

Labor Politics of Employment Protection Legislation for Nonregular Workers in South Korea

LEE Byoung-Hoon and EUN Soo Mi

Abstract

This study delineates the evolution of nonregular employment lawmaking in accordance with the strategic-relational theoretical perspective in order to shed light on how contested interactions concerning the nonregular employment protection legislation have evolved over the course of three governments—People’s Government, Participatory Government, and Practical Government. The legislative process and the enacted laws of nonregular employment protection have proven the materialized cohesion of actors’ strategies and contextual structure. In particular, the making of labor laws tends to involve a sharp interest contest among concerned actors. The government takes part in the political interaction of lawmaking through its “strategic selectivity.” The interests and strategic measures of the actors, including the government, are conditioned and even constrained by contextual situations, particularly economic and political circumstances. In this light, the interactive processes concerning the nonregular employment lawmaking are characterized as strategic-relational. As a consequence, the nonregular employment protection laws, to which actors’ interests and strategies as well as contextual structure have contributed, have the dual nature of employment protection and labor flexibility, which dissatisfy both organized labor and business groups.

Keywords: nonregular employment protection legislation, labor politics, industrial relations, strategic-relational perspective, strategic selectivity, policy consultation

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Introduction

Over the past ten years, nonregular employment has become a core labor policy issue in South Korea (hereafter Korea). Nonregular labor in Korea is comprised of a variety of employment patterns, such as fixed-term workers, part-time workers, dispatched and subcontracted workers, home workers, and dependent self-employed workers. The increase of nonregular employment has been a common phenomenon among industrialized economies. Likewise, nonregular employment has proliferated in Korea, particularly along with changing corporate employment strategies after the economic crisis of 1997. The diffusion of nonregular employment has led to the growing segmentation of labor markets in the country because those workers suffer from inferior working conditions and a vulnerable employment status, compared to regular workers. The intensifying trends of labor polarization, chiefly associated with the proliferation of nonregular employment, have created nationwide concern over the social exclusion and economic discrimination suffered by these marginal workers.

In this context, labor unions and nongovernmental organizations (NGOs) have demanded legislation to prevent the overuse of and discrimination against nonregular labor. At the same time, employers and business associations have consistently insisted on institutional reforms that guarantee labor market flexibility and have opposed any legal constraints on the use of nonregular employment. Accordingly, employment protection legislation for nonregular workers has been a polemic issue within industrial relations and national politics in Korea. For the past decade, a variety of actors, including labor unions, business associations, governments, political parties, NGOs and academics, have taken part in the contentious and complicated processes of labor politics concerning the enactment and revision of nonregular employment protection legislation. The process of nonregular employment legislation has involved diverse arenas, such as policy consultation of the Tripartite Commission, top-level negotiations by industrial relations representatives, political negotiations in the

National Assembly and, sometimes, in the streets.

The purpose of this study is to examine the historical evolution of employment protection legislation for nonregular workers from the strategic-relational perspective formulated by Jessop (1990). The strategic-relational perspective helps deconstruct the complex processes of nonregular employment protection legislation in which structural contexts, actors' interests, strategic choices, and the interaction of these factors are embedded. This case study of Korea offers a theoretical lens and analytical framework to understand the labor politics of nonregular employment protection legislation, which has become a controversial policy issue in both developed and developing economies. This paper is comprised of five sections. The first section sets the stage for the study. The second section discusses strategic-relational theory and proposes an analytical framework to examine the politics of nonregular employment protection legislation. The third section describes the trends and present state of nonregular employment in Korea. The fourth section delineates the historical evolution of labor politics concerning nonregular employment protection legislation during the past ten years. The fifth section concludes with some theoretical and policy implications arising from our case study.

Strategic-Relational Perspective on the Making of Laws

The strategic-relational perspective offers a useful lens to analyze the political process of lawmaking. This approach, reflecting the dialectic of structure and strategy, postulates the state as form-determined social relations (Jessop 1990) or materialized cohesion of power relations (Poulantzas 1978), rather than reducing it to an apparatus of class domination or a neutral mediator. The neo-Marxist state theory rejects both economic determinism and class reductionism and sheds light on the strategic selectivity of the state, which has a dual meaning. First, the state is characterized as a site and an object, where strategic interaction and power relations of social actors take place

and become embedded. The character of the state is form-determined by strategic interactions and power relations of social actors, entailing conflicts and bargaining, rather than shaped by the simplified logic of class domination or a nonclass consensus regime. Second, the state has a discriminating influence over political interactions of social actors; it favors interests and strategic choices of a particular class or political group over those of others in the specific stage of politicoeconomic context (Jessop 1990).¹ For instance, the ruling party using the state's institutional power tends to represent the interests of its political constituents and supporters, while bureaucrats, administering the state's apparatus, foster their group inclination and vested interests and prefer particular policy actions to others (Lee and Yu 1998). In sum, the state could be seen as the relational arena of social actors' strategic interactions, as well as a "subjective inclination" toward policymaking, from the theoretical viewpoint of strategic selectivity.

At the same time, the strategic-relational perspective underscores the contingency and indeterminability embodied in the dynamics of the state's policymaking, which involves intense interactions of various actors with conflicting interests and contesting strategies in a fluid politicoeconomic context (Jessop 1990).² The outcomes of the state's policymaking are not predetermined by the logic of class domination or economic structure, but are uncertain, accidental, and unexpected due to its inherent complexity. According to Jessop (1990), the indeterminacy and uncertainty of the state's policymaking processes are attributable to complex interactions of different causal chains; however, they are furthered by a variety of "real" factors,

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1. This theoretical reasoning originates from Offe's (1974) notion of "structural selectivity," denoting the state's biased policymaking inclination to safeguard the capitalist class interest. However, Jessop (1990), critical of Offe's deterministic view, refines the state's selectivity from the strategic-relational perspective, by replacing the structural class bias with a contingent one.
 2. Jessop (1990) presents the theoretical notion of "contingent necessity," a juxtaposition of contingency denoting "indeterminability" and necessity signifying an assumption that "everything that happens is caused."

such as concerned actors' bounded rationality, time constraints, the uncoordinated contention of "states within state"—failed intra-organizational bargaining within major social groups such as labor unions and business associations—and unforeseen domestic or overseas incidents. As a result, the state's policymaking tends to become "a process without subject" (Poulantzas 1978). In particular, the democratic regime inevitably entails the uncertainty of institutionalized processes for interest intermediation (Przeworski 1991). In this light, the strategic-relational perspective could offer an insightful lens to decode the complicated and contingent processes of the state's policymaking.

