

The State Made Informalisation of Women Workers: A Case Study into Care Work in South Korea

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Abstract

This article examines the fragmentation of care work undertaken by women in South Korea brought about through the complex interrelationship of the state, the market and the home. The discussion is explored through an examination of the changes introduced by the South Korean government after 2008, which aimed to provide new long-term care benefits to persons over 65 years of age through the social security system, and simultaneously to increase women's labour market participation through creating employment opportunities as caregivers in the labour market. The new government programs are implemented through private service agencies, where these caregivers generally work in precarious forms of employment. This article explores the ways in which the marketisation of social care has impacted women at work; creating and reinforcing fragmented work as normative for women and influencing the proliferation of informal and precarious work. It thus reveals the way in which the intervention of the state in the crisis of care for the aged in South Korea and the subsequent reforms introduced to the labour market reproduce and change the fragmented and gender division of labour.

Keywords: Care Worker, Precarious Work, Informal Employment, Long-term Care Insurance for Older Persons

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1. Introduction

South Korea has been impacted by both globalisation as well as the subsequent Asian economic crisis of the 1990s. Following the policy prescriptions of the International Monetary Fund, the South Korean government pushed ahead with labour flexibilisation. As a result, South Korea has become one of the countries where precarious work or informal employment has increased the fastest. In response to the proliferation of precarious work and low-waged jobs, the government has promoted “productive social safety nets”.¹ As a result, since the 2000s, social care services, including care for the elderly, have become the fastest growing sector.

Women have historically performed care work. This work has been largely unrecognised and unpaid. The growth of *paid* care work raises questions on whether jobs in this sector are replicating patterns of gender disadvantage. In this article, I undertake a case study and examine paid care work through the interrelationship of the state, the rise of fragmented labour in South Korea and gender norms. The discussion explores the changes introduced by the government after 2008 to provide long-term care benefits to persons over 65 years of age, and to simultaneously increase women’s labour market participation as professional caregivers. A further layer of complication in assessing the impact of paid care work is that two types of care workers arrangements have emerged. The public system operated through the Long-Term Care Insurance, although this has a strong element of privatisation within it, and a concurrent system of private employment agencies that work within hospitals.

Has the creation of paid employment in both the public and private sphere for women in care services broken cycles of gender disadvantage? Has the law and state policy promoted decent work for women in care services? And how do narratives around care services and gender impact paid caregivers employment status and relationship? Through a consideration of these questions, I challenge the dominant narrative in South Korea that caregivers in the formal, public system are guaranteed decent work. I demonstrate that women working in care services in both the public and private sector are poorly paid and precariously employed. I further demonstrate the ways in which the intervention of the state in

¹ Since 1999, the government pushed ahead with “Productive Social Security Net” as a new welfare regime. It was also referred to as ‘workfare’ policy instead of ‘welfare’ because the new policy advocated addressing vulnerability through participation in the labour market. See D Hwang (ed) ‘Labour Policy for Productive Social Security’ (Korea Labour Institute, 2000).

the economic and social crisis and the subsequent reforms introduced into the labour market and social security system reproduce and reinforce the fragmented and gendered division of work.

2. Understanding the South Korean Labour Market: The Expansion of Social Care Service

Over the past thirty years the South Korean labour market has been dominated by fragmented labour practices. In South Korea, after the industrialisation under the military dictatorship in the 1960s, the government directly controlled and suppressed trade unions, and wages were set by both employers and the government. Following widespread labour protests in 1987, a new independent trade union movement developed in South Korea, weakening the prior authoritarian industrial relations which exerted military-like control over workplace.² Trade unions achieved wage increases which had been opposed for decades. Since the late 1990s, the gains made in wages have been undermined through the growth of precarious work and subcontracting. The economic crisis of 1997 was another turning point. It resulted in a significant change in the structure of the labour market. Through redundancy, restructuring and outsourcing, regular employment (defined in South Korea predominantly as full-time employment lasting over one year) has been significantly eroded.³ Since 1997, when jobs have been created they have mostly been with precarious conditions.

