

# NLI Research Institute REPORT

## Future Issues of Indefinite Employment Reclassification Rule — Learning from the Precedent in South Korea —

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### 1—Introduction<sup>1</sup>

In both Japan as well as South Korea, the increase in non-regular workers can be observed as a long-term trend. In Japan, the cabinet decided on a plan to continue regulatory relaxation in 1997 that incorporated liberalization of temporary labor, and temporary labor was effectively liberalized in 1999. This spurred the increase of non-regular workers and further diversified the modes of employment available. In South Korea, the number of non-regular workers began increasing after the IMF economic crisis in 1997. For both Japan and South Korea, employment destabilization continues.

In 2007, as the increase in non-regular workers accelerated, the South Korean government implemented the “*Act on the Protection of Non-Regular Workers*.” The purpose of the law known was as “In acknowledgement of the diversification of the labor marketplace, to limit the time period of fixed-term and part-time worker employment in order to restrict abuse of irregular employees and rectify unreasonable discrimination against irregular employees.” The result was that employees who worked at the same workplace for more than two years would be treated as contractual employees for an indefinite contractual period.

In this paper we discuss the current status of non-regular workers in Japan and South Korea in addition to both countries’ governmental stance on this issue is referred. First, based on several studies conducted in both countries, we contrast and analyze the different definitions of “non-regular workers” used in Japan and South Korea. Then we explore measures to address non-regular workers in both countries. In particular, by analyzing the issues surrounding the implementation of South Korea’s “*Act on the Protection of Non-Regular Workers*,” which introduced the indefinite employment reclassification rule not yet seen in Japan, we seek to discuss what kind of indefinite employment reclassification rule Japan should pursue in the future.

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## **2—Definition of non-regular employee in Japan and South Korea**

The definition of non-regular employee is one of the important factor when we compare the actual condition of them cross-nationally. The actual condition, however, is not totally same even if the name is same because structure of the labor market, form and scale of the development and industrial relationship vary depending on each country. Also, non-regular employee has not been defined apparently not yet. But, Japan and South Korea define it in some ways to grasp the actual condition, so next, we will discuss further on them.

### **(1)Definition of non-regular employee in Japan**

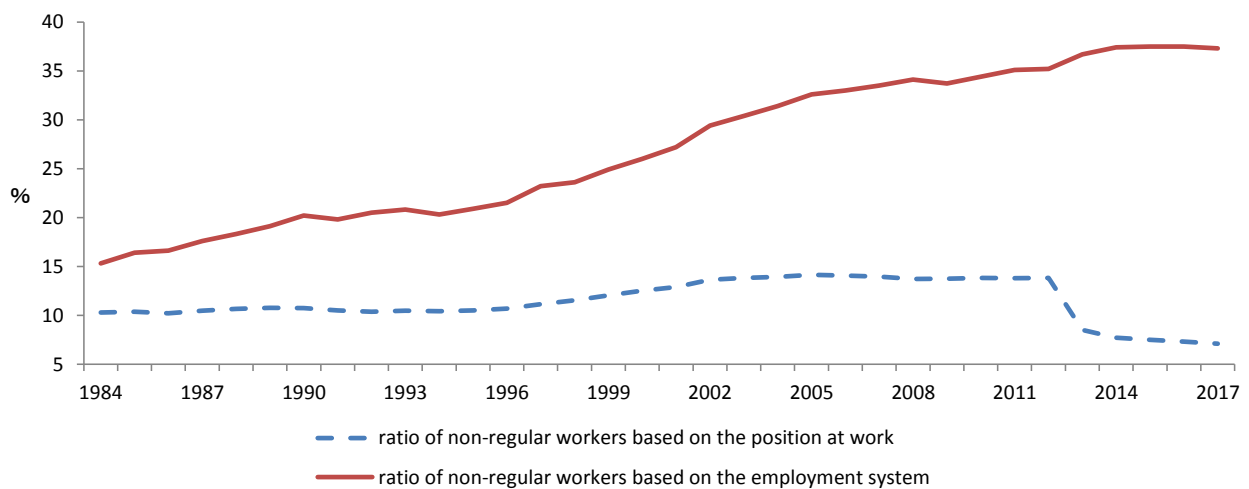
Initially, Japanese survey distinguishes non-employee by means of “contract period of labor (hereinafter called a position at work)” and “internal name at work (hereinafter called employment system)” Based on a position at work, “a temporary employee” who is employed with contract with fixed term between a month and a year and “daily employee” employed with contract with fixed term less than a month are regarded as non-regular employee. Meanwhile, “internal name at work” based divides it into seven parts depending on the name at the work such as regular employee, part-time worker, casual staff, dispatched employee, contracted employee, fixed-term employee and others, and treats the six parts except regular employee as non-regular employee and staff.

However, the difference of the definitions affects big gap of regular employee rates. In 2017, a rate of non-regular employee based on the position at work is 7.1 % which is far below that based on the employment system, 37.3%. It can be said that changes of Labor force survey’s agenda caused significant decrease in a rate of non-regular employee based on the position at work (13.8%-8.5% 2012-2013).

Labor force survey newly divides a position of work into “permanent work (an indefinite contract)” and “permanent work (a definite contract)”, therefore, it can be explained that the respondents who answered “a temporary employee” as far answered “permanent work (a definite contract)” in the new survey and, it reduced the number of “a temporary employee” and it increased permanent work (a definite contract) at the same time.

Although a rate of non-regular employee based on a position at work had not changed dramatically from 80’s to 90’s, it increased to up to 14% after then, however, it has been decreasing since 2013. On the other hand, a rate of non-regular employee based on employment system has been increasing since 80’s even now. Kambayashi (2013) focuses on the difference of time-series trend of increase in non-regular employee and says that the difference of the definition of non-regular employee is not only problems of statistic measurement and academic sentences but key issues which is intimately connected with the role played by non-regular employee in labor market.

Figure1 Trend of ratio of non-regular employment by two definitions in Japan's labor force survey



Source: Statistics Bureau of Japan, *Labour Force Survey*, various years.

Osawa and Kim (2010) state that all workers other than regular employee are generally non-regular employee. That is, regular employee includes ①full-time, ②name called regular employee or permanent employee,③indefinite term, ④contractual labor and ⑤direct employed by the company. Non-regular employee, on the other hand, lacks any factor of them.

## (2)Definition of non-regular employee in South Korea

In South Korea, the argument how to define non-regular employee among government, labor union and researchers still underway. The tripartite committee convening a committee called “The special committee for non-regular employee” in July 2002 because of an intensifying dispute over the concept and range of non-regular employee after IMF economic crisis, and they finally came to an agreement on classification standard based on employment system. This agreement expanded the extent of non-regular employee to include contingent employees and temporary workers which is based on sustainability of labor, part-time workers based on labor time and atypical worker such as dispatched workers, subcontract workers, specially hired service providers and Family workers.

However, a ratio of non-regular employment which is announced by researchers still has a big gap despite the integration of concept of non-regular employment due to the standard established by the special committee for non-regular employment. Although both the government and labor union are tally based on “The Economically Active Population Survey” conducted by Korea National Statistical Office. However why the rate differs?

