8

Remote Work and Redistribution of Responsibility

The Korean Case in Perspective

Choi Sukhwan

8.1 REMOTE WORK IN KOREA: THE SOCIAL CONTEXT

There was a remarkable increase of Unionization rate recently at a company in Korea. A company named Kakao (the most famous corporation for its mobile instant messenger in Korea) ordered its employees to come back to the office after the pandemic is at its stable situation. When it made it clear to go for a change in the working environment, from home to work, it faced huge resistance from its employees[1]. Just a week after Kakao ended the remote work system and announced a change into the office-oriented work system, the union membership rate, which had been below 10% for several years, dramatically soared, exceeding 50% in an instant (Park 2023). It achieved the majority of unions, and got the position of representative for the collective bargaining (Choi 2024a)[2]. This was really news, considering the recent nationwide union membership rate, about 14%, which has increased in these 4–5 years but still not that high (Kwon 2023). Employees who newly joined the union insisted that there was not enough communication between management and employees in the process of transitioning the working system from telework to the office centered work. They were members of an instant message company, very much accustomed to working without facing people even before the pandemic, and sudden transition into face-to-face work was a huge change for them. In the IT industry, there was an atmosphere that conflicts were inevitable due to the withdrawal of remote work, when many companies were getting back to the office

[1] www.donga.com/news/Economy/article/all/20230105/117301094/1 [in Korean].

[2] Trade Union and Labor Relations Adjustment Act (TULRAA) of Korea Art.29-2. Para.1. Nr.1. Where at least two trade unions established or joined by workers exist in one business or one place of work regardless of the type of organization, trade unions shall determine a bargaining representative trade union (including a representative bargaining organization, the constituent members of which are members of at least two trade unions; hereinafter the same shall apply) and request the same to bargain. For a more detailed explanation about the system, see Choi 2024a: 412.

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from "Work Anywhere" policy. During the pandemic age, a lot of work which was originally accomplished at the office was performed without actual contact, which a Korean scholar named the age of "untact" (Kim 2017). With the end of the story, increase in union membership rate among the IT industry, we realize that we can still utilize traditional labor law as a tool for improving issues occurring with the new types of work, including remote work.

Before the pandemic, we had tried to introduce remote work in Korea, which was not that successful (MOEL 2020c: 206)[3]. For example, for the public officials, "Smart work center" was set up by administrative offices and courts, as an attempt to make satellite offices so that some part of the workday could be done outside their original workplace. This is a kind of work–life balance by place, a welfare for the employees. Because many government offices moved to the rural side in the name of "balanced development of the nation," this space has become an alternative workspace when officials come to Seoul, the place where they worked before, to join their families, or submit all the data requested by the National Assembly which is still in Seoul. In this case, it was far from the type of remote work which workers could entirely determine where to perform their work.

However, in Korea, the type of remote work rapidly spread amid changes in the environment caused by COVID-19. Many companies have introduced remote work and telework, which was welcomed by workers who had to live far away from their companies because of high housing costs. In particular, restrictions on gathering together and requests for "social distance" during the COVID-19 period accelerated the fast proliferation of telecommuting. Remote work soon became a preferred option for both labor and management. IT companies expanded recruitment and increased the size of their companies, to build and maintain such infrastructure.

In addition to the pandemic, there is one more critical issue about remote work in Korea: fertility rate. Koreans spend more time on paid work than workers in most of the OECD countries. With annual hours worked, South Korea has been one of the longest working countries in the OECD (Kim 2023a), with the average of 1740 hours in 2023[4]. Korea's fertility rate is the lowest level in the OECD, 0.81 in 2021[5], and Korea's long working culture is pointed out as one of the main reasons for the low birth rate (Kim 2023b). This is such a critical issue that recently the "Presidential committee on ageing society and population policy" has launched as a new governmental organization[6]. In this situation, remote work is actively supported, in terms of contributing to the tackling the low birth rate by making women's working environment family-friendly, mainly supporting childcare.

[3] Only 3.5% of the whole enterprise introduced remote work system in 2019, 4.5% work at home.
[4] www.oecd.org/en/data/indicators/hours-worked.html?oecdcontrol-d7f68dbeee-var3=2023.
[5] www.oecd.org/en/data/indicators/fertility-rates.html?oecdcontrol-00b22b2429-var3=2021.
[6] www.betterfuture.go.kr/index.do;jsessionid=3615F3D9246F42211A6AB1BD64A6081E.node20.

