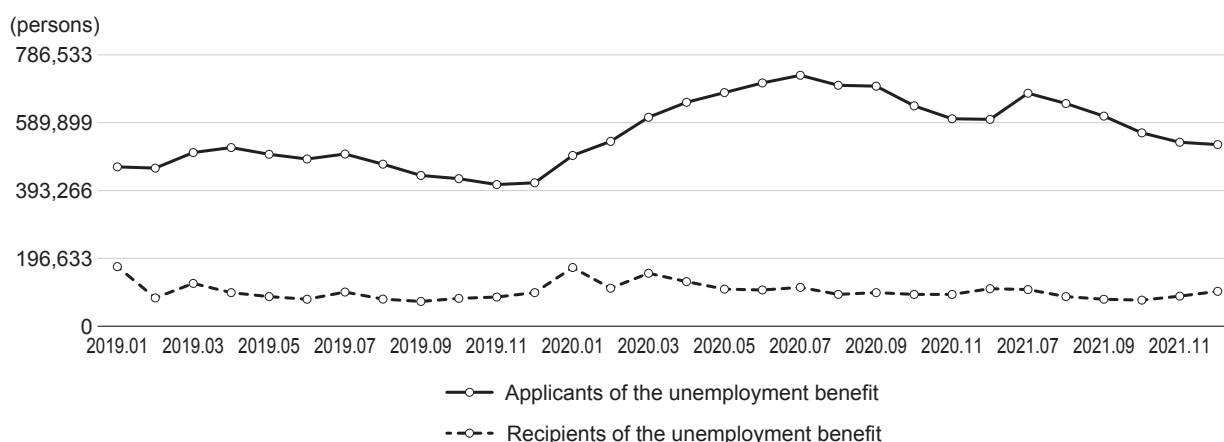
This paper aims at summarizing the situations in Korea in the age of COVID-19 and the responses to labor and social security issues. In Part II, I will describe the situations in Korea and make it clear that there appeared many problems, some of which were already dealt with and some still are pending. 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).

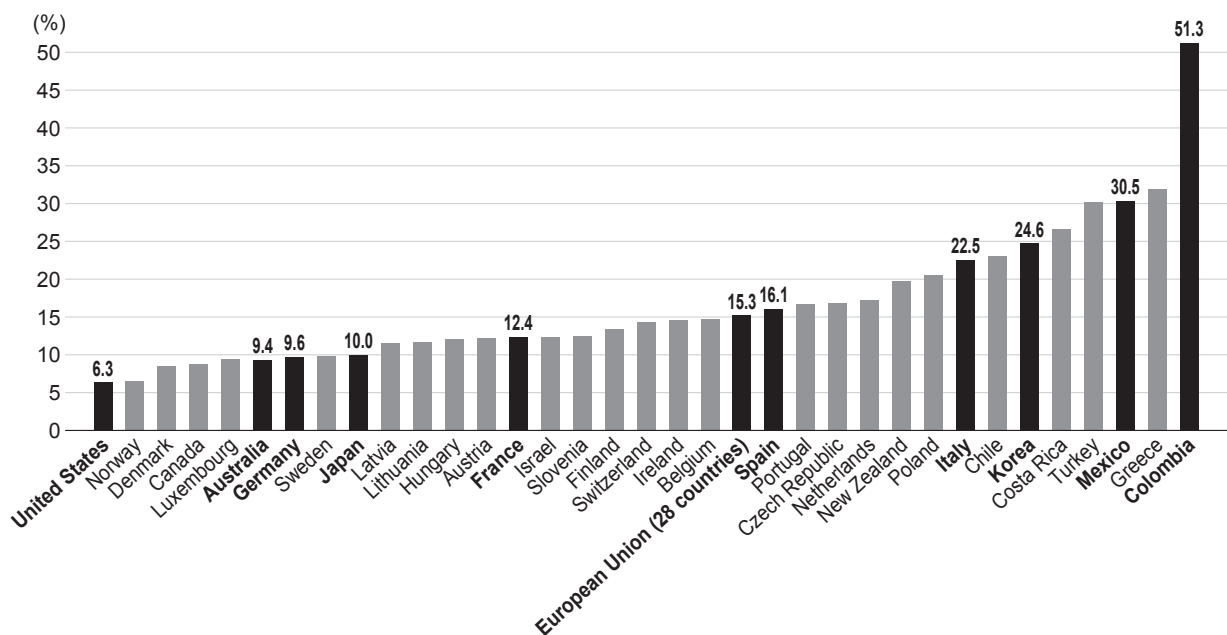
Figure 1. Change in numbers of applicants/recipients of the unemployment benefit

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.