For one of the reason, government statistics define non-regular employment as those who contracts with fixed-term based on ①contract term (indefinite or definite), ②labor time a day (full-time or

part-time), ③relationship of contract (direct hire, indirect hire or a sole proprietor), works with short-time, contracts with more than three people and works as dispatched workers, specially hired service providers, and family workers. In contrast, statistics of labor union include regular contingent and regular daily workers distinguished by The Economically Active Population Survey adding to non-regular employment defined by government statistics.

Government statistics calculate regular workers as workers excluding non-regular workers. But, the labor union treats both workers without social insurance and workers with less sustainability of their workplace (regular temporary workers and regular day employees in Table 1) as non-regular workers.

Table1. Estimated classification that regular temporary and day workers are non-regular workers

Unit: ten thousand person, %

	2002.08	2003.08	2004.08	2005.08	2006.08	2007.08	2008.08
<b>Employees</b>	<b>1,403.2</b>	<b>1,414.9</b>	<b>1,458.4</b>	<b>1,496.7</b>	<b>1,535.1</b>	<b>1,588.3</b>	<b>1,610.3</b>
<b>Regular workers</b>	<b>1,019.1</b>	<b>954.3</b>	<b>919.0</b>	<b>948.5</b>	<b>989.4</b>	<b>1,018.0</b>	<b>1,065.8</b>
①regular ordinary workers	605.0	618.4	608.8	641.3	663.9	693.1	749.8
②regular temporary workers	341.7	310.0	284.4	280.3	292.6	293.6	280.6
③regular daily workers	72.4	25.9	25.8	26.9	32.9	31.3	35.4
<b>Non-regular workers</b>	<b>384</b>	<b>461</b>	<b>539</b>	<b>548</b>	<b>546</b>	<b>570</b>	<b>545</b>
<b>ratio of non-regular workers by government =non-regular workers/employees</b>	<b>27.4</b>	<b>32.6</b>	<b>37.0</b>	<b>36.6</b>	<b>35.5</b>	<b>35.9</b>	<b>33.8</b>
<b>ratio of non-regular workers included ② + ③ in non-regular workers</b>	<b>56.9</b>	<b>56.3</b>	<b>58.3</b>	<b>57.2</b>	<b>56.8</b>	<b>56.4</b>	<b>53.4</b>
<b>ratio of non-regular workers by labor union</b>	<b>56.6</b>	<b>55.4</b>	<b>55.9</b>	<b>56.1</b>	<b>55.0</b>	<b>54.2</b>	<b>52.1</b>

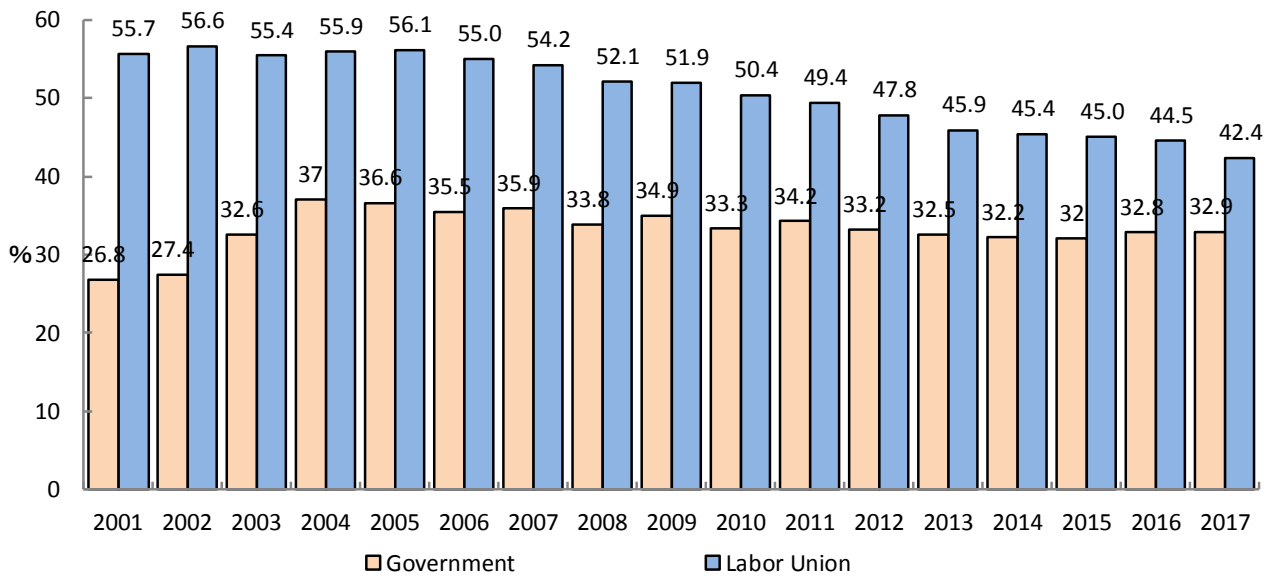
Source:Byeong-Hee, Lee(2008) *Effect of Employment in One Year of the Enforcement of the Act on the Protection of Non-Regular Workers*

Figure 2 shows the trend of the ratio of non-regular employee in South Korea from 2001 to 2017. The reason why it shows 2 data is because the rates announced by government statistics and labor union are different. As at August 2017, government statistics say the rate of non-regular employment is 32.9% while labor union does 42.2%. Although the gap between them is narrowing, it still varies by 9.5 %.

Kim Yusun (2008) states that “long-term temporary workers” who has got anxiety of their job like a risk that they can be fired and termination of their contract even if they have already been working more than a year and they expect that they can work more than a year, constitute a vital portion of non-regular employment in South Korea. According to Table 2, the number of non-regular employee reached 3 million and 414 thousand in August July, so the rate by labor union goes below that by

government statistics when we recalculate by adding this fugue by labor union`s estimate to regular employee that lessen the rate of non-regular employee from 42.4% to 25.2%.

Figure2 Trend of ratio of non-regular workers by government and labor union in Korea



Source: Statistics Korea *Economically Active Population Survey*, various years

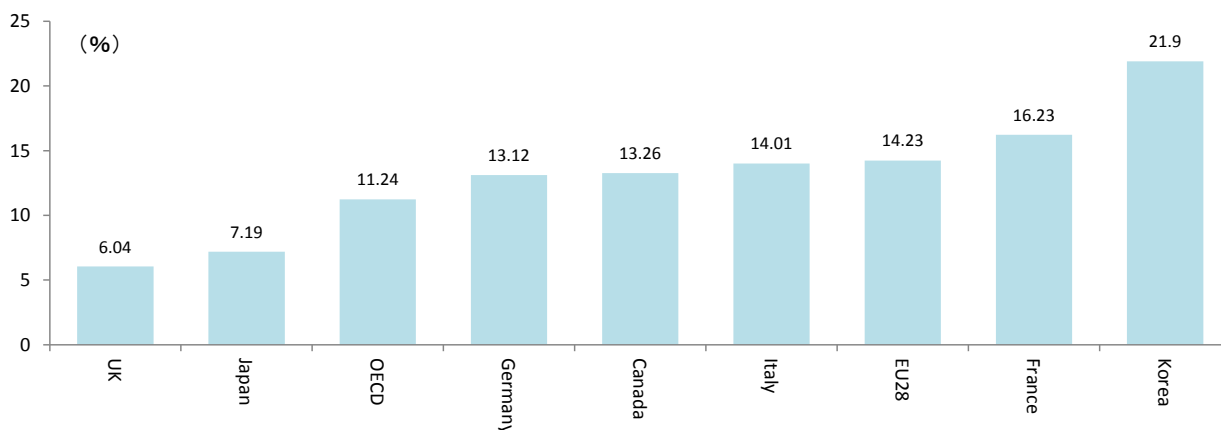
Table 2 Estimated results prescribing long-term temporary workers as non-regular workers (Korea, 2017.08)

