



# Regulating Work through Digital Labour Platforms in South Korea and Questions for Our Future

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# 01. Introduction

## Framework of labour law in South Korea

### Constitution, Art. 10 (Pursuit of Happiness, Human Dignity)

Art. 32 (Working citizens' rights to minimum terms and conditions)

#### <Individual Employment Law>

##### • Labour Standards Act

- Equal Employment Opportunity And Work-family Balance Assistance Act
- Minimum Wage Act / Wage Claim Guarantee Act
- Act on the Guarantee of Employees' Retirement Benefits
- Fixed-term & Part-time Employees Act / Temporary Agency Workers Act
- OSHA/Occupational Accident Compensation Insurance Act
- Employment Insurance Act

Art. 33 (Workers' rights to freedom of association, collective bargaining, and industrial action)

#### <Collective Labour Law>

##### • Trade Union and Labour Relations Adjustment Act

- Labour Relations Commission Act
- Labour-Management Council Act
- Trade Union Act for Teachers
- Trade Union Act for Public Officials
- Act for Public Officials' Councils
- Economic And Social Development Commission Act

**Civil Law:** Civil Act and other legislation will apply to labour disputes as subsidiary sources of law

**Criminal Law:** Criminal Act and other legislation (often in labour law legislation) to punish off-limit



## 02. History of Labour Law in South Korea

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### Birth of Modern Labour Law in South Korea

- 'Big 4 Acts' enacted in 1953: the year when the Korean War Armistice Agreement was signed
- Mixture of Continental European law and the United States' collective labour law institutions
  - 1) Civil law system (Germany, France ...) transplanted during Japanese colonialism in early 21C
  - 2) Drafted under influence of Japanese *Labour Standards Act* made under US military gov't after WW2  
e.g. Unfair labour practice and labour relations commission (similar to NLRB in US)

### 'Mid-life Crisis' of Korean Labour Law in its 40s

- Foreign-exchange crisis in 1997: 'The IMF bailout'
- 'The IMF's bailout' require comprehensive economic restructuring programmes
  - 1) included labour law reforms proceeded toward more labour market flexibility, through
  - 2) systemized social dialogues between the social partners and the government  
(now the Economic, Social and Labour Council),
  - 3) legalising <(collective) dismissal for managerial reasons> and <temporary agency work>



## 03. Blind spots of Labour Law: 'non-standard employment'

### ☰ Non-regular employees

- employees on an employment contract for fixed-term, part-time and/or with an agency work business or subcontractor

### ☰ 'Persons in Special Type of Employment': dependent self-employed

- Occupational Accident Compensation Insurance Act, Art. 125 defines 'PSTE' as those who are not employees under *Labour Standards Act*, although working in a similar manner to them, and
  - 1) mainly provide one line of business with labour service necessary for the operation thereof on a routine basis, and receive payment for such service and live on such pay;
  - 2) not use other persons to provide such labour service. → NOW replaced by "Labour-Provider"

### ☰ Emerging issue of work through 'digital labour platform'

- 7.4% of the employed if broadly defined,
- 0.9% of the employed if narrowly defined, i.e. those who provide labour through the digital platform that affects the assignment of work and is capable of monitoring the work



# Appendix: Expansion of Occupation Categories Covered

## 3. Institutional Protection

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Korea

### (3) Social Protection and Occupational health and safety

< Chronology of Industrial Accident Compensation Insurance Act on expansion of the range of persons in special types of employment >

Enforcement Date	Applied Occupations
2008.7.1. (2008.6.25. revised)	1. Insurance planner 2. Concrete mixer truck driver 3. Home-school[home-study] teacher 4. Golf Caddie
2012.5.1. (2011.12.30. revised)	5. Delivery worker 6. (Exclusive) express service worker
2016.7.1. (2016.3.22. revised)	7. Mortgage outsourcing 8. Recruiter of credit card members 9. (Exclusive) proxy driver
2020.7.1. (2020.1.7. revised)	10. Door-to-door salesperson 11. Rental service inspector 12. Worker for repair and installation of appliance 13. Truck owner(container, cement, steal material, hazardous materials)
2021.7.1. (2021.1.12. revised)	14. Software engineer
2022.7.1. (2022.3.15. revised)	15. Delivery driver for distribution (5. + delivery driver of main and branch line)