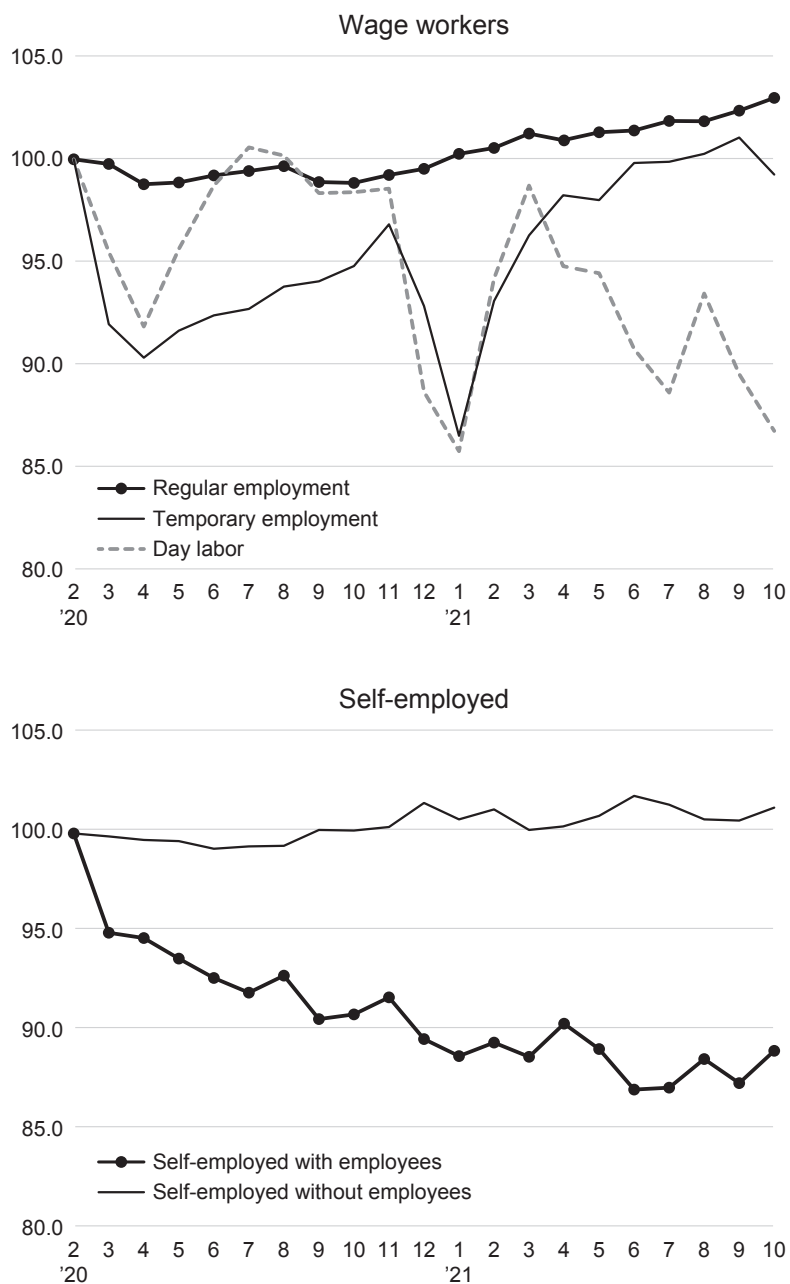
High rate of self-employed (especially without hired staff) is another unique feature of Korea, and this also was affected by COVID-19. The number of self-employed had decreased. For the year of 2020, self-employed with hired staff decreased by 1.65 million. Some of the self-employed without hired staff 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

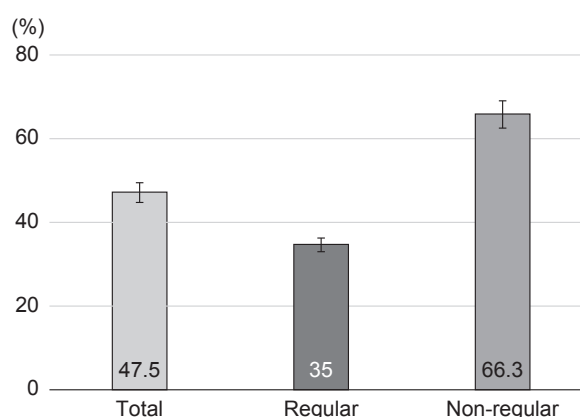


Source: "Center for Labor Trends Analysis," KLI working paper 2022-01, January 2022.

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.<sup>1</sup> 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.<sup>2</sup> 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/](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,<sup>3</sup> 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.<sup>4</sup> 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

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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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