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In this chapter, I'd like to describe the situations and institutional reply concerning remote work from the perspective of distribution of responsibility. The employment contract is a mutual contract, a structure in which each party bears related obligations and is responsible for it. This structure necessarily requires distribution of responsibility. From the traditional perspective of employment law, subordination has been the most important essence of the employment contract. Face-to-face direction and close supervision by the employer, usually with sharing spaces, have been thought of as an important basis for the subordination, which brings about a lot of unique obligations to the employers in labor relations. We can raise a question that, if we do not have these factors any more by remote work, in some part we have to reconsider the distribution of the responsibilities; in other parts, we still have to keep the traditional structure of the distribution of responsibility, maybe in a different way.

Surveys about the experiences of remote work in Korea show pros and cons. It was reported (MOEL 2020b: 8) that the biggest hurdle from the employers' side was difficulty in communication (62.6%). Hurdles in fair management compared with employees carrying out jobs not familiar with working at home (44.1%) and difficulty in performance evaluation (40.0%) were also problems indicated with the introduction of remote work. The answer mentioned that the cost burden for the infrastructure was only 9.0%[7]. From the workers' side, the ambiguous boundary between working hours and breaks was reported as the biggest problem (45.8%), which made workers hesitate to go for the remote work. Decreases in efficiency due to non-separation of workspaces (44.8%) and alienation due to lack of interaction with the colleagues (30.4%) were also main reasons.

However, both sides are basically positive about remote work, especially work at home. Work efficiency was to be expected to improve with less unnecessary meetings and reports, and job satisfaction increased through self-directed work performance and efficient goal achievement. Evaluation of workers' satisfaction with work at home reached 91.3%, contrary to 8.7% dissatisfaction (MOEL 2020b: 7). It has contributed greatly to the protection of workers' health during COVID-19 as the most effective social distancing method. It greatly helped to protect workers of vulnerable groups, especially pregnant women and those with underlying diseases. Working at home allowed work–life balance, relatively free from time and place constraints, with the expanded choices of working time and places, being able to participate in family care. The disabled, the elderly, those in care, or pregnant or childbirth who prefer to work at home could have the chance to continue to work without quitting their jobs by using telecommuting. From the employers' point of view, working at home or any other place could reduce the cost for workspace,

[7] This is the answer from the employers who are actually having remote work as working style in the company. At the same survey, 34.2% of the employers who did not introduce remote work system answered the reason as "the cost for newly building infrastructure."

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prevent skilled personnel from changing jobs, and expect long-term service. It helped to attract excellent human resources by enhancing job satisfaction, customer service satisfaction, and corporate image that supports workers' work and life balance. Also, working from home could have a positive impact on the environment, reducing traffic congestion and pollution during commuting hours. Increasing demand for IT infrastructure, such as collaborative tools and video conferencing systems, could boost non-face-to-face industries and create jobs.

In Korea, we had been experiencing a highly work-oriented society through industrial development for many years, and this apparently had been influencing regulations as well. For example, there are many cases that admitted an employee's death as an industrial accident covered by public insurance during or after the company dinner (Han 2015)[8]. Traditional features of Korean working culture like close human relations at work and company dinner as part of work (Choi 2024a; Chang 2015) were influencing regulations too, but as remote work doesn't necessarily suppose these types of relations, it is changing the way of working and consequently regulations for our working life too, consequently suggesting redistribution of responsibility.

8.2 REMOTE WORK IN KOREA: THE FRAME OF REGULATION

For the regulation, under the current Labor Standards Act (herein after LSA), employees' workplaces are based on their contract and employers' work rules (art. 15 and art. 93). In general, workers' homes are recognized as private spaces, away from the direction and supervision of employers, so telecommuting is an unfamiliar way of working from the traditional perspective of the labor law. However, the recent development of digital devices and communication technologies created an environment where people can work regardless of time and place, and the COVID-19 situation accelerated this transition.

Current LSA does not distinguish regulations on remote work, so in principle, it would be reasonable to assume that workers have no right to request or implement it. However, if there is a basis for remote work in contracts, work rules, and/or collective agreements, it can be interpreted that, with the consent of workers, the employer can start it. However, in the event of a disaster like COVID-19, in order to continue the business and secure the life and safety of workers, they can be ordered to work from home without the consent of workers, which cannot be disadvantaged for not agreeing to work from home.