In a report I have authored for the International Labour Organization (ILO), I have shown how the South Korean government has played a major role in perpetuating precarious work.⁴ It has reduced employment in the public sector and has been contracting out public

² In the wake of the massive protests against the military dictatorship, a new independent and democratic trade union movement emerged in South Korea to challenge the government-controlled industrial relations system and traditional company unionism that had dominated since the Korean War. See Hagen Koo, 'The Dilemmas of Empowered Labor in Korea' (2000) XL(2) Asian Surveys 227.

³ Here, 'regular employment' also includes part of a bilateral employment relationship. See Yoo-Sun Kim, 'Size and the Employment Conditions of Precarious Workers: An Analysis of 2017 Supplement Survey of Economically Active Population' (Korea Labour & Society Institute, 2017).

⁴ Aelim Yun, 'The ILO Recommendation on the Employment Relationship and its Relevance in the Republic of Korea' (2007) GURN Discussion Paper No.4 <http://www.ilo.org/public/libdoc/ilo/2007/107B09_95_engl.pdf> accessed 10 Jan 2018.

Informalisation of Women

services. The government also legalised redundancy and temporary agency work, which previously had been restricted under the law, and enacted a new law in 2006, which institutionalised fixed-term employment contracts. As a result, precarious workers have become the core workforce.⁵ They account for 42.4% of total wage employment. The wage gap between regular and precariously employed workers has also grown. The average monthly wage of precarious workers is half (51%) of that of regular workers. Precarious employment lasts on average for only 2.4 years.⁶ In other words, the majority of workers in South Korea suffer from regular dismissal and unemployment. In addition, the share of low-waged workers among precarious workers is sizeable (41.9 %).⁷

Another crucial trend in the South Korean labour market is the rising participation rates of women. Faced with a proliferation of precarious employment, women have increasingly participated in the labour market in order to supplement household incomes. As we will see below, this motivation shapes the characterisation of paid care-giving work. Employment rates of men have increased slightly, from 69.2 per cent in 1998 to 70.9 per cent in 2008. By contrast, employment rates of women have increased significantly, from 44.4 per cent to 48.7 per cent for the same period.⁸ Despite the employment rates of women increasing in recent decades, South Korea is ranked at the lowest level of labour force participation rates of women among the OECD countries.⁹ In 2016, the economic activity rate of women was 52.1 per cent, with about half of them being wage workers (defined in South Korea as all workers who hold the type of job defined as paid employment jobs).¹⁰ The employment rate of women between 35 and 44 years of age is the lowest. This is likely due to women in this age group taking a career break to have and raise children. It is also noteworthy that 52.4 per cent of female workers are precarious workers, while only 34.4 per cent of male workers are precarious workers.¹¹ The fragmentation of the labour market needs to be understood as a gendered issue.

The government has sought to increase employment through boosting female labour force participation rates. This has been done predominantly through creating jobs in care services. Historically, the

⁵ *ibid.*

⁶ Kim (n 3).

⁷ *ibid.* 'Low-waged worker' refers to as a worker who is paid less than two-thirds of median wage of all workers.

⁸ J Keum and J Yun, 'Changes in Female Labour Market after the Financial Crisis' (Korea Labour Institute, 2011).

⁹ OECD, *OECD Employment Outlook: 2016* (OECD Publishing, 2016).

¹⁰ Korean Statistical Information Service, 'Statistical Database' <<http://kosis.kr/eng/>> accessed 10 Jan 2018.

¹¹ Kim (n 3).

South Korean welfare regime was based on a family care model, which has traditionally placed responsibility for care on family members and, in particular, on women.¹² Creating paid care work enhances the social security system. Care services have been framed as especially suitable for women, on the grounds that the assumed attributes of “femininity”, such as mildness and sensitivity, are required for care work. Because women are the ‘primary carer in the family’, they are assumed by the government to be good at doing low-skilled care work.¹³ As a result of the government initiatives, the numbers of social service workers, service provided in order to meet the socially recognised care needs, increased from 489,902 in 2000 to 754,033 in 2007. Among them, the numbers of women almost doubled, with an increase from 317,802 to 553,645, for the same period.¹⁴

