THE POSSIBILITY OF CONTEMPORARY JAPANESE LABOUR LAW TO REGULATE WORK UNDER THE GIG ECONOMY

by Chih-Cheng Chang

This article addresses the transformation of the concept of "workers" under Japanese labour law and the relevant judicial precedents, and – by adopting a predictive perspective – points out that contemporary Japanese labour law might not effectively protect gig workers from a variety of social risks. Ultimately, this article suggests that Japan should adopt a temporary special regime to regulate the working conditions of the emerging gig workers, which could help avoid the current difficulties regarding classification, as well as correct the shortcomings of contemporary Japanese labour law.

Questo contributo riguarda la trasformazione del concetto di "lavoratori" ai sensi del diritto del lavoro giapponese e dei principali precedenti giurisprudenziali; inoltre, collocandosi in un'ottica predittiva, l'articolo evidenzia come la disciplina giuslavoristica giapponese attualmente in vigore potrebbe non tutelare in maniera efficace i cosiddetti "gig workers" da una serie di rischi a livello sociale. L'articolo suggerisce in ultima analisi che il Giappone dovrebbe adottare in via temporanea un regime giuridico speciale al fine di regolamentare le condizioni di lavoro di questi lavoratori; un tale regime potrebbe contribuire al superamento delle difficoltà che al momento si presentano in termini di definizione dello status giuridico dei lavoratori, nonché all'eliminazione degli aspetti problematici riscontrati nella disciplina giuslavoristica giapponese attualmente in vigore.

1. Introduction

Because Japan's labour law was designed to protect workers in the manufacturing sector of the early to mid-20th century, subsequent structural transformations in both industry and the wider economy have rendered much of it obsolete. Though in recent decades this body of law has been adapted to deal with legal problems arising from atypical labour relations (Araki, 2006; Yamakawa, 2001), further changes will be needed if it is to meet the far-reaching new demands of the gig economy.

Amid rapid advances in digitalisation and its dramatic impact on labour markets, work patterns in Japan have become more diversified. In this context, the phenomenon of "de-employment" is one of the most hotly debated issues among scholars of Japanese labour law (Yamakawa, 1999). Unlike in most European countries and the USA, the number of

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self-employed workers in Japan is still on a downward trend, albeit a slowing one[1]; and with the gig economy increasingly influencing how people work and manage their lives, it is reasonable to predict that, in the near term, this trend may be reversed, and self-employment as a share of overall employment will begin to grow.

As compared to its US and EU counterparts, Japan's gig economy is in a fledgling stage. Relatively few digital intermediary platforms such as Uber have won even partial permission to operate there, and their operational capabilities remain strictly limited[2]. Nevertheless, in 2016, the Japanese government proclaimed its intention to proactively foster the gig economy, not only as a new method of working but as a new form of industrial coordination, and this initiative is likely to become a central issue in Japanese labour law moving forward[3].

Accordingly, this paper has three main aims. First, it will address the transformation of the concept of "workers" under Japanese labour law and the relevant judicial precedents, with special attention to the status of gig workers and the adequacy of their legal protections. Second, it will assess the extent to which Japanese labour law is likely to face challenges arising from the expansion of the gig economy. And third, based on the analyses mentioned above, it will propose a temporary special statute to regulate the working conditions of gig workers, in a manner that directly addresses both the prevailing difficulty of defining such workers, and the inability of contemporary Japanese labour law to effectively protect them from a variety of social risks.

2. The relativisation of the definition of "workers" under Japanese labour law

This section discusses whether Japan's growing population of gig-economy participants can be classified as "workers" under the country's contemporary labour law: a pivotal question, in terms of whether such individuals are adequately protected from predictable social risks. Contrasting strongly with the simple, unitary definitions of "workers" adopted by the legal systems of numerous other countries, Japanese labour law's relativised definition of "workers" is one of its most distinctive characteristics.