Even at this time, regulations for working hours (Article 50), restrictions on overtime work (Article 53), rest (Article 54), and holidays (Article 55) should be applied. Working at home without real-time supervising technology will inevitably lead to legal issues like the initiative for the introduction and implementation of

[8] As one of the leading cases, Supreme Court of Korea 2008. 10. 9. 2007du21082.

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remote work, the way to decide important working conditions such as wages and working hours when working at home, responsibility about health, privacy, and industrial accident protection of remote workers. From the perspective of LSA, remote work without supervising by employer is rather similar to the discretionary work (art. 58 para.3), in that employees can decide allocation of working time[9]. In this way, even if there are no legislations related to remote work under the LSA, there have been efforts to deal with the situation of appearance of remote work, and in principle, labor standards for ordinary employees apply to remote workers.

However, there was a need to regulate remote work in more clear ways, and another type of regulation was sought, resulting in two "guidelines" by the Ministry of Employment and Labur (herein after MOEL), in 2011 and 2020 respectively. These were in the form of "soft law," not a binding law with strong enforcement, but with a more flexible way of regulation, rather close to the recommendation by the administrative authority. They clarified the application of existing laws and regulations to some ambiguous matters caused by remote work. Instead of the traditional method of imposing penalties for violations, they provided support and incentive by the government. They attempted to visualize the responsibilities of employers and employees in very specific situations with examples, and pointed out that it would be better to have an agreement between the parties regarding each specific matter that was not imagined before remote work became the main role on the stage.

First, the 2011 smart work guideline by MOEL defined smart worker as "a worker works all or part of his or her working hours at home, in a separate office provided by the employer, or in an unspecified place" (MOEL 2011). It also described smart work as "a flexible working method that works regardless of location or time, such as using information and communication devices, unlike working in a fixed working place according to a predetermined working time." The 2011 smart work guideline made it

[9] In case of works designated by Presidential Decree as those works which, in the light of their characteristics, require leaving the methods of performance to a worker' discretion, it shall be deemed that the works have been provided for such work hours as determined by a written agreement between the employer and the labor representative. In this case, such written agreement shall specify the matters falling under the following subparagraphs: (1) Work to be provided subject to such written agreement. (2) Statement that the employer would not give specific directions to the worker regarding how to perform the work, how to allocate work hours, etc. (3) Statement that the calculation of work hours shall be governed by the written agreement concerned. Works designated by presidential decree here are as follows: (1) Research work in the field of research and development of new products or new technologies or humanities and social sciences or natural sciences. (2) Design or analysis of information processing systems. (3) coverage of articles in newspapers, broadcasting or publishing businesses, organizing or editing work. (4) Design or design of clothing, interior decoration, industrial products, advertising, etc. (5) Producers or directors' duties in the production business of broadcasting programs, films, etc. (6) Other duties prescribed by the Minister of Employment and Labor (business that provides counseling, advice, appraisal, or agency under the delegation and commission of others in the affairs of accounting, legal cases, tax payment, legal, labor management, patent, appraisal, financial investment analysis, investment asset management, etc.).

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clear that smart workers should be under the regulation of current labor laws such as the LSA, Minimum Wage Act, Workers' Retirement Benefit Guarantee Act, Occupational Safety and Health Act, and Industrial Accident Compensation Insurance Act.

According to the guideline, when hiring workers to use the smart work method, the place of work must be specified, whether regular or occasional. In other words, it should be stated that in the normal case, the place of work is the home or satellite office of the worker, and in the occasional case, a certain frequency and time can be worked in different places along with the main place of work. The place of work had not been highly specified before remote work; only abstract wording of "the location determined and directed by the employer" had been used. The 2011 guideline made it more distinct and articulated that home of the worker could be a pace of work on the basis of contracts, work rules, or collective agreements. If there are no regulations on smart work, and no changes in working conditions other than the place of work between smart work workers and ordinary workers, it is sufficient to obtain individual consent from workers who want to do smart work, but with a change in working conditions such as working hours and wages as well as the place of work for all workers, then work rules need to be changed. The guideline also deals with working hours management of smart work, depending on the possibility of command orders for working hours. If there are information and communication devices to make employers be able to connect with the workers all the time, it is just the same as the regulation for ordinary workers. If it is difficult to calculate working hours because the information and communication device is not in a state of connecting at all times and the employer does not give specific work instructions, then art. 58 of LSA can be applied. At the same time, however, the employer is recommended to check and manage the working hours of the workers periodically, in the sense of the responsibility to take care of workers' health. The standards about the responsibility can be adjusted in consideration of the privacy of the workers, but still employers are required to take regular education for safety and health. The worker must prove whether an accident that occurred to the smart worker is work-related. The guideline suggests making a consensus between labor and management on smart work, documenting or setting up in advance about what to do, how to perform it, how to contact with each other, and how to take fair performance evaluation and personnel management.

