

Informal Workers and Legal Protection in Thailand

By

Bundit Thanachaisethavut

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Executive Summary

This study on “Informal Workers and Legal Protection in Thailand” aims at shedding some light on the present circumstance of informal workers and relevant laws that provide for their legal protection, so that further improvements in protection can be made. The paper begins with a review of a wide range of academic literature together with relevant data on informal workers through surveys of the National Statistical Office in 2010. The following is the summary of that information.

According to the National Statistical Office, an “**informal worker**” means a **person of at least 15 years of age, whose employment is neither protected nor regulated by social security system.**

It was found in 2010, that of the total 38.7 million persons employed, 24.1 million of them or 62.3% were informal workers by this definition. Most of these workers’ educational attainment was lower than primary level with the majority of them working in the agricultural sector, earning an average minimum monthly wage of THB 3,024 (about USD100.80¹). Their counterparts, hired as employees with social security benefits (formal workers) received an average monthly income of THB 4,088 (about USD136.26), about 35% higher.

Around 3.5 million informal workers (9% of the informal workforce) were injured or involved in accidents at the workplace; most of them through cuts or being injured by sharp objects.

Some major problems typically faced by informal workers are:

- 1) Low and irregular wages and long working hours;
- 2) Occupational health issues arising from substandard working conditions, such as exposure to toxic chemicals and dangerous machinery and tools, vulnerability to occupational hazards such irritation to their ears and eyes;
- 3) Poor working conditions resulting in chronic problems such as poor working posture, excessive dust, smoke, smells and insufficient lighting.

It is clear that Thailand’s current labour laws have failed to provide adequate legal protection for all sectors of informal workers because they are regarded as “self-employed” and thus not covered by the definition of “employees” according to the legislation. The following labour laws are in force:²

(1) **Labour Protection Act (LPA) B.E.2541 (1998):** The LPA is applicable generally to employees in private workplaces. The following are limitations to coverage:

- Wholly excluded from the protection of this Act are those whose work is protected by other specific laws, such as those working in the central, regional and local government administrations, state enterprise officers and temporary employees, private school teachers or headmasters/headmistresses;

¹ 1 USD = 30 Baht

² Available in English in the web in several places including ÷ www.ThailLaws.com

- Certain types of work receive limited protection by virtue of it being specifically mentioned. This includes for those employed as domestic workers, an entitlement to regular payment of wage and annual holidays. Employees in non-profit organizations are to get an equal wage regardless of sex, for the same quantity and quality of work. They are also protected from providing guarantee money or liability for any damage arising from the performance of work; and
- Those receiving protection different from that provided by the LPA. This applies to employees in direct sales jobs who are protected differently with regard to overtime. Employees in fisheries, homeworkers and seasonal agricultural workers also have separate protection, provided by the Ministerial Regulation No.10 (1998) on labour protection for workers in marine fisheries, Homeworkers Protection Act (2010) and Ministerial Regulation (2004) on labour protection for agricultural work, respectively.

(2) **Labour Relations Act B.E.2518 (1975)**³: This Act stipulates the criteria for establishing employee associations and dealing with labour complaints and disputes between employees and employers. According to the Act, an employer's direct management control over the performance of his/her employees has a pivotal role in determining employee status. In the case that a labourer is free from the employer's control and able to determine his/her own work methods, choose his/her working hours, and provide his/her own materials and work tools, he/she shall not be deemed an "employee" entitled to protection by labour laws such as homeworkers.

(3) **Workmen's Compensation Act B.E.2537 (1994)**: This Act provides legal protection for an employee who suffers from injuries, sickness, death or disappearance as a result of performing the work or suffers sickness caused by diseases arising from the nature or conditions of work or diseases arising from performing the work for his/her employer. Excluded from this Act's protection are such people as domestic workers in a home where no commercial businesses are operated, people working for ordinary citizens who hire them for non-profit-making work, and those hired by vendors and hawker stalls.

(4) **Social Security Act B.E.2533 (1990)**: This Act provides legal protection for employees under an employment contract or insured persons according to Section 33 of this Act. Informal workers can also become insured persons voluntarily under Sections 39 and 40 of this Act, but the entitled benefits are not comparable to those formal workers:

- An insured person under Section 33(formal workers) is entitled to seven benefits: injury or sickness, death, invalidity,, maternity, child allowance, old age pension and unemployment. The government and employers co-pay the contribution to the fund for such employees;
- An insured person under Section 39, who was an insured person under Section 33 but ceased to be an employee and who is voluntarily enrolled as an insured person, is entitled to only six benefits excluding that of unemployment. The government is also required to contribute to the fund on this person's behalf; and

³ Available on the web in English in several places including: www.ThailLaws.com

- A person voluntarily insured under Section 40 is entitled to only three benefits: maternity, invalidity and death but the government's contribution is not obligatory in these cases.