The introduction of the Long-term Care Insurance for Older Persons (LTC) in 2008 is a good example of the expansion of care work employment. The LTC aims to ‘reduce family expenses on elderly care, to create employment for caregivers, and to activate the local economy by increasing care institutions’.¹⁵ Under the LTC, individuals over 65 years old, who have difficulties in carrying on with daily life on their own due to old age or senility, can be provided with long-term care benefits via the social insurance scheme. Although the insurance scheme is administered by the government, the actual care services are mainly provided by private service agencies, which employ the caregivers. In 2015, 78 percent of LTC institutions were private, only 1.22 percent were public.¹⁶ Persons who want to be caregivers under the LTC must finish mandatory educational programmes and pass a qualifying examination. The numbers of licensed caregivers increased from 330,000 in 2008 to 1,300,000 in 2015. Obtaining a caregivers license does not necessarily translate into employment. Only 301,709 licensed caregivers were employed in 2015.¹⁷ As these caregivers do have a contract of employment, for the purposes of this case study they are classified as formal caregivers.

¹² K. Jeong et al, ‘Policy Issues and Strategies regarding Social Services in Korea’ (Korea Institute for Health & Social Affairs, 2006).

¹³ H Kim, S Ahn and Y Cho, ‘Job Creating in Social Services’ (Korea Labour Institute, 2006) 5.

¹⁴ E Oh and D Noh, ‘Policy Study to Improve “Job Creation Policy” in the Social Service Sector (III)’ (Korean Women’s Development Institute, 2009) 38.

¹⁵ ‘Public Long-term Care Security Promoting Committee, Studies on Development of Public Long-term Care Security’ (Ministry of Health & Welfare, 2004).

¹⁶ National Health Insurance Service, 2015 Long Term Care Insurance Statistical Yearbook.

¹⁷ *ibid.*

Alongside the caregivers associated with LTC institutions, there are other types of caregivers who provide personal care services within hospitals, nursing homes or in patients' homes. Most of them are provided by private employment agencies. These caregivers often do not have an employment contract with either institutions (hospital, nursing home or employment agency) or individual recipient, and thus are considered to be informal caregivers. The number of informal caregivers was roughly estimated at 112,400 persons, in 2009.¹⁸

3. The Illusion of Just and Fair Working Conditions for Caregivers

A. Formal Caregivers Under the Long-term Care Insurance System

Given the significant number of people employed in care services, it is imperative to examine the working conditions for both formal and informal caregivers. Starting first with formal caregivers; women accounted for 95 per cent of all formal caregivers under the LTC, in 2016.¹⁹ The majority of caregivers are in their forties (32.7 per cent) or fifties (37.7 per cent).²⁰ While the numbers of licensed caregivers have increased rapidly since 2008, the actual employment rates are very low. In 2015, roughly 24 per cent of licensed caregivers were working under the LTC.²¹

A survey of the National Health Insurance Service (NHIS) reveals the poor working conditions of formal caregivers. Formal caregivers are poorly paid. Home-visit caregivers, caregivers who visit the individual recipient in their home, who accounted for 81 per cent of all formal caregivers, were paid 592,496 Korean Won (approx. USD 557) per month, in 2014.²² In the same year, the average monthly wage of all workers was 2,230,000 Korean Won (approx. USD 2,096). Some factors

¹⁸ H Park et al. 'A Survey on Persons in Special Types of Employment' (Ministry of Employment & Labour, 2011) 160.

¹⁹ National Health Insurance Service, 2016 Long Term Care Insurance Statistical Yearbook.

²⁰ H Lee and S Yoo, 'Analysis of Operation Situation of the Long-term Care Insurance' (Audit and Inspection Research Institute, 2012) 17.

²¹ J Seok, 'Studies on Restructuring of Long-term Care Home-Visit Service' (Ministry of Health & Welfare, 2016) 87.