Created in the aftermath of the Second World War, modern Japanese labour law combines three general types of labour provisions (individual labour law, collective labour law, and labour market law) with numerous statutes (Sugeno, 2002). It draws considerable inspiration from German labour-law theory, notably including the concept of subordination, which is fundamental to German definitions of "workers". Though the specific wording used to define the worker in various Japanese labour statutes differs considerably, the concept is nevertheless relatively uniform (Yamakawa, 1999), insofar as the criterion used to assess a person's status as a worker is the "employment subordination relationship": i.e., that one party (the worker) must provide services "under the direction and supervision"

[1] According to an official survey by the Japanese government, the working population of Japan in 2015 was 63.51 million, while the self-employed numbered 6.4 million. On the other hand, according to a private survey covering the same period, conducted on behalf of the human resources firm Lancers, the number of freelancers in Japan was 9.13 million, and rose by 17% in one year, i.e. between 2015 and 2016.

[2] Uber is now permitted only in part of downtown Tokyo and in part of the city of Kyotango in western Japan. Additionally, the company is regulated like a taxi operator, and thus unable to expand as freely as it does elsewhere. See: http://asia.nikkei.com/Business/Companies/Rules-leave-Uber-with-hard-road-in-Japan.

[3] See: http://www.japantimes.co.jp/news/2016/12/27/business/sharing-economy-takes-off-japan-despite-barriers/#.WRL04VPyg9Y.

of another party (the employer). Over several decades, Japan's courts and legal scholars developed a range of additional definitional criteria, which acquired formal status with the publication of a report by the Minister of Labour in 1986 (Ministry of Labour, 1986).

The Labour Standard Act 1947 outlines the following criteria: "a 'worker' shall mean one who is employed at an enterprise or place of business [...] and receives wages therefrom, without regard to the kind of occupant". (Article 9) In other words, being a worker comprises two elements: being employed, and receiving a wage. The employment subordination relationship has four components, all of which must be present for such a relationship to be deemed to exist. First, employees are not free to refuse a request to perform work. Second, they are subject to direction and supervision with regard to the content of their work and the manner of its performance. Third, they are restricted with regard to the location and hours of work; and fourth, they may not engage other people to perform the work on their behalf. The supplemental criterion of receiving wages implies "receipt of remuneration in return for the service rendered", from which income tax and employment-insurance, health-insurance, and pension contributions must be deducted.

In one form of words or another, these criteria have consistently defined workers under all Japanese labour provisions. However, as Japan's domestic labour market diversifies, labour law scholars and the courts have begun to relativise how workers are defined.

2.1. The relativisation of the definition of "workers" between the collective labour law and the individual labour law

The definition of "workers" first began to be relativised in the context of collective labour law. The Labour Union Act 1949 aimed chiefly to protect workers' rights to organise labour unions, bargain collectively, and conduct collective actions, and instituted a system for the relief of unfair labour practices, i.e. a process of administrative remedies designed to prevent workers' collective rights being jeopardised by the behaviour of employers (Sugeno, 2002). Article 3 of this act defined "workers" as "those who live by their wages, salaries or other remuneration assimilable thereto regardless of the kind of occupation". Although this definition differed from that provided in the Labour Standard Act 1947 by emphasising only wages rather than a combination of wages and subordination, the definitions of "workers" provided in the two acts have been deemed consistent both with each other and with all other Japanese labour legislation (Kadaoka, 1965). Nevertheless, there have been some controversial cases in which self-employed workers claimed the right to conduct collective bargaining, giving rise to a view – increasingly influential in both the courts and in Labour Relations Commissions – that "workers" should be defined differently for purposes of the Labour Union Act than for purposes of other labour laws. This view is rooted in an argument that the key aim of the Labour Union Act was to safeguard working conditions via collective bargaining, and that the set of persons who expect to be protected in this way is considerably larger than the set of persons who are in employment subordination relationships, and thus covered by the Labour Standard Act (Sugeno, 2002).

