

노동정책연구  
2013. 제13권 제1호 pp.71~100  
한국노동연구원

연구논문

## Legislative Challenges on Disability Employment System in Korea\*

Mi Kyung Cho\*\*

This paper provides a comprehensive overview of current legislation on the employment of disabled people and recommends a direction for future legislation aimed at improving the system currently in place in Korea. The goal of this paper is to provide evidence that will help guide revisions of relevant provisions of appropriate Acts and stimulate further discussion on disability and employment. To this end, the paper begins with an examination of existing legislation related to disability employment in Korea. It then presents the major legal challenges to improve the disability employment system. The paper concludes by providing five recommendations based on a review of the current legal system in Korea. Firstly, the impairment grading should be reevaluated in relation to the quota system. Secondly, the period of mandatory employment rate evaluation should be revised in order to reflect the changing environment. Thirdly, the employment levy should be determined by the level at which employers are induced to employ disabled people. Fourthly, part-time worker with disabilities should be factored into the quota system. Fifthly, surveys should be conducted on employers who are required to pay levies and employers who qualify for the subsidy, to ensure that the levy and subsidy are working properly.

Keywords : Employment Promotion and Vocational Rehabilitation of Disabled Persons Act, Welfare of Disabled Persons Act, legal definition of disability, employment quota system, employment levy system, employment subsidy system, double counting system.

논문접수일: 2013년 2월 6일, 심사의뢰일: 2013년 2월 13일, 심사완료일: 2013년 3월 21일

\* This paper is based on the author's PhD dissertation (*The Right to Work of People with Disabilities in the Republic of Korea*) submitted to the Yonsei University in December 2011.

\*\* Researcher, Institute for Legal Studies, Yonsei University(mikyungcho22@gmail.com)

## I. Introduction

Aside from the fact that work allows people to earn a living, having a job or a career gives a sense of self-worth; moreover, it empowers people to make the economy and community stronger. The desire to work is no different for persons with disabilities, as they both have the same feelings and outlook on employment (Barnes, 2000). For people with a disability, obtaining and maintaining employment are significant in achieving full participation and equality.

According to the World Health Organization (2011), about 15% of the world's population lives with some type of disability. In Korea, the number of registered disabled people was 2.683 million, accounting for 5.61% of the total population in 2011 (Ministry of Health and Welfare, 2012). The number of people with disabilities is growing due to various factors. Even though persons with disabilities represent a considerable population group in all societies, they are largely excluded from satisfactory employment opportunities. In Korea, in order to facilitate employment promotion and vocational rehabilitation of disabled persons, the Promotion etc. of Employment of Disabled Persons Act was enacted in 1990. Since then, it has been amended and renamed the Employment Promotion and Vocational Rehabilitation of Disabled Persons Act in 2000. An employment quota system was introduced based on the Act. It has functioned as the core axis of the policy on employment for disabled people in Korea. Meanwhile, in 2007, the Anti-Discrimination against and Remedies for Persons with Disabilities Act was enacted. Accordingly, in the employment arena, employers are prohibited from discriminating against persons with disabilities in matters related to employment. However, although a foundation to secure the right to work of persons with disabilities has been laid down, a

high level of exclusion of disabled people from participation in the labor market still exists. In addition to the very low employment rate of disabled people, the majority of disabled employees are slightly disabled, and severely disabled people are still more seriously excluded from employment. Despite legislation intended to root out discrimination against people with disabilities in the workplace and to contribute to employment promotion, official figures, as of 2011, showed that about 35.5% of disabled people were employed, compared with Korea's total employment rate of 60.3%. The jobless rate for disabled people stood at 7.8%, twice the 3.3% for people over the age of 15 (Ministry of Health and Welfare, 2012). In addition, the employment rate of disabled people is still below the legally mandated rate in both private and public sector.

In this regard, this paper will provide a comprehensive overview of legislation related to the employment of persons with disabilities and suggest a direction for future legislation aimed at improvements to the system currently in place in Korea. In particular, the main concern of this paper is the examination of the current law and regulations on the employment of disabled people, and the problems with the mandatory employment quota system for disabled people. To this end, the study was conducted drawing on the primary provisions of the Employment Promotion and Vocational Rehabilitation of Disabled Persons Act (EVDPA), the Welfare of Disabled Persons Act (WDPA). The EVDPA governs disability employment quota system and the WDPA has provisions related to disability employment quota system. The study also utilized a range of sources including legislative texts, government documents, academic papers and official statistics. Legal precedents relevant to disability employment were examined.

## II. Main Contents of Legislation related to the Disability Employment in Korea

In order to fully understand the Korean employment system for the disabled, it is necessary to look at the legislative framework related to disability and employment and consider not only the laws but also the enforcement decrees and the enforcement rules of the laws. With respect to the main points of employment-related legislation concerning persons with disabilities, revised contents will be explored briefly in chronological order.

### 1. Employment Promotion and Vocational Rehabilitation of Disabled Persons Act

The Employment Promotion and Vocational Rehabilitation of Disabled Persons Act (EVDPA) is the general law concerning the employment of disabled people. The employment quota system<sup>1)</sup> was implemented based on the EVDPA. In Korea, in order to enforce the obligatory employment of disabled people, regulatory policies and support policies for employers are combined.