²² J Kim, 'Analysis of Account Balance of Long-term Care Institutions' (National Health Insurance Service, 2014). In comparison, formal caregivers working within care facilities were paid 1,430,466 Korean Won (approx. USD 1,344) per month.

might explain the low wages of formal caregivers. First, the government has set the wages of formal caregivers close to the legal minimum wage.²³ The average hourly wage of formal caregivers was 7,226 Korean Won, which was slightly higher than the legal minimum wage, 5,210 Korean Won per hour, in the same year. Although formal caregivers' hourly wage is higher than the legal minimum wage, their monthly wage (wages in Korea are usually paid monthly) is usually lower than the average monthly wage of all workers, as their work hours are usually shorter and insecure.²⁴ According to the survey conducted by the NHIS, home-visit caregivers work on average only 82 hours a month. It is increasingly difficult to obtain more working hours, as the numbers of private institutions and home-visit caregivers have reached saturation point.²⁵ What is worse, the government even encourages low wages. As the National Human Rights Commission of Korea noted, even the standard form of employment contract distributed by the Ministry of Health and Welfare included provisions for the evasion of the law, stating that 'all relevant allowances are regarded as being included into the sum of wages'²⁶ or 'working hours exceeding eight hours a day are regarded as a recess'.²⁷ In other words, the Ministry of Health and Welfare provides space for employers to disguise working hours as a recess or cutting overtime pay.

Second, in 2017, the Ministry of Health and Welfare changed the care service time rule from four hours per house-visit to three hours per house-visit. To maintain their wages, caregivers have to increase the number of house-visits which is difficult since the time for travelling and for time between scheduled home visits is not paid. Moreover, the working time regulation forces caregivers to provide unpaid services. In practical terms, it is difficult for caregivers to reduce their service time

²³ In 2010, for example, 5~6,000 KW were evaluated as the "normal" level of hourly wages of formal caregivers. In the same year, the legal hourly minimum wages were 4,110 KW.

²⁴ Kim (n 22).

²⁵ The Campaign Committee for Amending the Long-term Care Insurance Act, 'Forum on a Complete Revision of the Long-term Care Insurance Act' (26 June 2017).

²⁶ Under the Labour Standard Act, an employer shall, in addition to the ordinary wages, pay 50 per cent or more thereof for overtime work, night work, or holiday work. To cut these overtime allowances, employers often force an employee to sign an employment contract which sets in advance the sum of wages regardless of actual working hours, holding that all relevant allowances are regarded as being included in the pre-fixed sum of wages. For example, if a worker worked for 12 hours, employers often claim that all relevant overtime allowances were included in advance into her pay, or that the worker had 4 hours recess while she actually provided her labour for those hours.

²⁷ National Human Rights Commission of Korea, 'Recommendation on the Improvement of Human Rights of Long-term Care Services Workers' (14 Jun 2012).

when they visit an individual recipient's home.²⁸ Care work has relational features and individual recipients usually need and demand the level of care service that they have previously been provided with during a four-hour visit. Consequently, caregivers must either provide unpaid service time or increase their workload within the time limits.

Along with low wages, formal caregivers are, in practice, not able to access labour entitlements. According to the NHIS survey, only 59.4 per cent responded that they had paid holidays, and 51.1 per cent that they were entitled to a holiday work allowance.²⁹ Although their status is of a formal employee, the majority of home-visit caregivers are employed as part-time workers.³⁰ In addition, their contractual working time is usually set at less than 15 hours per week by employers in order to avoid paying legal employment benefits.³¹ Moreover, most formal caregivers suffer from employment insecurity. Caregivers are formally employed on a one-year term contract, but, in reality, they often lose a job whenever one of their individual recipients enters a care facility or dies.

Formal caregivers are vulnerable to exploitation. Many researches recounted that formal caregivers have been frequently exposed to inappropriate requests from individual recipients and sexual harassment. According to a survey conducted by the National Association of Caregivers, 58 per cent of caregivers indicated that they were asked to do household chores, to make *kimchi* or even to do farming within individual recipients' home.³² Thirty-six per cent answered that they were verbally and physically abused, and 17 per cent were sexually harassed.³³

B. Informal Caregivers within Hospitals

Alongside the job creation of formal caregivers under the LTC, informal caregivers provided personal care services within hospitals, nursing homes or in patients' homes. When a patient is in a hospital, the hospital often asks the patient's family to sit by their bedside during the period of hospitalisation. This is due to a shortage of nurses within hospitals. In most cases, female members of family do this work or employ an informal

²⁸ *ibid.*

²⁹ Lee and Yoo (n 20) 74.