Increasingly, the government and all sectors of society have begun to realize the important role played by the informal economy both for their role both in the country's economic development and as an immune system, preserving for the health of the national economy. Indeed, informal workers play a substantial role in creating Thailand's gross national product, contributing to national economic growth. Thus, government measures and policies have been introduced while laws have been developed to provide more equal labour rights and social protection for informal workers, as follows:

(1) Laws providing for protection and promotion for homeworkers: There are three of them:

1. Ministerial Regulation on the Protection of Homeworkers B.E.2547 (2004): Homeworkers protected by this Regulation are those using raw materials or equipment provided for the performance of work by the employers. However, homeworkers who pay for required raw materials or equipment from their own pocket and later have the expenses refunded by the employers on delivery of the products are not be protected by this Regulation;

2. Rules on the Promotion of and Fund for Homeworkers B.E.2546 (2003): These Rules aim to promote homeworkers' organizations to ensure their work security and to provide them with revolving funds from which homeworkers can secure loans to buy raw materials and equipment needed for the performance of their work; and

3. Homeworkers Protection Act B.E.2553 (2010): This Act provides protection for informal workers categorized as homeworkers who get work from an industrial enterprise that is carried out at their home. This Act covers a wider range of issues than the Ministerial Regulation on the Protection of Homeworkers B.E.2547 (2004) and addresses fundamental labour rights, right to a fair wage and provision for occupational health and safety.

(2) Ministerial Regulation on the Protection of Agricultural Workers B.E.2547 (2004): This Regulation provides agricultural workers with days off and sick leave with pay, provision of clean drinking water and accommodation while working and other welfare benefits;

(3) National Health Security Act B.E.2545 (2002): This Act provides access to free appropriate standard quality public health services;

(4) National Savings Fund Act B.E.2554 (2011): The Fund promotes savings and ensures payment of pension to members of the Fund when they reach the age of 60;

(5) Social Security Act B.E.2533 (1990): In 2010, the government announced a policy for insured under Section 40 and proposed a draft Royal Decree amending Section 40 to require government contribution to the fund and changes to the benefits in three cases: sickness compensation while an inpatient, invalidity and upon death. However, this policy for insured under Section 40 has been implemented since May 2011.

There has been progress in the state's realization of the importance of issues affecting informal workers. . A Five-year Strategic Plan (2012-2016) by the Ministry of Labour has been announced for informal workers. The Plan proposes that informal workers will be protected and

provided with social security benefits to improve the quality of their lives. The plan has three significant strategies, as follows:

Strategy 1: Extending social protection provisions for informal workers;

Strategy 2: Developing knowledge and skills of informal workers to improve their employment prospects, and;

Strategy 3: Increasing administrative capacity for informal workers.

Chapter 1 - Introduction and Background

1.1 Importance of the Sector and the Issues

The very existence of an informal economy carries the embedded reality that the full range of the nation's economic activities are not recognized, protected or regulated by laws. Since they are not recognized by law, their conduct is beyond legal provisions and not subject to any regulatory or measures that protect the responsibilities and rights of the parties involved. Though these activities may be lawful, they are not protected in practice since there is no legislation that regulates this work and existing laws are not actually enforced. Another dimension is that existing laws and regulations can actually be a barrier to the informal economic operators' legal obligations because they are frequently inappropriate, impose unrealistic burdens on concerned parties or incur high cost.

Globalization and economic restructuring is taking place alongside the growth of the informal economy all over the world. Preliminary studies carried out by the **National Economic and Social Development Board** (NESDB) showed that informal economic activities in Thailand contributed as much to the national GDP as the formal economy did (excluding illegal activities). In 2001, the informal economy generated about THB 2.33 trillion (USD 53,196.34 Billion/USD1=43.8 baht), or 45.6% of the GDP. A part of such contribution, 33.3%, was accounted for in the GDP whereas the remaining 12% was not covered.

Employed persons in the informal economy are classified as either **wage workers** or **own-account workers**. Wage workers are as insecure and vulnerable as own-account workers and employer demands often result in informal workers' shifting from one type of work to another. Because informal workers are deprived of protection, entitlements and representation, they have always been trapped in poverty. There has been a trend for the number of informal workers that are neither legally protected nor entitled to social security benefits to increase, from 22.5 million persons in 2005 to 24.1 million persons in 2010. The contributing factors to such a rapid increase in the number of informal workers are:

1. Production modes and employment relations between the investors or employers and workers or employees continue to favour the flexible and informal forms of work. This results from the increasing internationalization of manufacturing, the consequent intensity in trade competition, pressure to reduce production costs and the advancement of information and communication technology that facilitates the search for increasingly cheaper production locations.
2. Economic crises and the adaptation of businesses have led to lay-offs and reduction of full-time workers, which has brought about a variety of new forms of employment in the informal economy.
3. National labour laws, social protection systems and traditional government mechanisms are by their nature slow to respond to the fast change of pace in the business environment. They are almost always playing catch-up with quickly

outmoded, ineffective, and limited means to deal with business realities. The dominant reality is flexible employment relations and production strategies adopted by multinational capital groups whereby a large number of trans-boundary and cross-region producers are involved in interrelated production chains.