#### 1) Persons with Disabilities Covered by the Quota System

The quota system covers all persons with disabilities in accordance with the EVDPA. Persons with registered or with disability certificates under the WDPA are effected, and persons falling within the degree of injury as specified

---

1) The employment quota system and vocational rehabilitation are sometimes considered as two wheels of the same cart. The EVDPA defines vocational rehabilitation but that is not discussed in this paper in details.

in Article 14(3) of the Enforcement Decree of the Act on the Honorable Treatment and Support of Persons etc. of Distinguished Services to the State are covered (Enforcement Decree of the EVDPA Article 3).

In order to ensure substantial hours of employment, the criteria for working hours are prescribed in the EVDPA. Namely, persons whose monthly fixed working hours are less than 60 hours (Enforcement Decree of the EVDPA Article 5) are excluded from the provisions of the quota. Moreover, workers employed for 16 days or more per month can be included in the quota (Enforcement Decree of the EVDPA Article 24(3)).

There are special provisions for severely disabled persons. When employers in either the private or the public sector employ an individual with severe disabilities, they can count them as two disabled persons for purposes of computing the employment rate for disabled persons. This double count system has been in effect since 2010 (EVDPA Article 28-3). Criteria for persons with severe disabilities are stipulated under Article 4 of Enforcement Decree of the EVDPA.<sup>2)</sup> However, persons with severe disabilities, whose contractual working hours are less than 60 hours a month, are excluded from the double counting system (Enforcement Decree of the EVDPA Article 26-2).

## 2) Quota System in the Public Sector

National and local governments must employ disabled persons as at least 3% of the total work force.<sup>3)</sup> The EVDPA also states that at least 6% of newly

---

2) In details, under the EVDPA, severely disabled people are as follows: disabled people with grade 2 or higher under the WDPA; the following types of disabled people with 3 grade or more: cerebral, visual, learning disabilities, autism, mental, heart, respiratory, epilepsy, people with arm disabilities; People with grade 3 or more under Act on the Honorable Treatment and Support of Persons etc. of Distinguished Services to the State.

3) The required quota rate has been increasing gradually over recent years. The quota for the national and local governments, which was previously 2%, was increased to 3% in 2009, while the quota for public agencies was increased from 2% to 3% in 2010.

hired workers must be those with disabilities, in cases where the number of disabled public employees is less than 3%. In addition, the mandatory employment ratio in public institutions designated as public corporations or quasi governmental institutions pursuant to Article 5 of the Act on the Management of Public Institutions among public institutions under Article 4 of the same Act should be 3% of the number of workers ordinarily employed (EVDPA Article 28-2).

Although the quota rate does not apply to employment within the public security sector, governments should also strive to have disabled persons employed in that sector as well, even if the rate is reduced compared to the requirements of the general quota system (EVDPA Article 27 (4)). An exemption from quota application in the government sector was reduced significantly and was finally abolished in January 1, 2006, through the amendment of the EVDPA as of May 31, 2005. However, this did not include the public security sector, for instance, public prosecutors, police officers and fire fighters.

In June 2010, an amendment to the EVDPA added a provision on the publication of recruitment planning and poor implementation. The heads of central agencies in charge of personnel affairs under the State Public Officials Act and the heads of local governments should submit to the Minister of Employment and Labor, a plan for the employment of disabled public officials, outlining detailed steps in the recruitment process in each relevant agency under her/his command, and a report on the status of its implementation, as prescribed by Presidential Decree (EVDPA Article 27 (6)).

In addition to the amendment of the EVDPA in June 2010, if the head of a central personnel management agency under the State Public Officials Act or the head of local government employs a disabled worker not in the capacity of a public employee, the provisions in regard to the mandatory employment of disabled persons by employers (e.g. Article 19-2, Article 21, Article 28, Article 29 and Articles 33 through 42 of the EVDPA) also apply to that

worker. In this case, a person falling under any of the following shall be excluded from the total number of workers and disabled persons: i) a person who is working as an apprentice under the State Public Officials Act; ii) a person to be appointed as a public official who is on the training (including on-the-job-training) under the State Public Officials Act and the Local Public Officials Act; iii) and other persons prescribed by the Ordinance of the Ministry of Employment and Labor, who are employed as part of welfare measures or unemployment measures taken by the national or local governments (EVDPA Article 79). Therefore, if the national or local government plans to employ 50 workers who are not to be considered public employees, 2.5% of them should be disabled persons, as of 2013. The employment levy system and double counting system also apply. The employment subsidy system, however, does not apply. Thus, if the national or local government employs more than the quota rate of disabled people, no employment subsidy payment would be awarded. The quota system in the public sector was changed from a recommendation to an obligation in 2000, through a complete revision of the EVDPA.

### 3) Quota System in the Private Sector

Any business concern that has 50 or more regular workers employed must employ disabled persons. The legally required employment rate was gradually increased from 1% in 1991 when first introduced, to 1.6% in 1992, 2% in 1993, 2.3% from November 2010 to December 31, 2011, 2.5% from January 1, 2012 to 31 December 2013, and thereafter 2.7% (Ministry of Employment and Labor, 2013: 53).

As a special case of mandatory employment, with respect to job types deemed to be suited to the abilities of specific disabled persons, the relevant employment ratio may be overruled. In this case, the ratio is not considered to be the mandatory employment ratio (Enforcement Decree of the EVDPA

Article 26). According to the Enforcement Decree of the EVDPA (Article 26 and Asterisk 1), for a specific occupation, such as a masseur, the employment rate is 70% and 30% for severely visually disabled and slightly visually disabled, respectively. However, in this case, issues were raised about the violation of the principle of statutory reservation, the prohibition of excessive restriction and the freedom of occupational pursuit for people who are not visually impaired. Recently, the Constitutional Court<sup>4)</sup> decided that the relevant provisions which exclude the non-visually impaired from massage services by giving masseur licenses exclusively to the visually impaired do not contradict the Constitution.<sup>5)</sup> More importantly, it is considered that visually impaired persons can be given the opportunity to do a wide range of occupations in addition to massage services with the potential development (Cheon, et al., 2010).

