

* This paper was originally released in Korean in the 43rd issue of the Monthly Labor Review published by the Korea Labor Institute in July 2008.

One Year After the Fixed-term Employment Act: Impact and Policy Direction

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I. Raising the Issue

Around July 1, 2008, when the anti-discrimination corrective measures prescribed under the Act on Protection of Fixed-term and Part-time Employees became applicable to workplaces with 100 or more employees, the debate on the effectiveness of this fairly recent legislation kicked off in full force. The employers contend that the Act should be eased as it suppresses job creation and exacerbates the business environment. At the same time, the labor sector is calling for an overhaul on the grounds that the Act fails to protect non-standard workers and may even lead to massive layoffs. While both sides agree to revision, their intended directions are completely opposite from each other.

By all means, it is tenuous to evaluate a legislation that has only been in existence for slightly over one year. But the analysis of the Supplementary Survey to the Economically Active Population Survey (Korea Labor Institute, 2008; Lee, Byung-hee & Jeong, Seong-mi, 2008) demonstrates the lack of statistical basis for the claim that the Act suppresses job creation. In all fairness, it should be stated that the Act did not generate massive layoffs or only negative consequences – it had both negative and positive effects.

But given that there are visible conflicts involving non-standard workers, such as

protracted disputes and unfair dismissals, it is highly necessary to assess the impact of the Fixed-term Employment Act and seek ways for further improvement. And with less than one year to go (July 1, 2009) until the corrective measures are applied to workplaces with less than 100 employees, who employ 86% of all non-standard workers, it should be noted that many of these workplaces would find it a challenge to shoulder the costs for such corrective actions or conversion to standard workers. Thus, it is important to seek appropriate support programs for them.

This paper evaluates the impact of the Fixed-term Employment Act based on the following questions, and proposes a way forward in terms of policy response.

First, is the Act merely a case of bad legislation, one that only reduces job creation?

Second, is the Act a piece of bad legislation that exacerbates non-standard workers' wage and working conditions and triggers massive layoffs?

Third, why are there unending disputes involving non-standard workers?

Fourth, what are the elements that give rise to negative views of the Act?

Fifth, how can it be made better?

II. Impact of Fixed-term Employment Act on Job Creation

The claim that the Act is job-unfriendly arose after the year-on-year job creation stopped at 184,000 in March 2008, way below previous levels as well as the government-committed level of 300,000.

But Lee, Byung-hee & Jeong, Seong-mi (2008) demonstrates that such claim lacks statistical grounds. They cite the following reasons: a. if it was indeed the Act that increased labor costs (for fixed-term workers, etc.), thereby reducing creation of temporary jobs, it should be the non-standard temporary jobs that were reduced, but in reality, it was standard temporary jobs that declined by 332,000 while non-standard ones actually increased by 167,000; b. 82% (135,000) of the reduction came from workplaces with less than 100 employees that were *not* affected by the Act; c. the main cause for reduced job creation is less hiring, not dismissal or unemployment.

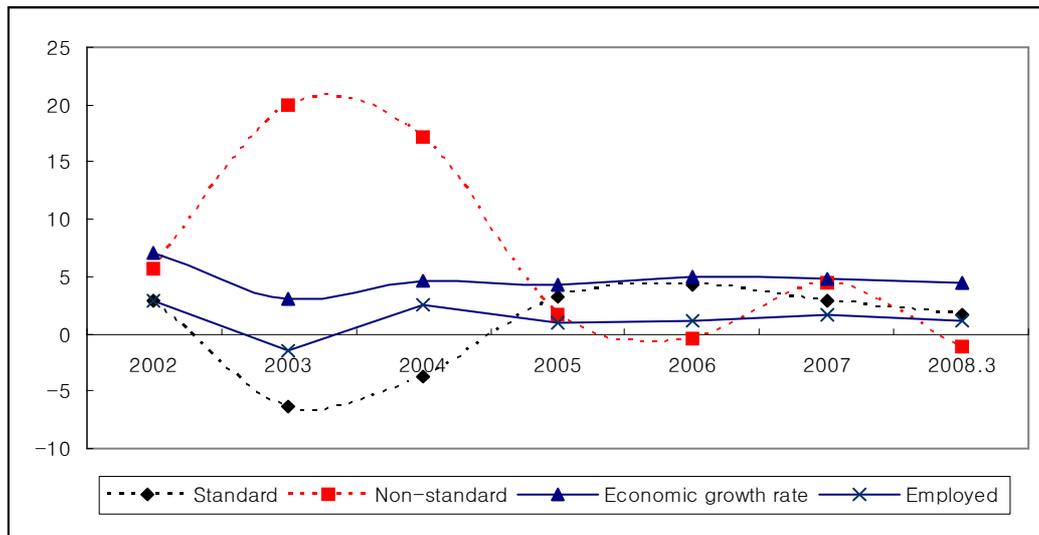
<Table 1> Employment Trends in March 2008

