

# Labor Politics of Employment Protection Legislation for Non-regular Workers in South Korea

2009. 7

Lee, Byoung-Hoon

(Dept. of Sociology, Chung-Ang University: [bhlee@cau.ac.kr](mailto:bhlee@cau.ac.kr))

## ◆ Non-regular Employment Legislation as a Contested Terrain of Labor Policy

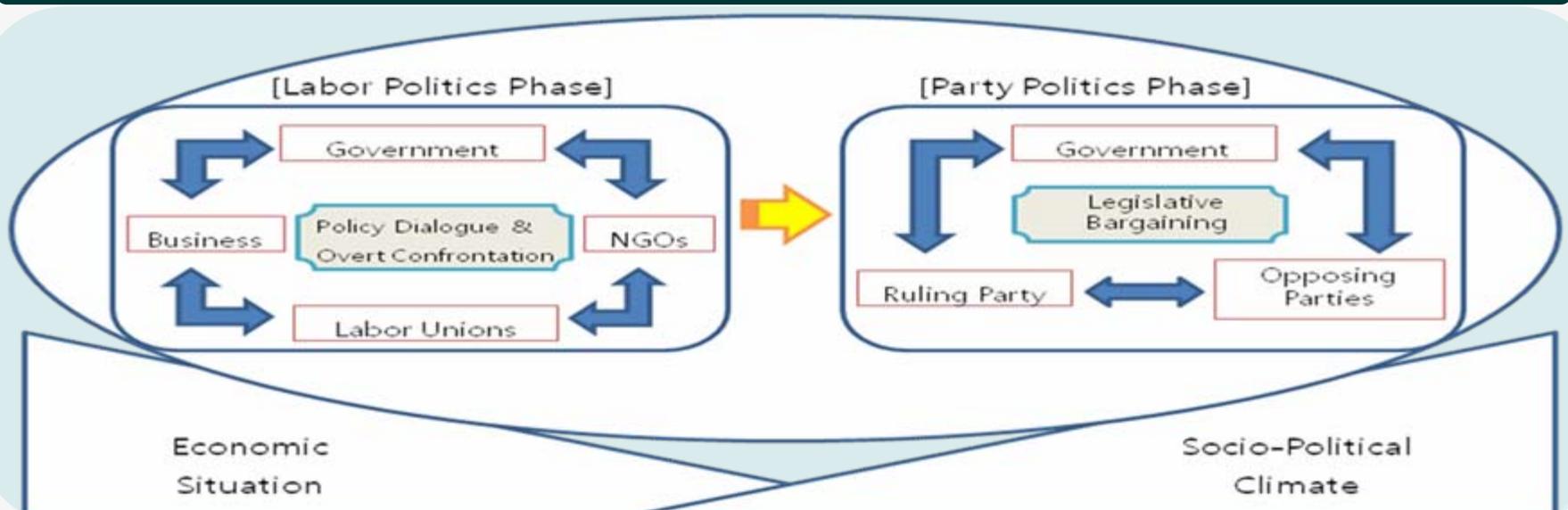
- ✳ Non-regular employment including fixed-term, part-time, dispatched, contracted, home workers, and dependent self-employed
- ◆ Non-regular employment as key source of labor market polarization: overuse, discrimination, and entrapped
- ◆ Non-regular employment legislation under intense contention among labor unions, business associations, governments, political parties, NGOs and academics over the past 10 years ⇒ Contested politics over protection and flexibilization
- ◆ Political processes of non-regular employment legislation involving policy consultation, top-level negotiations, political party negotiations, and street politics
- ◆ Aims to examine the evolution of non-regular employment legislation from the strategic-relational perspective