But in September 2020, the MOEL suggested a "Comprehensive Manual on Work at Home," mainly focusing on the situation caused by COVID-19, in which work at home was inevitable. The main objective lies in giving support to companies considering the introduction of work at home system, and this is also an important difference with the smart work guideline 2011. Here "work at home" is defined as the type of work performed by a worker in a designated place, such as home. It is mentioned here, too, that when companies attempted to introduce a work at home system, if there provisions don't exist about work at home or

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somewhere else, in the employment contract or work rules, then individual consent from the workers is needed. However, it also says that when there appear situations like epidemic disease, then the order to work at home can be justified only with consultation, even without consent. It also stipulated that the government could support indirect labor costs, telecommuting infrastructure construction costs, and cost for consulting services to promote telecommuting. Next, in order to collect information on the location of telecommuters, like using GPS tools, consent from workers is required. In principle, the cost of expendable office supplies generated by telecommuting is borne by the employer. In particular, the guideline speaks to the principle that injuries or diseases that occur in relation to work at home are occupational accidents. Governmental support for telework entailed a multifaceted approach, encompassing diverse measures aimed at promoting the introduction and settling down of flexible work practices. It also recommends a more clear way of job description, a more detailed standard setting about performance evaluation, and making a system of eliminating the fear of discrimination with the persons who work at the office.

8.2.1 *Uncomfortable Cohabitation with Traditional Labor Law*

Two guidelines mentioned above are in the form of "soft law," not binding laws that have strong enforcement. The use of soft law contrasts with the fact that Korea's labor law, especially the LSA and unfair labor practice system, has been a hard law regulation with criminal punishment. The use of soft law can be highly evaluated in two perspectives. First, in the time that requires optimized regulatory response when hard law is a little too tight, it can be easy to perform a rather flexible way of regulation (Kang 2014: 539). Second, we are still in the way of forming regulations with these new situations and unfamiliar technology, where soft law regulation can leave much room to be decided by autonomy of the parties concerned, especially collective autonomy. This can also be evaluated as an attempt to reconsider the nature of these working conditions and shift from the public order to the agreement between private parties. The fundamental question of what should be dealt with the regulation of labor law is here, when working people seem to have more freedom and less control and domination by the employers with remote work.

However, with this possibility of flexibility by soft law, we still need to be careful about the limit of minimum working conditions (e.g., maximum working hours). The approach that soft law is searching for about remote work, it certainly gives more discretion to the employees and maybe to the employers, so easy to deal with this new phenomenon. But even with remote work, we still have area that traditional regulations still presides, especially about OSH issues. The responsibility to protect workers from unhealthy and a dangerous working environment is a kind of duty that should not be easily transferred to the employees' side, even if they are not visible right in front of the employer.

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What is more, among the changes in values caused by the COVID-19 era, a key element of remote work that does not share space can be found to be used as a reason to avoid employers' traditional labor law responsibilities. This raises the question of whether remote work is accelerating the fragmentation of labor relations, outsourcing the labor force, which can bring about the blurring of employer responsibilities. Certainly, technological advances seem in a way to enlarge discretion and independence of employees. But as seen in the *MES* case[10] and portable devices workers carry at all times, unlike what they look like, the relations do include commands and directions disguised with technologies, especially when connected with GPS. This is the very situation where labor law finds its original place to be applied. Anyway, it is clear that remote work is at least a catalyst that requires a review of the distribution of responsibilities between employers and workers, between multiple users or stakeholders.

8.2.2 *Redistribution of Responsibility in Contract*

Remote work seems to make it easier to have multi-jobs for the employees. Exclusivity, which traditionally has been main feature of the employment and the very essence of managerial prerogative (De Stefano et al. 2024), is getting more and more difficult to be guaranteed (Countouris & De Stefano 2023: 153). Here we can approach from a new perspective about safety and health. Exclusive domination by the employer necessarily requests the whole responsibility about the OSH of the workplace. However, there are attempts to limit this responsibility because of the discretion that employees have when he/she works apart from the face-to-face supervision of the employer. In Korea, we have discussion about working hours as public order with multi-job workers, and burden of proof concerning industrial accidents.