(Unit : 1,000, %, %p, year-on-year)

	March 2007		March 2008			
		increase		Increase	Increase	
Economically Active Population (participation rate)	23,960 (61.4)	0.8	24,114 (61.1)	154 (-0.3p)	0.6	
Employed (employment rate)	23,121 (59.2)	1.2	23,305 (59.1)	184 (-0.1p)	0.8	
Type	Permanent	8,432	4.1	8,898	466	5.5
	Temporary	5,188	1.7	5,023	-165	-3.2
	Daily	2,112	-2.5	2,073	-39	-1.8
	Unpaid family worker	1,387	-0.8	1,375	-12	-0.9
	Self-employed	6,002	-1.3	5,936	-66	-1.1
Unemployment rate (seasonally adjusted)	3.5(3.2)		3.4(3.1)	-0.1p		
Non-economically active population	15,084	1.4	15,350	266	1.8	

Source : Korea National Statistical Office (2008).

[Figure 1] Increase in Standard and Non-standard Workers and Economic Trends



Source : KNSO

In other words, it is the consequence of SMEs' attempt to deal with worsening business environment, rather than the Act itself.

[Figure 1] well illustrates the pattern where the economic growth rate affects the quantity of job creation, while the Act is related to the quality of jobs (quality at work) rather than the quantity, especially the increase in standard or non-standard jobs. A good example is the fact that in 2003, before the Act, there was a YOY growth of -6.4% for standard jobs and 20% for non-standard ones, while in March 2008, after the Act, the numbers changed to 1.7% and -1.1% respectively. As the

growth in standard jobs went from negative to positive, its average growth was 0.3% from 2002 to 2006, which increased to 2.3% between 2007 to 2008 (March). But the growth in non-standard jobs fell from 8.8% to 1.7%. It seems to indicate that at least, job growth led by increase in non-standard jobs, or "race to the bottom," has stopped.

III. Impact of Fixed-term Employment Act on Job Quality

There are two aspects to job quality. First is the composition of wage earners, or the proportion of non-standard jobs among wage-earning jobs, and second is wage, working conditions and improvement in workers' welfare. This section will take separate looks into the two aspects.

1. Impact on the Composition of Wage Workers

The Act appears to have improved the overall wage earner composition but worsened the composition of non-standard workers. The proportion of non-standard workers declined around the time of the Act's enactment, with a YOY decrease by 1.5% (352,000) in March 2008 (see [Table 2]). The biggest reduction was among fixed-term workers (4.6%, 321,000) and workers with contract renewals (5.4%, 318,000) (see [Figure 2]).

And many of the reduced non-standard jobs appear to have been converted to standard jobs. According to Lee, Byung-hee & Jeong, Seong-mi (2008), 52.9% of the contract-renewed workers were converted to standard jobs. Furthermore, the Ministry of Labor's 2008 survey on 1,465 out of 6,912 companies with 100 or more employees shows that 63% have converted at least some of their non-standard workers to standard jobs, and 43.2% of fixed-term workers of the same companies have been transferred to standard jobs. The fact that standard jobs increased by 1.5% (398,000) despite the 121,000 reduction in new hiring of standard workers, is also an indirect indicator of the sizeable conversion from non-standard to standard jobs.

