

# Republic of Korea

## Overview of migration

Historically a labour-exporting country, South Korea is now a popular destination for migrant workers overseas. According to official record, the number of foreigners living or working in Korea stood at more than 1.25 million persons<sup>1</sup> in 2014.

South Korea experienced rapid growth starting from the 1960s. As a result of the economic “Miracle of the Han River”, South Korea transformed from a labour-exporting country into a destination country for migrant workers in the late 1980s. Increasing prosperity resulted in the reluctance of many Koreans to participate in dirty, difficult and dangerous jobs. This created a labour shortage for many small and medium enterprises (SMEs), particularly in the construction, manufacturing and agricultural sector. Accordingly, migrant workers were needed to fill the gap.

Initially, migrant workers in SMEs had to work under an irregular status due to the lack of any formal work scheme. The legal status of migrant workers was recognized by the 1991 Joint Venture Trainee System, which was followed by the Industrial Trainee System. The Trainee Systems, which had been widely criticized as discriminatory, were phased out and eventually replaced by the Employment Permit System (EPS) in 2007.

## The EPS and other policies towards migrant workers

The employment opportunities of local Korean workers are always given priority. Only employers who failed to hire local workers can legally employ migrant workers under the EPS. The government determines the quota of migrant workers to be introduced every year according to the situation of the Korean labour market.

The selection and recruitment of migrant workers is administered by the government, in accordance with the MOU made with the sending country. Selected workers will be granted a working visa (E-9 visa) and can be employed for a maximum of 3 years (or 4 years and 10 months upon extension). As of 2014, there are around 250,000 foreign workers working under the EPS with an E-9 visa<sup>2</sup>.

Under this system, migrant workers cannot apply for permanent residency, which requires applicants to live in Korea for at least 5 years. In addition, in order to stop

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<sup>1</sup> 2014 Foreigner Labour Force Survey, Statistics Korea

<sup>2</sup> Ibid

migrant workers from settling in Korea, they are prevented from inviting their dependents to join them<sup>3</sup>.

Additionally, migrant workers had been historically denied the right to form their own union. Established in 2006, the Seoul-Gyeonggi-Incheon Migrants' Trade Union (MTU) embraces all migrant workers, regardless of legal status. The government had accordingly refused to grant MTU legal recognition, on the basis that irregular migrant workers do not have the right to unionize. However, in a recent landmark decision in June 2015, the Korean Supreme Court ruled in favour of the MTU. Accordingly, all migrant workers, irregular migrant workers inclusive, may now form and join their own trade union<sup>4</sup>.

Under the EPS, national labour laws apply to migrant workers and Korean workers alike:

#### 1. Labour Standards Act

- *Standard working hours.* Working hours shall not exceed 40 hours per week or 8 hours per day. However, working hours can be extended upon agreement between parties<sup>5</sup>.
- *Payment of wages.* Wages shall be paid at least once a month on a fixed day<sup>6</sup>.
- *Overtime payment.* Workers are entitled to receive overtime payment for extra work or night shift (10 pm to 6 am) or working on holidays<sup>7</sup>.
- *Retire payment.* Workers are entitled to receive retirement payment when workers have worked for over 1 year<sup>8</sup>.
- *Maternal protection.* Pregnant workers are granted a 90-day maternity leave.<sup>9</sup>

#### 2. Minimum Wages Act

- As of 2015, the hourly minimum wage for both migrant workers and Korean workers is 5,580 won (approx. 5 USD), while monthly minimum wage is 1,666,220 won (approx. 1,028 USD)<sup>10</sup>.

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<sup>3</sup> Mundy, Simon, *S Korea Struggles to Take in Foreign Workers*, Financial Times, 17 Sept. 2013, available at <http://www.ft.com/intl/cms/s/0/afcd4-1c1c-11e3-b678-00144feab7de.html?siteedition=intl#axzz3fAwJ6tzQ> (accessed 8 July 2015)

<sup>4</sup> Korea: Supreme Court Affirms Right to Unionize for Undocumented Migrants, International Trade Union Confederation, 25 June 2015, available at <http://www.ituc-csi.org/KOREA-SUPREME-COURT-AFFIRMS-RIGHT#.VYXHZQVYCIS.FACEBOOK> (accessed 27 July 2015)

<sup>5</sup> Articles 50 and 51

<sup>6</sup> Article 43

<sup>7</sup> Article 56

<sup>8</sup> Article 34. See also Article 4 of the Employee Retirement Benefit Security Act.

<sup>9</sup> Article 74

<sup>10</sup> See webpage of Minimum Wage Council, Republic of Korea, available at

### 3. Industrial Accident Compensation Insurance Act

- Compensation for medical treatment, disability, business suspension and family's bereavement can be claimed by workers in case of injury or disease while on duty<sup>11</sup>.