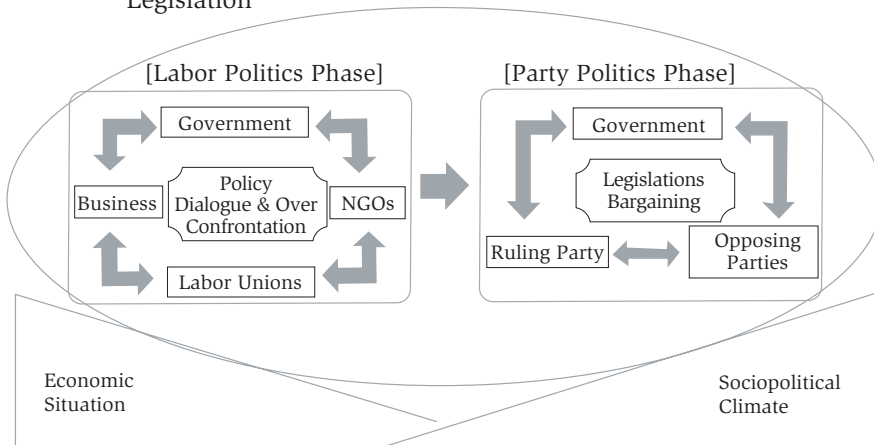
According to Foucault (1980), the law is a "normalized power structure" because it provides an institutional foundation for the state's exercise of power and normative authority to regulate socioeconomic relations. Therefore, the making of laws is a key part of the state's function. At the same time, social actors try to exert influence over the process of lawmaking and engage in overt contests to safeguard their own interests, since the law functions as a game to frame opportunity structure and power relations of those actors. Accordingly, from the strategic-relational perspective, the law is treated as a product of complicated political interactions among the concerned actors. Jessop (1990) points out that the law should not be viewed as an apparatus of class domination, but as an autonomous entity, in which the interests and "externalized" strategies of concerned parties are interwoven in a relational form of cohesion under the structural constraints of economic conditions and political power relations. To sum up, the politics of strategic relations is embedded in the processes of lawmaking. In this light, Jessop's strategic-relational perspective differs from the institutionalist approach to industrial relations. Like Jessop's theoretical approach, the old institutionalist view, represented by Dunlop's industrial relations system theory, and the new institutionalist perspective on the transforming dynamics of industrial relations regimes, formulated by Kochan and his colleagues (Kochan, Katz, and McKersie 1986), underscore industrial actors' strategic interaction and contextual conditioning, although in a loosely cou-

pled way. However, those institutionalist approaches do not have clear understanding of class interest contests and power relations, nor do they address the “contingent indeterminacy” of political dynamics embedded in the process of making policies or laws regarding industrial relations policymaking.

Labor laws, which set an institutional framework to regulate labor market exchanges and industrial relations, have been a contested terrain of the capitalist state, manifesting interest conflicts between employers and labor unions (or workers). Workers or labor unions protect their interests and enhance the terms and conditions of working life by influencing the process of making labor laws. In contrast, employers and business associations oppose labor laws that increase labor costs and restrain their discretion as to the purchase and deployment of labor power. In the context of globalization, employers have demanded the loosening of employment protections under the pretext of enhancing corporate competitiveness, a move which organized labor has strongly opposed. Accordingly, the making of labor laws tends to entail interest conflicts between employers’ associations and workers’ organizations. The government also engages in this contest, with its selective stance toward the making of labor laws, whether pro-labor, pro-business, or neutral mediator. NGOs that are concerned about the worsening quality of working life may take an active part in the process of making labor laws, particularly where labor unions have low organizational coverage and weak social leverage. In addition, academics and the media participate in the public discourse concerning the making of labor laws by giving voice to their own ideological inclinations. These actors bring distinct interests and strategic intentions into the making of labor laws and get involved in the interactive process of policy consultation, whether through an institutionalized form or informally. They take a variety of strategic actions—such as a labor union’s general strike, an NGO’s publicizing its views on policymaking, or a business group’s co-opting approach—in order to turn the making of labor laws to their advantage. In this political process, each actor may experience intra-group strife, making the interaction more complicated.

The making of labor laws goes through two stages. The first is legislative agenda setting, where the three main parties—employers, labor, and the government—and other social actors engage in intense interactions to determine how to draft and enact a law. The second is enactment or revision in the legislature, where political parties and the government participate in negotiations on the detailed contents of the legislation. The first stage is accompanied by policy consultation and overt confrontations among concerned actors, while the second stage is characterized by party politics, which is often affected by those actors' mobilized pressures and public discourse outside the legislature. In both stages, the externalized strategies of social actors, including the government, and political parties, are conditioned by contextual structures, which depend on the economic situation and sociopolitical climate. Under a particular economic-political circumstance, some actors have a big advantage over others in exerting influence on the making of labor laws. With changing circumstances (i.e., economic fluctuations, political scandals, and unexpected social incidents), however, the strategic (and power) relations of actors in the bargaining process could be reversed. Thus, the strategic selectivity of social actors (and political parties) is structured by contextual

Figure 1. Framework for Analyzing the Politics of Employment Protection Legislation



factors because the scope of the actors' strategic choices is chiefly constrained and reshaped by external conditions.

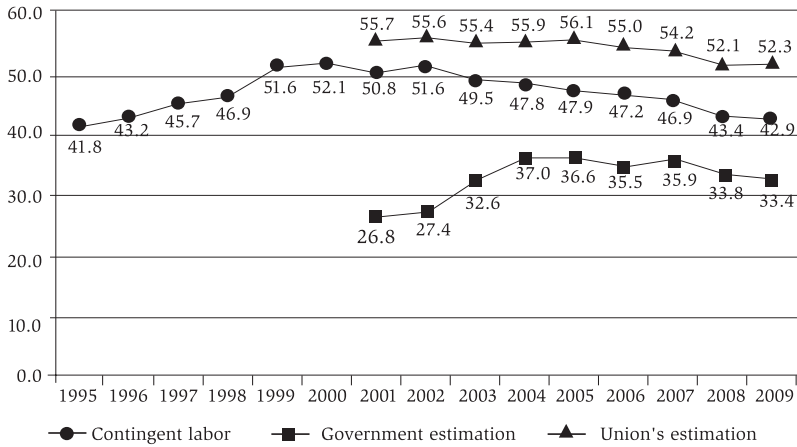
Figure 1 illustrates an analytical framework for examining the political processes of nonregular employment protection legislation from the strategic-relational perspective.³