<Table 2> Changes in Proportion of Non-standard Workers

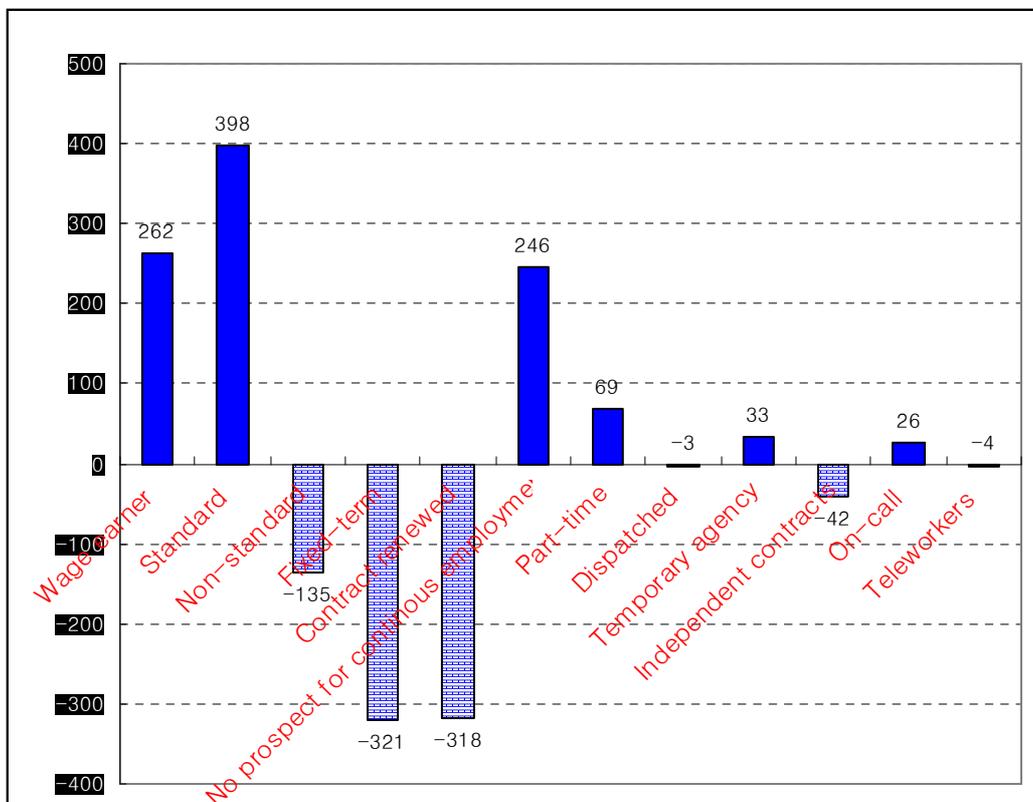
(Unit : 1,000, %)

	Aug. 2005	Aug. 2006	March 2007	Aug. 2007	March 2008
Non-standard workers	5,483	5,457	5,773	5,703	5,638
YOY Increase	89	-26	-	246	-135
Proportion	36.6	35.5	36.7	35.9	35.2

Source : KNSO, "Supplementary Survey to the Economically Active Population Survey".

[Figure 2] Changes in Proportion of Non-standard Job Sub-types

(Unit : 1,000, %)



Source : KNSO, "Supplementary Survey to the Economically Active Population Survey".

But there was an increase in the more disadvantageous employment types, such as short-term hiring (3, 6, 9 months with no prospect of continuous employment), part-time, temporary agency, and on-call jobs. To be fair, it is debatable whether such part-time, temporary agency, and on-call jobs increased due to the Fixed-term Employment Act. These employment types have been on a continuous upward climb since 2000, with no sudden rise observed (see [Figure 3]). But in the case of short-term jobs with no prospect of continuous employment, there had been a downward trend, and it is worth tracking whether the changing trend had

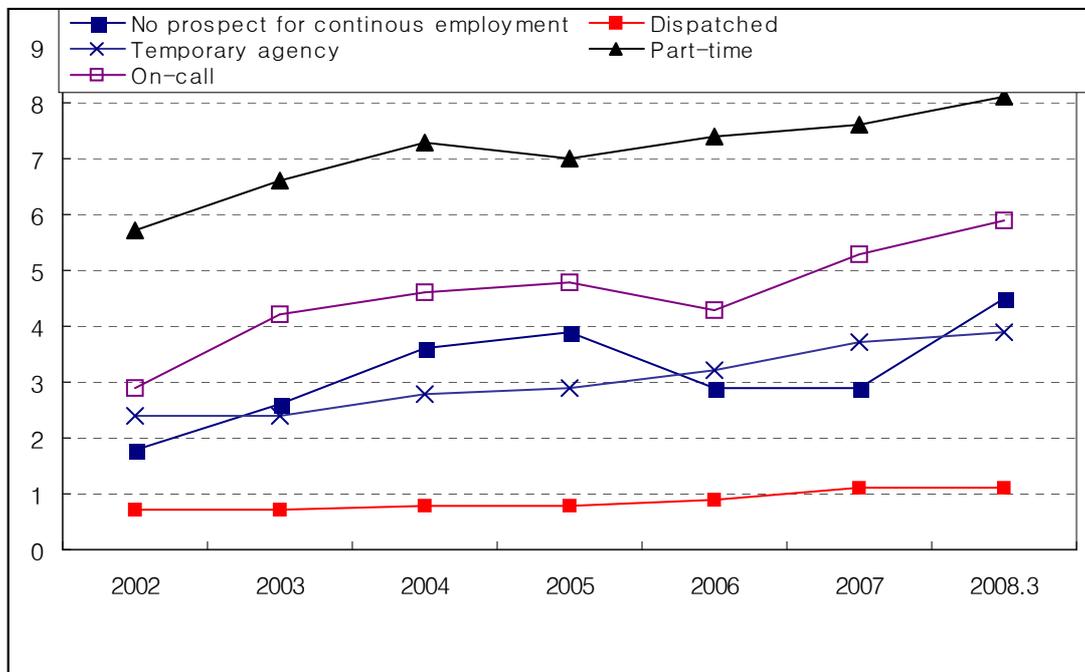
anything to do with the Act.