		thousand				%			
		ordinary	temporary	daily	Total	ordinary	temporary	daily	Total
Employees(1)		13,426	5,029	1,428	19,883	67.5	25.3	7.2	100
Regular workers (2=1-3)		11,456			11,456	57.6			57.6
Non-regular workers (3= ①+++ ⑧, Deduplication)		1,970	5,029	1,428	8,427	9.9	25.3	7.2	42.4
Employment contract	Temporary worker(①+②)	1,578	5,029	1,428	8,035	7.9	25.3	7.2	40.4
	①Long-trem temporary workers		3,414	1,113	4,527		17.2	5.6	22.8
	②Temporary workers	1,578	1,616	315	3,509	7.9	8.1	1.6	17.6
Work hours	③Part time workers	335	1,762	562	2,659	1.7	8.9	2.8	13.4
How to provide labor	④Zero-hour contract workers			792	792			4	4
	⑤specially hired service providers	14	460	19	493	0.1	2.3	0.1	2.5
	⑥Dispatched workers	108	63	15	186	0.5	0.3	0.1	0.9
	⑦Labor by the service provider	408	185	95	688	2.1	0.9	0.5	3.5
	⑧Family workers	6	8	16	30	0	0	0.1	0.2

Source: Kim Yusun(2017) 「The scale of non-regular workers in South Korea 2017.08」

Although there is not integrated standard of non-regular employee`s concept internationally, OECD recognizes “Temporary workers” which is based on generally time limit of employment for international comparison. Korea National Statistical Office estimates that Short-term Contract Employee, Dispatched worker, Daily worker are qualified for “Temporary workers” and submits relative data of them to OECD every August. Figure 3 shows trend the ratio of temporary workers in major members of OECD. The rate in South Korea as of 2014 was 21.6% which is the highest standard among OECD countries while that in Japan has been decreasing since 2005 continually.

**Figure 3** The ratio of temporary workers in major members of OECD



Source: OECD Data Temporary employment

### **3—Background of Act on Protection of Non-regular employee’s enforcement and changes after that**

#### **(1) South Korean government enforced Act on Protection of Non-regular employee**

Increase in the number of non-regular employee began with IMF economic crisis. As terms of financing by IMF, the government had to be committed to structural reform of company, money and banking, public sector and labor market. Especially introduction of dismissal for the purposes of reorganization system and legislation of “Act on Prohibition against employee dispatch” are required for labor market.

However, there was a limitation in fulfilling IMF’s request amid growing social fear such as business bankruptcy and unemployment. Although labor law including legislation of dismissal for the purposes of reorganization system revised in 1997, the timing of enforcement was postponed for two years later because of opposition by labor side.

To get agreement of workers, government, employers, South Korean government set up “the Tripartite Commission” which involves labor union, representative of business managers and government delegate in 1998 and issued “Social agreement for economic crisis breaching”. Although it suggested 90 items for early enforcement of dismissal for the purposes of reorganization system and legalization of dispatched work, and 21 agendas for second consultation, it just ended without any

agreement.

Under these conditions, the timing of dismissal for the purposes of reorganization system was postponed and “Social agreement for economic crisis breaching” have not been concluded, IMF economic crisis urges the company adjust employment which increase the rate of non-regular employee. Since IMF economic crisis, it got difficult than ever before to controlling company for government, and it is said that it affected to increase non-regular employment and restructuring of company.

Amid the ongoing increasing in no-regular employee, South Korean government are trying to alleviate instability of employment and polarization in labor market because of non-regular employee rising by establishing Act on Protection of Non-regular employee such as “Act on temporary and daily workers”, “Act on Prohibition against employee dispatch” to normalize non-regular employee to regulate employee. The Act aims to restrict employment period of short-time and contingent workers, to curtail abuse of non-regular employment and to correct irrational discrimination against non-regular employee by admitting to diversification of employment. Then, when non-regular workers work more than two years, they came to be regarded as open-ended contracted employee.

It was about 2004 that South Korean government undertook to establish Act on Protection of Non-regular employee. However, labor side strongly opposed to it because the Act would only increase dispatched employee and would not resolve the issue of discrimination. As a result, two years had passed since the bill had been submitted to the Diet, and the ruling and opposite parties finally came to an agreement in 2006 which is the fourth year of No Mu-Hyeon administration. In this way, Act on Protection of Non-regular employee passed the Diet’s full House in November 30th in 2006 and was enforced in July 2007.

The period which makes direct employee mandatory was shorten from three years to two years after the agreement. As the scope of the Act in the early stages, only a workplace and public institution which usually hires more than 300 employees. The scope was extended generally, and it included company which usually hires between 100 and 300 employees in 1th July 2008, and finally it does all company and a workplace with more than 5 employees in 1th June 2009.

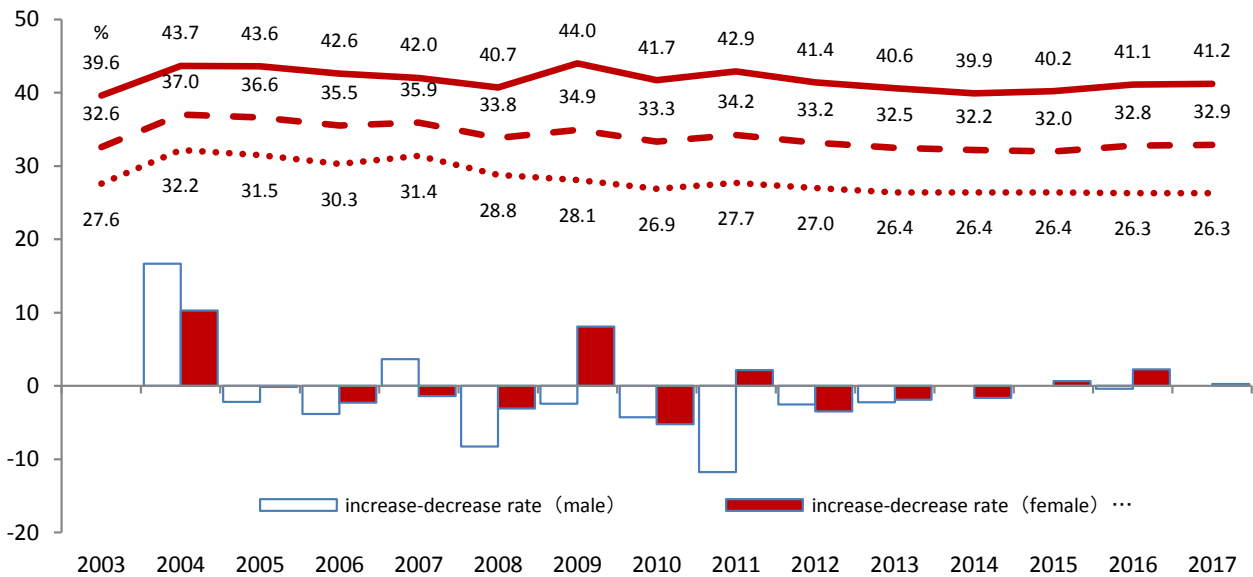
## **(2)Changes after enforcement of Act on Protection of Non-regular employee**