# Theoretical Approach

## Bob Jessop's Strategic-Relational Perspective

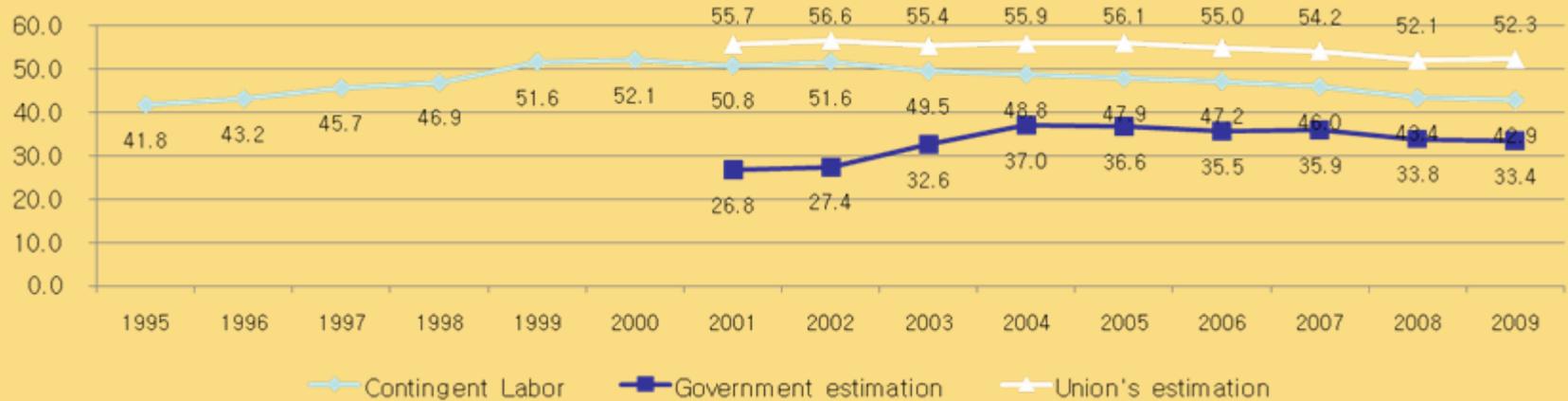
- ◆ Dialectic of structure and strategy, rather than structural determinism & class reductionism
- ◆ Strategic selectivity of the state, materialized cohesion of power relations & discriminating influence over political process of policy/law-making
- ◆ Contingency & indeterminability in the dynamics of law-making
- ◆ Labor laws as a contested terrain manifesting interest conflicts among a variety of social parties

## Framework to Examine the Labor Politics of Non-regular Employment Legislation



# Background of Non-regular Employment Legislation

## Sharp Proliferation of Non-regular Employment since the Economic Crisis of 1998



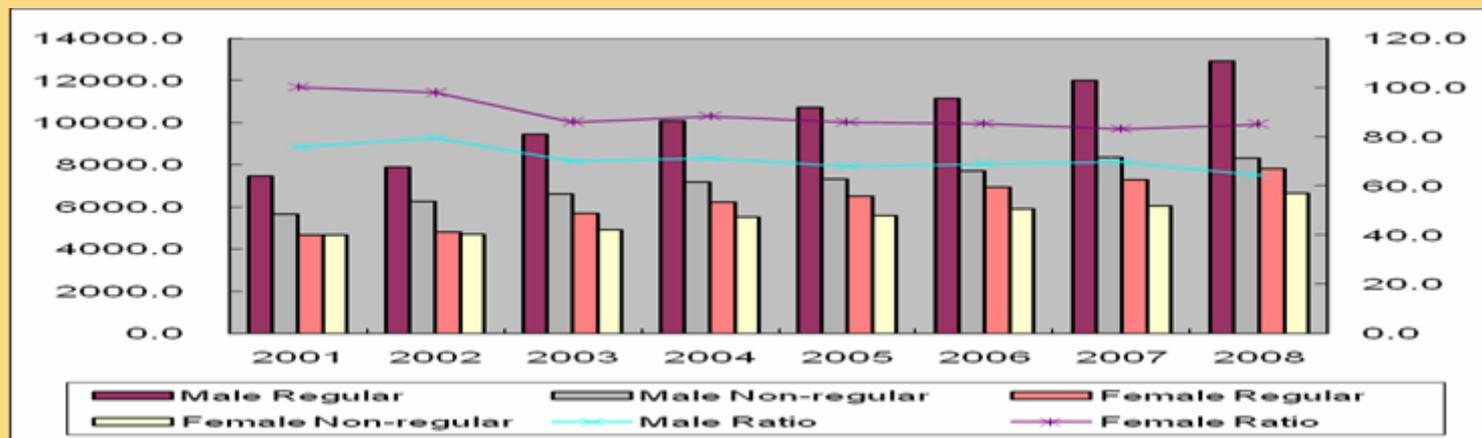
## Categorisation of Employment Types in Economically Active Population Survey