For many legal scholars, this viewpoint holds that the protection provided by a collective bargaining system should also be extended to those who provide services under work-delegation or service contracts, if their situation meets all three of the following criteria: first, that their livelihood is dependent upon the remuneration, which they are given in exchange for the provision of services (referred to as "economic subordination"); second, that their rate of pay is decided by the party who receives their service (resulting in a gap

in bargaining power between the two parties); and third, that they are incorporated into the service receiver's business organisation (Sugeno, 2010). Once academic opinion began to coalesce around the idea that the purpose of the Labour Union Act was "to encourage collective bargaining", there arose numerous legal cases related to whether independent contractors (such as television actors, orchestra members, fundraisers, and self-employed engineers who had signed maintenance-delegation contracts with manufacturers) should be recognised as "workers" under the Labour Union Act by Labour Relations Commissions and local district courts. The outcomes of these cases upheld the scholars' view that "these persons were workers to whom the Trade Union Law should apply" (Araki, 2002, pp. 6-14).

In 2011 and 2012, three judgments of the Supreme Court of Japan accepted the prevailing academic opinion as well as the position of the Labour Relations Commission[4], and in the process established six criteria, all of which must be met by independent service providers seeking the right to engage in collective bargaining. First, these providers' contractual work is incorporated into the service receiver's business organisation. Second, the contents of the contract are determined unilaterally by the service receiver. Third, the remuneration is paid solely in consideration for the work performed. Fourth, the service provider has little or no freedom to refuse the service receiver's requests that work be performed. Fifth, the work is completed under the service receiver's direction and supervision, within certain time limits and at specific locations. And sixth, the *work itself* is not strongly characterised by self-direction (regardless of whether the service provider has the opportunity to manage profits by distributing their work efforts based on their own independent business judgement).

In the wake of these three Supreme Court judgments, workers continue to be defined according to the Labour Union Act, but independent contractors are also recognised as workers, provided that they meet the six-criteria test described above. Subsequently, the Labour Relations Commission of Tokyo City used the same criteria to rule that convenience-store operators fit the status of "workers" under the Labour Union Act 2016, reasoning that many such stores are run by households as stand-alone family businesses – albeit under a franchise umbrella – and that the families involved rely on this work for their livelihood. The Labour Relations Commission also held that, under their franchise contracts, convenience-store franchise affiliates have no authority to alter or terminate the contract; and that therefore, "it is proper […] that they may conduct collective bargaining with the protection of the Labour Union Act"[5].

While the trend towards labour-market diversification has led to relativisation of the definition of "workers", "enterprise unionism" – a hallmark of Japanese industrial relations – has also played a key role in recent changes to collective labour relations. Under this system, unions are established within an individual enterprise, only engaging in collective bargaining with that one employer, and concluding collective agreements only at the enterprise level (Araki, 2002). And in further contrast to those bargaining on an industry-wide basis, as in Europe, unions conducting collective bargaining with a single employer in Japan can petition the Labour Relations Commission for administrative remedies even if their efforts to bargain are denied, provided only that their members are defined as workers under the Labour Union Act.

[4] Shinkokuritsu Gekijyo Unei Zaidan Jiken, 65 Minji 943 (Sup. Ct., 12 April 2011); INAX Maintainers Jiken, 236 Minshu 327 (Sup. Ct., 12 April 2011); Victor Servie Engineering Jiken, 66 Minshu 955 (Sup. Ct., 21 February 2012).

[5] Heisei 24 nen fudai 96 goumeirei [Unfair Labour Practice Relief Order] (Labour Committee of Tokyo City, 17 March 2016).