Source: Article 125 of the Enforcement Decree of the Industrial Accident Compensation Insurance Act



## 04. Concept of 'Employee' under *Labour Standards Act*

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### Statutory definition

- *Labour Standards Act*, Art. 2.1(1): 'any person who lives on wages, a salary, or any other income equivalent thereto, regardless of the person's occupation'

### Case law: Supreme Court's 1994 and 2006 landmark decisions

#### □ Supreme Court formulated the employment status test

- (1) whether the alleged employer decided what work was to be done by the alleged employee;
- (2) whether the alleged employer's 'rules of employment' applied to the alleged employee;
- (3) whether the alleged employer directed and controlled to a significant degree how the work was to be performed;
- (4) whether the alleged employer designated when and where the work was to be carried out;
- (5) whether the alleged employee was entitled to freely choose the work to be undertaken by a substitute;
- (6) whether the alleged employee owned the equipment, raw materials, or tools required for the work;
- (7) whether the alleged employee made profits or suffered loss from the work at his/her own risk as if his/her own business;
- (8) whether and to what extent the alleged employee's work was provided continuously and exclusively to the alleged employer;
- (9) whether the remuneration was paid in exchange for the work provided itself;
- (10) whether a base pay or a fixed wage was paid to the alleged employee;
- (11) whether wage and salary income tax was deducted as a withholding tax; and
- (12) whether the alleged employee was registered as the alleged employer's employee with the social security system



## 05. Concept of 'Worker' under *Trade Union Act*

### Statutory definition

- *Trade Union and Labour Relations Adjustment Act*, Art. 2(1): 'a person, regardless of the kind of occupation, who offers labour to business or a workplace for the purpose of earning wages'
  - Korean term for 'employee' and 'worker' identical, i.e. 근로자(勤勞者) with slightly different words;
  - This difference was disregarded but began to be taken seriously and the two terms have been interpreted differently since 2010s and 2018 in particular

### Case law: Supreme Court's 2018 landmark decision

- Supreme Court formulated the worker status test
  - (1) whether a worker's source of income is mainly dependent upon a specific employer;
  - (2) whether an employer unilaterally decides the terms of a contract, including wage, that it concludes with a worker who provides the necessary labour;
  - (3) whether a worker gains market access by way of providing the essential labour to perform an employer's business;
  - (4) whether the legal relationship between the worker and an employer is of a substantially continuous and exclusive nature;
  - (5) whether there exists a certain degree of supervisory/managerial relationship between an employer and a worker; and
  - (6) whether income, such as wage or salary, that a worker receives from his/her employer is a consideration for provision of labour



# 06. Alternative approaches (comprehensive)

## 3. Institutional Protection

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< Legislative approaches to each Institutional protections >

	Legislative actions	Labor rights	Trade union	Social protection
Chul-Min Chang (2021.03.18) Soo-Jin Lee (2021.11.11)	Law on Protection and Support of Platform Workers (pending)	△	X	△
Soo-Jin Lee (2022.11.16) Chul-Min Chang (2022.11.22)	Act on the Protection of Every Working People (pending)	△	X	△
Eun-Joo Lee (2022.09.14)	Proposal for the amendment of Labor Union Act (Yellow Envelope Act)	△	O	X
Standing Committee (2023.02.21)	Alternative of proposal for the amendment of Labor Union Act	△	△	X
Amended (2021.01.05) Amended (2022.05.29)	Amendment of the Industrial Accident Compensation Insurance Act	X	X	△
Amended (2020.05.26) Amended (2021.01.15)	Amendment of the Employment Insurance Act	X	X	△