³⁰ In 2012, for example, 75.1 per cent of home-visit caregivers answered their employment contract was part-time. See D Seo et al, 'Outlook of Supply and Demand of Long-term Caregivers' (NHIS, 2012).

³¹ Under the Korean labour and social security law, an employee whose contractual working time is more than 15 hours/week is entitled to paid holidays, holiday work allowance, severance pay and employment insurance benefits.

³² National Association of Caregivers, *An Examination and Outlook for Care Work in an Aging Society* (2010).

³³ *ibid.*

caregiver. The number of informal caregivers working within hospitals was estimated at about 36,453 in 2012.³⁴

Most informal caregivers are provided to patients through private employment agencies. The private employment agency, which does not have an employment contract with the caregiver, is not legally deemed an ‘employer’ but is a fee-charging job placement service agency.³⁵ However, the private employment agency usually assigns jobs to caregivers, provides them with job training and in some cases, even collects fees from patients and gives remuneration to caregivers. Furthermore, many private employment agencies provide caregivers for patients according to an arrangement with a hospital. The arrangement between an employment agency and a hospital usually contains details regarding the personal requirements of care workers, the standard of service fees, working hours, uniform and appearance rules and the method of evaluation. Indeed, caregivers provide their service for patients under the supervision of nurses and other hospital staff. If hospital staff requests that the employment agency replace a caregiver, then she loses her job. Despite the control exerted by the hospital and employment agency, the courts have not regarded either actor as an employer.³⁶ Instead, these caregivers have been regarded as being hired by individuals like an “informal worker” or a “domestic worker”.³⁷ This is discussed further below when evaluating the employment status of informal caregivers.

Informal caregivers have similar and different working conditions and characteristics with formal caregivers. In 2010, women accounted for 98.7 per cent of informal caregivers. The majority were slightly older than formal caregiver under the LTC. Informal caregivers are in their

³⁴ Besides, there are informal caregivers working at long-term care hospitals (roughly 19,210), and much more informal caregivers working within patients’ homes. H Ahn et al, ‘A Study on Institutionalisation of Personal Care Service at Medical Institutions’ (NHIS, 2012).

³⁵ Under the Employment Security Act (ESA), ‘job placement’ means referral services enabling a job offerer and job seeker to enter into an employment contract by searching job seekers and job offerers or recruiting job seekers, in receipt of an application for a job offer or job search (Article 2-2). Most private employment agencies which send caregivers to patients or hospitals, normally register them as the ‘fee-charging job placement service’ under the ESA. In the legal sense, an entity conducting fee-charging job placement service has not been regarded as an employer of the job seeker, and thus takes no liability as the employer.

³⁶ The Supreme Court, 24 November 2009, 2009-du-18448; The Supreme Court, 12 MAR 2009, 2009-do-311 etc.

³⁷ Article 11 of the Labour Standard Act stipulated that this Act shall neither apply to any business or workplace in which only the employer’s blood relatives living together are engaged, nor to servants hired for the employer’s domestic works.

Informalisation of Women

fifties (59.3 per cent) or sixties (27.4 per cent).³⁸ Again similar to caregivers under the LTC, informal caregivers are normally required to finish training courses and to get a patient caregiver certificate.³⁹ Care work whether in the informal or formal system are poorly paid. An NHIS survey showed that 36.3 per cent of informal caregivers in hospitals were paid less than 1,000,000 Korean Won (approx. USD 894) per month, and 44.7 per cent were paid between 1,000,000 and 1,490,000 Korean Won (approx. between USD 845 - USD 1,259), in 2010.⁴⁰ Given that they usually worked and stayed within hospitals for very long hours, their average hourly wages were roughly 2,292~2,708 Korean Won (approx. USD 2), which falls below the legal minimum wage (4,110 Korean Won), in 2010.