4. Shortcomings of the educational system (outreach and incentives issues of the system), family poverty and the need for immediate income, combined with the inheritance of low expectations of the value of education from generation to generation all contribute as well, squeezing families into the familiar “vicious circle of poverty”.

1.2 Definition and Typology

The National Statistical Office (NSO) has defined “informal workers” and conducts a yearly survey to enable concerned agencies to better plan for the administration and protection of the workers’ rights in the informal economy. The NSO defines “informal worker” as follows:

An “Informal worker” is a person of at least 15 years of age, whose employment is neither protected nor regulated by the social security system, unlike their counterparts in the formal economy⁴.

Thus a “formal worker” is a worker whose employment is subject to processes of protection and regulation. Such workers include civil servants, regular employees of central government, provincial administrations, and local government administration as well as those working for state enterprises, private school teachers, employees of foreign governments or international organizations, and employees protected by Thailand’s labour laws.

There are three major groups of informal workers, defined by their nature of work, namely:

1. Agricultural informal workers, including
 - Small-scale farmers;
 - Workers hired for agricultural activities, such as planting, fishing, forestry, cattle farming, salt farming; and
 - Contract farmers
2. Informal workers in the service sector, including independent or self-employed workers or non-professional service providers, such as garbage collectors/waste pickers and street vendors, and;
3. Informal workers in the manufacturing sector generally employed off site and thus “homeworkers”.

According to the 2010 NSO’s survey on informal workers, most worked in the agricultural sector, 60% (14.5 million workers), followed by those working in the service sector, 31.4%, and 8.6% in the manufacturing sector.

⁴ National Statistical Office, The Informal Employment Survey 2010 (in Thai language): <http://service.nso.go.th/nso/nsopublish/themes/files/workerOutRep53.pdf>

Though the informal economy plays an active socio-economic role by contributing almost half of the national GDP, the informal workers, whose nature of work is similar to that of their formal counterparts, have neither been provided with equal social protection nor have their labour rights been legally granted. As a result, informal workers contend with occupational and health problems as well as work-related dangers, lack of employment and income security, unfair employment practices and lack of opportunities to develop their skills.

In this Chapter we have shown that since 2001, the informal economy sector has significantly, at least 33.3%, contributed to Thailand's national GDP. But the workers in this informal economy have not been adequately and effectively provided with equal social security benefits enjoyed by their counterparts in the formal economy sector.

Chapter 2 - Working Conditions of Informal Workers

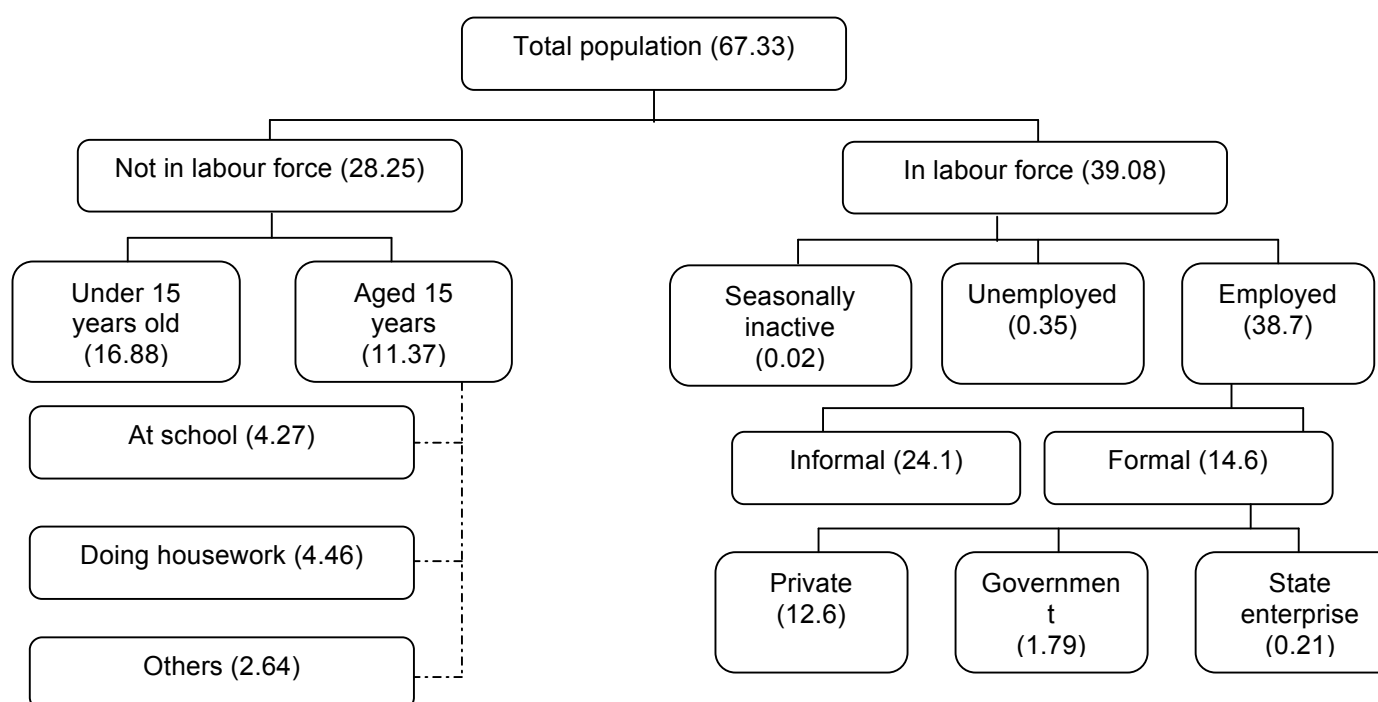
A review of working conditions in the sector is partly provided by the 2010 survey of the National Statistical Office and partly through a review of research and academic studies. (The NSO's Informal Employment Survey was carried out on 1-12 July and August of 2010 only. Though the collected data covered every province, with a sample size was limited to of 53,040 households. Thus, the survey could not be presented on a provincial basis.) Following are excerpts of the NSO findings and research and academic studies.