Other protections offered to migrant workers under the EPS include<sup>12</sup>:

#### 1. Social insurance

- EPS workers are covered by the Industrial Accident Compensation Insurance, Employment Insurance, National Health Insurance and National Pension.

#### 2. Anti-discrimination

- Discrimination against foreign workers is expressly prohibited under Art. 22 of the EPS Act.

Finally, migrant workers may send their children to public elementary schools as long as they have a "confirmation of residence". On the other hand, a "certificate of foreigner registration", which is not available for irregular stayers, is required for middle or high schools. Consequently, the enrolment rate of irregular migrant children for middle or high schools is extremely low<sup>13</sup>.

## Issues

Under the EPS, migrant workers can only change their job for 3 times at most during the three-year sojourn period. Additionally, workers must find new employment within 3 months of leaving a job<sup>14</sup>. Otherwise, they lose their legal status and are thus subject to arrest, detention and deportation. Significantly, workers must also obtain a release form signed by their employers in order to change jobs. Workers lose their legal status if they do not have a release form. The requirement of a release form is exempted if workers can prove that their employers violated labour laws. However, this takes much time and effort, rendering the option impractical<sup>15</sup>. The inability to change jobs freely contributes to the excessive dependence of workers on their employers.

In short, the EPS creates a system under which employers wield significantly more

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<http://www.minimumwage.go.kr/eng/sub04.html> (accessed 27 July 2015)

<sup>11</sup> See Employment Permit System official webpage, available at <https://www.eps.go.kr/ph/index.html> (accessed 27 July 2015)

<sup>12</sup> Ibid

<sup>13</sup> Lee Hye-won, *Migrant Children's Right to Education*, Korea Focus

<sup>14</sup> Article 24 of the EPS Act

<sup>15</sup> Amnesty International, *Disposable Labour: Rights of Migrant Workers in South Korea*, 21 October 2009, ASA 25/001/2009

power over migrant workers. Consequently, workers often have no alternative but to put up with abuses and exploitation in the workplace in order to maintain their legal status. For example, according to a report published by Amnesty International in 2009<sup>16</sup>, migrant workers are paid less than their local counterparts notwithstanding the supposedly equal protection offered by labour laws. It is also not uncommon that migrant workers are forced to work overtime and denied recess hours. This is exacerbated by lack of safety training and results in industrial accidents. Female migrant workers further risk sexual harassment and violence by their employers and co-workers. However, according to the report, victims are unwilling to report to the authorities because they fear dismissal and possible loss of regular status<sup>17</sup>.

Migrant workers who find working conditions so unbearable have no recourse but to escape from their employers and become irregular workers. Workers who become irregular are even more vulnerable to exploitation. They are not able to turn to government authorities for assistance since public officials, including labour officials and the police, are obliged to report any irregular migrant worker to the immigration authorities. As a result, they live in the constant fear of raids, during which workers often face violent treatment<sup>18</sup>.

Agricultural migrant workers who work under the EPS are particularly vulnerable due to the non-application of the Labour Standards Act to the agricultural sector<sup>19</sup>. Amnesty International's recent report "Bitter Harvest: Exploitation and forced labour of migrant agricultural workers in South Korea"<sup>20</sup> offers an in-depth critique of the EPS from the view point of agricultural workers.

In addition to the EPS, a considerable number of female migrant workers work in the "arts and entertainment" sector, which is regulated by a different working scheme (E-6 visa). A lot of them work as singers and dancers, who are mostly employed in bars and nightclubs in the US military camp towns. Female E-6 workers are highly susceptible to abuse. Many of them are told that they are recruited to sing in bars. In reality, their job is to serve and solicit drinks from US soldiers. Sexual assault by clients is not uncommon in the workplace. At some establishments, some female workers are even forced to have sex with their customers<sup>21</sup>.

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<sup>16</sup> Ibid

<sup>17</sup> Ibid

<sup>18</sup> Ibid

<sup>19</sup> See Article 63 of the Labour Standards Act

<sup>20</sup> Amnesty International, *Bitter Harvest: Exploitation and forced labour of migrant agricultural workers in South Korea*, 20 October 2014, ASA 25/004/2014

<sup>21</sup> Ibid at n14

## Responses

Both the government and civil society provide assistance to migrant workers in various respects.

The Korean government operates 7 migrant worker support centers in major urban areas, and 27 smaller support centres in rural areas<sup>22</sup>. Services include industrial safety and working welfare education, counselling, financial management support and cultural education.

Legal assistance is provided by the Ministry of Employment and Labour, who offers labour law counselling services. In addition, the Seoul Bar Association has a pro bono legal counselling centre for migrant workers to provide legal advice on matters such as delayed wage payment, industrial accidents, violence at the workplace and other human rights violations.