When a collective labour dispute occurs in Japan, the settlement process is preceded by the Labour Relations Commission's unfair labour practice remedy procedure. Rather than seeking courtroom-based determinations of the parties' contractual obligations, this procedure normally focuses on facts, and arrives at judgments based on the content of the issue. This unique background makes the development of case law under collective labour law of considerably greater interest and complexity than the parallel development of individual labour law. For instance, the courts often withdraw the relief orders awarded by the Labour Relations Commissions, but remain deeply affected by such commissions' perspectives, not only on the meaning of the law but with regard to the "facts on the ground". Undoubtedly, then, Labour Relations Commissions' assessments of whether a self-employed individual is to be defined as a worker under the law have considerable potential to disrupt the flow of decision making in the courts.

2.2. The relativisation of the definition of "workers" within individual labour law

Another major cause of the relativisation of how workers are defined emerged following the passage of the Labour Contract Act 2007[6]. A "worker" as defined in Article 2 of that act is "a person who works by being employed by an employer and to whom wages are paid". This is compatible with the receipt-of-wages and employment criteria for worker status set forth in Article 9 of the Labour Standard Act, as described above; and as Sugeno has pointed out, the two acts share the same conceptual definition of "workers", insofar as both are rooted in the notion of employment subordination (Sugeno, 2010).

Additionally, according to prevailing academic opinion and prior rulings by the courts, all labour statutes belonging to the category of individual labour law – including those covering the minimum wage, occupational safety and health, and accident compensation insurance – share the same definition of "workers". Accordingly, a person who seeks the protection of any aspect of individual labour law should first be confirmed to be a "worker" under the unified criteria publicised by the Ministry of Labour in 1985 (Sugeno, 2002). However, people often fail to win lawsuits in pursuit of their rights under individual labour law when their work is based on independent contracts characterised explicitly by economic subordination (including service contracts as well as the rapidly proliferating work-delegation contracts), even when such contracts are otherwise similar to normal labour or employment contracts (Kamada, 2006).

Because the six criteria most widely used to define a worker (as well as the employment subordination relationship) are published by the Ministry of Labour, they naturally have both positive and negative impacts on atypical work: i.e. work that usually entails mixed features of labour, service, delegation, and/or quasi-delegation contracts, making it difficult to determine its exact legal nature (Kamada, 2006). As a result, scholarly opinion and some recent rulings by district courts have begun to advocate further relativisation of the definition of "workers" within the sphere of individual labour law.

Scholars have argued that the Labour Standard Act and the Labour Contract Act were established for different purposes. The former is characterised as a *public* statute, with the sole purpose of acting as an administrative control on law. As well as defining the minimum

[6] The act was established to "contribute to achieving stability in individual labour relationships, while ensuring the protection of workers, through facilitating reasonable determination of, or changes to working conditions, by providing for the principle of agreement, under which a labour contract is to be established or changed by agreement through voluntary negotiation between a worker and an employer, and other basic matters concerning labour contracts" (Article 1).

standards for working conditions, it established criminal sanctions to protect its own validity. The Labour Contract Act, on the other hand, was a merely *private* statute, which respects the agreements made by contracting parties but aims to adjust the unfair distribution of risk that arises from disparities in bargaining power between them (Kamada, 2006).

It has also been seen as inappropriate and inflexible that a person defined as a worker under the Labour Standard Act can be made subject – in spite of the intentions of both parties – not only to the provisions of the Labour Standard Act, but also to all individual labour statutes, due to the prevailing view that the definition of "workers" is uniform across all such statutes. In practice, most court judgments that have dealt with the definition of "workers" have been related to cases of workers' compensation under the Industrial Accident Compensation Insurance Act 1947 (Kamada, 2006).

However, in individual labour law, each statute has different rules due to its different purposes, and may thus vary in scope over who counts as a qualified subject. Scholars have therefore recommended that the definition of "labour" in this body of law be further relativised. The scholarly opinion indicated that there are more and more self-employed persons working under contractual relationships that are similar to labour contracts. However, such situations are dissimilar to the employment subordination relationship, which is always subject to high-density direction and supervision by the employer. Yet, self-employed persons working under contracts can still experience unfavourable conditions, including inequality in bargaining power. Moreover, these contractors often rely on their contractual work to survive, such that they could be defined as "economically subordinated" (Kamada, 2006).