Then, how the enforcement of Act Protection of Non-regular employee changed the situation? Initially, the rate of non-regular employee which was 37.0% in August 2004, decreased to 35.8% immediately after the enforcement in August 2007. However, we can’t say for sure that the establishment definitely reduced the rate because the trend of the number of non-regular employee had tended to decrease since August 2004. The rate of non-regular employee continually had been decreasing since August 2007 as well and it reached 31.9% which is the lowest since the survey had begun seriously in 2004. After all, it increased to 32.9% in August 2017 which is

higher standard for the first time since August 2012 of 33.2% (Figure 4).

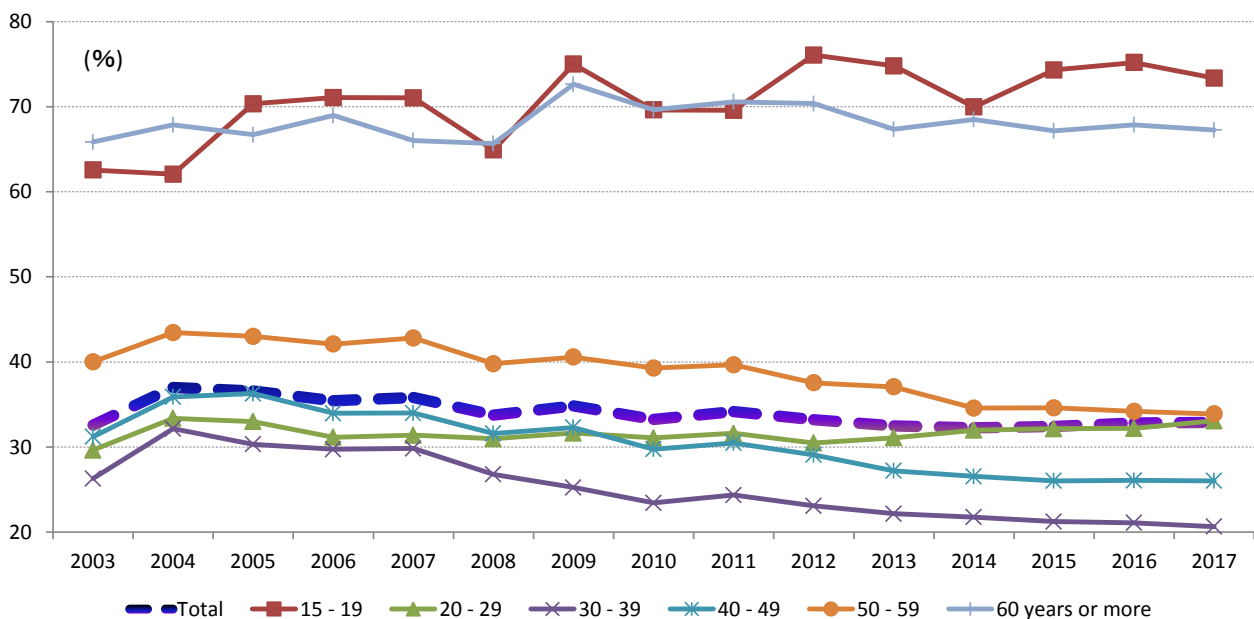
Looking at trend of the rate of non-regular employee by sex before and after the enforcement, the rate of male dropped by 4% from August 2006 to 2017, female's one only fell 1.4%. Therefore, it can be said that mainly the rate of male decreased during this term. Also, when viewed from the perspective of ages, the rate of 30-39 years old made biggest decrease by 9.1%, and the next was 50-59 years old (8.2%), 40-49 years old (7.9%) and over 60 years old (1.7%). Meanwhile, in the case of those who are 15-19 years old and 20-29 years old, the rate increased by 2.3% and 1.9% respectively which shows the young people's difficulty of finding work (Figure5).

Figure 4 Trend of ratio of non-regular workers by sex in Korea



Source: Statistics Korea *Economically Active Population Survey*, various years

Figure 5 Trend of ratio of non-regular workers by age-group in Korea



Source: Statistics Korea *Economically Active Population Survey*, various years



Then, did the enforcement of Act on Protection of Non-regular employee affect the rate of non-regular employee? Table 3 and 4 show the test result of mean difference by sex and age groups. Firstly, variance of two population by sex is equal according to Levine's test for equality of variance. After testing the gap of average based on the result, the rate differs in male and the amount of male and female between before and after the enforcement, Therefore, it is considered statistically significant

Meanwhile, the rate differs by ages among 30-39 years old, 40-49 years old and 15-19 years old, and it is also considered statistically meaningful as well ( the result which doesn't hypothesis variance because there was no homoscedasticity according to Levine's test for equality of variance).

**Table 3 The test result of mean difference by sex**

	Levene's test		two independent sample t-test						
	F-stat	significance probability	t-stat	degree of freedom	p-value (two tail)	mean difference	standard error	95% confidence interval	
								lower	upper
Total	1.051	0.324	2.419	13	0.0309**	1.9977	0.8259	0.2135	3.7819
Male	0.258	0.620	3.032	13	0.0096***	2.9727	0.9805	0.8545	5.0910
Female	1.051	0.324	1.161	13	0.267	0.9477	0.8163	-0.8158	2.7112