2.1 NSO Data

1) Population and Labour Force in 2010

Thailand's total population in 2010 amounted to 67.33 million with 38.7 million (57.5%) employed. Of all employed persons, **24.1 million of them or 62.3% were informal workers**. There were **14.6 million formal workers or wage workers, or 37.7% of all employed persons**, comprising civil servants and state enterprise workers employed by government and employees of the private sector (see Table 1).

Table 1- Structure of the Population and Labour Force in 2010 (Million persons) ⁵



2) Number of Informal Workers by Region

Of the total 38.7 million persons employed, 14.6 million of them or 37.7% were formal workers while 24.1 million of them or 62.3% were informal workers.

By region, the northeastern region had the highest number of informal workers or 10.1 million persons, followed by the northern and central regions at 5.2 and 4.5 million persons, respectively (see Table 2). In terms of the percentage ratio between informal and formal workers by region, it was found that the northeastern region had the highest proportion of 77.6: 22.4; followed by the northern region, 71.6: 28.4; and the southern region, 58.1: 41.9. In Bangkok and the central region, the numbers of informal workers were lower than those of formal workers. Bangkok's proportion ratio between formal and informal workers was 66.2: 33.8 whereas that of the central region was 51.6:48.4 (see Table 2).

**Table 2 - Formal and informal workers by region in 2010
(Unit: 1,000 Persons (%))**

Employed persons	Total	Region				
		Bangkok	Central Region	Northern Region	Northeastern Region	Southern Region
Formal workers	14,557.8 (37.6)	2,546.9 (66.2)	4,822.9 (51.6)	2,042.5 (28.4)	2,944 (22.4)	2,241.0 (41.9)
Informal workers	24,133.7 (62.4)	1,300.0 (33.8)	4,527.2 (48.4)	5,145.1 (71.6)	10,052.3 (77.6)	3,109.2 (58.1)
Total	38,691.6 (100.0)	3,846.9 (100.0)	9,350.1 (100.0)	7,187.6 (100.0)	12,956.7 (100.0)	5,350.2 (100.0)

Source: National Statistical Office

⁵ National Statistical Office, The Informal Employment Survey 2010 (in Thai language): <http://service.nso.go.th/nso/nsopublish/themes/files/workerOutRep53.pdf>

3) Levels of Educational Attainment of Informal Workers

According to the Survey, the educational attainment of the majority of informal workers, 62.6% (15.1 million workers) was of primary and lower level. The workforce with secondary level education comprised 26.8 million workers (26.8%) and those having undergraduate education amounted to 1.7 million workers (7.1%). It is clear that informal workers are by far the majority (almost 2/3) and have low educational attainment. (See Table 3).

Table 3 - Informal Workers by Levels of Educational Attainment in 2010

Educational Attainment	Number (Million)	Percentage
Other	0.05	0.2%
No education	0.79	3.3%
Undergraduate	1.71	7.1%
High school	2.83	11.7%
Secondary	3.64	15.1%
Primary	6.13	6.1%
Lower than primary	8.98	37.2%

Source: National Statistical Office

4) Informal Workers' Nature of Work

By occupation, most informal workers were **skilled at agricultural and fishery work, with 13.8 million or 57.3% of them** engaged in such work. The other occupations include 4.9 million workers (20.5%) engaged in providing services, shop and market sales work and 1.8 million workers (7.6%) engaged in elementary occupations related to sales and service provision, respectively (See Table 4).