Trends and the State of Nonregular Employment in Korea

As exemplified in Figure 2, the number of nonregular workers, who had been a substantial part of the working population in the 1990s, soared sharply after the financial crisis of 1997-1998 in Korea. Against the backdrop of the economic crisis, many firms downsized regular employees and refilled their positions with nonregular workers. Figure 3 illustrates how Korean firms increased the use of nonregular employment and reduced the payroll of regular employees in the early 2000s. As a consequence, the share of contingent workforce, comprised of temporary and daily labor estimated by the Economically Active Population Survey, increased from 41.8% in 1995 to 52.1% in 2000. Nonregular employment rose from 26.8% in 2001 to 37.0% in 2004 and then dropped to 33.4% in early 2009, according to official estimates of the Korean government, which started conducting the Economically Active Population—Supplementary Survey from 2001, along with the growing social concern over the nonregular labor issue. In contrast, the labor circle has presented quite different estimates, insisting that a majority of workers should be counted under the status of nonregular employment, ranging from 55.7% in 2001 to 52.3% in early 2009. There has been an intense debate on how to estimate the size of the nonregular workforce, drawing upon the Economically Active Population—Supplementary Survey conducted yearly between 2001 and 2006 and biannually from 2007 by the

3. Although the enforcement and judicial interpretation of labor laws could be similarly analyzed from the strategic-relational perspective, this paper focuses on the process of making nonregular employment protection laws.

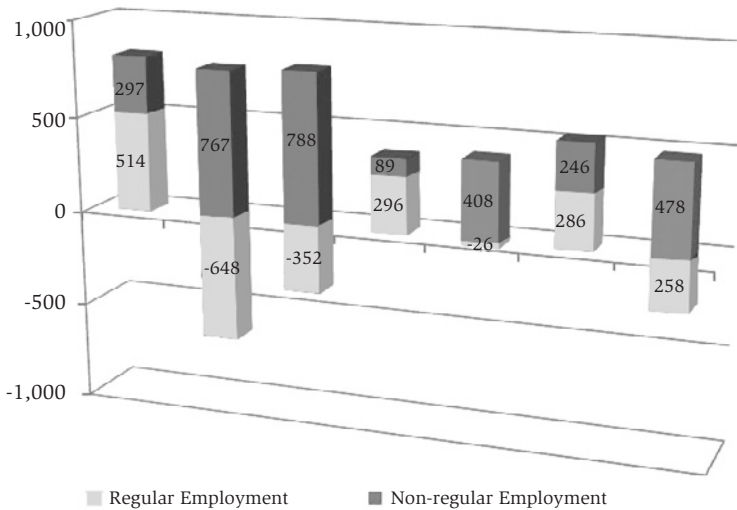
Figure 2. Trends of Nonregular Employment in Korea



Source: Economically Active Population—Supplementary Survey (each year).

Note: Contingent labor is estimated as the averaged number each year; nonregular employment by the government and labor unions is estimated as of August each year, except in 2009, when the number was calculated as of March.

Figure 3. Changes in Regular and Nonregular Employment in Korea



Source: Economically Active Population—Supplementary Survey in August (each year).

Table 1. Categorization of Employment Types in Economically Active Population Survey

		EAP—Supplementary Survey		Total
		Regular	Nonregular	
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%)

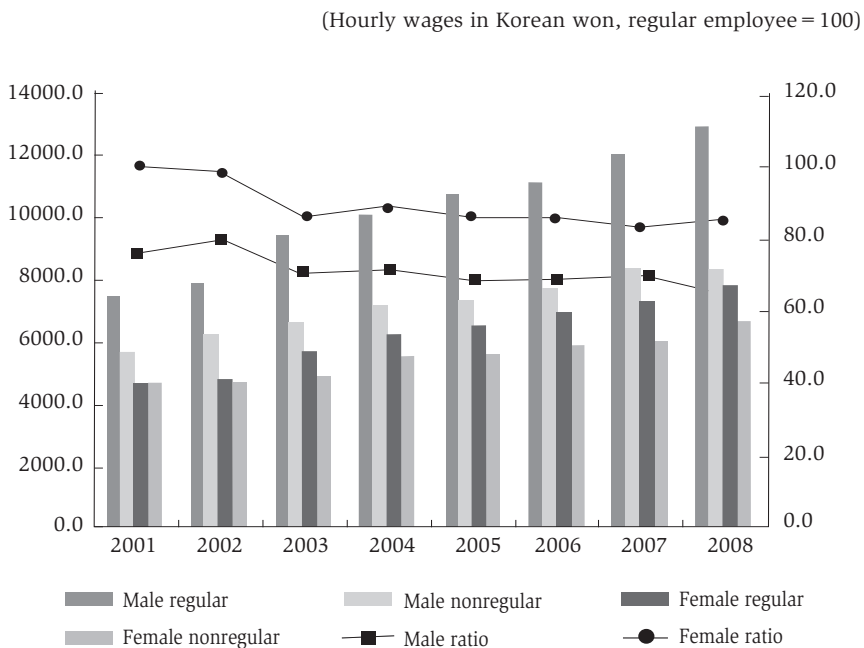
Note: Nonregular employment includes fixed-term labor, on-call labor, part-time labor, dispatched labor, contracted labor, home work, and dependent self-employed. Government's estimates = ② + ③; Labor's estimates = ② + ③ + ④

National Statistics Office. As Table 1 illustrates, the difference in the estimates of nonregular employment between the government and labor depends upon how they categorize workers under the recurrent renewal of temporary employment contracts (category ①). The Tripartite Commission, which was involved in the design of the Economically Active Population (EAP)—Supplementary Survey, reached an agreement regarding the definition of nonregular employment in July 2002. According to the Tripartite Commission's definition, the government estimated the size of nonregular employment by drawing on the official indicators (② + ③) of the EAP-Supplementary Survey. The Korea Confederation of Trade Unions (KCTU), which was excluded in policy consultations from the Tripartite Commission, has insisted that temporary workers under the recurrent employment contract have to be included in the estimates of nonregular employment because their employment and working conditions are as vulnerable and inferior as those of other nonregular workers (Kim 2009). As of March 2009, the number of the recurrent temporary workers amount to over three million, or 18.8% of the wage-earning population. Given the differing estimates made by the government and labor, the share of nonregular employment has declined over recent years, which is chiefly attribut-

able to the implementation of labor policies and employment protection legislation to protect those vulnerable workers between 2005 and 2006.