# 07. Alternative approaches (Employment Rights)

## 3. Institutional Protection

02

Korea

### (1) Labor law

#### Labor Standards Act

- aims to establish minimum working conditions to ensure the basic quality of life for "employees."
- criteria of subordination
  - (a) whether they provide work under the command and order of employers
  - (b) whether they provide work for wages



⇒ do not reflect the dependence of NSFW and prevent them from institutional protection

### < Legislative actions >

- ① **"Law on Protection and Support of Platform Workers" (2021)**  
(proposed by legislator Chul-Min Chang and Soo-Jin Lee)
- ② **"Act on the Protection of Every Working People" (2022)**  
(proposed by legislator Chul-Min Chang and Soo-Jin Lee)
- ③ **A new proposal drafted to broaden the definition of "working people" to include solo self-employed workers**  
(proposed by Eun-Joo Lee)



# 08. Alternative approaches (Collective Labour Rights)

## 4. Comparing Platform Work and Institutional Protection in the EU and KOREA

### 03

### Trade union law

	Legislative actions	Labor protection	Trade union	Social protection
<b>Trade Union Law</b>				
<b>EU</b>	Guidelines on the application of Union competition law to collective agreements regarding the working conditions of solo self-employed persons (2022.09.30)	△ Ensuring labor rights through collective bargaining and agreement	○ Excluding collective bargaining and agreement from the application of competition law	X
<b>KR</b>	Proposal for the amendment of Labor Union Act (Yellow Envelope Act)	△ Ensuring labor rights through trade union	○ Redefining worker And employer	X
	Alternative of proposal for the amendment of Labor Union Act (2023.02.21)	△ Ensuring labor rights through trade union	△ Redefining employer only	X



# 09. Alternative approaches (Social Insurance)

## 4. Comparing Platform Work and Institutional Protection in the EU and KOREA

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### Social protection

	Legislative actions	Labor protection	Trade union	Social protection
<b>Social Protection Law</b>				
<b>EU</b>	Council Recommendation of 8 November 2019 on access to social protection for workers and the self-employed (2019.11.08)	X	X	○ Ensuring access to social protection for all workers
<b>KR</b>	Amendment of the Industrial Accident Compensation Insurance Act (2022.05.29)	X	X	△ Abolishing exclusivity requirements and opt-out options and ensuring formal access for all workers based on the categorical approach
	Amendment of the Employment Insurance Act (2021.01.15)	X	X	△ Ensuring formal access for all workers based on the categorical approach



# 10. Development in Social Insurance Law in Korea

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## **Impose Obligations to Report relevant Information of Platform Operators**

Art 77–7, Employment Insurance Act, Art 91–21, Industrial Accident Act

“where a business owner collects and manages data and information related to the worker and/or himself/herself/itself, and signs a platform use contract with a platform operator who records and processes such data and information in the form of electronic information (hereinafter referred to as a “labour provisions platform”), the platform operator shall report the beneficiary status of insurance eligibility of the worker”

Further Information

- 1) the start or end date of the platform use contract
- 2) data or information prescribed by Presidential Decree, such as the name and address of the workplace, as matters related to the insurance relations of the business owner
- 3) data or information prescribed by Presidential Decree, such as the worker’s name, job type, and remuneration, as matters related to the worker’s insurance eligibility. In this case, the platform operator who has received the request shall comply unless there is a justifiable reason not to



# 11. Questions (mainly for the EU law and regulation)

## Current status of the Directive Improving working conditions in platform work

- European Parliament amendment and EU Council amendment in Comparison

## Exact role and limit of Commission's Guideline (competition law)

- Does it grant self-employed workers the rights to freedom of association, collective bargaining and strike?
- Does it allow solo self-employed (genuinely running their undertaking) such rights or prevent competition law to intervene with their collective agreement?
- Does it legally bind the national authority of competition law enforcement in each MS in their domestic matters such as 'collective agreements' concluded by domestic entities?

## Council Recommendation (access to social protection)

- Does it legally bind the national authority of social protection in each MS to allow all workers of any employment status access to their social insurance law?
- Has there been a case of MS to expand their access to social insurance schemes to encompass such workers because of the Council Recommendation?