On the other hand, according to a survey conducted by the NHIS in 2010, 74 per cent of patient caregivers within hospitals worked between 13 to 24 hours per day. In addition, 70 per cent of patient caregivers worked between five and six days a week.⁴¹ While formal caregivers struggle to obtain a sufficient number of working hours, informal caregivers in hospitals usually work for over 12 hours a day, six days a week. Having only one day off a week (usually on Sunday), caregivers return to their own home before going back to the hospital on the next day, bringing their own meals and clothes for a week's work.

This analysis demonstrates that the job conditions of formal and informal caregivers are similarly poor, regardless of their employment status. Their monthly wages have been fixed at very close to, and sometimes below, the level of legal minimum wages. Their working hours are usually long and insecure, and caregivers quite often lose their job, depending on the individual recipients' circumstances. They have been, in effect, excluded from the social insurance system, and have frequently not been entitled to benefits such as paid holidays, overtime pay and severance pay. Although the jobs of formal caregivers under the LTC have been created by government intervention, their working conditions are not far from those of informal caregivers. This is contradictory to previous studies which argued that the state provision of care could

³⁸ Y Shin et al, 'Studies on a Plan for Institutionalising of Patient Care Services' (Korea Institute for Health & Social Affairs, 2010) 34.

³⁹ N Hwang et al, 'A Policy for Institutionalizing of Patient Care Services at Medical Institutions' (Ministry of Gender Equality and Family, 2006).

⁴⁰ Y Shin et al (n 38). More recent survey also reported that the average daily remuneration of informal caregivers was 69,999 KW for 24 hours service, in 2012 (See H Ahn et al (n 34)). It means their hourly wages (about 2,900 KW) are still lower than legal minimum wages (4,580 KW).

⁴¹ C Kwak and M Seong, 'A Survey on Patient Care Services in Hospitals' (NHIS, 2010).

mitigate care work wage penalties.⁴² Even though care services are provided by the social insurance system, care work wages are limited by the legal minimum wage. In particular, when private institutions in effect provide care services under the cost-control of the state, care work wage penalties persist even in public sector employment.

4. Understanding the Employment Status of Formal and Informal Caregivers

The way to justify precarious work in female-dominant jobs is multi-fold. First, the ‘male breadwinner, family model’ has been dominant in the South Korean labour market. Yet, it should be noted that in South Korea, historically, the male breadwinner’s family wages have been provided only for employees working in large corporations. Since the economic crisis of the late 1990s, in particular, the majority of the workforce has suffered from low wages and precarious employment. Even though many such male workers have not earned enough so as to support their family, female workers are still regarded as the ‘second earner’ in the labour market.⁴³ Rather than being valued and recognized as work, care work for the elderly or patients, has been frequently depicted as a middle-and-old aged housewives’ job for pin money.

Second, care work has been devalued as an extension of domestic chores, even when it is done by a paid and professional caregiver. With regard to informal caregivers, their work is essential for inpatients as hospitals have cut down their nursing personnel. Hospitals need informal caregivers in order to make good the shortage of nurses.⁴⁴ However, the caregivers’ work has been deemed an extension of care by family (in particular, by female members of the family), and the exclusion from labour protection is legitimated as such. The Korean Standard Classification of Occupations (KSCO) by the National Statistics Office classifies the jobs of informal caregivers as “requiring a middle school

⁴² Michelle J. Budig and Joya Misra, ‘How Care-work Employment Shapes Earnings in Cross-national Perspective’ (2010) 149(4) *International Labour Review*, 455.

⁴³ In this regard, Kim argued that the Korean gender regime should be named as a “stratified male breadwinner model” rather than a typical male breadwinner model, as male breadwinning in return for female care-giving was only the case for middle-class married women. See Youngsun Kim, ‘The Social Rights of Female Non-regular Workers and the Gender Regime in Korea’ (2009) 26(1) *Korean Social Security Studies*.

⁴⁴ According to the result of a survey, nurses answered patient caregivers were necessary, due to “the shortage of nurses (49.5%)” and “need of care for 24 hours (23.6%).” See Kwak and Seong (n 41).