Nonregular workers in Korea have suffered from differentiated compensation and inferior working conditions. As illustrated in Figure 4, the discrepancy of hourly wages between regular and nonregular workers has been widening for both males (from 75.9% in 2001 to 64.4% in 2008) and females (from 100.2% to 85.2% during the same period). The wage differentials between regular and nonregular workers are even larger for males than for females. As summarized in Table 2, a large number of nonregular workers in Korea have been commonly excluded from statutory social welfare schemes and fringe

Figure 4. Trends in Wage Gap Between Regular and Nonregular Workers in Korea



Source: Economically Active Population—Supplementary Survey (each year).

benefits provided by firms. Over 60% of the nonregular workforce is still excluded from social and legal protections, such as employment insurance, national pension, overtime work payment, and paid vacations, although social and statutory protection for nonregular workers has slowly expanded over recent years. Nonregular workers are also excluded from labor unions' protection, as exemplified by the fact that less than 3% of them are unionized (Lee & Kwon 2008). Moreover, many studies have shown that nonregular jobs in Korea are not a "stepping stone" but a trap because nonregular workers remain stuck in their marginal jobs, rather than being able to move upward to regular positions (Nam and Kim 2000; Han and Jang 2000).

Table 2. Coverage of Social Welfare and Labor Standards for Regular and Nonregular Workers

(unit: %)

	Regular Workers		Nonregular 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

Source: Economically Active Population—Supplementary Survey (2004, 2008).

Nonregular employment in Korea, which has proliferated over the last ten years, has become a core policy issue due to overuse and discrimination. In this context, social actors such as labor unions, business associations, the government, and NGOs have become involved in a strategic-relational interaction concerning nonregular employment protection legislation since the early part of this decade.

Evolution of Labor Politics Concerning Nonregular Employment Protection Legislation

In this section, we delineate how labor politics concerning nonregular employment protection legislation has evolved over the past three governments, by focusing on strategic-relational interaction between the governments and other social actors.

The Period of the People's Government (1998–2002)

Nonregular employment drew social attention as a focal issue of industrial relations in early 1998, when the People's Government, led by President Kim Dae-Jung, enacted the dispatched workers protection law during the economic crisis. This law, which was not implemented by the previous Civil Government (1993–1997) due to labor unions' strong resistance, was written as part of the social pact made in February 1998; it allowed employers to use legally dispatched labor, which had been prohibited, in some occupations and industrial sectors designated by the positive list. At the time, labor unions, whose strategic reaction was constrained under the contextual pressure of the economic crisis, could not help but accept the government's reform drive to legislate the dispatched workers protection law in accordance with the International Monetary Fund's (IMF) economic restructuring guideline to promote labor market flexibility as a condition of its relief loan (Lee and Yoo 1998). The KCTU, whose leadership endorsed the social pact and had to step down as a result of a no-confidence resolution of local union representatives, opposed the dispatched workers protection law but was unable to stop the legislation. However, it is noteworthy that the government enacted this law as part of a "big deal" to exchange labor rights enhancements (for teachers and public servants) for labor market flexibility (allowing layoffs and the use of dispatched labor) (Lee and Yu 2001). Aware that labor unions, particularly the KCTU, had blocked the legislation on labor market flexibility by mobilizing a powerful general strike during the former administration, the government resorted to

the process of social dialogue involving union representatives in the context of the economic crisis.

Korean firms launched massive downsizing of regular employees during the economic crisis and expanded the use of nonregular workers during the rapid economic recovery beginning in the second half of 1999. As a result, nonregular employment sharply increased, as illustrated in Figure 2, and inferior working conditions created a growing concern among labor unions and NGOs. In this context, nonregular workers in a number of labor categories, such as daily laborers, contracted workers, and dependent self-employed workers, tried to organize their own labor unions⁴ and engaged in intense collective action against their employers' opposition. With the mounting concern over the growth of nonregular labor, the joint committee for protecting the labor rights of nonregular workers and abolishing discrimination, comprised of two national trade unions—the Federation of Korean Trade Unions (FKTU) and KCTU—and 24 civil and labor NGOs, was formed in May 2000 and demanded the passage of nonregular employment protection legislation in September of that year. Confronted with the increase in nonregular employment-related disputes and the escalating pressure of labor unions and civil NGOs, the government announced its first policy proposal concerning nonregular workers in October. However, as the government's proposal was severely criticized by both labor unions and business associations, it was not implemented.

Meanwhile, the Tripartite Commission adopted the nonregular employment issue as its agenda of policy consultation. The Economic-Social Subcommittee of the Tripartite Commission began discussing the fact-finding and policymaking of nonregular employment in April 2000, yet made little progress, mainly owing to the wide interest gap between labor unions and business associations. As the Joint Committee raised its public voice about the nonregular employ-

4. During 2000, 91 labor unions were organized to represent around 36,000 nonregular workers, and 844 nonregular workers obtained regular employment status through their struggles (Bak and Kim 2002).

ment protection legislation and the FKTU demanded the formation of a subcommission to handle nonregular labor issues in early 2001, the Tripartite Commission finally established the Nonregular Labor Policy Subcommission in July 2001, comprised of six representatives of the three parties—labor unions, business associations, and the government—and six academics representing the public interest. Because the KCTU withdrew its participation from the Tripartite Commission in early 1999, it was excluded from the policy consultation process of the Nonregular Labor Policy Subcommission. Therefore, the labor politics concerning the nonregular employment protection legislation proceeded on two tracks: on the one hand, a policy negotiation process inside the Tripartite Commission, and, on the other, a mobilizing process of public pressure by the KCTU and civil NGOs from outside the commission.

The Nonregular Labor Policy Subcommission, which held 114 meetings in total, including workshops and public conferences, and conducted field interview research during the period of its operation (from July 2001 to July 2003), reached an agreement in May 2002 regarding the criteria of statistical estimation for nonregular employment and the strengthening of workplace supervision and expansion of social insurances for nonregular workers. The subcommission also discussed legislative recommendations for the four types of nonregular employment—fixed-term, part-time, dispatched, and dependent self-employed (called special employment) workers—but was not able to produce an additional agreement until the end of the People's Government, due to sharp and persistent interest differences between union and business representatives. Table 3 summarizes the public representatives' policy recommendation as well as the contending positions of labor unions and business associations with regards to nonregular employment protection legislation. In short, union representatives insisted on strictly regulating the use of nonregular workers and prohibiting their discriminatory working conditions, whereas business representatives strongly opposed the introduction of any regulation to restrict employers' discretion to employ at will and cause additional labor costs for employers. In the policy-consultation

Table 3. Legislative Proposals by Concerned Parties in the Policy-Consultation Process of the Tripartite Commission

