

Asia Pacific Labour Law Review

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Workers' Rights for the New Century

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The Labour Law and Its Implementation in North Korea

Sang Wan Shim and Yeonchul Kim

Contemporary snapshot

Major labour legislation

Legislation providing or protecting workers' welfare:

- social security (Socialist Labour Law (SLL) Article 68);
- useful and decent housing (SLL Article 69);
- food supplied for reasonable prices (SLL Article 70);
- day care centre/kindergarten on state and society's costs (SLL Article 71);
- free compulsory education until working age and schooling at all levels (SLL Article 2);
- social insurance for disabilities (SLL Article 73);
- pensions for elderly (SLL Article 74);



- paid (average living costs) regular leave and maternity leave (SLL Article 76);
- pension for bereaved families;
- unemployment protection.

Collective labour rights:

- no right to form a union;
- no right to collective action.
- trade union rights;
- no provision of trade union rights except for foreign invested firms. The Regulation of Labour in Enterprises Involving Foreign Investments (ReLEIFI) (promulgated 30 December 1993, amended 8 May 1999 Article 8) obliges a foreign invested firm to make a labour contract with the trade union that protects workers' rights and interests and represents workers.

Occupational health and safety legislation/law provides;

- sick leave and pay;
- occupational injury compensation;
- free medical treatment for workers and dependants;
- workplace safety regulations.

Gender related labour laws provide for:

- maternity protection (no paternity provisions);
- maternity leave of 35 days before and 42 days after childbirth (extended to 60 days before and 90 days after childbirth by Policy Directive No. 2464, 20 February 1986) irrespective of the length of service;
- six-hour working day for a woman worker with three children or more;
- sexual discrimination;
- gender equality;
- no assignment of arduous and harmful labour to women workers;
- no pregnant women or nursing mothers on night shifts;
- no menstruation leave.

The Socialist Constitution provides for:

- discrimination of any type; racial, religious, sexual, and political etc.

Unfair dismissal

Under the SLL there can be no arbitrary dismissal. The SLL (Article 34) protects superfluous workers from dismissal at the employer's will. A state organ or a com-

pany is required to reorganise surplus labour resulting from unavoidable reasons into temporary assistance work at other factories, offices, or farms. Though there is no mention of unfair dismissal in the SLL, it does not mean that it does not occur.

The story may be different, however, in the case of a company involving foreign investments. The ReLEIFI sets provisions for dismissal in an enterprise involving foreign investment. Dismissal before the end of employment contract is permitted for reasons as follows (Article 15):

- when employees are not able to work, even after being treated due to occupational diseases or injury;
- when superfluous labour occurs due to changes in production management and technology;
- when a labour cut is unavoidable due to bankruptcy or when corporate dissolution is announced;
- when an employee causes a company a huge loss or commits a serious violation of labour regulation.

When dismissing workers for reasons not ascribable to workers', the company should provide financial assistance pro rata according to the length of service (Article 17). The ReLEIFI (Article 18) requires a company to come to an agreement on dismissal one month in advance with the trade union concerned and then to present a list of workers to the employment mediation organ concerned.

Dismissal may be deemed illegal when it does not satisfy the above criteria or does not follow procedure, when the company is fined by the Labour Administration Organ and, if the offence is judged to be serious, liable to criminal punishment (Article 43).

The ReLEIFI lays down certain conditions to protect workers from unfair dismissal. Workers may file grievances concerning unfair dismissal. The grievance procedure is as follows: first, a worker may solicit aid and protection from the trade union before an agreement is reached between the company and the trade union; second, a formal complaint may be submitted to the Labour Administration Organ; and last, an appeal may be presented to the court.

However, no provisions are made in the ReLEIFI concerning how to proceed with workers' complaints.

While the ReLEIFI necessitates an agreement between the trade union and the company one month in advance, a loophole does not make it obligatory either for the company to give prior notice to workers concerned or to consult workers for their views. Therefore the ReLEIFI falls short of enabling workers to protect their rights.