Currently, unlike national and local governments, private enterprises do not have provisions related to being exempted from the obligatory employment ratio. The ratio of exemption application from the quota by businesses in the private sector was completely abolished in 2010.

With regard to plans for employment of disabled persons by employers, the Minister of Employment and Labor may order employers to prepare and submit a plan for the employment of disabled persons and report on the status of its implementation. If an employer fails to perform substantially, without

4) See e.g., The Constitutional Court of Korea (Oct. 30, 2008: 2006Hun-Ma1098); (May 25, 2006: 2003Hun-Ma715); (June 26, 2003: 2002Hun-Ga16).

5) Background of the Case: “Despite the Constitutional Court’s previous decision that held unconstitutional the former Enforcement Regulation excluding the non-visually impaired from the massaging profession, the National Assembly, on September 27, 2006, revised Article 61 Section 1 of the former Medical Service Act to grant exclusive license to the visually impaired (Instant Provision), thereby retaining the restriction upon the non-visually impaired in attaining massager licenses. The complainants argued that the Instant Provision barred non-visually impaired persons from obtaining the massager licenses and therefore infringed on their basic rights, including their freedom of occupational choice, and filed a constitutional complaint.” (Oct. 30, 2008: 2006Hun-Ma1098).



justifiable reasons, his/her obligation to establish a plan for the employment of disabled persons or to employ disabled persons, the Minister of Employment and Labor may publish the details of such failure to the general public (EVDPA Article 29 (1) & (3)).

#### 4) Employment Levy System

The main purpose of the employment levy system is to encourage employers to meet their quota target. It can also redress the financial responsibility inequality between employers who hire disabled people and those who do not (July 24, 2003: 2001Hun-Ba96; Son, et al., 2004: 230).

With respect to the levy system, the targeted employers are those who employ more than 100 full time workers. If employers fail to meet the obligatory employment ratio, they have to pay a levy for the employment of disabled persons to the Minister of Employment and Labor each year. However, employers who have 50 or more regular employed workers, but less than 100, are excluded from the levy system (EVDPA Article 33 (1)), which seems to take the financial burden of relatively small businesses into consideration.

The basic amount of the levy is at least 60% of the minimum wage for the year in which the basic amount of levy is publicly notified. In 2013, the employer should pay 626,000 won per person per month for more than 3/4 of the shortfall, 782,500 won for 1/2-3/4 of the shortfall and 939,000 won for less than 1/2 of the shortfall. If the employer does not employ any disabled people, he/she should pay 1,015,740 won per month, the same amount as the monthly minimum wage.<sup>6)</sup>

---

6) The scope of workplaces that must pay the amount of levy equivalent to the minimum wage if they employ no disabled person will be extended to workplaces ordinarily employing 100 or more workers (e.g. Public institutions: 300 employees or more in Jul. 2011→ 200 employees or more in 2012→100 employees or more in 2013) (Ministry of Employment of Labor, 2012).

In addition, check-ups on the implementation of mandatory employment of the disabled and list disclosures should be made twice a year, once in the first half of the year and once in the second half (Ministry of Employment and Labor, 2012).

#### 5) Employment Subsidy System

Employment subsidy is a project that offers financial incentives to employers hiring disabled people in excess of the minimum employment quota rate. It is designed to further promote the employment and job security of disabled people.

The Minister of Employment and Labor determines the payment rate for employment subsidies and the period of payment within the minimum wage converted on a monthly basis. Subsequently, preferential payment unit and time period were set to apply to persons with severe disabilities and disabled women (EVDPA Article 30 (3)).

Before the enactment of the EVDPA in 2000, there were two payment systems, allowance and subsidy. If employers employed disabled persons beyond the standard employment quota rate, they were paid an employment allowance. The Minister of Labor also initiated a subsidy within the employment allowance to employers who employed more disabled persons than required, even if they did not qualify as disabled under the mandatory employment of disabled persons. The EVDPA saw the unification of allowance and subsidy into one payment in 2000.<sup>7)</sup>

Employment subsidy is commensurate with gender and severity of disability (150,000~500,000 won). Employment subsidy of the recruitment of slightly disabled people is the same for the first three years and then modified by a declining schedule. Conversely, employment subsidy of severely disabled

---

7) For the evolution of employment subsidy system and calculation method of that, see Choi, Hyun, and Cha (2007).

people maintains the unit cost of subsidy at the same rate (Ministry of Labor, 2010).<sup>8)</sup>

Employment subsidy continues to be paid to employers in principle, as long as if they employ disabled people in excess of the obligatory employment rate. However, for mildly disabled people (belonging to the sixth grade), the employment subsidy is payable for four years from the date of hiring, coming into effect in 2011. Also, a subsidy is payable to employers who employ disabled people for more than the minimum wage or with the exception of the application of the minimum wage.

## 2. Welfare of Disabled Persons Act

The Welfare of Disabled Persons Act (WDPA) is said to be the most fundamental law associated with disability welfare. The WDPA is implemented under the jurisdiction of the Ministry of Health and Welfare, which is responsible for a part of vocational rehabilitation services since the enactment of the EVDPA.