**Table 4 The test result of mean difference by age groups**

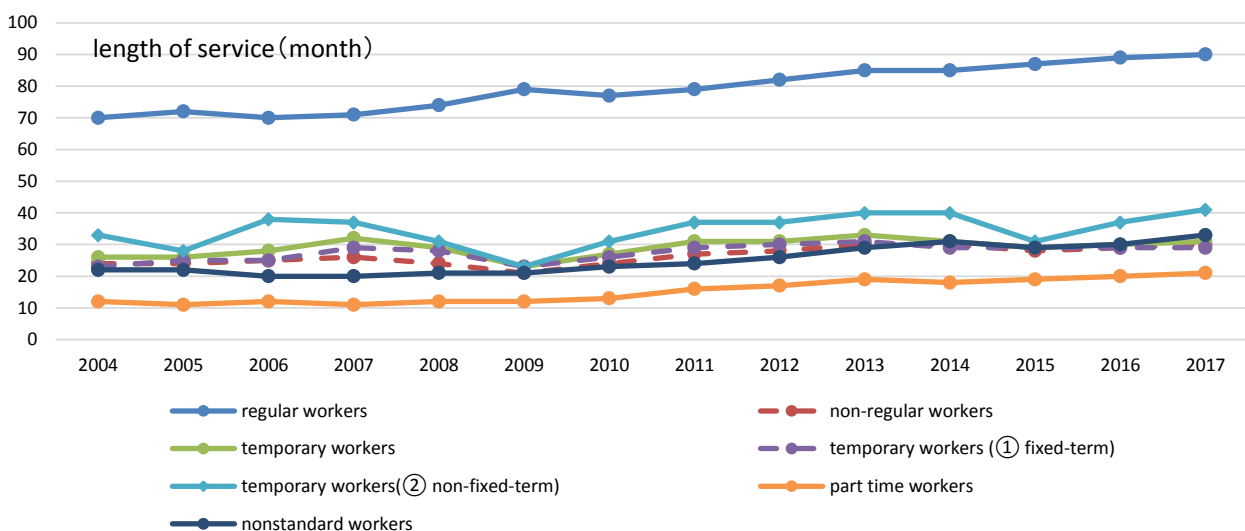
	Levene's test		two independent sample t-test						
	F-stat	significance	t-stat	degree of freedom	p-value (two tail)	mean difference	standard error	95% confidence interval	
								lower	upper
Total	1.051	0.324	2.419	13	0.0309**	1.9977	0.8259	0.2135	3.7819
15~19	2.442	0.142	-2.550	13	0.0242**	-5.6727	2.2245	-10.4785	-0.8670
20~29	unequal variance		0.183	3.367	0.8654	0.1659	0.9077	-2.5526	2.8844
30~39	0.255	0.622	3.787	13	0.0023***	6.0250	1.5910	2.5878	9.4622
40~49	0.711	0.414	3.348	13	0.0052***	5.3409	1.5954	1.8943	8.7875
50~59	unequal variance		3.774	11.035	0.0031***	4.4795	1.1870	1.8680	7.0911
60 ages or more	1.039	0.327	-0.970	13	0.3500	-1.1227	1.1580	-3.6243	1.3789

Figure 6 illustrates trend of length of service based on the employment pattern and we can find out that regular employee's length of service increased from 70 months in 2006 to 90 months in 2017. Those of non-regular employee, also rose from 24 months to 30 months as well in the same period. Then, why did it increased though non-regular employee came to be regarded as pen-ended contracted employee after they work more than two years by the *Act on the Protection of Non-Regular Workers*? It is thought to be due to exemptions of the *Act on the Protection of Non-Regular Workers*. In other words, although the company can hire the temporary workers

within the scope which doesn't exceed two years in accordance with the provisions of Article 4, the company can hire them over two years only in the following cases.

- Where completion of a job or a time period necessary for completing a job has been established.
- Where a position becomes vacant due to absence or reassignment and someone must perform those job duties in the absent worker's place until the absent worker returns in the corresponding year.
- Where a worker must complete worker study or training and the time period necessary to complete it has been established.
- Where an employment contract has been executed with a senior citizen as defined in Section 2.1 of the "Senior Citizen Employment Promotion Act."
- Where utilization of specialized knowledge and skills is required as established in a presidential executive order in connection with a job sponsored by a government welfare or unemployment measure.
- For any other reasonable reason as established by presidential executive order.

Figure 6 Trends in the number of length of service by employment type



Source: Statistics Korea *Economically Active Population Survey*, various years

### (3) Primary Results of Labor Mobility Panel Surveys by Mode of Employment (1 – 8)

In 2013, the South Korean Ministry of Labor announced the results of the Labor Mobility Panel Survey by Mode of Employment (1 – 8) in order to evaluate the effectiveness of the *Act on the Protection of Non-Regular Workers*, implemented on July 1, 2007. This survey polled a sample of 20,000 fixed-term workers, conducting its first survey in April 2010 and its eighth and final survey in April of 2012, observing changes in labor mobility, labor conditions and worker satisfaction during a period of two years.

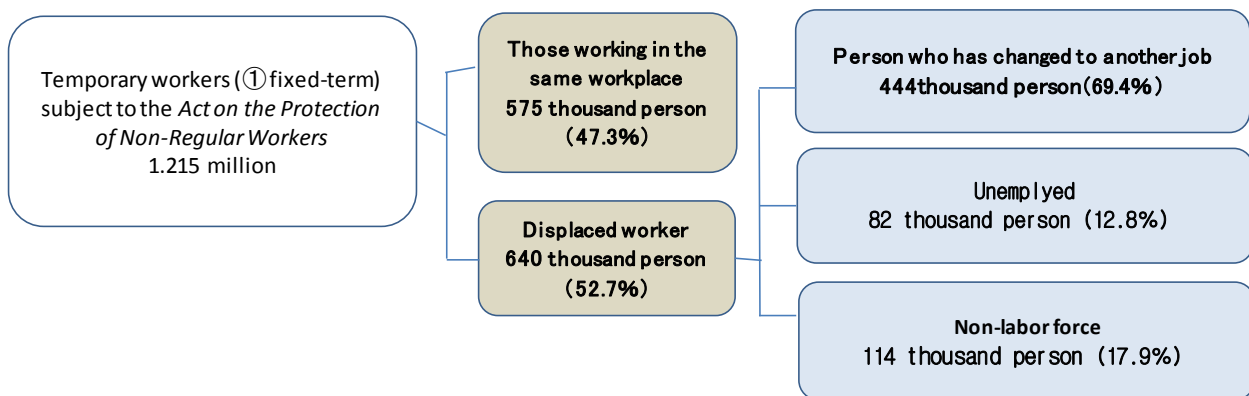
According to the report released by the Ministry of Labor, as of April 2012, with regard to 1.215 million fixed-term employees subject to the *Act on the Protection of Non-Regular Workers*, 575,000

(47.3%) were still working at the same job, and 640,000 (52.7%) had left the job. Among 640,000 who left the job, the largest category, of 440,000 left for a different job (69.4%), 82,000 became unemployed (12.8%) and 114,000 (17.9%) had left the work force (Figure 7). Looking at the reasons why people had left their job, 392,000 (61.3%) had left voluntarily, exceeding the 248,000 (38.7%) who had left involuntarily.

The 1.215 million temporary workers (① fixed-term) subject to the *Act on the Protection of Non-Regular Workers*, 71,000 had become regular full-time employees at the same workplace, and 68,000 had become regular full-time employees at a different workplace, for a total of 139,000 (11.4% of fixed-term workers) becoming reclassified as regular employees. Combined with the 424,000 workers who were reclassified as contractual employees for an indefinite contractual period under the *Act on the Protection of Non-Regular Workers* by working at the same workplace as fixed-term workers for over two years, this amounts to 563,000 workers whose employment status was protected by the *Act on the Protection of Non-Regular Workers*, or 46.4% of all fixed-term workers.

Examining the ratio of fixed-term workers reclassified as regular employees by business size, 20.2% were at business with over 100 employees (hereinafter “100 or more-person businesses”), twice as many as the 10.1% at businesses with fewer than 100 employees (hereinafter “under 100-person businesses”). On the other hand, the ratio of those classified as contractual employees for an indefinite contractual period was 75% at under 100-person businesses, higher than the 69.6% at 100 or more-person businesses.