	Union Representatives	Business Representatives	Public Representatives
Fixed-term	<ul style="list-style-type: none"> - Regulating the use of fixed-term labor only for limited valid reasons - Imposing the duration limit of fixed-term employment for two years - Treating fixed-term workers exceeding two years as permanently employed - Stipulating the principle of the equal pay for equal value-work 	<ul style="list-style-type: none"> - Opposing the stipulation of limited valid reasons for the use of fixed-term labor - Allowing the duration of the employment contract for three years - Opposing employer's obligation to turn fixed-term workers into permanent workers - Opposing the stipulation of the "equal pay for equal value-work" principle 	<ul style="list-style-type: none"> - Introducing the time limit of fixed-term contract and treating fixed-term workers exceeding the limit as permanently employed - Stipulating prohibition of discrimination - Introducing employer's obligation to elucidate working conditions in written form
Part-time	<ul style="list-style-type: none"> - Setting a separate limit of maximum work hours for part-time workers - Introducing the overtime allowance for part-time workers 	<ul style="list-style-type: none"> - Opposing the introduction of maximum work hours and overtime allowance 	<ul style="list-style-type: none"> - Stipulating the principle of proportionate protection and prohibition of discrimination for part-time workers - Paying overtime allowance for exceeding the predefined limit of part-time work - Introducing employer's obligation to make a written employment contract
Dispatched	<ul style="list-style-type: none"> - Limiting the use of dispatched labor only for professional jobs - Allowing the use of dispatched workers only for two years - Prohibiting dispatched workers from doing the same job over two years 	<ul style="list-style-type: none"> - Changing the positive list for the use of dispatched labor into the negative list - Abolishing the time limit of dispatched labor in use - Allowing the use of dispatched labor in the same job without time limit 	<ul style="list-style-type: none"> - Regulating the illegal use of dispatched labor by letting employers employ them in regular jobs - Stipulating prohibition of discrimination - Introducing a tripartite council to adjust the coverage of dispatched labor in use - Promoting labor rights of dispatched workers at their working sites
Dependent Self-employed	<ul style="list-style-type: none"> - Guaranteeing the legal entity of dependent self-employed worker in the trade union law - Extending the definition of workers under labor standards law 	<ul style="list-style-type: none"> - Opposing the recognition of the legal entity of dependent self-employed worker in the trade union and labor standards laws - Resolving the issues of dependent self-employed through civil or commercial laws 	<ul style="list-style-type: none"> - Proposing the special law to guaranteee quasi-workers (dependent self-employed) labor rights to organize and bargain - Suggesting additional policy-consultation to prepare for labor and social protection

process, the government did not take a clear stance on the legislative direction concerning nonregular employment, nor did it make an active effort to mediate between labor unions and business associations. The KCTU and nonregular workers' unions pressured the policy-consultation process of the Tripartite Commission by mobilizing a number of campaigns demanding the abolition of nonregular employment.

The Period of Participatory Government (2003-2007)

Under the Participatory Government, led by President Roh Moo-Hyun, the Nonregular Labor Policy Subcommittee tried to finalize its policy recommendation regarding the nonregular employment protection legislation, but failed to reach a tripartite agreement due to persistent interest discrepancies between union and business representatives. It concluded with a policy recommendation proposal put forward by only the six public interest representatives in May 2003. As illustrated in Table 3, the public representatives' recommendation was a compromise proposal to regulate the overuse of and discrimination against nonregular workers. Accordingly, the recommendation was rejected by both labor unions and business associations; however, it became a significant point of reference for the following tripartite negotiation with regard to nonregular employment protection legislation. After the closing of the Nonregular Labor Policy Subcommittee, the Tripartite Commission accepted the public representatives' suggestions and decided to re-establish a subcommittee to discuss the legislative issues of dependent self-employed workers in September 2003. The so-called Special Employment Policy Subcommittee undertook a variety of activities to find a legislative solution for dependent self-employed workers from 2003 until mid-2006, yet produced little compromise between union and business representatives.

The Participatory Government did not have a clear plan to generate new legislation to resolve the issues of nonregular employment at the beginning of its term. When the government took office in early 2003, its long-term policy program did not include any legislative

plan for nonregular employment protection, except introducing the regulation to guarantee the equal treatment of those workers. During 2003, civil NGOs expressed stronger concerns about the vulnerable and discriminatory situation of nonregular workers, and labor unions organized a series of nationwide campaigns demanding statutory protection of nonregular employment. As a result of this pressure, the government began active legislative efforts from early 2004.⁵ Interestingly, however, the government, which was expected to take a pro-labor policy stance toward nonregular employment issues, took a pro-business position in drafting nonregular employment legislation. This stemmed from the worsened economic situation and the failed attempt to build a cooperative relationship with the KCTU.

In 2003 and 2004, the national economy fell into a major slump, and the government's effort to induce the KCTU to rejoin the Tripartite Commission was unsuccessful because of the union's weak leadership and the rank-and-file's ingrained mistrust of the commission.⁶ In this context, the government made public a legislative proposal concerning the protection of three nonregular employment types—fixed-term, part-time, and dispatched—in September 2004. The government's proposal appeared closer to the position of business associations than to that of labor, as illustrated in Table 4. The government's proposal aroused strong opposition from the two national trade unions—FKTU and KCTU—which agreed to a joint campaign to block the government-initiated legislation and joined a nationwide committee to prevent the regressive revision of labor laws and to protect the labor rights of nonregular workers; the committee was comprised of 101 civil and labor NGOs.⁷ Meanwhile, the Democratic

5. In February 2004, the Participatory Government established the nonregular employment policy office in the Ministry of Labor, which was to take charge of policy-making on nonregular labor issues. This office was dissolved by the Practical Government in early 2009.

6. Many activists and union members of the KCTU have blamed the Tripartite Commission for the massive layoff clause legislated in early 1998.

7. Immediately after the Ministry of Labor announced its proposal for nonregular employment legislation, nonregular workers' representatives of the two national unions engaged in a sit-down protest at the ruling party office for one week. In

Table 4. Proposals Concerning Nonregular Employment Protection Legislation in 2004

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

addition, a number of academics and lawyers called a press conference to demand the withdrawal of the government’s legislative proposal on nonregular employment.

Labor Party (DLP), which made its first entry into the National Assembly by gaining ten seats in the 2004 general election,⁸ put forward a counterproposal to limit the use of and discrimination against fixed-term and dispatched labor. The government handed its proposal on nonregular employment protection legislation to the National Assembly in November 2004. However, it was not passed amid strong opposition of labor unions and mounting criticism from the public.

The pending situation of the nonregular employment protection legislation in the National Assembly remained unchanged, and even became worse in 2005, although the government attempted to enforce its legislative plan in a unilateral manner. In March 2005, the presidents of the two national unions issued a joint statement that demanded the resumption of the social dialogue to discuss a compromise solution to the impasse over the nonregular employment protection legislation, and warned the government and the ruling party that their unilateral enforcement would result in general strikes by the labor unions. In April 2005, the National Human Rights Commission addressed its official statement endorsing the labor unions' position, thereby damaging the legitimacy of the government's proposal. Between April and May, when the government tried to enforce the legislation unilaterally, the leaders of the two national unions engaged in hunger strikes and called a general strike. In July 2005, the FKTU decided to withdraw from the Tripartite Commission to protest the government's legislative proposal.⁹ As a result, the government, faced with persistent opposition of labor unions and civil NGOs, failed to pass its legislative proposal and finally gave up its hard-line position to unilaterally enforce the proposal at the end of 2005.