In terms of employment of disabled people, it is stipulated in Article 21 of the WDPA that the national and local governments should take any necessary measures such as vocational guidance, evaluation of vocational capabilities, etc. so that disabled persons can be engaged in vocations suitable for their aptitude and capabilities. The WDPA also contains provision for promotion of employment: the national and local governments shall endeavor to employ disabled persons with the capabilities and aptitudes fitting the relevant business under their operational control, and may recommend the business operators who conduct business(s) fit for disabled persons to employ disabled individuals according to their capabilities and aptitudes (Article 46).

---

8) For more details on the unit cost for payment of employment subsidy, see Ministry of Labor (2010). *Notification No. 2010-24*.

Accordingly, the WDPA has specific provisions about delivery of fundamental policy (Articles 17~30) and welfare measures (Articles 31~52).

The following section examines legal issues which are directly related to employment: the legal definition of disability, the registration of disabled persons.

#### 1) Legal Definition and Scope of Disability

The WDPA is the first legislation to give a legal definition of disabilities in Korea. Under the WDPA, disabled persons are defined as “those who are hampered by substantial long-term impairment in daily life or social activity due to physical or mental disability.” The disabled persons governed by this Act are individuals described under paragraph i) and those who fall under the types and standards of disability prescribed by Presidential Decree stipulated in the following subparagraphs. These define ‘physical disabilities’ as disability of principally external bodily functions and internal organs, etc. and ‘mental disabilities’ as a disability caused by psychological development disorder or mental disease.

The definition of disabled persons in the EVDPA is the same as in the WDPA. According to the Enforcement Decree of the EVDPA, the criteria for disabled persons are specified under the WDPA. Specifically, with respect to the quota system, those registered as disabled under the WDPA qualify for certain employment assistance and services offered by the state. Registration is conducted for 15 types of disabilities by dividing them into grades, ranging from grade 1 to grade 6 according to the extent of the disability (See Enforcement Decree of the WDPA Article 2, Table 1).

The scope of legal disability was expanded from 5 types in 1988 and 10 types in 2000 to 15 types in 2003. The expansion of disability categories had significant legal ramifications. It provided welfare benefits to a large number of people with disabilities who prior to that were not eligible for such benefits.

## 2) Registration of Persons with Disabilities

In accordance with the provision of Article 32 under the Welfare of Disabled Persons Act (WDPA), disabled persons should register details of their disability with the government. If a disabled person applying for registration meets the set standards, the government issues a disabled person registration certificate to her/him. Policies affecting persons with disabilities in Korea are enforced on the basis of the registration system. Detailed procedures on the registration are established under the Enforcement Rules of the WDPA.

The disability registration system was started in 1989, in order to foster more effective welfare measures for people with disabilities (Korean National Assembly Official Record, 1989). Registration is not mandatory; however, government services are provided only to those disabled persons who are registered. It was originally expected that the disabled person's registration system would serve to provide basic data on disability by exposing the current status of disabled people and that this data could be used to establish an effective management system for disabled people. Also, it should be pointed out that the registration system is often seen as an administrative convenience in order to implement the national policy. Since 2011, a disability rating assessment has been conducted on new registrants and people with a disability are required to have their rating reviewed (See WDPA Article 32 (6)).

### III. Shortcomings of Existing Legislation and Implementation Problems of the Current Quota System

The success of laws depends on how far they are enforced. Korea's quota system has played an important role in the employment of disabled people.

However, that notwithstanding, the situation of disabled people is still notably low in the labor market. Disability employment-related laws, particularly the EVDPA, were revised to tackle the problems arising from implementing the policy so far. Nevertheless, significant problems still remain.

## 1. Definition of Disability under the Quota System

Under the WDP, the definition of disability is based on the medical model orientation, i.e. a disabled person is defined as a person who is hampered by substantial long-term impairment in daily life or social activity due to physical or mental disability (WDP Article 2). On the other hand, the EVDPA defines a disabled person as a person who has his/her long-term working life substantially restricted due to a physical or mental disability and corresponds to the standards prescribed by the Presidential Decree. In addition, a person with severe disabilities is defined as a person who has significantly lost his/her working abilities, and corresponds to the standards prescribed by the Presidential Decree (EVDPA Article 2). Thus, it is different from the definition based on the WDP. However, standards set forth in the EVDPA are in compliance with the WDP and essentially are linked to medical standards. In addition, disabled people under the Act on the Honorable Treatment and Support of Persons etc. of Distinguished Services to the State (AHTSPDS) are included in the target group of the quota system. In short, the definition of disability complies with standards of the WDP in enforcing the disability mandatory quota system under the EVDPA, even though the legislative purposes of the WDP and the EVDPA are different. Therefore, inconsistency between the policy objectives and results has occurred. Problems arise when the definition of disability focuses on impairment, rather than limited work capacity. Even severely disabled persons under the medical definition may not be significantly hindered from maintaining a professional life. Conversely,

moderately disabled persons from a medical perspective may be defined as severely disabled from a vocational perspective. Therefore, a new official definition of disability in the field of employment should be set up to reflect the concept of vocational disability.

## 2. Employment Quota Rate

As of 2013, the quota for the national and local governments, and public agencies was 3% and for private companies 2.5%. The latter will be increased to 2.7% beyond 2014. As mentioned in the introduction, given the growth both the disabled population and the rising in the registration rate, it is expected that the prevalence of disability will continue to increase. Lee (2005) pointed out that the employment quota rate should be determined based on the ratio of disabled persons to total population. I think that it is reasonable to do that from a demographic perspective. Also, it should be noted that the mandatory employment quota of disabled people in Korea is quite low compared to that of developed countries. For example, in Germany, the quota rate is 5% even though the quota is targeted only at the 'severely disabled' while it is 7% in Italy, and 6% in France and Poland. These countries are the OECD Member States and have introduced quota systems to promote employment of people with disabilities. Under these circumstances, the quota rate will inevitably necessitate reevaluation of what the appropriate disability employment quota rate should be.