The above is no more than logical possibilities inferred on the basis of the legal provisions. There is no information available to assess the extent to which these provisions are effective. Furthermore, no report of a labour contract between trade union and management concluded under the ReLEIFI is published.

Key trade union federations:

- General Korea Federation of Trade Unions (Jikmaeng);
- Agricultural Workers Union.

At present there is no new union formation.

Analysis and implementation of the labour law

It is daunting for an outsider (even for those who use the same language) to attempt a critical account of the labour law and its implementation in North Korea. This is due mainly to the dearth of relevant information and data. North Korea lies behind the ‘curtain’. What goes on in North Korea is rarely made public. Rare opportunities to look inside North Korea are provided by testimonies from North Koreans who defected to South Korea. Unfortunately the number of testimonies relevant to our theme is but a few. This essay draws on a report that contains testimonies of eight former North Korean workers.¹

Another major source of difficulties in understanding North Korea exists in the systemic idiosyncrasies, which aim at building a ‘my way’ socialist economy on the basis of ‘Juche’ thought.

As laws in a society embody the ideologies that govern it, so labour law in North Korea expresses governing ideologies such as Juche thought, socialism, communism, and policies of the ruling Korean Workers’ Party (KWP).

Labour laws of the DPRK

Major labour legislation currently in force in North Korea can be divided into three groups: a) general legisla-

tion such as the Constitution, the SLL, and the Penal Code, b) detailed regulations for the application of laws such as the Regulation on Labour Discipline, and c) special legislation such as the ReLEIFI.

The SLL is at the centre of this legislation. It applies to a wide range of workers who work at factories, offices and co-operative farms.² The SLL differs in nature from labour laws in capitalist countries. Its aims are directed at developing socialist institutions; legally consolidating the achievements of the KWP’s labour policies and legally stipulating the principles and demands that should be observed in socialist working lives. The SLL is clearly spelled out as a tool in the service of the KWP labour policies.

It comprises eight chapters: ‘basic principles of socialist labour’ (Chapter 1); ‘labour as sacred responsibility’ (Chapter 2); ‘socialist organisation of labour’ (Chapter 3); ‘socialist distribution according to labour’ (Chapter 4); ‘labour, technological revolution, and skill improvement of workers’ (Chapter 5); ‘labour protection’ (Chapter 6); ‘labour and rest’ (Chapter 7); and ‘state and social benefits for workers’ (Chapter 8).

In the SLL some provisions are made for labour rights but less emphasis is placed on rights than on duties. Commentators argue that the main thrust of the SLL is the concern to improve labour productivity by strengthening labour disciplines. Provisions of labour rights are mostly vague.

The right to organise

One of the key characteristics of the SLL is the absence of provision for trade union rights. Neither the Constitution nor the SLL contains the right to organise a trade union. Workers are only allowed to join one of the ‘mass organisations’ depending on the category of people they fall into. The major mass organisations are the Jikmaeng, the Agricultural Workers’ Union, the Socialist Youth Workers’ Union, and the Women’s Union. The main role of mass organisations is described as a ‘transmission belt between the party and the mass people’.

The Jikmaeng, which was first established in 1945 and affiliated to the World Federation of Trade Unions, organises people over 30 years old who work at factories and offices other than political parties. It is the largest mass organisation in North Korea with at least 1.6 million members grouped by industry and region. There are

nine industry-based Jikmaengs and some region-based Jikmaengs.³ The Jikmaeng exercises the monopoly to organise these categories of people.

Under the initial Labour Law of 1946 (LL), the Jikmaeng was given a legal status amounting to a trade union to ‘represent factory and office workers, to conclude a collective contract’, and to ‘take part in the process of considering and solving labour problems’. Such loose provisions lost ground as the ownership of companies and offices were increasingly nationalised. The nature of a ‘collective contract’ shifted with efforts to construct a socialist nation. The focus of collective contracts was to achieve planned production targets rather than to protect workers’ interests. A collective contract typically included the rationalization of labour and production organisations, enhancing facility usage, improvement of labour productivity, savings of raw materials and other resources, and reduction of costs. It emphasised duties and responsibilities of workers, as well as labour disciplines and workplace rules.