Traditional labor and employment law presuppose the sharing of space. The fact that the employer who manages his or her facility and the employee who works in

[10] Supreme Court of Korea 2022. 7. 28. 2021da2221638. This is a case whether a production management system (Manufacturing Execution System, hereinafter referred to as MES) can be recognized as control and order of employers. This computer-based process management system is widely introduced in various manufacturing process to support various activities such as work schedule, work instruction, quality management, and work performance aggregation at the production site of a company. Although the details of the MES may vary from company to company, it is common for data at the production site to be collected, processed, and provided in real time through MES. In this case, the production process and operation system were planned and managed by a MES, and the subcontractor's employee performed cooperative work according to what was designated through the MES. Most of the tasks performed were simple, repeated job according to the manual standard, did not require a high degree of expertise and skills. The reward paid by the company to the subcontractor was calculated mainly based on the number of workers and working hours input by the subcontractor, not the quantity of the work. The court said that worker control by MES was recognized as the command and supervision typically performed by the employer.

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the employer's facility are located within the same space enabled a strong command without any other external factor's intervention. The employer's direction and order were both the essence of the employment contract and the basis for various responsibilities. The employer's authority to place a worker in a particular place entails his or her responsibility for risks arising from that place at the same time. The basic principle of the employers' responsibility for occupational health and safety lies in this presumption.

The LSA mandates a 40-hour weekly working limit but lacks provisions about working more than 40 hours with multiple employers. Traditional employment contracts involve one employer and one employee, and exclusivity has been one of the main factors to decide whether a service provider is an employee or not. But the focus has shifted to individual contracts with multiple employers, raising concerns about health and self-determination in working time regulation. Combining total hours across employers could address the working hour ceiling, but calculating total working hours by an employee – whether by the employers or public authority – raises privacy concerns. The emergence of new work models, such as "Coupang Flex" in Korea, where individuals work as independent contractors in delivery services, presents challenges despite flexibility. The increased demand for delivery services during the pandemic has led to more participants for this job. Addressing health and safety in this context requires new regulations to handle prolonged working hours for both workers and independent contractors. When we take a perspective that views maximum working hours as a public order everyone – not only employers – should observe, it may offer a comprehensive approach to the issue (Choi 2021: 120–121). The problem here with the multi-job worker is also meaningful with the remote workers. If surveillance by employer is widespread with the technology and consequently exclusive subordinate characters of the relation is still unavoidable[11], then it is back to the traditional regulation, with the full package of responsibility by employer.

However, if there is much discretion available to the employees, including setting standards of working hours, orders, safety, and health, then the shift and reallocation of responsibility can be considered. Of course, we should be careful about the attempt that an employer tries to avoid his/her responsibility with, by highlighting factors that can backup employee's ability to decide his/her own working conditions. When employees are forced to take this type of relation, it is highly possible to lead to misclassification. When different types of supervisions and commands, like directions to the employee by algorithms and AI, are combined with remote work, it also suggests the possibility of transferring the employer's duty of consideration to the employee side.

[11] Where communication is possible at all times through information and communication devices, and so on, and it is possible to manage the start and end time of work, rest time, and so on determined by the user, the usual working hours system may be applied.

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Along with the distribution of responsibility between employer and employee, the role of government, at least part of its responsibility for health and safety, also needs to be considered. We can get inspiration from the role of government described in the Comprehensive Guideline 2021, to support financial allocations earmarked for the establishment of telework infrastructure.

With the traditional Bismarck model (Esping-Andersen 1990) for social security, Korea has been categorized as a model in the middle of the corporatist-statist and liberal model. Health insurance is tremendously close to the statist model, while much of the role of safety net for the employed persons and their family has been the burden of the company, that is, the market. Facing remote work and thinking of the changes in the labor law, it may be the time to make a switch. At least part of the things that were thought that the employer should take care of, things that were regarded as the area of contractual rights and duty, can be shifted to the area of public order, when a strong tie that classical mutual relations persisted becomes weaker. Governmental support about setting infrastructure and financial support for the employment, prescribed in the recent work at home guideline (MOEL 2020a), suggests that when introducing remote work was the result of the social issues like epidemic disease, then it is not only the responsibility of contractual parties' anymore, but the public's too. If so, when we think of remote work not just for productivity, but also for the fertility rate, childcare, and climate issues (reducing pollution by commuting), then traditional mutual contractual duties may need to be redistributed, including society as the one to take responsibility.