## 3. Employment Levy System

According to the OECD (2003: 107), differences in the extent of enforcement of employer obligations have a much greater impact than differences in approach between anti-discrimination legislation or mandatory employment

quotas. In Korea, there are two issues with respect to the current levy system: i) how the size of the basic amount of the levy is set; ii) why the levy is not applicable to national and local government.

#### 1) Size of the Basic Amount of the Levy

As of 2013, four different levels of the basic amount of the levy shall be imposed, instead of three. Ministry of Employment and Labor (2012) announced that it was to make employers more accountable for failing to employ disabled people and to encourage large companies to increase their ratio of disabled employees. Nevertheless, it is doubtful that the levy plays the role of a strengthening mechanism enhancing the employment of the disabled. The rather low level of the basic amount of the levy can induce employers to pay the levy rather than directly employ the disabled. There has been a tendency that enterprises in stable financial position like large conglomerates opt for paying the levy instead of employing the requisite number of disabled people. Furthermore, in Korea there is no significant pressure on employers except for the employment levy. As seen the OECD report (2003: 106), the evaluation of the extent of employer responsibility in Korea was quite low. It is argued that it is reasonable to consider a thorough reevaluation of the basic amount of the disability employment levy.

#### 2) Application of the Levy System to the national and local Governments

Currently, the national and local governments in Korea are exempt from the levy system, even though they are also in a position of employers managing their workplaces directly like private employers. Therefore, it could be argued that the government is transferring the responsibility of employment for disabled people to private companies. Also, it is noted that this does not comply with Korean Constitution-oriented values (Kim, 2009: 26).



To date, there were reasons for not imposing the levy on national and local government. If the national and local governments pay the levy through the tax revenue pool paid by all taxpayers, the purpose of the levy would be fundamentally changed from ensuring an equal spread of the burden of employing disabled people among all employers to sharing of the burden between employers and the general public.

The Constitutional Court ruling also showed that

the national and local governments are the public actors responsible for carrying out education, publicity campaigns, and employment promotion drives for disabled persons to enhance understanding by the employers. [...] On the other hand, unlike private business entities, the national and local governments do not pay the levy and do not receive the subsidy in the case of exceeding the quota rate. Namely, the national and local governments are different from the private employers in respect to that obligation. Therefore, a differential treatment based on reasonable grounds is not against the principle of equality (July 24, 2003: 2001Hun-Ba96).

However, in accordance with recent amendment (2010) of the EVDPA, if the head of a government body employs a worker who is not a public employee, the mandatory employment quota as in the private sector shall apply to the worker. If they fail to meet the quota applied to the private sector, they have to pay the levy. Therefore, the previously described reason for exempting the governments from the levy system in regard to public sector employment is undermined. It is strongly argued that from now on, in order to ensure the effectiveness of the quota system, the levy has to be imposed on national and local government in the same way it is on employers in the private sector. The legal contradiction can be solved on the grounds of sound logic.

#### 4. Employment Subsidy System

With regard to the employment subsidy, it has been noted that there is a problem regarding a considerable rate of deadweight loss,<sup>9)</sup> registering as high as 36~48%. The extent of deadweight loss is different depending on researchers (Kang, 2008: 27).

In recent years, the subsidy for mildly disabled persons has shown a tendency to continue to increase. On the other hand, the subsidy provided to employers who employed severely disabled persons was 50% of total subsidy payment in 2008. This decreased by 12.1% compared with 61.8% in 2004 (Ryu, 2011: 128~129).

There are cases where employers have found individuals who registered as a disabled person due to an accident or disease during their employment who have applied for the subsidy. In such cases, the payment is growing (Kim et al., 2008: 89); the subsidy, however, does not contribute to the disability employment growth in real terms. A more serious problem is that the Fund for enforcing disability employment policy is being depleted. For the past 5 years, the proportion of the subsidy out of the total payment of the Fund has gone beyond half. This state is unsustainable due to the nature of the employment quota system, and then it may cause the disruption of other businesses (Ryu, 2011: 150). Given that the deadweight loss of subsidy has reached a large proportion and the proportion of expenditures of the Fund is too high, the subsidy system should be overhauled.

---

9) In economics, a deadweight loss is a loss of economic efficiency that can occur when equilibrium for a good or service is not Pareto optimal. The deadweight loss in terms of the disability employment subsidy is a social loss incurred when employers hire disabled people even if there is no subsidy.

## **5. Employment Exclusion of Persons with Severe Disabilities**

The employment rate of severely disabled people is slightly less than half the rate of the moderately disabled. However, the unemployment rate of severely disabled people is more than twice that of moderately disabled people (KEAD EDI, 2010: 100~102). The employment rate of mildly disabled people was 55.6% in 1995, 56.3% in 2000, and 56.3% in 2005. On the other hand, in the same period, the employment rate of people with severe disabilities had been decreasing, 33.5 % in 1995, 30.8% in 2000, and 27.6% in 2005 (Kim, et al., 2008: 28).