In addition, the continuous rise in temporary agency workers, one of the indicators of increase in indirect hiring, merits more attention. The Ministry of Labor survey (2008) also revealed cases of conversion to sub-contracting or dispatched workers (19.9%) and replacement (21.4%), as well as future plans to do so, at 16.4% and 26.6% respectively.

2. Impact on Wage and Workers' Welfare

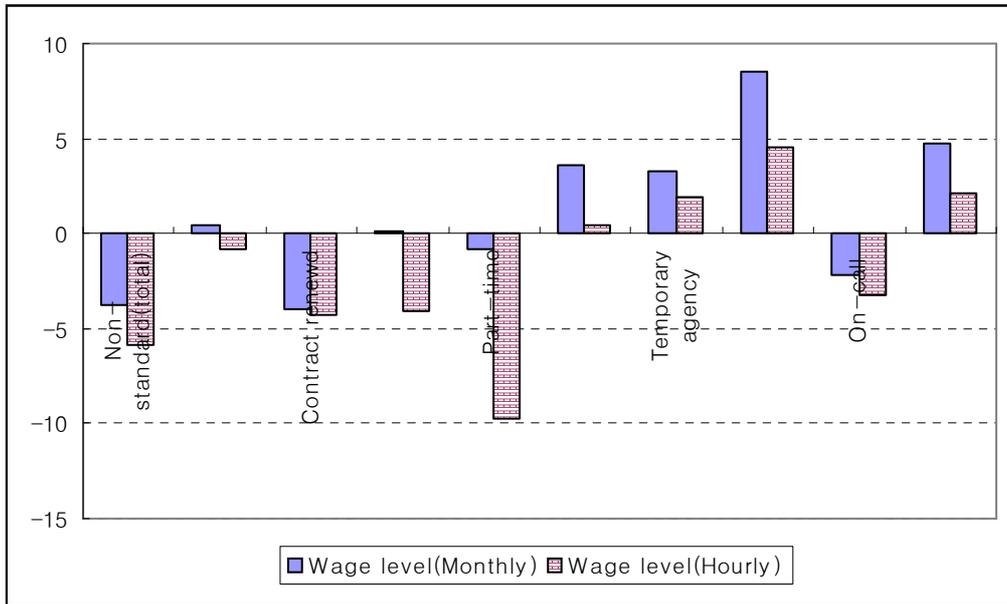
Looking at YOY changes in non-standard workers' wage levels in March 2008, there is actually a growing gap with standard workers. Using the standard wage as 100, the monthly average non-standard wage dropped from 64.2% in 2007 to 60.4% in 2008, and the hourly wage from 73.2% to 67.3%. But there is a difference between sub-types: whereas the wage level dropped for fixed-term jobs, contract-renewed jobs, contingent work (no prospect of continuous employment, etc.), part-time work and on-call work, the opposite was true for dispatched, temporary agency, independent contract and tele-workers, where the wage gap was reduced (see [Figure 4]).