		EAP - Supplementary Survey		Total
		Regular	Non-regular	
EAP Survey	Permanent	① 7,687 (47.8%)	② 1,487 (9.2%)	①+② 9,174 (57.1%)
	Contingent	④ 3,015 (18.8%)	③ 3,887 (24.2%)	③+④ 6,902 (42.9%)
Total		①+④ 10,702 (66.6%)	②+③ 5,374 (33.4%)	16,076 (100.0%)

Note: Non-regular employment includes fixed-term labor, on-call labor, part-time labor, dispatched labor, contracted labor, home work, and dependent self-employed. Government's estimates = ②+③; Labor's estimates = ②+③+④

# The Background (cont.)

## ◆ Widening Trends in Wage Gap Between Regular and Non-regular Workers (Hourly Wages in Korean Won, Regular Employee=100)



## ◆ Social Exclusion of Non-regular Workers

	Regular Workers		Non-regular Workers	
	2004	2008	2004	2008
Employment Insurance	61.5%	65.8%	36.1%	39.2%
Medical Insurance	73.8%	78.0%	40.1%	41.5%
National Pension	72.5%	77.3%	37.5%	39.0%
Severance Payment	67.4%	74.5%	31.3%	35.6%
Overtime Work Payment	65.8%	53.5%	27.5%	28.0%
Paid Vacations	55.8%	65.4%	22.2%	33.6%
Bonuses	58.2%	71.2%	24.5%	27.9%

◆ Non-regular job as a trap, not a stepping stone → Segmented Labor Markets

# Labor Politics of Non-regular Employment Legislation

## The People's Government (1998 - 2002)

- ◆ Legislation of the Dispatched Workers Law under the 1998 economic crisis, as part of IMF-demanded labor market reforms
- ◆ Joint action-mobilizing of unions & NGOs, concerned over the rapid proliferation of non-regular employment
- ◆ Tripartite Commission started policy-consultation, producing public policy recommendation

	Union Representatives	Business Representatives	Public Representatives
Fixed-term	<ul style="list-style-type: none"> <li>- Regulating the use of fixed-term labor for limited valid reasons or by the duration limit</li> <li>- Stipulating the principle of the equal pay for equal value-work</li> </ul>	<ul style="list-style-type: none"> <li>- Opposing any regulations for fixed term workers</li> </ul>	<ul style="list-style-type: none"> <li>- Enforcing the time limit of fixed-term contract</li> <li>- Prohibiting of discriminatory treatment</li> </ul>
Part-time	<ul style="list-style-type: none"> <li>- Introducing a limit of daily working time and extra work allowance for part-time workers</li> </ul>	<ul style="list-style-type: none"> <li>- Opposing the introduction of part-time working time limit and extra allowance</li> </ul>	<ul style="list-style-type: none"> <li>- Prohibiting discrimination of part-time workers and paying extra work allowance for exceeding the pre-defined limit of part-time work</li> </ul>
Dispatched	<ul style="list-style-type: none"> <li>- Limiting the use of dispatched labor only for professional jobs and for two years</li> <li>- Prohibiting dispatched workers from doing the same job over two years</li> </ul>	<ul style="list-style-type: none"> <li>- Changing the positive list into the negative list</li> <li>- Abolishing the time limit of dispatched labor in use</li> </ul>	<ul style="list-style-type: none"> <li>- Regulating the illegal use of dispatched labor</li> <li>- Prohibiting discrimination and promoting labor rights of dispatched workers at their working sites</li> </ul>
Dependent Self-employed	<ul style="list-style-type: none"> <li>- Guaranteeing the legal entity of dependent self-employed worker in labor laws</li> </ul>	<ul style="list-style-type: none"> <li>- Opposing the recognition of the legal entity of dependent self-employed worker and resolving their interests via civil or commercial laws</li> </ul>	<ul style="list-style-type: none"> <li>- Proposing the special law to guarantee quasi-workers (dependent self-employed) labor rights to organise and bargain</li> </ul>