Scholars have highlighted the difficulty of dealing with these self-employed persons under the Labour Standard Act, which was designed explicitly to protect workers in an employment subordination relationship, especially as the former should be protected by the Labour Contract Act. Specifically, that law covers obligations to ensure contract workers' physical safety, and establishes restrictions on dismissal and disciplinary action, rules of employment, and a process by which the contents of a labour contract can be changed (Kamada, 2006).

In 2014, a group of independent contractors working for TV stations had their contract terminated before its expiry, and sued the stations on the grounds that the Labour Contract Act should apply to them[7]. This took the definition of "workers" under individual labour law in a new direction, when the Osaka District Court found that these contractors had a special legal status: protected under the Labour Contract Act by analogy, even though their claim to the status of workers had been denied[8]. This judgment is now recognised as an important new development in the relativisation of the definition of "workers".

3. Analytical predictions of issues involving gig workers under Japan's contemporary labour law systems

Litigation relevant to the gig economy has not yet occurred in Japan. However, the structure of the country's labour laws, and the relativisation of the concept of workers

[7] Article 17 of the Labour Contract Act provides that: "With regard to a fixed-term labour contract, an Employer may not dismiss a Worker until the expiration of the term of such labour contract, unless there are unavoidable circumstances".

[8] NHK Saki Eigyosho Senta Jiken, 61 Rohan 1137 (Osaka Dist. Ct., 30 November 2015).

in past case law mean that such laws' future relationship to the gig economy will almost certainly focus on the legal status of gig workers under the Labour Union Act, the Labour Contract Act, and the Labour Standard Act. In the light of all the factors discussed above, it is reasonable to expect that gig workers in Japan will experience both positive and negative consequences of the application of contemporary labour law[9].

3.1. Probable positive impacts on gig workers of the application of Japanese labour law

In one respect, relativisation of the definition of "workers" across multiple Japanese labour acts could provide flexibility to Japan's body of labour law, and thus be helpful in meeting the challenges of the gig economy. Unlike their US counterparts, who are still struggling for the right to organise unions and conduct collective bargaining, gig workers in Japan can – with little controversy – be classified as workers under the Labour Union Act[10], and thus become entitled to organise unions, bargain collectively, and conduct industrial actions such as strikes more seamlessly.

Additionally, it can reasonably be expected that the trend towards relativisation will exert further influence on individual labour law (Nokawa, Kamada, 2016). The most recent relevant judgment, made by the Osaka District Court in 2015, did not directly affirm the academic opinion that the definitions of "workers" under the Labour Contract Act and the Labour Standard Act should be distinct. Nevertheless, the ruling can be understood as a positive result of relativisation, to the extent that the court recognised independent contractors as having a special legal status, to which the protections offered by the Labour Contract Act are applicable by analogy. Even so, new criteria for identifying workers under the Labour Contract Act have yet to be determined.

Potentially, the relativisation movement could also lead to "levelisation" of the definition of "workers": i.e. a multifaceted approach to defining them that accords better with the current era of work diversification. Moreover, all along the gradient of contractual forms – i.e. from the core of the employment subordination relationship to its periphery –, different needs arise from different social-security and labour statutes.

3.2. Probable negative impacts on gig workers of the application of Japanese labour law

Although Japan's courts have relativised the definition of "workers", and been willing to treat independent contractors as being analogous to workers in some circumstances, gig workers still may not be adequately protected by Japanese labour laws. They are relatively easy to classify as workers under the Labour Union Act or even under the Labour Contract Act, but in Europe and the USA, the gig economy has created a large number of "mini jobs" and increased the numbers of working poor, with many gig workers earning less than the minimum wage and working more hours than is legally permissible, and in some cases missing out on social-security protections (De Stefano, 2015). It seems unlikely that all of these social risks that are taken by gig workers around the globe will be mitigated by contemporary Japanese labour law.