[Figure 3] Increase in Non-standard Job Sub-types



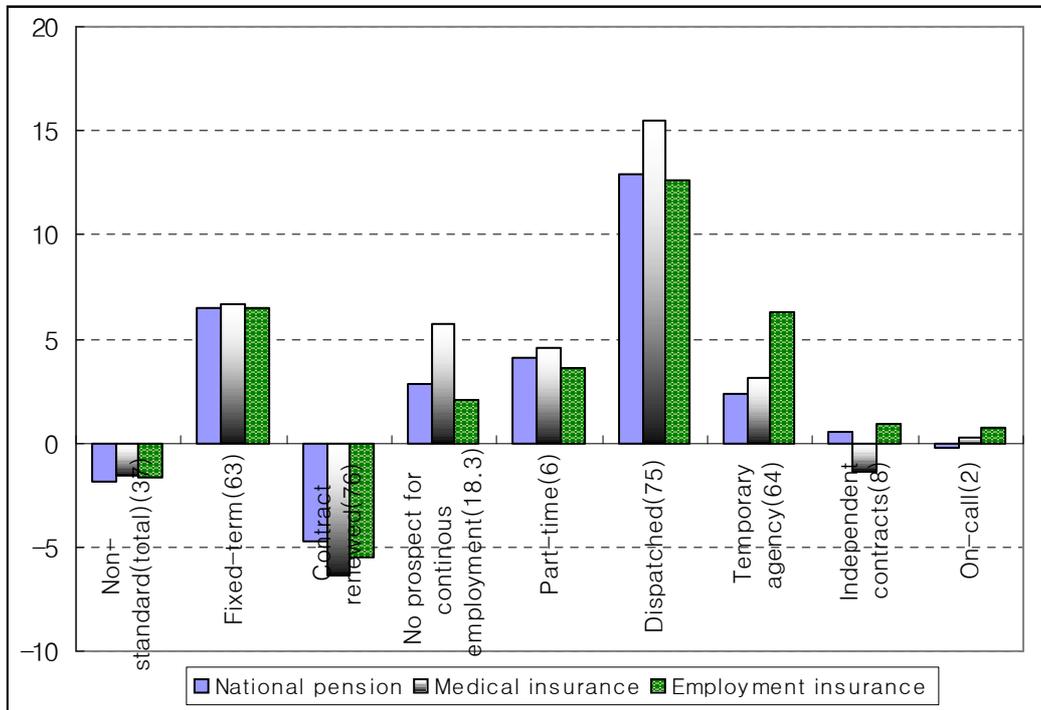
Source : KNSO, "Supplementary Survey to the Economically Active Population Survey".

[Figure 4] Wage Level of Non-standard Job Sub-types vs. Standard (2008. 3, YOY)



Source : KNSO, "Supplementary Survey to the Economically Active Population Survey".

[Figure 5] Increase in Social Insurance Coverage for Non-standard Job Sub-types (2008. 3, YOY)

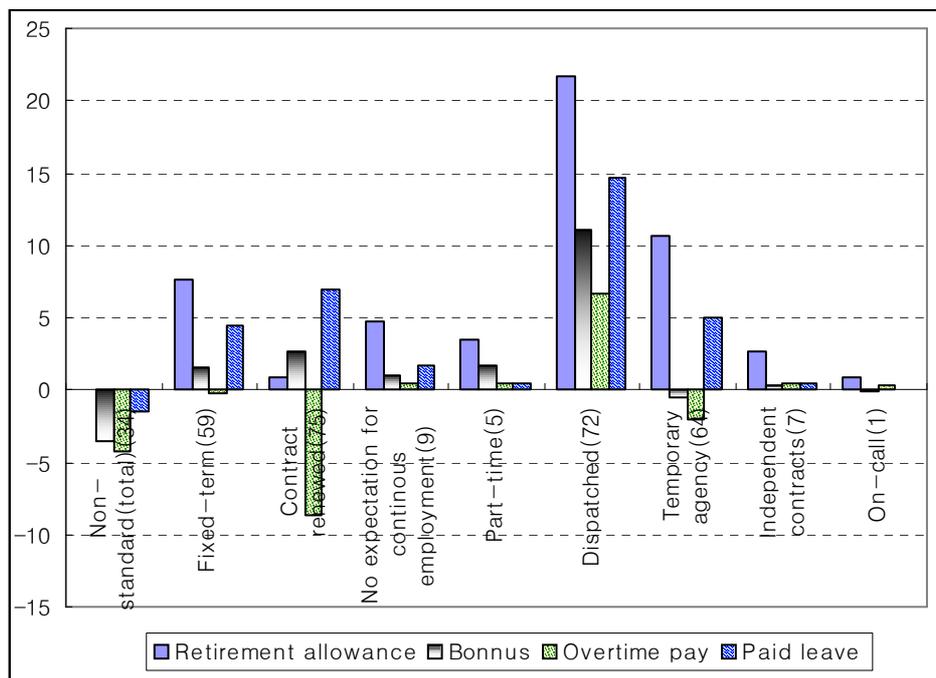


Note: Numbers in () are the coverage as of 2008.

Source : KNSO, "Supplementary Survey to the Economically Active Population Survey".