In 1964, the Government scrapped the system of collective contracts between Jikmaeng and management. The main reason put forward for this was the belief that as construction of a socialist economy in had reached a stage where the interests of workers corresponded with those of the state, there was no point for workers to make a contract with the state. Since then the Jikmaeng was deprived of key trade union rights to collective contract and to monitor labour management and became more of a pseudo state agency taking over certain labour administrative roles such as setting quantities of labour expenditure and living stipends. This may be interpreted that the Jikmaeng has some influence over setting wages and working conditions but it has no right to bargain and no right to strike.

Its major activities are devoted to educating workers along the lines of the ruling KWP. It plays a leading role in organising study sessions that take place for two hours each working day. The Jikmaeng seems under the strict control of the KWP; selecting the Jikmaeng leadership is reportedly controlled by the KWP. Its constitution says “the Jikmaeng is a supporter of the KWP and shall carry out all the activities under the leadership of the KWP. We shall strengthen the unity and integration of working classes, uniting them around the KWP and systematically mobilizing them to fulfil the revolutionary tasks designated by the KWP.”

There is little information suggesting that the Jikmaeng has played any significant roles in shaping labour law in North Korea.

The right to work

Under the Constitution and the SLL, all workers choose occupations according to their wish and aptitude. It also stipulates that workers are provided with stable employment and working conditions. The SLL Article 5 goes so far as to proclaim, ‘unemployment has disappeared for good in DPRK’. The Constitution states, “Workers work according to their ability and distributed according to the quantity and quality of the work done.”

There is not much information on how rights to work are realised within the framework of the planned economy. The SLL requires that it is the most sacred duty of the citizen to sincerely take part in work (Article 14); workers must strictly observe labour discipline and working hours (Article 18). A violation of labour discipline may entail grave criminal punishments. The Penal Code provides for the death penalty for anyone who hinders the nation’s industry, trade, or the transport system by intentionally failing to fulfil a specific duty. It also states that anyone failing to properly carry out an assigned duty is subject to no less than five years’ imprisonment. The United Nations Human Rights Committee (2001) recommended that North Korea amends the provisions of SLL Articles 14 and 18 to avoid conflict with the prohibition of forced labour in the International Covenant on Civil and Political Rights.

Entering into employment in North Korea is not through an employment contract but through the planned allocation of workers to workplaces by the labour administrative organ.

Since the Korean War, North Korea has developed stringent labour management policies in her attempt to construct a socialist planned economy.

Working hours and the right to rest

The Constitution stipulates an eight-hour working day and six-day working week, which means a 48-hour working week. The SLL provides for a six- or seven-hour working day in view of the degree of arduousness and extraordinary conditions (Article 16). The SLL prohibits business organisations and enterprises from compelling workers to do extra hours of work (Ar-

ticle 63). When workers are made to work on off-duty days for unavoidable reasons, they must be given a leave of equivalent days within a week (Article 64).

In addition to public holidays and Sundays, workers are entitled to the regular leave of 14 days and supplemental leave from seven to 21 days a year depending on occupation (SLL Article 65). Under SLL Articles 62 and 67 the state is responsible for supplying facilities for relaxation and rest of workers. The state's responsibility includes managing recreational facilities suitable for workers to take rests while working.

No reliable data is available on the implementation of these provisions. However, several sources report that most workers work from 12 to 16 hours daily when factories are operating.

Protection of children and women

According to Article 31 of the Constitution, the minimum working age is 16. Labour by children under working age is prohibited (SLL Article 15).