At the same time, burden of proof required in the industrial accident is another issue. In Korea, industrial accidents must be proved by the employee who argues that he or she met with an accident. But a recent minority opinion of the Supreme Court ruling[12] separated "work-related characteristics" and "causal relationships," suggesting the redistribution of responsibilities that the former must be proved by workers and the latter by employers. For remote work, the smart work guideline stipulated that in the case of home-type smart work, "in principle, there is no need to implement the safety and health standards prescribed by the Occupational Safety and Health Act" (MOEL 2011). In addition, the smart work guideline stipulated that

[12] Supreme Court of Korea 2021. 9. 9. 2017du45933. "Most methods of evidence or information exist in the workplace in lawsuits related to industrial accident insurance benefits, making it difficult for workers to prove without the absolute cooperation of the employer. In many cases, the working conditions or working environment in which the worker worked are not disclosed because it is a trade secret. In the case of a professional accident, the cause of the accident is complex and technical due to the specialization or modernization of the work, so a high degree of professional knowledge is required to determine the cause of the accident, and it may be difficult for workers to scientifically prove the cause of the accident themselves. In the case of occupational diseases, it is often impossible to determine medical causal relationships due to a lack of medical expertise or limitations of epidemiological investigations. In particular, for diseases whose cause has not been medically identified, it is contrary to the principle of fairness and the notion of justice to have workers who cannot afford it bear the burden of proof even though epidemiological investigations take a lot of time and cost."

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if it is to be admitted as an industrial accident covered by OSHA, then the worker himself must prove that the accident is caused by the smart work. About the same issues, the recent work at home guideline (MOEL 2020a) states that in principle, the Occupational Safety and Health Act applies to telecommuting, but it is limited in that only some regulations can be applied because work is provided in places where it is difficult for employers to actually control and manage. It is positive that the obligation of employers to protect and consider the safety and health of workers is recognized in remote work too. At the same time, it is necessary to set and comply with standards for the working environment so that remote workers can work in an environment where they can maintain their health, and to provide measures such as supporting the cost of improving the working environment if necessary. While acknowledging that accidents during performing smart work are also recognized as industrial accidents, it is said that telecommuters themselves must prove it, and the person who works alone at home may have more difficulty to prove causality with work in the event of an accident than the person who works at the workplace with the employer and colleagues. Remote work regulation seems to limit the responsibility of the employer, including the burden of proof. Will this be a fair distribution of burden, or will this make it more difficult for the employee to prove and be covered by public insurance? Remote work may suggest who will be in charge of the responsibility, instead of freedom. We should be careful who really enjoys and benefits from this freedom.

8.2.3 *Collective Bargaining in the Age of Remote Work*

Even with the progress of remote work, there are some points that we still feel reluctant to be changing our stance. The status of employer to take responsibility of collective bargaining is another issue in Korea. Labor unions can be organized based on company, industry, or occupation as desired, basically based on the freedom of association articulated by the Constitution of Korea, art. 33. But when the unions wish to start a collective bargaining process, a bargaining unit should be set by a group of workers with common interests toward certain employers, and they choose a representative to negotiate. It has been criticized for limiting the constitutionally guaranteed rights of collective bargaining to some extent. Korean labor law enhances these limitations by enforcing the duty of fair representation and facilitating the negotiation process[13].

However, two problems arise because both the work at home guidelines (2020) and the smart work guidelines (2011) target employees under the LSA[14], that is,

[13] Constitutional Court of Korea, 2012. 4. 24. 2011hunma338; 8; Constitutional Court of Korea, 2024. 6. 27. 2020HUNMA237, etc. For a more detailed description about the bargaining system in Korea, see Choi (2024b: 90–91), and Choi (2024a: 412–413).

[14] The term "employee" means a person who works in a business or workplace for the purpose of wages, regardless of the type of occupation (LSA art. 2.nr.1.).