Taking into account the nature of their economic activity, it was found that **more than half of informal workers, 14.2 million or 58.9%, worked in the agricultural sector**, followed by 4.0 million (16.7%) workers engaged in wholesale and retail sales work, 1.9 million (7.7%) workers engaged in the hotel and restaurant industry, 1.1 million (4.6%) workers engaged in manufacturing, 970,000 workers (4.0%) engaged in construction work, and the rest of them in other industries (see Table 5).

Table 4 - Informal Workers by Occupation in 2010

Occupation	Number (1,000 persons)	Percentage
1. Legislators, senior officials and managers	608.2	2.5
2. Professionals	103.0	0.4
3. Technicians	210.7	0.9
4. Clerks	154.2	0.6
5. Service workers and shop and market sales workers	4,947.0	20.5
6. Skilled agricultural and fishery workers	13,819.3	57.3
7. Craft and related trades workers	1,740.4	7.2
8. Plant and machine operators and assemblers	723.4	3.0
9. Elementary occupations	1,827.2	7.6
10. Workers not classifiable by occupation	-	-
Total	24,133.7	100.0

Source: National Statistical Office

Table 5 - Informal Workers by Industry in 2010

Type of Industry	Number (Million)	Percentage
Agriculture	14.216	58.9
Fisheries	0.270	1.1
Manufacturing	1.102	4.6
Construction	0.970	4.0
Wholesale and retail Trade	4.036	16.7
Hotel and restaurant	1.862	7.7
Transport	0.522	2.2
Community/social services	0.512	2.1
Others	0.644	2.7

Source: National Statistical Office

5) Wages and Salaries of Formal and Informal Workers

The survey found that employed informal workers received an **average wage of 4,088 baht (USD 136.26/USD1 = 30.00 baht) per month**. However, the majority informal workers engaged in agricultural sector earned an average wage of **only 3,024 baht (USD 100.8)** per month. Those employed by private households and received an average wage of 3,428 baht (USD114.26) a month. Informal workers engaged in financial intermediation (chiefly providing small loans) earned the highest average wage of THB 15,142 (USD 504.73) a month (See Table 6).

Moreover, the **average monthly salary** received by informal workers is **significantly different** from that earned by formal workers. A formal worker's average salary was 10,526 baht (USD 350.86), which was **about 2.5 times** higher than that earned by his/her informal counterpart.

Table 6- Average Wages and Salaries of Formal and Informal Workers by Industry in 2010

Industry	Wages and salaries (THB/Month)		
	Formal Workers	Informal Workers	% of Formal
1. Agriculture, hunting, forestry	5,240	3,024	42%
2. Fisheries	6,599	4,550	31%
3. Mining and quarrying	12,538	4,793	62%
4. Manufacturing	8,479	4,343	49%
5. Electricity, gas and water supply	20,351	6,000	71%
6. Construction	7,434	4,589	38%
7. Wholesale and retail trade, repair of motor vehicles and motorcycles	8,540	4,646	46%
8. Hotels and restaurants	6,710	4,699	30%
9. Transport, storage and communications	13,923	3,954	72%
10. Financial intermediation	21,788	15,142	31%
11. Real estate, renting and business activity services	14,655	5,279	64%
12. Public administration and national defence, including mandatory social security	13,945	6,041	57%
13. Education	18,906	5,455	71%

Industry	Wages and salaries (THB/Month)		
	Formal Workers	Informal Workers	% of Formal
14. Health services and social welfare work	13,912	5,100	63%
15. Other community, social and personal services	7,872	3,976	49%
16. Employment in private households	5,405	3,428	37%
17. International organizations and other foreign agencies and member organizations	6,142	-	N/A
Simple Average	11,320	5,314	53%

Source: National Statistical Office

6) Work-related Injuries and Accidents of Informal Workers

In 2010, 3.5 million informal workers, or 14.6% of the total, were injured or involved in work accidents. Compared with the 4.6 million informal workers injured or involved in work accidents in 2009, the difference in the two groups amounting to 1.1 million persons in 2010 accounted for 23.9%.

In terms of the types of injuries or accidents suffered by informal workers, it was found that **most of them, 2.2 million (63.7%), were cut or pricked by sharp objects**. Ranking next were falls, 500,000 workers (14.1%); being struck or hit, 310,000 workers (8.7%); vehicle-related accidents, 220,000 workers (6.1%); and being burnt or scalded, 130,000 workers (3.8%).

On average, about 9,637 informal workers were injured or involved in work accidents each day in 2010. Though the number was lower than that in 2009, which amounted to 12,603 workers and was related to cutting tools, it was still rather high. Thus, it is critical that employers and the self employed pay more attention to and provide increased work safety in the informal sector.

7) Other Problems of Informal Workers

The survey of the National Statistical Office focused on three main areas: **work-related problems, occupational hazards and other work environment issues**.

Regarding work-related problems, **low wages was the problem most informal workers (2.6 million or 48.5% of them) wanted the government to help address, followed by irregular wage payment (1.1 million or 21.5% of them), and arduous work (1.0 million or 19.0%)**.