Employers often search for persons with mild disabilities and give them preferential employment to meet the quota. This is due to the perception that there is relatively less burden on employment and professional life and higher work efficiency. Therefore, persons with severe disabilities are likely to be marginalized in regard to employment opportunities. Delsen (1996: 529) also noted on this situation pointing that generally the quota system has been “most beneficial to the least disabled candidates for employment because companies tend to cream off, that is hire these in preference.” In an aim to induce businesses to employ persons with severe disabilities, a double counting system for persons with severe disabilities was introduced in 2010. In addition, the unit cost for paying the employment subsidy was revised to give more payment to employers who hire severely disabled people. Persons with severe disabilities still experience difficulty in finding employment under the quota system.

## **6. Lack of Effectiveness in Prohibiting Discrimination by Employers under the EVDPA**

The EVDPA Article 5 (2) stipulates that “employers shall not discriminate

against any worker in personnel management, such as in hiring, promotion, transfer, education and training, etc., merely on the ground that the worker is a disabled person.” However, this provision is only a declarative rule, because there are no regulations in regard to sanctions or procedures of remedies against violation of the prohibition on discrimination (Kim, 2008). In addition, it is not clear whether discrimination in areas of non-personnel management (e.g. salary) is prohibited or not. In the case of a breach of discrimination prohibited under the EVDPA, it is difficult to see any legal consequences. Therefore, the obligation of employers in relation to prohibition of discrimination under the EVDPA can be seen as an obligation arising from the relationship between the state and employers. It is not referred to as an obligation under the laws regulating private affairs (Cho, 2004: 45). In short, the EVDPA prohibits discrimination against the employment of persons with disabilities; however, the EVDPA does not provide any specific guidelines on duties, liabilities, and remedial procedures. Thus, the EVDPA is regarded as symbolic, rather than practical. The National Human Rights Commission may provide remedies (Lee, 2008).

#### IV. Legislative Challenges for further Improvement

##### 1. Distinct Groups of People with Disabilities and the Quota System

In Korea, the quota system targets all people with disabilities. Whereas, many countries implement the quota system with a particular focus on severely disabled people. For example, in Germany, the quota scheme specifically

targets people with severe disabilities. This means a person who has a degree of disability of at least 50% is subject to the quota system (Waldschmidt & Prassel, 2012). In Spain, a person with 33% work-capacity reduction in a usual occupation is subject to the quota system (Verdugo, et al., 2009). In Italy, work invalids with 33% or less remaining capacity qualify for the quota (Micangeli, et al., 2009). In these countries, the target group is decided on a review of losing capacity to work as well as medical criteria.

It is therefore argued that the definition of disability under the quota system in Korea should be established by focusing on the limited working capacity of the individual. Eventually, the quota system has to be implemented centering on persons with severe disabilities. Currently, there is no difference between the 6<sup>th</sup> grade disabled workers and non-disabled workers in terms of vocational capacity evaluated by entry-level labor markets (labor force participation rate and employment rate), productivity (e.g. wage level), and employment stability. In this sense, it is reasonable that the 6<sup>th</sup> grade of disability would be excluded from the quota system. A previous study (Kim, et al., 2008: 137) showed that there is no difference in terms of vocational capacity between this group of disabled and the able bodied workers.

## 2. Appropriate Quota Rate

Currently, the mandatory employment quota level is based on the criteria of economic activity in the labor market between disabled people and non-disabled people. That is to say that the unemployment rate between the two is of the same level (Cheon, 2011: 148~149). Quota percentage should be based on consideration of the number of people with disabilities willing and available to work. The quota rate should be raised to the extent of the disability prevalence rate because it is correlated with the disabled population. The disability employment quota rate should be increased far more than the

2.7%, which is expected to be applied after 2014, as a positive relationship between quota rate, enforcement rate, and actual employment rate has been found in research on the correlation among the OECD countries (Kang, et al., 2007: 60).

Furthermore, in Article 28 (3) of the EVDPA, it is stipulated that the mandatory employment rate should be predetermined every five years. It is suggested that it is revised to every three years instead of every five years, when rapid changes in social and economic environment are considered. For the survey on the actual conditions of the disabled, the survey cycle should be changed from five-year intervals to three-year intervals in accordance with the amendment of the WDPA in 2007.

### 3. Repositioning of the Levy

If employers prefer to pay the levy rather than directly employ persons with disabilities, the effectiveness of the quota scheme should be reviewed.

If the levy is set too low and weakly enforced, it causes many employers to either pay or ignore the levy, instead of employing the requisite number of disabled people. Ideally, decisions should be based primarily on consideration of how far the amount is likely to stimulate employers to hire and retain disabled workers. Moreover, the levy may be set at different levels according to other criteria such as size of company, in recognition of varying ability to pay. In fact, the employment rate of large size companies, considered to be in a good financial position, is lower than that of smaller companies (KEAD EDI, 2012).

The other side of the issue is the exempt status from paying the levy of national and local government in Korea. In accordance with the revised EVDPA (2010), if national or local government employs 50 workers who are not in the capacity of public employees, the quota levy system is applied to

those government bodies. Therefore, they have to pay the levy when they fail to meet the quota. There are precedents where the levy is applied to the public sector. In Germany, both private and public sector, as well as government agencies, are subject to the disability employment levy. In France, up to 2005, only private employers had to pay a levy if they did not meet the quota. From January 1, 2006, however, public and state functions have had to declare the number of people with disabilities they employ, the severity of each disability and to pay a levy if applicable (National Disability Authority, 2007) Likewise, it is argued that in Korea, the levy has to be applied to the public sector as well as to the private sector.