[9] Apart from Uber, hardly any of the digital platforms that are launching gig-economy businesses in Europe and the USA have obtained permission to operate in Japan. Accordingly, this article relies on Uber's business model as the only local example available.

[10] In the USA, whether gig workers have the right to unionise and engage in collective bargaining with such platforms remains unclear. See Kennedy (2016).

The so-called "core subjects" protected by Japanese labour law are limited to "core workers". As such, only persons who meet the definition of "workers" under the Labour Standard Act can obtain legal protections. As mentioned above, only work that meets the criteria of employment subordination can be certified as work under the Labour Standard Act. However, scholarly opinion suggests that "workers" could eventually be radically redefined[11]. So far, the relativisation and multi-levelisation of such definition allows various kinds of workers to be covered and protected by different labour statutes; but a consensus among academics and legal practitioners may yet be reached (Yamakawa, 1999).

If gig workers in Japan wish to pursue legal protections that are only available to persons definable as workers under the Labour Standard Act, then, under the contemporary legal order, they must first file and win a court motion to be classified as workers with an employment subordination relationship. It is difficult to predict whether such a motion would succeed.

Gig work's key features are (1) that it is conducted without direction or supervision from the platform, and (2) that gig workers retain total freedom to choose both when and where they work. As such, gig work is very unlikely to meet Japan's current legal criteria for what work is. Tellingly, the Supreme Court of Japan ruled in 1996 that truck drivers who owned their own trucks could not be classified as workers under the Labour Standard Act, on the grounds that their work patterns were less restricted than those of workers *per se*[12]. Without a major shift in judicial opinion, therefore, it is unrealistic to expect that gig workers will be classified as workers under the Labour Standard Act in the future.

4. A temporary "Gig Worker Protection Act" considered as a means of regulating gig work in Japan

When facing any challenge to the existing order posed by new innovations, we always have three choices: to ban, to indulge, or to institute proper regulation. Due to the high economic cost of the first of these choices, and the unacceptable human cost of the second, it appears inevitable that Japan must face the challenge of regulating labour under the gig economy.

Projections and predictions regarding the impact of the gig economy on the labour market now appear to be polarised. One view holds that the gig economy will lead the labour market of industrial countries to return to the pre-industrial pattern of the 18th century, when most work was done by self-employed craftsmen or peasants, and among the minority of people whose work was regulated by employment contracts, the notion of subordination was the norm. Such an argument assumes that the gig economy will transform the nature of work, such that the proportion of work covered by labour contracts will decrease overall, and the labour market will be dominated by the self-employed. The other prevailing view is that the gig economy, being governed by algorithms, should be seen as an extension of industrialisation, or perhaps reindustrialisation, similar to "Taylorism" as experienced at the beginning of the 20th century (Prassl, Risak, 2015).

[11] According to Ouchi (2015, pp. 79-88), Japan's dominant criteria for defining workers are rooted in the traditional industrial model of the 20th century, which focused on notions of "command and supervision", as well as on a narrow range of assumptions about working time and locations, which are arguably obsolete in the context of gig-economy work.

[12] Yokohamaminami Rokisyocho Jiken, 714 Rohan 14 (Sup. Ct., 28 November 1996).

This article agrees with the latter claim: predicting that, rather than freeing people from employment subordination, most work under the gig economy will create new forms of subordination to which we are simply not yet accustomed. However, regardless of contractual forms, it is important not to lose sight of a fundamental principle: that the fairness of all contractual relationships should be protected, either via legal interpretation or new legislation.

Accordingly, this article proposes that Japan must move beyond the outmoded, but still predominant classification of workers according to the employment subordination relationship. Some scholars of Japanese labour law have argued that economic subordination should move to the core of any new definition, while other scholars have advocated that "organisational subordination" should be used instead. However, this debate – though long-running – has had little impact on the status quo, due to various complex factors. Therefore, this article advocates a temporary but realistic and effective countermeasure: the Gig Worker Protection Act (GWPA) – a special, time-limited statute to protect persons who provide services through online platforms.