Figure 7 Transfer of labor of temporary workers(2010 . April →2012. . April)



Source: Panel survey by employment type(1~8years)

#### (4)Problems with the Act on the Protection of Non-Regular Workers

Have there been problems by the implementation of the *Act on the Protection of Non-Regular Workers*? Kim Yuseon (2008) points out that while regular employment is increasing, indirect employment via staffing and temp agencies has been increasing for the same period.

Also, the practice of “hiring cutoff” where an employment contract is terminated before two years elapses, has

been widespread. Section 4.2 of the “Act on the Protection of Fixed-Term and Short-Term Workers (the Act on the Protection of Non-Regular Workers)” states that fixed term employees may be employed at most for two years, whereupon they become classified as contractual workers for an indefinite contractual period. However, this can be interpreted to mean that employment may be terminated at any point of time prior to two years. In fact, most workers’ employment contracts were terminated at the point of around 1 year and 9 to 10 months after their contracts were signed. Experts have predicted that this problem would occur ever since the Ministry of Labor first began designing the *Act on the Protection of Non-Regular Workers*.

It is fair to say that the implementation of the *Act on the Protection of Non-Regular Workers* in South Korea has had a somewhat positive effect by lowering the ratio of non-regular workers and increasing the usage of nonfixed-term contracts, but the effect has not been as pronounced as the South Korean government had expected. In other words, more and more, as contracts near the two-year point, fixed-term contractors run into the hiring cutoff, and their jobs are outsourced. One typical example, which occurred in June 2007, was the “E-Land War.” Just prior to the implementation of the *Act on the Protection of Non-Regular Workers*, the E-Land Retail Group, parent of the South Korean retailer “Homever,” announced that 521 of its 1,100 contract workers of over two years would be reclassified as regular employees. However, they also notified 350 people whose contract terms had expired that their contracts would not be renewed, and decided to outsource the jobs such as cash registers, etc. Outraged at this last-minute hiring cutoff, union workers lead by the *ajumma* (middle-aged women), held labor strikes and sit-ins in protest. The strikes continued for 510 days, finally ending on November 13, 2008. While the “E-Land War” did result in the rehiring of some of the union members who were terminated during the strike after the major distributor Samsung Tesco Homeplus acquired Homever’s business, and as the negotiations continued after the acquisition, some of the non-regular workers were automatically reclassified as indefinite employees during the 16 month-long ordeal; the practice of hiring cutoff to cope with the *Act on the Protection of Non-Regular Workers* appeared the forefront as a societal problem.

The “E-Land War” has paid the attention of the mass media and the nation as a whole. Although it was resolved in a not altogether unfavorable way, it was a reminder that this problem had gone on unsolved for 10 years, ever since the implementation of the *Act on the Protection of Non-Regular Workers*. There were still many vulnerable workers in Korean society who, in spite of the unfair termination of their contracts, their poor working conditions, and in spite of being discriminated against merely for being irregular employees, were powerless to do anything at all about it. Further, even those who were reclassified as contractual employees for an indefinite contractual period under the *Act on the Protection of Non-Regular Workers* saw no improvement in the way they were treated such as many continuing to see a widening salary and benefits gap between themselves and regular workers. This has contributed to growing inequality in South Korean society.

The *Act on the Protection of Non-Regular Workers* reclassifies contract workers who have worked for two years or more as contractual employees with no fixed term, requires management to employ them directly, prohibits unreasonable discrimination against them through wages or working conditions, and grants non-regular workers who were discriminated against the right to seek redress before South Korea’s Labor Commission.

However, the reality is that improved treatment of non-regular workers has not improved that much. Currently,

only the discriminated individual against has standing to seek redress for discrimination under the *Act on the Protection of Non-Regular Workers*, and only if the discrimination is unreasonable when compared with a regular employee with the same or similar job duties. Further, very few workers are willing to jeopardize their contracts in order to pursue this remedy.

Table 5 shows the state of utilization of this discrimination remedy system, which peaked in 2008, the year after the *Act on the Protection of Non-Regular Workers* was implemented, at 1,948 petitioners using the system, and has been declining ever since, falling all the way to only 78 cases in 2012. Given the large proportion of non-regular workers in South Korea, the number of cases where the discrimination remedy system has actually been used is profoundly low. Why are there so few cases of the discrimination remedy system being used? The Ministry of Labor announced that it would consider the potentially negative consequences faced by those non-regular workers who individually petition for redress of discrimination, and that it would introduce a method whereby a labor union could represent an individual member as a petitioner, but so far this has not been implemented. Further, even when a petitioner does make a claim, in many cases the commission finds that no discrimination occurred because the scope of regular employees with the same or similar job duties is very narrow. We believe this is the reason for the declining frequency of the use of the discrimination remedy system.

**Table 5 Usage status of Affirmative action**

Year	Total	a court of first instance							a court of review						
		subtotal	accept	dismissal	rejection	nolle prosequi	conciliation	arbitration	subtotal	accept	dismissal	rejection	nolle prosequi	conciliation	arbitration
2012	78	65	5	6	10	27	17	0	13	2	7	4	0	0	0
2011	88	77	39	4	3	11	20	0	11	2	4	1	4	0	0
2010	152	131	12	19	53	26	19	2	21	12	7	2	-	-	-
2009	95	80	10	5	6	48	11	-	15	8	-	4	3	-	-
2008	1,948	1,897	23	557	74	768	475	-	51	18	20	7	4	2	-
2007	145	145	55	15	1	73	1	-	-	-	-	-	-	-	-

Source: The Central Labor Relations Committee. (2013) 『Conciliation and Adjudication』, 2013, Spring.

Next let us examine wage levels and applicability of job benefits broken down by mode of employment. First, looking to wage levels, in 2006, the year before the *Act on the Protection of Non-Regular Workers* was implemented, wage levels (one month) were at 1.985 million won for regular workers, and 1.273 million won for non-regular workers. In August of 2017, ten years after the act was implemented, these figures had risen to 2.843 million won and 1.278 million won respectively, widening the disparity between the two from 712,000 won to 1.278 million won. Furthermore, we also see a widening disparity in terms of health insurance and applicability of other welfare benefits (Table 6).