The SLL provides for various policies to protect women. A six-hour working day is set for women workers with three children or more. The state boasts that it provides women with all conditions to take part in social labour. Local government bodies, enterprises and social co-operative organisations develop nurseries, kindergartens, children's wards, and public service facilities for the convenience of working women. It also organises housewives' work teams and housewives' co-operatives so that women who do not go to work may join them according to their skill if they wish (Article 31). The state should pay special attention to protect women in workplaces (Article 59). It is not allowed to assign arduous and harmful labour to women, or to put pregnant women or nursing mothers on night shifts. In addition to regular and additional holidays, working women are entitled to maternity leave of 60 days before and 90 days after childbirth, irrespective of the length of service (Article 66). Before 1993, maternity leave was 35 days before and 42 days after childbirth.

These provisions may be seen to prove that the Government took legal measures to treat women preferentially.⁴ However, little information exists to assess how far these measures are implemented. The SLL provides for potential gender discrimination by setting the age eli-

gible for the retirement pension differently between men and women: the age of 60 for men; the age of 55 for women.

Industrial safety and health

The SLL provides for labour protection and industrial safety and health. Under the SLL the state is obliged to put labour protection before production (Article 53). Other provisions include a system of labour safety education (Article 54), safe and hygienic working environments (Article 55), and regular medical check-ups (Article 58).

As regards these issues, North Korean defectors presented conflicting views in their testimonies. For instance, six out of eight defectors responded negatively when asked whether state organs, enterprises, and social co-operatives try to make sure that all workers work in safe, civilised, and hygienic environments. Their views concerning the implementation of the provision for safety conditions of construction and production facilities (Article 57) and regular medical examinations (article 58) were divided 50:50.

Many sources suggest that North Korean workers suffer from continuing economic crises. Mr. Choi, Suhon, North Korea's deputy foreign minister, officially reported deteriorating welfare indicators at the UNICEF conference in Beijing in May 2001. Average life expectancy fell from 73.2 years in 1993 to 66.8 in 1998; the mortality rate for children under age five rose during that time from 27 deaths per 1,000 to 48 per 1,000 and the infant mortality rate rose from 14 to 22.5 per 1,000 births.

His report noted, 'due to successive serious natural disasters since 1995 and external factors, the supply of food and medicine is insufficient, whereby under nourishment has appeared among children'.

The SLL contains no concept of unemployment insurance. The SLL stipulates that even if a company has surplus labour, management cannot dismiss them at will (Article 34). No wonder that no provision of unemployment insurance was made in 1978. Things have since changed in North Korea. When the National Social Security Law was enacted, a new provision was that a worker who has difficulty with livelihood on account of not being assigned to a job for a month or more despite his/her willingness and capability to work is provided with 20 percent of standard living costs for not more

than six months. No records of the actual payment of unemployment benefit are available.

Recent changes in labour law

Based on available information, two strands of legislation head recent changes in labour law in North Korea: one is the Regulation of Labour Discipline (ReLD) in domestic workplaces, the other concerns the ReLEIFI.

Regulation of labour disciplines

In April 2000, the Cabinet of North Korea approved an amendment to the ReLD, which was originally enacted by the Central People's Committee in 1978. The main objectives of the ReLD are to strengthen labour discipline and order, to remove labour waste, to continuously improve labour productivity, and thereby to accelerate the construction of socialism.⁵ The re-institution of the ReLD in 2000 can be understood against the background of national economic crises. Economic depression coupled with droughts and floods since the mid-1990s reportedly caused breakdown of worker morale. Shortages of food wrecked the system of food distribution while shortages of resources shut down factories. Workers became concerned less with attending factories than with going to rural areas for food or black market trading. In the late 1990s, with Kim Jongil's leadership consolidated, North Korea adopted a new economic strategy to overcome the economic crisis. It included substantial restructuring of enterprises and factories. The adoption of the ReLD seems to be a part of the state's endeavour to normalise its economy by bringing order back into workplaces.

Labour regulation in enterprises involving foreign investments

Since the mid 1980s, the Government enacted various laws introducing some new (capitalist) elements to induce foreign investments. The ReLEIFI puts together labour-related provisions stipulated in a variety of laws on foreign investments. It applies to joint-management/ventures and to foreign subsidiaries.