Informalisation of Women

educational background and a light workload”. The ‘official’ image of care work is presented as unskilled and easy work which is basically an extension of unpaid domestic chores. In this way, the discriminatory discourse on care work has been shaped and reinforced by the state. Although informal patient caregivers are working within public spaces and in hospitals, they have long been treated as domestic workers under the Labour Standard Act, and they have been excluded from labour law protections and the social insurance system.

These narratives on care-giving have impacted the employment status and relationship of caregivers in both the formal and informal sphere. Debates around the legal status of informal patient caregivers working within hospitals have questioned this classification. For instance, in 2003, Seoul National University Hospital decided to shut down its free service of job placement of caregivers for inpatients, and to contract it out to private employment agencies. As caregivers had concerns about intermediary exploitation, they approached the Seoul National University Hospital Trade Union and joined the union soon afterwards. Caregivers and the union conducted various campaigns, demanding that the hospital should maintain the free service for job placement within the hospital. After eight months’ struggle, the union achieved an agreement with the hospital, which let the union run the free service for job placement of caregivers for inpatients.

Through this fight, the poor working conditions of informal caregivers came to public attention, and debates on their legal status arose. While the traditional legal interpretation regarded them as domestic workers, the union argued that informal caregivers’ work was in practice integrated into the business of the hospital, and thus the hospital should take responsibility for their working conditions. Being inspired by fights of caregivers in Seoul National University Hospital, informal caregivers working within other large hospitals joined trade unions one after another, and their fights to bargain collectively with hospitals went on. Unionised informal caregivers have demanded that hospitals should take responsibility for decent working conditions,⁴⁵ and ultimately should have a direct employment relationship with informal caregivers. These arguments have even more salience when we remember that these types of caregivers provide their service not within patients’ homes but within hospitals, and thus their workplace is far from an “informal” or “domestic” space.

⁴⁵ For example, trade unions demanded that hospitals should provide patient caregivers for rest areas for sleep-over, eating and changing uniforms, and appropriate protection from occupational accidents and disease.

Until recently, hospitals and the government have taken a negative view of these demands. The courts have ruled that informal caregivers were hired by individual patients and they did not have an employment relationship with either private employment agencies or hospitals. They noted that a caregiver was technically free to refuse work as offered; she could freely join and leave the agency; she could let another caregiver supplant herself; and the agency did not supervise directly and minutely the performance of work.⁴⁶ The court also denied the existence of an employment relationship with the hospitals as well, holding that the hospital did not have the right to hire and fire caregivers even though it could require the agencies to replace caregivers. The courts also dismissed the argument that patient caregivers' service was an integral part of the business of the hospital.⁴⁷ Relying on the traditional theory of employment as a subordinate relationship,⁴⁸ the courts could not identify an employer in such a work arrangement involving multiple parties, and this led to the denial of employee status to informal caregivers. As a result of the court's ruling, the informal caregivers have been excluded from the protections of labour laws and social security insurance.

Similarly, formal caregivers under the LTC were initially regarded as another type of domestic worker or a type of self-employment. When the LTC was enforced in 2008, the Ministry of Employment and Labour viewed the formal caregivers as self-employed, arguing that they would be free to refuse work as offered, and they would not be subject to detailed supervision over the performance of their work.⁴⁹ After the trade unions representing caregivers raised objections to this administrative interpretation, the Ministry changed its position slightly: a caregiver under the LTC would be deemed an employee of the long-term care institution, only when she is subject to direction or supervision of the

⁴⁶ The Supreme Court, 12 MAR 2009, 2009-do-311.

⁴⁷ The Supreme Court, 24 November 2009, 2009-du-18448; Seoul Administrative Court, 10 June 2010, 2010-guhap-4209 etc.