#### **4. Employment Subsidy System and Deadweight Loss**

In principle, if no financial loss is incurred by employment of disabled persons, the subsidy should not be paid. However, subsidy is provided to all employers who hire disabled persons based on the presumption of loss of productivity. In the case of exceptional situation, the subsidy may be not provided. As for the subsidy, it should be designed to reduce or prevent the deadweight loss. The unit cost for payment of employment subsidy has been improved. At this time, I would recommend conducting surveys in order to identify whether the subsidy is working properly or not.

#### **5. Employment Promotion of Persons with Severe Disabilities**

Since employment of persons with severe disabilities is much more difficult than those with mild or moderate disabilities, special provisions have been set in place to promote their employment: supportive employment (EVDPA Article

13); provision of personal assistance services (EVDPA Article 19-2); support for standard workplaces for disabled persons (EVDPA Article 22); double count system (EVDPA Article 28-3), etc.

Persons with severe disabilities whose contractual working hours are less than 60 hours a month are excluded from the double counting system (Enforcement Decree of the EVDPA Article 26-2). In regard to the above exclusion, a more flexible arrangement is recommend. For example, a part-time worker with a disability working for 20 hours or more but less than 30 hours a week should be included in the scope of mandatory employment. A part-time worker with a disability should be counted as 0.5 persons for calculating the actual employment rate. Some severely disabled persons who are unable to carry out jobs during regular working hours and work on a part-time basis should be allowed under the quota. Japan is a prime example of the implementation of such a system, which could be used as a good reference point.

## V. Conclusion

This section reiterates the recommendations for further improvements on legislation of employment promotion for disabled people.

Firstly, with regard to target groups under the quota system, the study asserts that 6th grade impairment should be excluded from the quota system.

Secondly, currently the obligatory employment ratio is predetermined every five years under the EVDPA Article 28 (3). The paper suggests that it is revised every three years instead of every five years, given the fact that the social and economic environment are rapidly changing.

Thirdly, the paper recommends a repositioning of the levy. The employment levy should be determined by the level at which employers are induced to



employ disabled people. Furthermore, it is suggested that the levy is set at different levels depending on the size of a company. In addition, it is suggested that national and local governments should be legally obligated to pay the levy as do qualified private companies.

Fourthly, currently an employed person with a severe disability is counted as two persons in computing the employment rate. In this regard, it is suggested that a provision that equates the 0.5 persons with a part time worker with disabilities should be introduced.

Fifthly, it is recommended that surveys are conducted on employers who are required to pay levies and employers who qualify for the subsidy to ensure that the levy and subsidy are working properly.

It is hoped that this study will provide suggestions to guide future revisions of relevant provisions of the Acts and stimulate further discussion on disability and employment.

## References

### **Available only in KOREAN (Titles translated into English)**

- Cheon, K. S., Park, C. S., Kim, J. K., C, P. W., and C. K. Park(2010). *Effectiveness and effective operation strategies on disability employment quota system*. Gwacheon: Ministry of Employment and Labor.
- Cheon, K. S.(2011). "Reform discussion on the quota system for employment of the disabled." *Legal Studies* 21 (1). Seoul: Institute for Legal Studies, Yonsei Law School. pp.131 ~ 160.
- Cho, Y. M.(2004). *International comparison of employment discrimination laws: focused on discrimination against age and employment in the Anglo-American legal system*. Seoul: Korea Labor Institute.

- Choi, J. C., Hyun, J. H., and J. H. Cha(2007). *A study on the improvement of calculation method for disability employment subsidy*. Sungnam: KEAD EDI.
- Kang, D. U.(2008). *A study on the reformative schemes of a support program for the enterprises hiring disability worker*. Gwacheon: Ministry of Labor.
- Kang, D. U., Lee, S. W., and S. W. Lee(2007). *A study on the applied target group in relation to the employment mandatory system*. Gwacheon: Ministry of Labor.
- KEAD EDI(2010). *The survey of economic activity status for the disabled*. Sungnam: KEAD EDI.
- \_\_\_\_\_(2012). *2012 Disability statistics*. Sungnam: KEAD EDI.
- Kim, J. J., Jang, C. Y., Yoo, W. S., Kim, E. A., Lee, J. J., Ryu, J. J., Kang, P. S., Choi, J. C., Nam, Y. H., and Y. S. Kim(2008). *Reform of employment quota system for people with disabilities in Korea*. Sungnam: KEPAD EDI.
- Kim, M. G.(2008). “Judicial remedies for employment discrimination.” *Labor Law Review* 25: 237~264.
- Kim, S. S.(2009). *Legal review and legal alternatives on the charge the disability employment levy to government sector*. Gwacheon: Ministry of Labor.
- Korean National Assembly Official Record *Plenary Session* (December 11, 1989). Seoul: Korean National Assembly.
- Lee, S. S.(2005). “A study on the act of employment promotion and occupational rehabilitation of disabled people.” *The Journal of labor law* 7: 181~229.
- Ministry of Health and Welfare(2012). *Survey on the current status of disabled people*. Gwacheon: Ministry of Health and Welfare.
- Ministry of Employment and Labor(2012). *Notification No.2012-127*.

Gwacheon: Ministry of Labor.

Ministry of Labor(2010). *Notification No.2010-24*. Gwacheon: Ministry of Labor.

Ryu, J. J.(2011). “Evaluation and future strategies of disability policy for 20 years.” in Cheon, K. S. (ed.). *Korean Society and Disability Policy: Welfare and Anti-Discrimination*. Seoul: Human & Welfare. pp.111~175.