8. In the general election held in April 2004, the Democratic Labor Party obtained 13.1% of national voting.

9. In addition, the FKTU's withdrawal from the Tripartite Commission was attributed to the death of a union officer at a rally demanding labor rights for dependent self-employed workers and the pro-business position of Minister of Labor Kim Dae-Hwan.

From early 2006, the government began approaching the issue of nonregular employment protection legislation using the “soft” process of social dialogue. In February, President Roh replaced the pro-business Labor Minister Kim Dae-hwan with an ex-labor lawyer, Yi Sang-su, and the government made efforts to resume the policy consultation process involving the FKTU and the Korea Employers Federation (KEP). In order to induce the FKTU to take part in the policy consultation process, the Ministry of Labor embraced some of union’s demands, including the term limit of two years for the use of fixed-term workers and the retention of a positive list for the use of dispatched labor in its legislative proposal, despite the opposition of economic ministries. The FKTU’s decision to return to the Tripartite Commission in February 2006 dissolved the coalition of the two national unions opposing the government-initiated legislation,¹⁰ and thereafter created a schism between the two national unions and among civil NGOs and labor activists groups in the process of nonregular employment lawmaking. The focal point of contention between the two national unions was how to approach the legislation; the FKTU and civil NGOs took a pragmatic stance by insisting that it would be better to introduce partial regulations on the use of and discrimination against nonregular employment than to play the “all or nothing” game, whereas the KCTU and labor activist groups opposed legislation because it violated their principles of prohibiting the irrational use of nonregular labor. A good example of this schism can be seen on the question of how to regulate the use of fixed-term labor. The FKTU accepted the term limit of two years as a means to regulate the use of fixed-term labor without the specification of specific reasons, taking employers’ tough opposition to new regulation into account. By contrast, the KCTU demanded that the use of fixed-term labor be allowed only for some specific reasons (i.e., regular

10. The dissolution of the FKTU-KCTU coalition was associated with the sudden resignation of the KCTU President Lee Soo-Ho, who was active in building a cooperative relationship with the FKTU in October 2005. President Lee resigned his position over corruption charges made against a senior union officer.

employees' short-term vacancies due to pregnancy and sickness, seasonal business, temporary projects, etc.) and intended to oppose any legislation that did not incorporate their demands.

Although the FKTU rejoined the policy-consultation process on nonregular employment protection legislation, the government was not able to produce a tripartite agreement on this legislative issue because the FKTU and the KEF differed widely in their positions. Because the policy consultation of the Tripartite Commission proved fruitless, the government pushed the legislative issue to the National Assembly in the fall of 2006. Between October and November 2006, the ruling party invited six representatives—the FKTU, the KCTU, the KEF, the KCCI (Korea Chamber of Commerce & Industry), the Ministry of Labor, and the Tripartite Commission—to the National Assembly and attempted to reach a final compromise on the nonregular employment legislation. During a series of tripartite meetings, those representatives made some progress in reaching agreement on many legislative clauses, but didn't resolve the key issues (i.e., how to regulate the use of fixed-term labor and penalize the illegal use of dispatched labor), mainly due to the KCTU's stubborn stance.

As the tripartite meetings failed to produce an agreement, the ruling party began negotiating with the major opposition party about the passage of two nonregular employment laws. Since all the representatives of tripartite negotiation except the KCTU gave implicit agreement to the final legislative proposals, as summarized in Table 5, the ruling and major opposition parties agreed upon enactment of the laws.¹¹ However, the KCTU and the Democratic Labor Party (DLP) conducted a series of campaigns, including general strikes, to block the passage of the nonregular employment protection laws. Faced with this stiff opposition of the KCTU and the DLP, the ruling party pushed for quick passage of the laws and brought them up by the authority of the chair to the floor of the National Assembly at the end of November

11. The major opposition party, the Grand National Party, which took a pro-business conservative position, did not oppose the ruling party's legislative proposal, since the business associations gave implicit endorsement to it.

2006. Once passed, the laws were put into effect in a gradual way by taking firm size into account: the provisions were effective for firms with 300 or more employees from July 2007, firms with 100-299 employees from July 2008, and firms with less than 100 employees from July 2009.¹² The nonregular employment protection legislation,

Table 5. Key Contents of Nonregular Employment Protection Laws

		Existing Laws	Nonregular Employment Laws
Fixed-term	Prohibition of discrimination	- No clause	- Introduction of “prohibiting discrimination” clause - Labor Relations Commission’s corrective action on 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
	Overtime payment	- No clause for part-time workers	- Adoption of the limit of overtime work (twelve hours weekly)
Dis-patched Labor	Prohibition of discrimination	- No clause	- The same clauses as fixed-term labor
	Duration & eligible sector of labor 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 two years or illegally, as regular employees

12. The nonregular employment laws are not applied to small firms with less than five employees.

reflecting a compromise of tripartite interests, took five years to enact because of intense political divisions.

Prior to July 2007, when the laws started to be put into effect, many large firms turned their temporary (fixed-term) workers into regular or permanent employees. However, a few firms, like E-land (department store), Korail (public transportation), and Giryung Electronics (manufacturing), undertook massive layoffs of fixed-term workers or replaced them with contracted labor, thereby creating grave social concern over the side effects of the nonregular employment protection laws. In this context, in May 2007 the Tripartite Commission formed the Subcommittee on Nonregular Workers to discuss follow-up policymaking to address the side effects and deficiencies in the legislation. At the same time, the Participatory Government took policy actions to carry out a series of special investigation into illegal use of dispatched labor at manufacturing firms¹³ and convert nonregular workers to permanent workers in the public sector during its term.