⁴⁸ In determining whether one is an employee under the Labour Standard Act, the legal precedents have developed the following indicators: the employer decides what work will be performed; the employee is subject to personnel regulations; the employer provides substantial directions/supervision over the performance of work; the employer specifies time and place in which work is done; the employee themselves may employ a third party to substitute the labour; the possession of fixtures, raw material or work tools; the nature of wages as the price for labour, the existence of a basic wage or fixed wage, or the collection of labour income tax through withholding income; the employee provides labour continuously and works exclusively to the employer; the recognition of employee status under other laws such as the Social Welfare Act; and the socio-economic situation of both parties (The Supreme Court, 7 DEC 2006, 2004-da-29736 etc.).

⁴⁹ Ministry of Employment & Labour, 19 AUG 2008, Labour Standards-3266; Ministry of Employment & Labour, 30 APR 2009, Labour Standards-2479.

institution to a 'substantial' extent, and she herself provides the service without employing others and does not bear the entrepreneurial risks.⁵⁰

In sum, as caregivers' work becomes more fragmented, the trajectory of an employment relationship seems like a dotted line, and this becomes disadvantageous in terms of labour protection, which has focused on the bilateral relationship between an employer and an employee. The existence of an employment relationship is contentious, in particular, where the terms of a contract is set by day or even by hour. As explained above, the courts have denied the existence of a subordinate work relationship, on the grounds that a caregiver could provide her labour to several employers. However, the fact that a worker provides her labour to a particular employer for a short term or intermittently does not always indicate that she has the same independence as the self-employed. Rather it might imply that the worker has more precarious conditions such as a day labourer.⁵¹

5. Conclusions

In South Korea, the government has sought low-waged and flexible employment, and attempted to sustain the 'low cost and low benefits' model of care regimes, at the expense of the women who perform care work. Government policies and legislation often play an important role with regard to precarious work as much as employers' strategies. Gender and age, in particular, have frequently become the agenda which justifies precarious employment as a norm. On the premise that women are first the caregiver and only second the breadwinner, jobs dominated by women become more precarious and are more easily devalued by policies which often pursue a quantitative increase of jobs.

Employers' responsibilities have been historically associated with the standard employment relationship and are easily avoided via the use of precarious work. As industrial relations institutions in particular were established within the limits of the scope of the standard employment relationship, employers can shift their cost and risks onto the most vulnerable workers. In South Korea, extremely low union density as well as increasing precarious employment is an output of a repressive labour regime which has attempted to hold down wages. The union density in general was 12.3 per cent in 2017, while that of precarious workers was

⁵⁰ Ministry of Employment & Labour, 30 DEC 2009, Labour Standards-5761.

⁵¹ Aelim Yun, 'Realizing Workers' Rights Beyond Corporate Boundaries in South Korea', in Roger Blanpain and Frank Hendrickx (eds) *The Notion of Employer in the Era of Fissured Workplace* (Bulletin of Comparative Labour Relations, 2017).

merely 2.1 per cent.⁵² The weak union presence underpins a situation in which workers have difficulties in demanding their labour rights, and this is especially harmful for female and/or precarious workers. The most vulnerable workers are not able to have their voices heard, in situations where workers in general are suppressed and deprived of their collective labour rights. Without addressing these unbalanced relations of power, precariousness in the emerging work arrangements cannot be effectively challenged.

Nevertheless, in South Korea, women and precarious workers have formed their own organisations or have taken up their own space inside unions independently, and their organisational spirit has given the impulse for building a more egalitarian culture in the labour movement and across society. They have demanded that hospitals should take responsibility for decent working conditions for informal caregivers, such as protection from occupational accidents and disease and security in employment. Furthermore, the unions have demanded that the state should take responsibility for securing the labour rights of formal and informal caregivers, through enhancing labour standards in the care sector. The first and foremost attempt of the unions is making care work visible and rightly valued in all aspects of their work.

A further area for reform is the low wages in South Korea. The statutory minimum wages have functioned as a “standard” wage rate for precarious and unorganised workers, the majority of whom are women, and thus played a role of maintaining low wages and wage inequality, instead of reducing them. A higher minimum wage and the observance of labour laws provide very simple, but powerful, leverage to improve working conditions, irrespective of employment status or union membership. In conclusion, providing workers with good wages and a platform to champion and mobilise for labour rights needs to become a top policy agenda.

⁵² Kim (n 3) 31.