The cause for the yawning wage gap for fixed-term and contract-renewed workers appears to be that many companies responded to the obligation for corrective actions by converting non-standard to standard jobs. This could lead to an increase in the relative wage gap for the workers remaining in these jobs. Moreover, if, in the course of improving worker treatment more attention was paid to welfare than wage, the impact on wage would be less. The Ministry of Labor survey (2008) shows that 52.6% of companies with 100 or more employees have improved worker treatment and 40.6% have plans to do so.

[Figure 6] Increase in Corporate Welfare Coverage for Non-standard Job Sub-types (2008. 3, YOY)



Note: Numbers in () are the retirement pay insurance coverage as of 2008.

Source: KNSO, "Supplementary Survey to the Economically Active Population Survey".

In addition, short-term, part-time and on-call jobs not only increased in proportion, but their wage gap with standard jobs also grew, turning them into the most vulnerable of non-standard employment types. The question is if they are being excluded from social insurance and corporate welfare as well.

Social insurance coverage increased across almost all employment types (excluding contract-renewed workers), and corporate welfare also improved at least partially with only a few exceptions (see [Figure 5], [Figure 6]). But for short-term, part-time, independent contract and on-call workers, the coverage itself hovers below 10%, while temporary agency workers also show lower coverage than dispatched workers. Furthermore, the extent of improvement is not better than dispatched or fixed-term workers.

In sum, there was some improvement for fixed-term and dispatched workers who

were the main targets of the Fixed-term Employment Act, but not so for other types of employment. In particular, the precariousness of short-term, part-time and on-call workers became even more noticeable. These pros and cons of the Act are assumed to be one of the factors that prolong the recent labor disputes. Then why is it that the Act results in only limited benefits? To fully answer this question will require more scrutiny over time, as it has been in existence for only one year, but some cause analysis is necessary at this stage for future preparation.

IV. Why Does the Act Have Only Limited Benefits

1. Legislation Details and Limitations in Application

The limitations of the Act itself have been pointed out even before its implementation. First are problems with the anti-discrimination corrective actions: a. they do not include indirect hiring; b. the possible actors of corrective actions are limited to individual workers; and c. comparison for corrective actions is limited to the workplace. It is worth noting that, as of May 2008, there have been only 816 applications for corrective actions involving 2,818 applicants filed at the Labor Commission, less than 1% of all applicable workers.

In addition, according to the Ministry of Labor survey (2008), 37.7% of workers responded that they are subject to unreasonable discriminatory treatment, while only 18.1% is willing to file for corrective actions. Reasons for the reluctance include: concerns for retaliation (32.7%), the unlikelihood of the employer to comply (27%) and issues of time and cost (8.9%). They illustrate the challenges involved with the individual filing method.

Second limitation is insufficient response to illegal worker dispatch and indirect hiring, which was brought up in the early stage of discussion. In addition, even the measure for non-standard workers in the public sector, implemented together with the Act, does not address the issue of indirect hiring.

Third, part-time and on-call jobs are not issues that can be handled with legislation alone, but labor, management and government all were preoccupied with legislation only. Furthermore, less than six months after the Act was implemented, the possibility of extending the usage period of fixed-term contracts and fully allowing worker dispatch business was raised, inviting the justifiable criticism that it was difficult to ensure full implementation of the Act and curb abuse of non-standard jobs.

2. Disconnect between Labor Market Changes and Legislation

Standard employment, direct hiring and internal labor market are decreasing while supra-company multi-dimensional employment (indirect employment) and external labor market are on the rise. Despite these labor market changes, the Fixed-term Employment Act is still only focused on the former, which serves as another obstacle in its application.

Such labor market changes are evidenced by the fact that between 1996 and 2006, number of employees dropped by 39.9% at large companies (with more than 1,000 employees) and by 16.2% at companies with more than 300 companies. In contrast, the number grew by 24.4% at companies with 10-49 employees, the biggest growth among all groups, while companies with less than 10 employees take up 43.3% of the hiring.

<Table 3> Impact of Bargaining Structure on Wage Level (1970-2000)

	Wage	Income Inequality	Youth Relative Income	Elderly's Relative Income	Women's Relative Income
Unionization	-0.0002	-0.0088··	0.0018···	-0.0007	-0.0004
Agreement	-0.0007	-0.0052	0.0012···	0.0003	0.0027···
Bargaining-mediation	0.0030	-0.1747··	-0.0120·	0.0324·	-0.0178·

Source : OECD Employment Outlook, 2004.

Furthermore, increase in outsourcing and weakening position of SMEs are also indicators of labor market changes. In addition, low-wage workers also increased from 22.6% in 2001 to 25.8% in 2006, and 19% of standard workers and 38.3% of non-standard workers fall into the low wage group, which also hints at reduction in direct hiring and internal labor market.