# Labor Politics of Non-regular Employment Legislation

## The Participatory Government (2003 - 2007)

- ◆ Growing Joint action-mobilizing of unions & NGOs, concerned over the discriminatory of Non-regular labor
- ◆ The government made a legislative proposal, covering fixed-term, part-time & dispatched workers, which created intense interest negotiations and contention between labor and Business circles, as illustrated in the below table.

	KTCU & DLP	Business	Government
Equal Treatment	<ul style="list-style-type: none"> <li>- Stipulating “Equal Pay for Equal Work” principle</li> <li>- Prohibiting discrimination by employment type</li> </ul>	<ul style="list-style-type: none"> <li>- Opposing the stipulation of “Equal Pay for Equal Work” principle</li> </ul>	<ul style="list-style-type: none"> <li>- Stipulating the prohibition of irrational discrimination</li> <li>- Introducing the corrective procedure of discrimination</li> </ul>
Fixed-term	<ul style="list-style-type: none"> <li>- Allowing the use of fixed-term labor only for rational reasons</li> <li>- Limiting the length of fixed-term employment to one year</li> </ul>	<ul style="list-style-type: none"> <li>- Opposing the limit of fixed-term employment for reasons of use</li> <li>- Allowing the use of fixed-term labor for three years</li> </ul>	<ul style="list-style-type: none"> <li>- Allowing the use of fixed-term labor for three years (temps exceeding 3 years to turn into regular workers)</li> </ul>
Dispatched	<ul style="list-style-type: none"> <li>- Abolishing the Dispatched Worker Law &amp; punishing illegal use of dispatched workers by making them regular workers</li> <li>- Strengthening the accountability of firms using dispatched labor</li> </ul>	<ul style="list-style-type: none"> <li>- Expanding the eligible sectors for the use of dispatched labor by adopting the negative list</li> <li>- Opposing the suspension period</li> </ul>	<ul style="list-style-type: none"> <li>- Adopting negative list of dispatched labor (except manufacturing)</li> <li>- Introducing the suspension period to prohibit the use of dispatched workers in the same job</li> </ul>

# Labor Politics of Non-regular Employment Legislation

## The Participatory Government (2003 - 2007)

- ◆ Social parties, except KCTU & DLP, had a tacit consent to legislate non-regular employment laws after the prolonged negotiations, and the Congress passed the controversial laws having the following contents in November 2006.
- ◆ The enforcement of the laws in July 2007 produced such side effects as growing use of subcontracting and dependent self-employed, leading to the follow-up policy consultation.

		The Existing Laws	Non-regular Employment Laws
Fixed-term	Prohibition of Discrimination	- No clause	- Introduction of 'prohibiting discrimination' clause - Labor Relations Commission's corrective action of discriminative cases
	Renewal of Employment Contract	- No clause	- Two-year limit on the use of fixed-term labor (Fixed-term workers exceeding the two-year limit are regarded as permanently employed)
Part-time	Prohibition of Discrimination	- No clause	- The same clauses as fixed-term labor
	Extra Work Payment	- No clause for part-time workers	- Adoption of the limit of extra work (weekly 12 hours)
Dispatched Labor	Prohibition of Discrimination	- No clause	- The same clauses as fixed-term labor
	Duration & Eligible Sector of Dispatching	- Limit of two years - Positive list	- The same limit of two years - Retention of positive list, yet expanded
	Treatment of dispatched workers in illegal use	- Legally regarded the workers as employed in regular jobs	- Enforcing employers to employ dispatched workers, used over 2 years or illegally, as regular employees

# Labor Politics of Non-regular Employment Legislation

## The Conservative Government (2008 - Present)

◆ The “business-friendly” government attempted to deregulate the non-regular employment protection legislation on the pretext of economic crisis, yet failed due to strong resistance from opposition parties, labor unions, and NGOs. Now, the contest between political parties is going on with regard to how to de/regulate non-regular employment.