The ReLEIFI keeps the basic principles and provisions of a planned economy but distinguishes between enterprises involving foreign investments from domestic enterprises.

Under the ReLEIFI an enterprise involving foreign investments (EIFI) is not allowed to employ workers directly, but through the labour mediation organ (labour administration organ) in the area where it is located. Unlike domestic enterprises, however, an EIFI must make a labour contract with the Jikmaeng before employing workers. The contract must include the duties of workers, indicators of quantity and quality of production, hours of work and rest, remunerations and insurance benefits, labour protection and working conditions, labour discipline, awards, sanctions, and resignations. An EIFI can select workers sent by the labour administration, which is not the case with a domestic enterprise. An EIFI also differs from domestic firms in that it can dismiss workers for managerial reasons, provided that it makes an agreement with the Jikmaeng one month in advance.

Thus, the ReLEIFI provides certain flexibility for labour management in an EIFI. Having that said, however, one of the significant features of the ReLEIFI is the provision that flexibility should be agreed with the Jikmaeng. Under the ReLEIFI, the Jikmaeng represents the rights and interests of workers collectively. It is interesting to note that the ReLEIFI obliges an EIFI to provide the Jikmaeng with funds and facilities for operation. While the Jikmaeng is legally empowered to protect workers' rights and interests, what Jikmaeng actually does in EIFIs are scarcely known.

Table I. Foreign enterprises' financial support for Jikmaeng

Number of employees	Amount paid for total employees
More than 1,000	1 percent
500 – 999	1.5 percent
Less than 499	2 percent

Source: the Regulation for the Implementation of the Law on Joint-Management Enterprises, Article 94; the Regulation for the Implementation of the Law on Enterprises Involving Foreign Investments, Article 62.

A considerable discrepancy exists in the legal regulation of labour between EIFIs and non-EIFIs. Some writers claim a dualism of labour law in North Korea, but it should not be exaggerated. As the ReLEIFI clearly states, matters not provided for in the ReLEIFI are regulated in accordance with other labour laws. The ReLEIFI is firmly placed in the framework of other legislations under the control of the KWP.

No reports are available to assess the extent to which the provisions of the ReLEIFI are implemented. According to observers, EIFs are few and small. Though South Korean business operations in North Korea have increased significantly in recent years, they mostly fall in the category of subcontract production involving little investment.

Some commentators talk about the possibility that North Korea may follow China in opening wide its economy to foreign investments. Apparently North Korea is considering the development of free trade zones (FTZ) to serve as 'locomotives for pulling the socialist economy out of its current crisis' without necessitating fundamental reforms.⁶ The biggest FTZ is the Rajin-Sonbong area, located on the northeast coast near Russia. The decree to establish the Rajin-Sonbong zone was adopted by the Administrative Council of the DPRK on 28 December 1991. Since then, over 50 laws and regulations have been introduced to cover various legal aspects governing activities within the FTZ. However, despite all these efforts, Pyongyang has not succeeded in attracting sizeable foreign investments. Data show that the poorest record is in the sphere of productive enterprises, which are crucial to the FTZ's long-term success.⁷

In 2002 North Korea designated Sinuiju as a special administrative district. Gaesong and Mount Geumgang are likely to be designated as FTZs, according to a report by the Joonggang Ilbo North Korea Net.⁸ South Korea's National Intelligence Service predicted at a briefing session to the National Assembly that the North's authorities will turn the areas into 'laboratories' for capitalist experiments that will be used as a springboard for economic development. Reportedly the Government claims its new Gaeseong Industrial Complex Act would give administrative rights at the complex to the South Korean business that would manage the complex.

If North Korea tries to induce more foreign capital, it may face pressures for more flexibility for labour management. Labour legislation has been under the strict control of the KWP. It remains to be seen whether and in which direction the necessity of foreign investments and labour protection will bring about changes to labour law.