3. Problems with Union Strategy and Corporate Labor-Management System

The Korean Confederation of Trade Unions (KCTU), strongly opposed to the Act, failed to offer specific alternative solutions other than limiting the criteria for using fixed-term workers. But it is also a possibility that if the criteria for using fixed-term workers were limited, indirect hiring and vulnerable workers may increase. It must be noted that the industrial and corporate unions under the KCTU and Federation of Korean Trade Unions (FKTU) also made attempts for conversion to standard jobs and discrimination mitigation. But in a company-based labor-management system where the unionization rate stands at only 10.3% (standard 16.5%, non-standard 5.1%), such efforts are hard to spread to workplaces with indirect hiring or no unions.

Not to mention, the company-level labor-management system weakens the freedom

for the two sides in complying with the Fixed-term Employment Act, creates a wide area of disagreement between labor and management, and widens the income gap.

A 2004 report by the OECD states that when collective agreement, unionization, and bargaining and mediation are broadly applied, the income gap will be mitigated. It also relayed that the application of collective agreement contributes to rise in relative income among youth, elderly and women. Thus, the company-level industrial relations system is likely to leave behind a large blind spot outside the system.

4. Problems with Employers' and Government's Strategies

Before the Act went into effect, employers preferred in-house contracting and non-standard workers as a way to cut personnel costs and facilitate employment adjustment. They were likely to opt for a "low-road" human resource management and industrial relations (Eun, Soo-mi, 2008a; Kim, Dong-bae et al., 2005; Kim, Dong-bae & Lee, In-jae, 2007). A good example is the 2003 KLI Workplace Panel Survey, where 68.8% of the companies were found to have restructured standard workers, while 62.6% made use of directly hired non-standard workers such as fixed-term.

The "low road" strategy, characterized by indirect worker management (that depends on the external labor market), market-principled human resource management and cost-cutting (quantitative flexibility), is fundamentally different from the "high road" which focuses on the internal labor market. In addition, the "low road" leads to the problem where the HR management is limited to specialists, simple deliverers, or regulators. Such strategy may conflict with non-standard worker legislation, and hinders development of HR management and industrial relations strategies that go beyond individual companies, to be designed at the level of the sector, industry or even nationwide.

The government's response also leaves much to be desired. The government has so far monitored the impact of the Act on five occasions. But if such efforts led to voluntary monitoring by labor and management, or creation of a joint body to address non-standard workers, the legislative effect could have been much bigger. In particular, the government should have actively intervened to encourage companies (large or public) and unions to undertake joint or individual monitoring and action planning to ensure legal compliance and further improvement of the Act, each from the perspective of living up to their social responsibility or pursuing solidarity.

Furthermore, both the Ministry of Labor and Ministry of Knowledge and Economy included non-standard workers legislation in their plan for deregulation, causing concerns that doing so will defeat the purpose of the Act. And they adhere, to an

overly strict extent, to the principles of labor-management autonomy and rule of law despite the rising number of protracted conflicts with non-standard workers. By applying without any adjustment the standard worker-oriented industrial relations paradigm to non-standard workers, they left little room for dealing with non-standard worker issues with means other than legislation.

5. Limitations of the Social Security System and Problems in the Approach

Korea has put in place a social insurance system where welfare is provided through employment, based on corporate welfare and individual contributions. This is beneficial for standard workers, especially those who belong to the internal labor market for the long term. But those who belong to the external labor market, such as non-standard workers or low-income workers, are essentially precluded from such system. This is why the corporate welfare and social insurance coverage rates are so low among non-standard workers.

Furthermore, the recent diversification of employment and job types have led to questions about the definition of "worker," and the informal sector also has a sizeable presence. The question of applying industrial accident insurance to independent contract workers, or the recent controversy regarding the three fundamental workers' rights of commercial vehicle owners who belong to the transportation union are some cases in point. But the existing system seems ill-equipped to encompass the diversifying employment types, and likely to expand the blind spot even further.

In addition, although non-standard worker issue is basically a labor rights issues, that is not where it ends. It is also a structural problem and reflection of the dramatic changes in the Korean society: changes in the industrial structure and the labor market, weakening position of SMEs, contracting domestic market, youth unemployment and educational caste system. It is an indicator that the old paradigm where growth was equivalent to jobs and jobs were equivalent to welfare is no longer working. Thus it requires a fundamental and long-term response in addition to legislation. But the current focus on human rights or protection only serves to complicate the issue.