Table 6 Changes in the application rate of social insurance and fringe benefit system by employment type

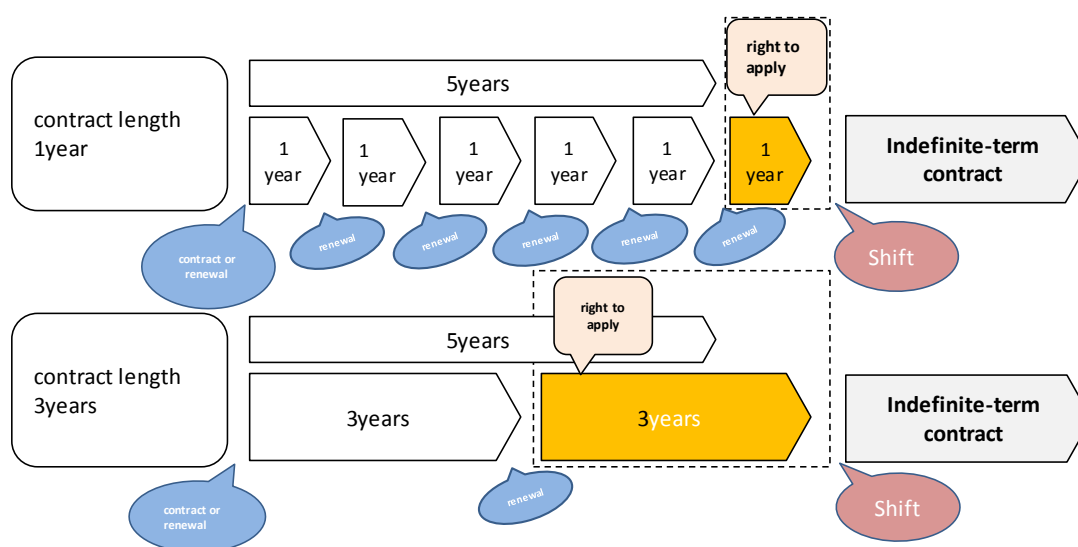
	Mar-07			Aug-17			Inequality Trend
	Regular	Non-regular	Difference (point)	Regular	Non-regular	Difference (point)	
Wage (10,000 won)	198.5	127.3	71.2	284.3	156.5	127.8	expanding
Public Pension	76.0	39.3	36.7	85.0	36.5	48.5	expanding
Health Insurance	76.6	41.8	34.8	88.4	45.3	43.1	expanding
Employment Insurance	65.4	38.8	26.6	85.9	44.1	41.8	expanding
Severance Pay	68.9	33.7	35.2	87.8	41.5	46.3	expanding
Bonus	69.5	31.4	38.1	86.2	39.1	47.1	expanding
Overtime Charge	54.3	24.3	30.0	59.2	24.2	35.0	expanding
Leave with Pay	59.9	27.3	32.6	75.7	31.7	44.0	expanding
Education and Training	32.7	22.4	10.3	62.6	44.4	18.2	expanding

Source: Statistics Korea *Economically Active Population Survey*, various years

#### 4—The Start of an “Indefinite Employment Reclassification Rule” in Japan

As discussed above, Japan applied its own “indefinite employment reclassification rule” from April 2018(Figure8). In Japan, after the Lehman Shock of 2008, the termination of fixed-term contract workers’ contracts became a societal problem, resulting in the enactment of an “indefinite employment reclassification rule” by the Liberal Democratic Party of Japan’s administration in August of 2012, which was implemented in April of 2013.

Figure 8 Indefinite-term contract system in Japan



Source: Ministry of Health, Labour and Welfare(2017) *Handbook of indefinite-term contracts*.

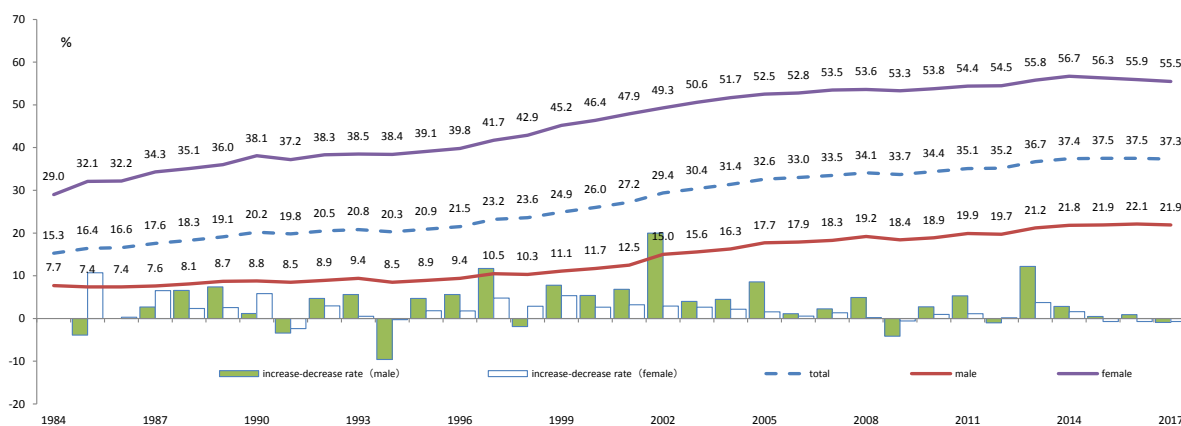
The indefinite employment reclassification rule is a rule that “allows a fixed-term contract worker with a defined period of employment such as a part-time worker, who has repeatedly renewed their fixed-term employment contract for over five years, to elect to have their contract reclassified as a contract for an indefinite contractual period (nonfixed-term employment contract).” Section 18 of the Labor Contract Act describes the reclassification of fixed-term worker contracts into contracts for an indefinite period as follows:

※Labor Contract Act Section 18

“If a Worker whose total contract term of two or more fixed-term labor contracts (excluding any contract term which has not started yet; the same applies hereinafter in this Article) concluded with the same Employer (referred to as the "total contract term" in the next paragraph) exceeds five years applies for the conclusion of a labor contract without a fixed term before the date of expiration of the currently effective fixed-term labor contract, to begin on the day after the said date of expiration, it is deemed that the said Employer accepts the said application. In this case, the labor conditions that are the contents of said labor contract without a fixed term are to be the same as the labor conditions (excluding the contract term) of the currently effective fixed-term labor contract (excluding parts separately provided for with regard to the said labor conditions (excluding the contract term)).” Generally, the indefinite employment reclassification rule was sought by part time workers, contract employees, probationary employees, half-time employees, etc.

As of 2017, non-regular workers accounted for 37.3% of Japan’s labor force, whose that is still increasing(Figure9). Compared with those of men and women, 55.5% of women were non-regular workers, nut men are a much lower 21.9%. However recently the ratio of irregularly employed men is increasing faster than women’s one.

Figure 9 Trend of ratio of non-regular workers by sex in Japan



Source: Statistics Bureau of Japan, *Labour Force Survey*, various years.

On the other hand, according to a “Survey of Labor” performed by the Ministry of Internal Affairs’ Bureau of Statistics, as of January 2018 there were 16.77 (30.3% of all workers other than officers and executives) million fixed-term contract workers in Japan. This accounts for 79.1% of non-regular workers (21.19 million people) in Japan at that time.

Toda (2017), using the “State of National Employment Panel Survey 2017,” states that while 8.93 million (46.7% of non-regular workers) non-regular workers working as non-fixed term workers since April 2013 who do not temporarily leave work or become reclassified as regular employees by April 2018 may be subject to the indefinite employment reclassification rule, “a not insignificant number of workers would decline to pursue indefinite employment reclassification, even if they become eligible, because they fear it could change their job responsibilities and/or increase their workload. Furthermore, a not insignificant number of businesses will terminate employment contracts before they exceed five years.” Accordingly, he explains that the actual number of people benefitted by the act will be lower than the number stated above.