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employees who have signed employment contracts with employers and are employed by specific employers. For them, these guidelines provide new protection or extended protection under the remote work environment. The first issue is about the independent self-employed people with ambiguous worker characteristics, working by remote work. If the command and supervision of the employer is not that directly designated and is hard to distinguish from the direction of civil contract, this functions as an element that can weaken the protection of law because the status as an employee under the LSA is questioned. Second, for this reason, it has been argued mainly on the workers' side that collective bargaining should be allowed at least on those conditions even if there is no direct contractual relationship if the working conditions can be substantially and concretely controlled and determined. Considering this trend, the collective bargaining system in Korea may be described as at the point of expanding employers (users)' responsibility, if they have decision-making power about the working conditions (Choi 2024b:93). Sometimes command seems to have been excluded by having distance, not sharing common physical space; however, when the location gap is compensated with technology, it inevitably requires the resurrection of traditional labor laws. This can be another insight to deal with the field of global supply chain and transnational collective bargaining. By extension of the notion of the employer on one hand, and multinational corporation and GSC on the other hand, we can broaden the actors and contents of the collective bargaining, or at least conversation among the stakeholders, though we have the hurdle of jurisdiction. In the end, there is a wide spectrum of discussions on how far to extend "responsibility" of communication, to hear about what the workers request, whether it is the scope of the person responsible for ensuring a safe environment, whether it is the subject to ensure the payment of adequate wages, or whether it is a position and obligation as a counterparty to collective bargaining.

8.2.4 *Orthodox Question: The Notion of Employee and Employment Contract*

Here we come back to face the classical question of whom to protect with employment and labor law, in the special situation of remote work. Remote work often tries to exclude employees and marginal workers from the category of employee, with the ground of physical distance and rather loose direction from the employers; consequently, some of the remote workers cannot be covered by the protection of employment and labor law (Countouris and De Stefano 2023: 152–153). When we see the distance of remote work over the borderline, the principles of legal regulation under the current private international law regulations are also concerned with remote work and the notion of employment contract. In Korean international private law, if there is an agreement on the designation of the governing law, it is determined accordingly (art. 45), and even in this case, the protection granted to employees under the legal regulations of the country that provides labor habitually,

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or the country where the employment office is located, cannot be deprived (art. 48 (1) and (2), domestic mandatory regulations). On the other hand, if there is no agreement on the designation of the governing law, it shall be subject to the law of the country that provides labor on a daily basis or the country where the employment office is located (art. 48 (2)), and if the place of daily labor provision is only slightly related to the employment contract relationship, it shall be subject to closely related laws (art. 21). In light of legislative purposes, the mandatory regulations of the Republic of Korea, which must be applied to the relevant employment contract relationship regardless of the governing law, also apply to cases where foreign laws are applied as the governing law (art. 20, international mandatory regulations).

On the premise of the current status of these regulations, it is a matter related to the scope of "employment contract" referred to in private international law. There is also a question of determining the governing law to determine the existence of an employment contract by which law to judge it as an employment contract, but at a subsequent stage, a review of which contract is an employment contract to which the special cases referred to in this Act apply is required. In particular, this is of great significance considering the circumstances when the person who did not sign the employment contract but is a member of a trade union. If the union takes a collective agreement with the employer, then the problem of normative effect or expansion effect of that collective bargaining can be controversial without specific current regulations. When the question that who should have the duty to sit at the collective bargaining table and the issue of remote work are combined, we do face multinational collective bargaining issues, rarely experienced until now in Korea. Problems that may arise from the failure of private international law to provide clear regulations or criteria for judgment on employment contracts are more clearly contrasted with those detailed in art. 42 of the LSA. Art. 42 limits the scope of consumer contracts that need protection while prescribing it as "a contract concluded by a consumer for purposes other than his or her job or business activity." There are many discussions on the above provisions that provide certain expected protection in relation to consumers' residences, but if the purpose of acknowledging the special case is clarified and identified as an attempt to reflect it, improvement from this perspective will also be appropriate for employment contracts too. This seems to be a circular logic, but a purposive approach for this legislation and cases can help to clarify the idea of remote work and persons to be protected in that area.

8.2.5 *Future of Remote Work and Institutional Response*

Responsibilities shift from employer to government, labor law's characteristic from private law to public law, technology and possibility of collective autonomy, and the democratic basis of organization will also be remaining questions arising from remote work. All these questions will also be related to raise the question of redistribution of the responsibility, that of employer, user, employee and the

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government, even international institutions. From these perspectives, remote work should not be just a temporary phenomenon to deal with. It should be a resurrection of traditional labor law, its fundamental values, and contemporary application for all.

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