V. Conclusion : Policy Response

This paper has discussed some points of contention pertaining to the impact of the Fixed-term Employment Act. The analysis reveals the following.

First, it is cyclical trends that are affecting the volume of jobs, and the recent job

reduction is the result of decrease in standard jobs at SMEs due to economic instability.

Second, the impact of the Act should be assessed from the quality of jobs, which shows both positive and negative results. The positive is the reduction in non-standard jobs and conversion of non-standard jobs (eg. fixed-term workers) to standard jobs, which helped partially improve the employment position of wage workers and stopped the "race to the bottom" where increase in jobs meant increase in non-standard jobs. But short-term, on-call, part-time and temporary agency jobs actually increased, while the wage gap did not show any improvement except for temporary agency and dispatched workers. Granted, there was some improvement in welfare, but not enough to turn around the current situation where the welfare coverage for short-term, on-call, part-time and special employment hovers below 10%.

Third, the reasons why the impact of the Act are limited are: a. limitations of the Act itself; b. incongruity between labor market changes and the Act; c. problems with the union strategy and company-level industrial relations system; d. problems with employers' strategy and government's response; and e. limitations in the social security system and problems with the approach.

The Act will be applicable for workplaces with 100 or more employees starting on July 1 this year, and for workplaces with less than 100 employees on July 1, 2009. In addition, in 2009 the mandatory conversion of fixed-term workers to standard workers after 2 years of employment will be fully applicable. Most of the non-standard workers are found at workplaces with less than 100 employees, and many of these employers are unfamiliar with the Act or incapable of compliance. Thus, for the Act to securely take root, and for the non-standard worker issues to be resolved, not only does the implementation of the Act have to be further improved, but a more fundamental solution needs to be sought.

1. Short/Mid-term Strategy

There must be different types of monitoring put in place in order to ensure compliance to the Act and resolve some of its limitations, and such monitoring should be conducted jointly by labor and management as much as possible.

In addition, although "anti-discrimination" should be the focus, large companies and public corporations should also establish an ongoing standard job conversion program and try to change the existing HR and worker management practices. To that end, the following are necessary: 1. improve anti-discrimination programs; 2. eliminate unfair transaction between large, medium and small companies; 3. firmly establish a supra-corporate industrial relations system so as to reduce the gap between insiders and outsiders; 4. improve social insurance tax benefits and related

laws to expand welfare coverage for certain employment types; 5. innovate public corporations to improve job quality and public services and strengthen social responsibility for large companies; and 6. establish support programs for SMEs intended to eliminate discrimination and help convert to standard jobs.

Indirect hiring should also be urgently addressed; 1. indirect hiring should be included as the target for anti-discrimination; 2. principal and sub-contractors should be jointly held responsible for above; and 3. conduct status surveys on indirect hiring and the low-income labor market.

2. Mid/Long-term Strategy

Non-standard worker issue cannot be addressed with legislation alone. And non-standard worker issue is closely related to the formation of the triangle of "non-standard, non-wage worker and economically inactive" and the resulting low-wage workers. Moreover, the triangle shows that the old virtuous cycle of growth leading to jobs and jobs leading to welfare is no longer working. Thus the focus of the mid/long-term strategy should be to break the triangle and create a new virtuous cycle of growth=jobs=welfare.

<Table 4> Mid/Long-term Strategy Programs

Objective	Break the Triangle -> Virtuous Cycle with Jobs as the Link
Growth	<ul style="list-style-type: none"> - Develop SMEs ① Eliminate unfair transaction between large, medium and small companies ② Strong control over monopoly or oligarchy in the domestic market ③ Eliminate the multi-layered structure ④ Increase socially responsible companies ⑤ Develop new regional models
Jobs	<ul style="list-style-type: none"> - Improve quality of jobs ① Restructure the public sector based on publicness indicators ② Strengthen large companies' CSR, develop job conversion programs ③ Implement strict and broad-based anti-discrimination programs ④ Strengthen vocational training-job link system ⑤ Flexible wage system conditional on job security
Welfare	<ul style="list-style-type: none"> - Transition to social security ① From corporate welfare to social welfare ② Build sectoral/industrial welfare systems ③ Improve contribution-based welfare system ④ Reform the social security service delivery system

The non-standard worker issue indicates that the Korean society is facing a period of transition. If we cannot go back to the days of standard jobs and full employment, we should at least move beyond "defective employment" and "discriminatory employment" to "diversified employment." To that end, we need to revise and improve the Act over time, and take a fundamental look at existing employment strategies.

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