As for occupational danger, **most** informal workers, 1.7 million or 63.7% of them, suffered from **contact with toxic chemicals**; followed by 580,000 workers or 21.6 % of them operating unsafe machinery and tools; and 150,000 workers or 5.5% suffered irritation to their ears and eyes.

Concerning work environment, **poor work posture** (maintaining an unnatural position for a long time can cause physical pain and bodily dysfunction) was the problem suffered by most informal workers, 1.2 million or 37.9% of them. Coming second was dust, smoke and exposure to noxious odours — suffered by 670,000 workers or 21.2% of them — and third, - inadequate lighting, suffered by 590,000 workers or 18.7% of them (See Table 7).

Table 7 - Informal Work-related Problems, Occupational Danger and Work Environment in 2009

Work-related Problems	1,000 Persons(%)	Occupational Danger	1,000 Persons(%)	Work Environment	1,000 Persons(%)
1. Low wages	2,562.4 (48.5)	1. Contact with toxic chemicals	1,699.6 (63.7)	1. Crowded workplace	54.4 (1.7)
2. Arduous work	1,003.8 (19.0)	2. Operating unsafe machinery and tools	575.9 (21.6)	2. Air-polluted workplace	319.8 (10.1)
3. Irregular working hours	67.9 (1.3)	3. Irritation to ears and eyes	147.2 (5.5)	3. Poorly-ventilated workplace	24.3 (0.8)
4. Irregular employment	1,134.4 (21.5)	4. Working on high ground/under water/underground	123.4 (4.6)	4. Poor work posture	1,198.8 (37.9)
5. Too many working hours	49.4 (0.9)	5. Others	12.0 (4.6)	5. Dust, smoke, smell	668.8 (21.2)
6. No holidays	94.5 (1.8)			6. Loud noise	56.7 (1.8)
7. Not entitled to leave of absence	39.2 (0.7)			7. Inadequate lighting	591.5 (18.7)
8. Lack of welfare	328.7 (6.2)			8. Others	245.4 (7.8)
Total	5,284.1 (100.0)	Total	2,668.8 (100.0)	Total	3,162.1 (100.0)

Source: National Statistical Office

2.2 Research and academic studies

Research and academic studies reinforce and expand the issues in the informal sector. A review of associated literature details major problems as follows:

1. Occupational health and safety and work environment: Turning a house into a workplace easily results in an unsuitable work environment for informal workers and for the family. In addition, the lack of adequate knowledge of occupational health and safety needs can create threats. Poor and faulty work tools can cause accidents while unsuitable posture can bring about aches and pains. Irregular employment, low wages leading to long working hours and the lack of appropriate rest periods were also considered as problems contributing to health and safety issues for informal workers.

2. The Government (and the society at large) has scant knowledge of informal workers' health problems. Government agencies responsible for healthcare-service policymaking, such as the Ministry of Public Health and National Health Security Office, have not paid enough attention to or put in place any specific preventative or curative healthcare programmes for informal workers.

3. Academic studies also point to the lack of employment security and social welfare benefits is another important problem for informal workers. Their employment is irregular while their wages are disproportionately low. The need to provide for a family results in arduous, irregular and longer working hours than for general workers.

4. In 1996 the Office of Agricultural Economics in the Ministry of Agriculture and Cooperatives elevated its Center for Agricultural Statistics set up in 1973 to Center for Agricultural Information in 1996 to collect data on the economic and social conditions and problems of farming households. However, an accurate database at group and local level is still lacking. The result of course is that

planners and administrators lack adequate information to effectively plan and manage social protection and development programs for informal workers, particularly those in the non-agricultural sector.

5. Although most informal workers (70.6% of them) are recipients of the Universal Health Coverage scheme⁶, or the Gold Card programme; however, this does not cover Occupational Health and Safety requirements.

6. Informal workers have limited access to credit services to fund their work. Their insecure employment and desperate struggle for survival prevent them from getting organized; hence further weakening their bargaining power.

7. They are deprived of training opportunities to develop employment related skills.

8. The Ministry of Labour has no office at district and sub district levels. Likewise, the local administration organizations and health centres that work closely with the informal workers are not aware of and have no basic information in their system on the needs of informal workers. That was why neither policy nor municipal ordinance, or any instructions on the allocation of budget to support the development and protection of informal workers in an integral manner have been put in place.

8) Changes in numbers of informal workers from 2005-2010

Data collected between 2005 and 2010, shows that employment in the informal sector **increased in this period**. From 2009-2010, the number of informal workers showed a decrease, implying that **more informal workers migrated into the formal labour sector**.

⁶ - The scheme was first implemented in six pilot provinces in April 2001 and covered every province in 2002. The National Health Security Act was passed in 2002 and the National Health Security Fund was subsequently established to ensure that all Thai people, including informal workers, have access to healthcare services.