Applying Toda’s (2017) analysis to the Ministry of Internal Affairs’ Bureau of Statistics labor survey, one may estimate that, at most, 9.9 million non-regular workers may be subject to the indefinite employment reclassification rule.

The Japanese government’s reason for implementing the indefinite employment reclassification rule is to prevent the abusive use of repeated fixed-term employment contracts to employ workers for long period of time, and by doing so, to protect the job security of fixed-term contract workers. The right to elect reclassification to indefinite employment may be exercised, in the case of a one-year contract, within one year after the fifth contract renewal, or, in the case of a three-year contract, within three years of the second contract renewal. There are no particular requirements for exercising this right—it may be in writing or oral. However, unlike in South Korea as described previously, the reclassification does not occur automatically, and must be invoked by the worker. The indefinite employment contract begins on the day after the contract in effect when the right is invoked expires.

For workers, the benefit of indefinite employment reclassification is job security. On the other hand, from businesses point of view, the benefit is that it makes it relatively easy to acquire indefinite-term contract workers who are experienced and familiar with the business and plan a long-term human personnel retention strategy. However, even after becoming an indefinite-term contract worker, there is no guarantee that wages or work conditions will improve. As a rule, the wages and job treatment will continue as before. Section 20 of the Labor Contract Act states: that a labor condition of a fixed-term labor contract for a Worker is different from the counterpart labor condition of another labor contract without a fixed term for another Worker with the same Employer due to the existence of a fixed term, it is not to be found unreasonable, considering the content of the duties of the Workers and the extent of responsibility accompanying the said duties (hereinafter referred to as the “content of duties” in this Article), the extent of changes in the content of duties and work locations, and other circumstances.” While this disallows differing standards for fixed-term and indefinite-term contract workers, it does not mention of the difference between regular employees and indefinite-term contract workers. If it remains unaddressed, the gap in working conditions between regular employees and indefinite-term contract workers may continue to widen.

Will the practice of “hiring cutoff” occur in Japan as it has in South Korea? In fact it is already occurring in some places in Japan. One such example is University of Tokyo’s “Todai Rule.”

When the University of Tokyo incorporated in 2004, it established the so-called “Todai Rule,” cutting of fixed



term employees' employment at five years. Due to this rule, after working for five years, workers must take a "cooling period" vacation of at least three months. When the Labor Contracts Act was revised in 2013, this "cooling period" was expanded to six months. Due to this, adjunct instructors got to enjoy a six-month sabbatical every five years, but they also lost the opportunity to exercise the right to be reclassified as indefinite-term contractual employees when their continued employment rights were reset during the cooling period. If the "Todai Rule" continues as implemented, there is a high probability that large-scale "hiring cutoff" could occur in April 2018, harming the majority of their approximately 8,000 part-time instructors. Further, if such a policy goes into effect at a prominent national university like the University of Tokyo, the ripple effects on other national universities will be pronounced. The eighty-six national universities in Japan employ at the very least, over 100,000 part-time instructors. The University of Tokyo Faculty and Staff Union and the Union of University Part-Time Lecturers in Tokyo Area have appeared with measures. They claim that the "Todai Rule" is illegal, and are prepared to take legal action if the university does not change its policy. The unions have put particular emphasis on Section 90.1 of the Labor Standards Act, claiming that the "Todai Rule" is not in compliance with it.

Section 90.1 of the Labor Standards Act states "In drawing up or changing the rule of employment, the Employer shall ask the opinion of either a labor union organized by a majority of the Workers at the workplace concerned (in cases where such labor union exists), or a person representing a majority of the workers (in cases where such union does not exist)."

Further, in a global ranking of universities, one reason for the University of Tokyo being downgraded was their lack of female instructors. If the hiring cutoff practices against the proportionally high number of irregularly employed women are not changed, the university's reputation may decline further.

In the face of these problems, the university announced an end to this employment policy on December 2, 2017. As a result, a path to reclassification to indefinite-term contractual employment has opened up for approximately 11,000 adjunct instructors.

Although the University of Tokyo may have solved its problems, the practice of hiring cutoff continues at many other universities like Tohoku University. One hopes that the University of Tokyo's example will have a positive impact on other universities in this regard.

## 5—Conclusions

Ten years have already elapsed since South Korea introduced its *Act on the Protection of Non-Regular Workers*. Since this new system has been implemented, socio-economic changes and the impact of the system have somewhat reduced the ratio of non-regular workers in the workplace, but non-regular workers still account for over 30% of all jobs. Further, the malignant practice of hiring cutoff remains as it is. Even those who have been reclassified as indefinite-term contractual workers due to the implementation of the *Act on the Protection of Non-Regular Workers* have seen no improvement in their working conditions, and many are faced with an increasingly wide gap in wages and benefits when compared with regular employees.

In Japan as well the ratio of non-regular workers continues to increase, with no improvement in the working

conditions of non-regular workers.

Improving working conditions for non-regular workers, in December of 2016 the Japanese government presented a “Guidelines for Equal Pay for Equal Work Proposal” at the “Council for the Realization of Work Style Reform,” with case studies of unreasonable discrimination against non-regular workers. However, it is still unclear when this system will be implemented. Specifically, the Ministry of Health, Labour and Welfare planned to implement “equal pay for equal work” in accordance with the “Guidelines for Equal Pay for Equal Work Proposal” starting from 2019. However, on February 7 of this year, the Ministry of Health, Labour and Welfare announced that the start date in the work style reform bill, it will submit to the Diet, has been pushed back by roughly one year. Furthermore, recently discrepancies were discovered in the Ministry of Health, Labour and Welfare’s “flex-time” working hours survey, causing the ministry to indefinitely postpone submission to the Diet of work-style reform bills based on “equal pay for equal work” and “limiting overtime hours.” Improvement in working conditions for non-regular workers still seems to be a distant goal.

Further, reference to the South Korean developments introduced in this paper suggests that it is likely that Japan will also experience the same outbreak of hiring cutoffs just prior to the application of an indefinite employment reclassification rule. However, where the Lehman Shock financial crisis struck South Korea immediately after it implemented its indefinite employment reclassification rule, Japan is currently experiencing a critical labor shortage, suggesting that hiring cutoffs will not be as pronounced as they were in South Korea. Still, hiring cutoffs are already occurring sporadically in Japan. An additional problem is that there is no solution in sight for the lack of improved working conditions for indefinite-term contractual employees. Even though Section 20 of Japan’s Labor Contracts Act prohibits discrimination against fixed-term contract workers as compared with indefinite-term contract workers, it does not address discrimination against indefinite-term contract workers as compared against regular employees. In other words, while the “indefinite employment reclassification rule” being implemented in April 2018 will provide job security, it will not otherwise guarantee improved working conditions for indefinite-term contract workers.

Even if hiring cutoff is not as severe as it was in South Korea, it is feared that neglecting to take measures to improve working conditions for indefinite-term contract workers will create new disparities between indefinite-term contract workers and regular employees. We continue to monitor what measures the Japanese and South Korean governments will take to improve working conditions for non-regular workers and indefinite-term contract workers.

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