	Unions & NGOs	Businesses	Government
Prohibition of Discrimination	-Expansion of complaint procedures & comparable jobs -Extension of complaint period for discrimination cases to 6 months	-Opposing any revision to the complaint procedures for discrimination cases	-Extending complaint period to 6 months, but disregarding the expansion of complaint procedures and comparable jobs
Fixed-term	-Retaining imposition of the two-year limit on the use of fixed-term employment and providing of incentives to firms turning fixed-term workers into regular jobs (KCTU) Limiting the use of fixed-term Labor for specific reasons	-Abolition of the duration limit on the use of fixed-term employment	-Extension of the term limit for fixed-term worker to 4 years -Provision of incentives (social insurance exemption) to small firm turning fixed-term worker into regular job
Dispatched	-Expanding the accountability of employers using dispatched labor -Opposing the extension of the duration limit of dispatched labor (KCTU) Abolishing the dispatched worker law	-Replacing the current positive list with the negative list for guaranteeing employers' extended use of dispatched labor	-Extension of the term limit to 4 years -Expanding the eligible sectors for the use of dispatched labor by revising ministry ordinance
Contracted & Dependent Self-employed	-Introducing statutory protection for contracted & dependent self-employed workers	-Opposing any regulation on subcontracting and dependent self-employed workers	-Not accepting any regulation on subcontracting & dependent self-employed workers

# Summary

◆ The re/making of non-regular employment legislation involves relational-strategic interactions of concerned social actors in its contested processes, often deviated from the government's intended reforms.

	Contextual structure	Actors' interest & strategy	Legislative outcomes
People's Government (1998-2002)	<ul style="list-style-type: none"> <li>-IMF's pressure for labor market restructuring during economic crisis</li> <li>-Labor unions' powerful resistance to the former government's legislative attempt</li> <li>-Political power shift to the liberal government</li> </ul>	<ul style="list-style-type: none"> <li>- Government: forced to enact the dispatched workers law as a policy measure to gain the IMF's relief loan; later, formed the policy-consultation process to produce a legislative proposal for NRE protection</li> <li>- Union: forced to endorse the introduction of the dispatched workers labor law by policy exchange under crisis; later demanded the regulation of non-regular labor</li> <li>- Business: demanding reform policy for labor market flexibility</li> </ul>	<ul style="list-style-type: none"> <li>-Enactment of the dispatched workers law legalising the use of this employment type</li> <li>-Forming the tripartite commission to deal with problematic issues of non-regular employment</li> </ul>
Participatory Government (2003-2007)	<ul style="list-style-type: none"> <li>-Growing social concern over labor polarisation &amp; non-regular labor issues</li> <li>-Economic slump &amp; political contention</li> <li>-KCTU's loss of public confidence</li> </ul>	<ul style="list-style-type: none"> <li>- Government: pressured to legislate non-regular labor protection, yet desiring to limit the regulation lest firms' competitiveness and labor flexibility be damaged</li> <li>- Union: divided between the pragmatic (FKTU) and the maximalist (KCTU) approaches to non-regular labor laws</li> <li>- Business: minimising the statutory regulation on the use of non-regular labor</li> <li>-NGO: demanding policy to resolve labor polarisation derived from non-regular labor issues</li> </ul>	<ul style="list-style-type: none"> <li>- Enactment and revision of the non-regular employment laws, reflecting com-promise between tripartite actors, except the KCTU</li> <li>-Follow-up consultation to deal with side-effects of the NRE laws</li> </ul>
Conservative Government (2008-now)	<ul style="list-style-type: none"> <li>-Power shift to pro-business government, faced with civil resistance</li> <li>-Outbreak of economic crisis</li> </ul>	<ul style="list-style-type: none"> <li>-Government: pursuing a pro-business labor policy to promote labor market flexibility</li> <li>- Union &amp; NGO: having a common ground to fight against the weakening of the non-regular labor laws</li> <li>- Business: demanding deregulation of NRE laws</li> </ul>	<ul style="list-style-type: none"> <li>-Political contention on the revision of NRE laws under way</li> </ul>