The Period of Practical Government (2008–Present)

President Lee Myung-Bak, who won the presidential election in December 2007, announced so-called “MBnomics” program, which included an extensive deregulation plan, at the beginning of his administration. The advent of the Practical Government, which gained the absolute majority of the National Assembly in the general election of May 2008, signaled the formation of business-led power relations, giving advantages to employers and business groups. This new government, which made clear its pro-business direction, surveyed business associations’ views on deregulation in the labor policy area, including the nonregular employment protection laws, and made a public pledge to undertake aggressive policymaking to pro-

13. The government’s special investigation became a source of complaints from labor unions and NGOs, since it ultimately gave many large firms an indulgence to the illegal use of dispatched labor, which is not allowed in the manufacturing sector.

mote labor market flexibility. Moreover, the economic slump, triggered by the financial crisis in the United States in the fall of 2008, provided a specious pretext for the government's attempt to revise the nonregular employment laws. In particular, the Ministry of Labor warned about the possibility of massive layoffs of fixed-term workers who reach the term limit of two years by July 2009 in order to justify its move to revise the nonregular employment protection laws. The ministry argued in early 2009 that around one million fixed-term workers would lose their jobs unless the term limit is extended to four years in the laws.¹⁴

However, the government's move to revise the nonregular employment protection laws has been confronted with strong opposition from labor unions, opposition parties, and civil NGOs. The government's rationale for revising the laws has been rebutted by those opposing groups. They insist that the nonregular employment protection laws have contributed to the conversion of fixed-term workers to permanent employees since the enforcement of the laws began in July 2007 and that the government's layoff estimate is grossly exaggerated and designed to take advantage of the economic crisis (Eun 2009).¹⁵ They have demanded the strengthening of protective regulations for nonregular employment, rather than weakening the existing laws. As summarized in Table 6, the reform agenda proposed by the opposing groups includes the enhancement of the complaint procedure for discrimination cases, the provision of financial incentives for firms converting nonregular workers to regular employees, the expanded accountability of employers using dispatched labor, and

14. The government revised those estimates to around 700,000 in June.

15. Many academics, critical of the government's position to weaken the nonregular employment laws, estimated that a maximum of 273,000 fixed-term workers would reach the statutory term limit in the next twelve months—a wide discrepancy with the government's estimates. It is noteworthy that the number of fixed-term workers sharply dropped from 2,614,000 in March 2007 to 2,293,000 in March 2008, yet increased to 2,560,000 in March 2009. This changing trend of fixed-term employment appears to reflect employers' reaction to the government's deregulatory move (Eun 2009).

Table 6. Key Issues Concerning Nonregular Employment Protection Legislation in 2009

	Unions & NGOs	Businesses	Government
Prohibition of Discrimination	<ul style="list-style-type: none"> - Expansion of complaint procedures for labor union and worker representatives - Expansion of comparable jobs to discrimination cases - Extension of complaint period for discrimination cases to six months 	<ul style="list-style-type: none"> - Opposing any revision to the complaint procedures for discrimination cases 	<ul style="list-style-type: none"> - Not accepting the expansion of complaint procedures and comparable jobs - Extending complaint period to six months
Fixed-term	<ul style="list-style-type: none"> - Retaining imposition of the two-year limit on the use of fixed-term employment - Provision of incentives to firms turning fixed-term workers into regular workers - (KCTU) Adoption of specific reasons for the use of fixed-term labor 	<ul style="list-style-type: none"> - Abolition of the duration limit on the use of fixed-term employment 	<ul style="list-style-type: none"> - Extension of the term limit for fixed-term workers to four years - Provision of incentives (exemption of social insurance fee) to small firms turning fixed-term workers into regular workers
Dispatched	<ul style="list-style-type: none"> - Expanding the accountability of employers using dispatched labor - Opposing the extension of the duration limit of dispatched labor - (KCTU) Abolition of the dispatched worker law 	<ul style="list-style-type: none"> - Replacing the current positive list with the negative list to guarantee employers' extended use of dispatched labor 	<ul style="list-style-type: none"> - Extension of the term limit to four years - Expanding the eligible sectors for the use of dispatched labor by revising ministry ordinance
Contracted & Dependent Self-employed Labor	<ul style="list-style-type: none"> - Introducing statutory regulation of in-house subcontracting - Guaranteeing labor rights and social insurance for dependent self-employed workers 	<ul style="list-style-type: none"> - Opposing any regulation on subcontracting and dependent self-employed workers 	<ul style="list-style-type: none"> - Not accepting any regulation on subcontracting and dependent self-employed workers

the introduction of additional regulations for in-house subcontracting and dependent self-employed workers.¹⁶ The government has rejected these demands and tried to weaken the existing laws by extending the term limit of fixed-term workers from two to four years and expanding the eligible sectors for using dispatched labor, even though its actions are short of what business associations have demanded. In accordance with the government's deregulatory policy direction, the Subcommittee on Nonregular Workers of the Tripartite Commission has changed its policy consultation agenda from regulatory solutions tackling the side effects of the existing laws to the revision and weakening of them.

In March 2009, the government announced its revision plan for the nonregular employment protection laws and asked the ruling party, Grand National Party, to take up an initiative to enact the legislative reform. However, the ruling party, which had concerns over growing criticism by opposing parties and labor and civil organizations, was reluctant to draft a proposal for the revised legislation. In the end, the government proposed its revision to the National Assembly in late April. Opposing parties (the Democratic Party and the Democratic Labor Party), labor unions (both the KCTU and the FKTU), and a number of civil NGOs, each of which had different views of passage of the nonregular employment protection laws back in November 2006, built a unified front to block the government-led revision to the laws. Even the FKTU, which contributed to President Lee's election through its policy coalition with the Grand National Party, made clear its opposition to the government's pro-business deregulation plan regarding the nonregular employment protection laws. Confronted with this strong opposition, the ruling party offered a compromise proposal to suspend the effect of the two-year limit for fixed-term workers, rather than extending the term limit to four

16. In March 2009, a local president of the Cargo Driver Union was killed during protests against the government's refusal to recognize labor rights of dependent self-employed workers. His death has created growing tension between the government and the dependent self-employed workers unions.

years, as the government had originally proposed. The ruling party's comprise proposal was refused by opposing parties and labor-civil organizations because the suspension of the laws would have the same effect as the government's revision proposal in weakening the force of the laws. In June 2006, the National Human Rights Commission came out in opposition to the government's proposal because the proposal lacked the due process of social dialogue and would result in an increase in nonregular employment. Moreover, the sudden death of former President Roh Moo-Hyun in late May stirred negative public opinion toward the government,¹⁷ whose targeted investigation many people thought prompted his tragic death. Thus, this unexpected political accident further constrained the government and the ruling party from making a move to revise the laws. Against this backdrop of an unstable political situation, the government and the ruling party tried to speed passage of the revised nonregular employment protection legislation by convening a special session of the National Assembly, while the opposing parties and labor-civil groups took a determined stance to block it. The contention and uncertainty of labor politics concerning the revision of the nonregular employment laws continues to grow.