Chapter 3 - Legislation, Policies and Plans Related to Informal Workers

Thailand's related legislation, ranges from the Constitution of the Kingdom of Thailand—the country's most important law—to a variety of acts, laws, ministerial regulations, notifications, and orders, as well as stated government policies and national development plans and strategies created from time to time. All are aimed at protecting the country's labour force, including the informal workers. In spite of the plethora of opportunities through the above, the majority of workers in the informal economic sector remain insufficiently protected. A detailed examination of the laws, policies and plans related to informal workers follows.

3.1 Constitution of the Kingdom of Thailand B.E. 2550 (2007)

The most recent Constitution of the Kingdom of Thailand B.E. 2550 (2007) has many sections designed to promote and protect the rights of Thai citizens, including informal workers. It also requires that the State formulates policies that promote people's economic activities. The following aspects are especially germane to the informal sector.

- Rights and Liberties at Work⁷: A person shall have the right to security in respect of safety and welfare at work, including such security in life both during their working life and upon leaving their employment, **(Section 44)**.
- Rights to Public Health Services: A person shall enjoy the right to receive appropriate health services up to the national standard, which shall be provided thoroughly and efficiently while the very poor shall have the right to receive this medical treatment free, from State public health centers **(Section 51)**.
- State Policies in Relation to the Economy: The State shall provide for pensionable savings for the use of people in their old age; ensure a fair distribution of income, protect, promote and expand opportunities for people's businesses with a view to economic development; promote jobs for the working-age population, protect child and women against unfair labour practices, organize labour relations and a **tripartite system under which employees may elect their representatives**; organize the social security system and provide protection to the effect that employees doing the work of the same value should receive fair remuneration, fringe benefits and welfare without discrimination **(Section 84, paragraphs 4, 6, and 7 respectively)**.

3.2 10th National Economic and Social Development Plan B.E. 2550-2554 (2007-2011)

This Development Plan addresses Strategies for Development of Human Quality towards a Knowledge-based and Learning Society Policies related to informal workers, as follows:

⁷ An English translation is available at www.senate.go.th/th_senate/English/constitution2007.pdf.

1. Providing Social Security for the informal sector and the underprivileged to include life insurance, social welfare, health services, housing security, consumer protection, and human rights security. In 2005, there were 8.2 million workers insuring themselves under the Social Security system, accounting for 22.73 per cent of the total workforce. The informal sector which accounts for 70 per cent does not have access to the system. Even though the informal sector and the underprivileged have more access to social services, in the form of welfare, assistance is far from comprehensively available.

2. Developing various savings systems including mandatory savings for pensions by establishing the National Pension Fund with a pension framework covering 13 million formal workers and developing a savings system for ageing informal workers so that these systems are comprehensive and cover the whole workforce.

3.3 Master Plan on Labour B.E.2550-2554 (2007-2011)

The Plan contains strategies to promote workers' employment security and good quality of life by ensuring that both formal and informal workers are protected in having good quality of life, security at work and in life by the following means:

- 1) Ensuring that workers' rights are better protected and their welfare benefits increased, measured by the percentage of workers legally protected;

- 2) Ensuring that all formal workers are provided with social security, measured by the percentage of formal workers socially protected; and

- 3) Ensuring that 10% of the persons belonging to occupation-based groups that are not employees voluntarily enter into the social security system within five years, measured by the percentage of success in extending social protection to non-employee persons.

3.4 Policies on Labour between December 2008-August 2011

1. Providing protection for formal and informal workers according to Thailand's labour standards, especially those for occupational safety, health and working environment by encouraging places of work to pass the test and be certified for standard labour management to ensure worker's rights and protection in compliance with the international labour standards; and

2. Reforming and consolidating the social security system and providing for independent and transparent management, extending its protection to cover the insured persons' children and spouses in relation to sickness as well as increasing other benefits for the insured.

3.5 Five Year Strategic Plan for Social Security Development (B.E. 2553-2557) (2010 – 2014)

The Plan provides for developing improved benefits and managing the Fund in a balanced, appropriate and fair manner, focusing on increasing the number of people entitled to protection and extending the protection to cover informal workers.

3.6 Labour Protection Act B.E. 2541 (1998)

The Labour Protection Act B.E. 2541 applies to general employees of the private sector, but exempts three groups of employees from its protection, as follows:

1) **Employees who are completely exempted from this Act:** Those who are protected under specific laws enacted for their benefit include:

- (1) Persons who work for central, regional, and local government administrations;
- (2) Officials and employees of state enterprises; and
- (3) Teachers and head teachers of private schools.

2) **Employees who are protected with some restrictions:** Certain groups of employees are provided with particular types of protection only, such as:

(1) **Employees, who are employed for domestic work which does not involve a business**, mean those employed as servants, nannies, cooks, cleaners, laundresses, gardeners, guards, and other jobs within a residence only.

Domestic workers are partially protected whereby employers are required to pay wages in Thai currency, at the workplace of the employee, at least once a month. With the employees' consent, the wages can be paid in foreign currencies or outside of the workplace or twice a month. The employer must provide the employee who has already worked for a full year, with an annual holiday of at least six working days each year.