Notes

1. Sohn, Kiwoong and Kil, *Taegeun, Bukhan Nodong-ja Munhwa Yonku* [A study on workers culture in North Korea] (Krean Institute of National Unification, 1995).
2. The SLL substituted rather than amended the Labour Law on Workers at Factory and Office 1946 (LL), which was promulgated several months after Liberation. The LL, the first law to regulate labour relations towards socialism in North Korea, was not enforced during the initial stages of the North Korean regime. Instead, a number of decrees and regulations that modified and supplemented the provisions of the LL were made to meet the requirements of changing realities. Whereas the LL recognised certain elements of capitalist ownership, the SLL reflects social changes that negated capitalist elements.
3. For a more detailed account of the *Jikmaeng*, see Kim, Byongno, *Choson jikopchong dongmaeng* [All Korea Federation of Trade Unions], (Sejong Institute, Seoul, 1998).
4. *Report of DPRK to the United Nations on implementation of the International Covenant on Civil and Political Rights* (25 December 1999).
5. The ReLD comprising 72 articles in five chapters sets out: the principles of labour disciplines (Chapter 1); measures for controlling time to report to and leave work (Chapter 2); and the organisation of work shifts (Chapter 3); dos and do-nots for the full utilisation of labour hours. (Chapter 4); rules for making and taking over labour forces between workplaces to minimise waste (Chapter 5).
6. *The DPRK Report, No. 11*, the Centre for Nonproliferation Studies (Monterey Institute of International Studies, 1998).
7. *Ibid.* As of 1 March 1998, contracts have been signed for 65 projects. Their total value is \$907.1 million. Letters of intent have been signed for \$2.02 billion. These prospective deals include companies from Austria, Denmark, Finland, France, Germany, Great Britain, Hong Kong, Italy, Japan, the Netherlands, Sweden, Thailand, and the USA. But the volume of funds actually committed to date is only \$35.1 million, which includes \$14 million for infrastructure development, \$12 million in the service sector, \$7.6 in the financial sector, \$1 million in the tourist sector, and only \$500,000 in productive enterprises. A total of 50 projects were approved for the last ten years from 1992 to 2001.
8. 'Long-term economic plan to be announced in North next year', Joonggang Ilbo North Korea Net, 25 October 2002, at <http://english.joins.com/article.asp?aid=20021025155227&sid=E00>.

Appendix

North Korean labour statistics *

Table 1: Number of workers by industry and gender in North Korea (December 1993)

	Total	Male	Female	Female (%)
Total	11,004,842	5,561,851	5,442,991	49.46
Industry	4,118,332	1,921,658	2,196,674	53.34
Agriculture	3,381,930	1,718,021	1,663,909	49.20
Construction,	464,366	352,124	112,242	24.17
Transportation, Communication	402,477	285,321	117,156	29.11
Nation land, City	250,787	152,716	98,071	39.11
Commerce, Procurement	508,630	161,097	347,533	68.33
Education, Culture, Health	843,647	339,459	504,188	59.76
Other	1,034,673	631,455	403,218	38.97

* North Korea does not publish labour statistics. The only available statistics are from the Population Census published by the Central Bureau of Statistics in 1995.

Source: Central Bureau of Statistics, Tabulation on the Population Census of the DPRK, 1995, p.513

Table 2: Number of workers by occupation and age in North Korea (December 1993)

Age	Total	Factory worker	Office worker	Farmer
Total	11,004,842	6,944,058	1,471,859	2,588,925
16-19	778,696	570,618	7,141	200,937
20-24	1,712,350	1,188,112	110,536	413,702
25-29	1,774,147	1,148,580	144,811	480,756
30-34	1,469,495	941,317	179,747	348,431
35-39	1,301,754	811,531	229,778	260,445
40-44	939,765	566,592	163,729	209,444
45-49	1,177,659	721,754	218,590	237,315
50-54	1,131,005	684,224	219,972	226,809
55-59	561,372	252,498	151,137	157,737
60+	158,599	58,832	46,418	53,349

Source: Central Bureau of Statistics, Tabulation on the Population Census of the DPRK, 1995, p.507.