Son, W. I., Cheung, J. H., Kim, H. J. and S. H. Kim(2004). *Corporate burden on quasi-taxes and policy direction*. Seoul: Korea Institute of Public Finance.

#### **Available only in ENGLISH**

Barnes, H.(2000). *Working for a Living?* Bristol: The Policy Press.

Delsen, L.(1996). Employment Opportunities for the Disabled. in Schmid, G., O'Reilly, J. and Schomann, K. (eds.). *International handbook of labor market policy and evaluation*. Cheltenham: Edward Elgar Publishing Limited. pp.520~550.

Lee, S. W.(2008). New development employment discrimination in Korea. *in New developments in employment discrimination law*. Tokyo: The Japan Institute for Labour Policy and Training. pp.119~140.

Micangeli, A., Puglisi, A., Vignola, R. and M. Benedetti(2009). *Report on the employment of disabled people in European Countries-Italy*. Academic Network of European Disability Experts (ANED).

Ministry of Employment and Labor(2013). *2012 Employment and labor policy in Korea*. Gwacheon: Ministry of Employment and Labor.

National Disability Authority(2007). *Research and policy development on part V of Disability Act 2005 - Statutory targets on employment of people with disabilities in the public sector*. Dublin: National Disability Authority.

OECD(2003). *Transforming disability into ability: policies to promote work and income security for disabled people*. Paris: OECD Publishing.

Verdugo, M. A., Jenaro, C., and M. Campo(2009). *Report on the employment of disabled people in European Countries-Spain*. Academic Network of European Disability Experts (ANED).

Waldschmidt, A., and K. Prassel(2012). *Germany-ANED Country profile*. Academic Network of European Disability Experts (ANED).

World Health Organization and The World Bank(2011). *World report on disability*. Geneva: WHO Press.

#### **Relevant precedents**

The Constitutional Court of Korea (Oct. 30, 2008: 2006Hun-Ma1098);  
(May 25, 2006: 2003Hun-Ma715); (June 26, 2003: 2002Hun-Ga16);  
(July 24, 2003: 2001Hun-Ba96).

abstract

## 장애인 고용 법제의 현황과 과제

조 미 경

세계장애보고서(World report on disability)는 2010년 현재 세계 인구의 약 15%를 장애인구로 추정하고 있다. 우리나라도 등록장애인가가 지속적으로 증가하고 있는 추세이지만 장애인들의 고용의 기회는 일반 노동시장에서 여전히 배제되어 있는 실정이다. 우리나라는 장애인고용촉진 및 직업재활법에 근거하여 장애인 의무고용제도를 시행하고 있고 장애인차별금지법도 제정하여 법제도적인 면에서는 장애인의 근로권이 보장될 수 있는 토대가 마련되어 있다고 볼 수 있다. 그러나 법정 장애인 의무고용률을 민간기업이나 국가기관 모두 달성하지 못하고 있다. 이러한 인식하에 본 논문은 현행 장애인고용촉진 및 직업재활법에서 규정하고 있는 장애인 의무고용제도의 내용을 구체적으로 검토하면서 문제점과 법적 개선과제를 제시하고 있다. 이를 종합하여 제안하면 다음과 같다. 첫째, 의무고용제도하에서의 장애개념을 새롭게 정립할 필요가 있다. 의무고용대상을 장애인복지법상의 장애개념을 원용하여 적용함으로써 정책의 목적과 대상 간에 불일치가 나타난다. 또한 직업생활능력이 비장애인과 차별되지 않는 6급 장애인을 의무고용대상에 포함시키지 말고 보다 중증장애인 중심으로 적용하는 것이 바람직하다고 생각한다. 둘째, 장애인 의무고용률을 ‘5년마다’ 정하도록 장애인고용촉진 및 직업재활법에서 규정하고 있으나 이를 ‘3년마다’로 개정하는 것이 합리적이라고 본다. 장애인복지법에 근거하여 실시하고 있는 장애인실태조사도 5년에서 3년으로 개정된 바 있다. 또한 중증장애인 고용률2배수 산정제도를 확대하여 단시간 장애인 근로자에 대하여 연구자는 0.5카운트 제도를 제안한다. 셋째, 고용부담금의 경우 장애인고용을 촉진할 수 있는 효과를 가져올 수 있는 수준으로 정하되, 기업규모에 따라 고용부담금을 차등 부과하는 프랑스의 예를 참고하여 대기업의 장애인 고용유인효과를 극대화할 필요가 있다. 넷째, 국가 및 지방자치단체도 장애인고용부담금을 납부해야 한

다고 본다. 국가 및 지방자치단체에 대한 특례조항(법 제79조)에 따라 2010년 1월부터 국가기관 및 지방자치단체의 장이 공무원이 아닌 근로자를 고용하는 경우에 그 근로자에 대하여 고용의무와 고용부담금이 적용된다. 부담금의 법적 성격 및 법 논리상으로도 국가 및 지방자치단체도 고용부담금을 납부하는 것이 합리적이라고 본다. 다섯째, 고용장려금은 사중손실을 최대한 방지하는 선에서 설계되어야 하며, 부담금 및 장려금이 장애인 고용촉진 기능을 제대로 발휘하는지 지속적인 검토가 필요하다.

핵심용어 : 장애인 고용촉진 및 직업재활법, 장애인복지법, 장애의 개념, 장애인 의무고용제도, 장애인고용부담금, 장애인고용장려금, 중증장애인 2배수 산정제도