Working with the Ministry of Labour, the Korean Migrant Workers' Centre provides multilingual consultation support service on inquiries relating to the workplace. In addition, established by the Ministry of Gender Equality and Family, the Emergency Support Centre for Migrant Women provides 24-hour counselling services and support for migrant women throughout the year.

Finally, the growing movement of consumer awareness led by civil society is also noteworthy. More and more South Koreans want to consume food that is organic and exploitation free.<sup>23</sup> This bodes well for agricultural migrant workers who have always been subject to much exploitation.

## Numbers and statistics

### Population of employed foreign workers 2014<sup>24</sup>

	Male	Female	Total
Number (in thousands)	568	284	852

### Top ten countries of origin of newly employed E-9 workers in 2014<sup>25</sup>

<sup>22</sup> See Migration News webpage, available at <https://migration.ucdavis.edu/mn/more.php?id=3813> (accessed 27 July 2015)

<sup>23</sup> Board, Jack, *Migrant Workers Treated like "slaves" in South Korea's Agricultural Industry*, Channel NewsAsia, 29 May 2015, available at <http://www.channelnewsasia.com/news/asiapacific/migrant-workers-treated/1872922.html> (accessed 8 July 2015)

<sup>24</sup> Ibid at n1

<sup>25</sup> Retrieved from Korean Statistical Information Services

Country	Number of workers
<b>Cambodia</b>	6,822
<b>Indonesia</b>	6,461
<b>Nepal</b>	5,341
<b>Vietnam</b>	4,495
<b>The Philippines</b>	4,150
<b>Myanmar</b>	3,976
<b>Thailand</b>	3,664
<b>Sri Lanka</b>	3,662
<b>Uzbekistan</b>	3,184
<b>Bangladesh</b>	1,664

Population of employed foreign workers by key industries 2014<sup>26</sup>

Industry	Number of workers (in thousands)
<b>Manufacturing</b>	418
<b>Wholesale &amp; Retail Trade and Hotels and Restaurants</b>	153
<b>Business, Personal and Public Services</b>	142
<b>Construction</b>	86

Population of employed foreign workers by key occupations 2014<sup>27</sup>

Occupation	Number of workers (in thousands)
<b>Craft workers and machine operating &amp; assembling workers</b>	358
<b>Elementary workers</b>	249
<b>Service workers and sales workers</b>	100
<b>Managers and professionals and related workers</b>	97

Summary of protections offered to migrant workers

Policy/Law	Available to migrant workers?
<b>Minimum wage</b>	Yes (approx. 5 USD/hour; 1,028 USD/month)
<b>Maternity protection</b>	Yes
<b>National labour laws</b>	Yes

<sup>26</sup> Ibid

<sup>27</sup> Ibid

<b>Social security</b>	Yes
<b>Joining a trade union</b>	Yes
<b>Forming a trade union</b>	Yes
<b>Path to permanent residency</b>	No
<b>Path to citizenship</b>	No
<b>Access to public schools by children</b>	Yes

Ratification status of relevant conventions

<b>Document</b>	<b>Year of ratification (if ratified)</b>
<b>ICCPR</b>	1990
<b>ICESCR</b>	1990
<b>ICERD</b>	1978
<b>CEDAW</b>	1984
<b>CRC</b>	1991
<b>Int'l Convention on the Protection of the Rights of All Migrant Workers and Members of their Families Migrant Workers</b>	N.A.
<b>ILO29 (Forced Labour)</b>	N.A.
<b>ILO105(Forced Labour)</b>	N.A.
<b>ILO87 (Freedom of Association)</b>	N.A.
<b>ILO98 (Collective bargaining)</b>	N.A.
<b>ILO100 (Equal remuneration)</b>	1997
<b>ILO111 (discrimination in employment and occupation)</b>	1998
<b>ILO97 (Migration)</b>	N.A.
<b>ILO143 (Migrant Worker)</b>	N.A.
<b>ILO189 (Domestic Worker)</b>	N.A.

**Useful links**

2014 Foreigner Labour Survey

- <http://kostat.go.kr/portal/english/news/1/1/index.board?bmode=read&aSeq=331999>

Employment Permit System (EPS)

- <https://www.eps.go.kr/ph/index.html>

Amnesty International's report in 2009: "Disposable Labour: Rights of Migrant Workers in South Korea"

- <https://www.amnesty.org/en/documents/asa25/001/2009/en/>

Amnesty International's report in 2014 on agricultural migrant workers: "Bitter Harvest: Exploitation and forced labour of migrant agricultural workers in South Korea"

- <https://www.amnesty.org/en/documents/asa25/004/2014/en/>



Source: Korea Times

< [http://www.koreatimes.co.kr/www/news/opinion/2012/08/137\\_98902.html](http://www.koreatimes.co.kr/www/news/opinion/2012/08/137_98902.html) >