The rationale for the passage of such a statute is as follows. First, an analysis of the development of labour law in Japan suggests that the Japanese government prefers to regulate numerous types of atypical work via special statutes (Yamakawa, 2001). For instance, the Home Work Act 1970 regulates the working condition of home workers; the Part-Time Employment Act 1993 and its reformulations of 2008 and 2014 regulate the working conditions of part-time workers (Houseman, Osawa, 1995) and the Worker Dispatching Act 1985, since reformulated eight times, secures working conditions for dispatched workers (Araki, 1999). Moreover, the Japanese government has considerable authority to regulate the behaviour of businesses. For instance, the Worker Dispatching Act requires dispatch companies to hire workers directly under a certain situation (Araki, 1999); and the Labour Standard Act authorised the Minister of Health, Labour, and Welfare to regulate the average wages of daily contract workers. In addition, most existing gig-economy platforms have yet to be licensed to operate by the Japanese authorities, which could thus require them to comply with a special labour-protection provision as a prerequisite for gaining official permission to launch their businesses in the country.

GWPA could also sidestep long-running controversies over "worker" classification, by adopting its own definition of who its subjects are. As such, it would allow Japanese policymakers to establish legal protections appropriate to the specific characteristics of gig work, and thus ensure that gig workers are protected from social risks such as low income, long working hours without appropriate remuneration, lack of access to the social security system, and so forth. Specifically, it is recommended that GWPA include the following provisions:

1) gig workers who work via the same platform for more than a certain number of hours per month must apply for protection under the Minimum Wage Act, and join the workers' pension system;
2) each gig-work platform will be regulated to ensure its workers' occupational health and safety, including by taking positive action to prevent its workers from engaging in excessive overtime work or being exposed to environmental hazards;
3) regardless of the number of hours they work per month, gig workers should be required to apply to be covered under the Industrial Accident Compensation Insurance Act and the accident-compensation clause of the Labour Standard Act. This also implies that gig-

work platforms would take on some of the usual responsibilities of employers when their workers suffer injuries or illnesses during the course of providing services;
4) gig-work platforms should provide equal treatment, and be subject to punishment for discriminatory acts on the same basis as regular employers;
5) labour law in Japan has developed in such a way that gig workers should be considered workers under the Labour Union Act and perhaps even the Labour Contract Act; however, to avoid possible controversy, gig workers' (1) collective rights and (2) rights protected under the Labour Contract Act should still be enumerated in GWPA.

Most importantly, GWPA should be a fixed-term statute with a clause obligating the Congress to comprehensively review and revise it at the end of its term. This is necessary due to the temporary and experimental nature of gig work, with innovations occurring daily in both online gig-platform technology and the algorithms that assign gig work. Moreover, since the number of gig workers in Japan is still small, and because it remains unclear how future gig-work developments will impact the country's labour market, a renewal clause that obligates the Congress to review and revise the statute would be an appropriate way for the State to regulate these emergent labour relationships.

5. Conclusion

In conclusion, we must continue to acknowledge that the definitions of "workers" and the criteria used to determine them are among the most significant issues in the field of labour law. Such definitions and criteria should always be allowed to change, since *de facto* ways of working are likely to transition continuously alongside myriad technological, financial, and socio-cultural innovations.

Contemporary Japanese labour law practice, which has been developed by labour law scholars and judicial practitioners, has relativised the definition of "workers", and as such may already provide gig workers in Japan with some degree of legal protection. Even so, gig workers still risk being excluded from various protections offered by the Japanese labour law system, such as minimum wage and other basic minimum labour standards, which are only provided to persons classified as workers under the Labour Standard Act. Rather than seeking to change the fundamental criteria that define the "worker", however, it would be more realistic and effective to extend legal protections to gig workers in Japan through a temporary special statute.

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