(2) **Employees whose work does not aim at profit making**, such as employees of foundations and non-profit associations, are partially protected in relation to such aspects as the requirement to be paid in Thai currency at the workplace, and at least once a month, being paid similar wages for the same nature, quality and quantity of work regardless of whether the employees are male or female, being protected against the employer's demand for a performance guarantee or guarantee of money in respect of damages, except where the nature or type of work requires that the employee be responsible for the employer's money or property, etc.

Furthermore, the Workmen's Compensation Act B.E. 2537 (1994) also exempts from its protection, employees whose employment does not aim at profit making.

3) Employees who are protected differently from those protected by the Labour Protection Act: Such people include employees whose work is specified by notifications or ministerial regulations differently from that prescribed by the Labour Protection Act B.E. 2541 (1998), such as:

(1) Employees in executive, technical and administrative positions as well as finance or accounting related work will be protected differently in respect of overtime pay if they are pregnant women: if the employees consent, the employer may ask them to work overtime on a normal working day.

(2) Employees in vending or direct sales work are protected differently in respect of overtime pay. If the employer has already paid commissions on the employees' sales, they are not entitled to receive overtime pay unless the employer agrees to do so.

(3) Employees engaged in marine fisheries;

(4) Employees engaged in work to be performed at home or homeworkers; and

(5) Employees engaged in agricultural work, who are not employed throughout the year.

3.7 Labour Relations Act B.E. 2518 (1975)

This Act prescribes criteria for the establishment of an organization to manage demands, negotiations and settlement of labour disputes between employees and employers. Coming into force for 30 years on 28 March 2005, it is in comparison to other labour protection and social security laws, the labour protection law most in need of revision. Thailand's labour movement has demanded, for over 10 years, that the government and Ministry of Labour revise it.

Coverage of the Thai Labour Relations Act can be summarized, as follows:

(1) ***Enterprises which are entirely excluded from the Labour Relations Act***, deprive the employees of these enterprises of their rights to set up labour unions. These include civil servants and government employees, self-employed workers and farmers;

(2) ***Persons who are not entitled to establish labour unions or become labour union committee members***: Only employees of Thai Nationality, who are of legal age and not under the age of 20, and who are employed in the same undertaking, can establish a labour union and become a labour union committee member relevant to that undertaking.

Foreign employees and Thai employees **under the age of 20** and not working in the same workplace or undertaking do not have the right to establish, as founding members, a labour union together with workers of another undertaking or to be elected or appointed as members of the labour committees or sub-committees. **They are entitled to be ordinary members of the labour union only.** Take for instance; employees of a sugar refinery cannot form an organization together with independently employed sugar plantation workers because they have different forms of employment in spite of the fact that their work concerns the same type of supply of raw materials to the sugar refinery.

3.8 Entitlement to Social Protection

There two related Acts providing social protection for informal workers: Workmen's Compensation Act B.E. 2537 (1994) and Social Security Act B.E. 2533 (1990).

Workmen's Compensation Act B.E. 2537 (1994): This legislation creates a fund to be utilized for paying compensation on behalf of the employer to the employee who suffers injuries, death or disappearance as a result of work or in the course of protecting the interests of the employer or by direction of the employer, or from sickness resulting from work caused by diseases related to the nature or condition of work, or an illness brought about in performing the work. An employer, who has at least one employee, has the duty to pay contributions in accordance with the types of risk of the enterprise.

Limitations of Coverage: Seven **types of employees or enterprises are not covered.**

These are civil servants and employees of government agencies/state enterprises, including employees who are employed for domestic work and who are not involved in business, employees of natural legal persons whose employment is not involved in a business and employees of an employer whose work involves peddling or street vending.

Social Security Act B.E. 2533 (1990): This legislation protects employees under **Section 33** and provides for coverage for unemployed persons as insured under **Section 39.** It requires the employer, employee and government to pay contributions at the rates and periods of time prescribed by law in return for seven benefits, as follows: 1. Accident or sickness, 2. death, 3. infirmity, 4. maternity, 5. child allowance, 6. old age (lump sum or pension) and 7. Unemployment in an enterprise with at least one employee, the employer, employee and the government must pay contributions at the rates prescribed by law.

Limitations of Coverage: Seventeen types of **employees or enterprise are not protected.**

Most are civil servants and employees of government agencies, state enterprises, and foreign governments or organizations. These include domestic employees not involved in a business, employees engaged in agriculture, forestry, fisheries and cattle farming , who are employed on an occasional or seasonal basis; employees of natural persons whose employment in not involved in a business; and employees of an employer involved in peddling or street vending.

Workers who are **not** employees or who are informal workers are entitled to be insured under the Social Security Act in two ways, under Section 39 or 40. Table 8 below shows a comparison of distinctive features of the coverage under *Sections 33, 39, and 40.*