Conclusion: Summary and Implications

Against a background of growing labor polarization, the nonregular employment protection legislation in Korea has been a polemic issue in labor politics over the past ten years. Table 7 deconstructs the evolution of nonregular employment lawmaking into three elements—contextual structure, concerned actors' interests and strategies, and legislative outcomes—in accordance with the strategic-relational theoretical perspective in order to shed light on how contested interac-

17. According to a public poll conducted right after the death of President Roh, the approval rating of the ruling party fell below that of the major opposition party, the Democratic Party. This was the first time since 2005 that the Grand National Party's approval rating fell below that of the Democratic Party.

tions concerning the nonregular employment protection legislation have evolved over the course of three governments. We can draw the following implications from this case study. The legislative process and the enacted laws have proven the materialized cohesion of actors' strategies and contextual structure. In particular, the making of labor laws tends to involve a sharp interest contest between organized labor and employers associations. Given the growing societal concern over the sharp proliferation of nonregular workers and widespread discrimination against them, labor unions have demanded statutory regulation limiting the use of nonregular employment and guaranteeing the equal treatment, whereas employers firmly opposed the introduction of any legislation to constrain the flexible utilization of nonregular employment and impose additional labor costs.

As delineated in section 4, concerned actors get actively involved in the process of labor lawmaking by taking strategic actions to safeguard their own interests. The legislative process of nonregular protection entails the various forms of political interaction between those concerned actors, such as policy consultations at the Tripartite Commission, top-level negotiations at the National Assembly, mass mobilization in the streets and workplaces, and public discourse contest in the media. Over time, the discrepancy of strategic approaches toward nonregular employment legislation emerged within labor unions (the FKTU versus the KCTU) as well as the organized labor (particularly the KCTU) and civil NGO activists. The FKTU and NGOs adopted a pragmatic approach to the lawmaking of nonregular employment protection, while the KCTU persistently insisted on a maximalist demand for the protection of nonregular workers.

The government also takes part in the political interaction of lawmaking through its "strategic selectivity," as demonstrated by the legislative approach of the three Korean governments examined in this case study. As theorized by Jessop (1990), the state is a contested arena involving keen political bargaining of concerned actors with regard to the nonregular employment protection legislation. At the same time, the state has shown discriminating policy inclination toward the nonregular employment protection legislation, although it

has swung its strategic stance back and forth during its term of administrations. For instance, the People's Government introduced the dispatched workers law to allow employers to use these nonregular workers legally as part of its neoliberal reforms under the context of the economic crisis. The same government, however, launched the process of social dialogue to deal with legislative and policy issues concerning nonregular employment, when societal concern over nonregular workers became widespread later. Similarly, the Participatory Government adopted its unilateral and, more or less, pro-business approach to nonregular employment protection legislation at first, then when confronted with strong resistance from labor unions and NGOs, began searching for a pragmatic deal with the FKTU and NGOs by resuming the process of policy consultation in the second half of its term.

The interests and strategic measures of the actors, including the government, are conditioned and even constrained by contextual situations, particularly economic and political circumstances (i.e., economic crisis, political power shifts, and changing public opinion). As illustrated in our case study, however, the contextual structure and the actors' strategies combine to make the interactive processes of lawmaking and their outcomes uncertain and indeterminable. In this light, the labor politics concerning nonregular employment protection legislation has embedded the dialectics of structural contexts and actors' interest-based strategies, rather than being directed by the structure's determinism or the actors' voluntarism. Although the government has tried to take the initiative in the process of nonregular employment lawmaking, the final outcomes have been far from what it originally intended. The government's strategic intention tends to be refracted through tense policy negotiation with and between the concerned actors, as well as by changing contextual situations. The strategies of the actors often expose intragroup interest contests (i.e., fission between the FKTU and KCTU and the interministry bargaining), thereby making the interactive process of lawmaking more complicated and uncontrolled. Sometimes, unrelated social and political issues create an overflow impact on the legislative process of labor

Table 7. Evolution of Labor Politics concerning Nonregular Employment Protection Legislation

	Contextual structure	Actors' interest & strategy	Legislative outcomes
People's Government (1998-2002)	<ul style="list-style-type: none"> - IMF's pressure for labor market restructuring during economic crisis - Experience of labor unions' powerful resistance to the former government's legislative attempt - Political power shift to the liberal government 	<ul style="list-style-type: none"> - 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 nonregular employment protection - Union: forced to endorse the introduction of the dispatched workers labor law by policy exchange under crisis; later demanded the regulation of nonregular labor - Business: consistently demanding reform policy for labor market flexibility 	<ul style="list-style-type: none"> - Enactment of the dispatched workers law legalizing the use of this employment type - Forming the tripartite commission to deal with problematic issues of non-regular employment
Participatory Government (2003-2007)	<ul style="list-style-type: none"> - Growing social concern over labor polarization and nonregular labor issues - Worsening economic performance and persistence of political contention, constraining the government's reform drive - Weakening public confidence in KCTU due to its militancy and internal corruption 	<ul style="list-style-type: none"> - Government: pressured to legislate nonregular labor protection, yet desiring to limit the regulation lest firms' competitiveness and labor flexibility be damaged - Union: divided between the pragmatic (FKTU) and the maximalist (KCTU) approaches toward nonregular labor protection legislation - Business: minimizing the statutory regulation on the use of nonregular labor - NGO: demanding policy action to resolve non-regular labor issues resulting in social polarization 	<ul style="list-style-type: none"> - Enactment and revision of the non-regular employment laws, reflecting an interest compromise between tripartite actors, except the KCTU - Forming a tripartite commission to deal with side effects of nonregular employment laws
Practical Government (2008-present)	<ul style="list-style-type: none"> - Political power shift to the pro-business government - Outbreak of economic crisis - Revival of democratic civil movement against the government's self-righteousness 	<ul style="list-style-type: none"> - Government: pursuing a pro-business labor policy to promote labor market flexibility - Union & NGOs: having a common ground to fight against the weakening of the nonregular labor laws - Business: making aggressive demands for revision of nonregular labor laws 	<ul style="list-style-type: none"> - Political and discourse contention concerning the revision of nonregular employment laws under way

lawmaking by moving in unexpected directions.

To sum up, the dynamic processes concerning the nonregular employment lawmaking are characterized as strategic-relational, in that they materialize structural contexts as well as actors' contested interests and strategic choices. As such, the strategic-relational perspective can offer a more plausible analytical lens through which to explore and shed light on the complicated and indeterminable processes of nonregular employment protection legislation, rather than the institutionalist perspectives, which simplify the complex dynamics of institutional transformation in their plane framework. As a matter of fact, the nonregular employment protection laws, to which actors' interests and strategies as well as contextual structure have contributed, have the dual nature of employment protection and labor flexibility, dissatisfying both organized labor and business groups. As a consequence, the laws became a focal issue of the ongoing strategic-relational contest among concerned parties, thereby producing considerable confusion over their institutional legitimacy.

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