

# Informal Worker's Struggle for Labor Relations Rights and the Recent Legislative Development in Thailand

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## I. The situation of labor market, workers, and workstyle diversification

Based on data provided by the Ministry of Labor, the workforce comprised 40,530,000 individuals in 2023, with approximately 54% being male and 46% female (Figure 1). While the number of workers in the informal sector in 2022 was slightly lower than in the formal sector, it has since increased to constitute more than half of the entire workforce. The distribution of workers across age groups between 20 and 59 years old is relatively even. However, only 12% of individuals aged 60 and above are currently employed (Figure 2).<sup>1</sup>

Employment within the informal sector is not a recent phenomenon in Thailand. In fact, more than half of the country's workforce has been engaged in informal sector activities. However, following the pandemic, there has been a notable surge in the prevalence of new forms of work. This demographic of workers faces similar challenges to their counterparts in other nations, including their non-employee status. Nevertheless, it is evident that the nature of these emerging forms of work has undergone significant changes. Take the case of food delivery riders. Prior to the proliferation of food delivery services, platform workers operated solely as self-employed individuals. They enjoyed considerable flexibility and independence in their work arrangements. However, the dynamics of this new work model have evolved, introducing a greater degree of inflexibility.<sup>2</sup> Platform workers are now obligated to adhere to minimum hour requirements, follow their predetermined schedules, and heavily rely on customer feedback because of the use of algorithms to organize, supervise or evaluate work.<sup>3</sup> According to the ILO report on the platform economy in 2024, it concludes that “[t]hese challenges relate to different dimensions of decent work, including the employment status of the workers, their remuneration and working time, their access to social security and occupational safety and health, their representation and access to social dialogue and the termination/deactivation and access to dispute resolution mechanisms. This includes the lack of access by workers and their representatives to information concerning how algorithms affect their working conditions, and in this respect, the extent to which the use of algorithms results in fair outcomes.”

1. “Labor Statistics,” Ministry of Labor, accessed January 10, 2024, <https://www.mol.go.th/academician/>.

2. Nanthaphon Putthapong, “Legal Measures for Protecting Digital Platform Workers: A Case Study of Food Delivery Businesses in Thailand,” *Ramkhamhaeng Law Journal* 11, no. 1 (June 2022): 271; Bavet Yanapisoot, “The Legal Problem and Legal Measures for Labor Protection of Food Delivery Platform in Thailand,” *Journal of MCU Haripunchai Review* 8, no. 1 (March 2024): 161-162.

3. International Labor Organization, *Realizing decent work in the platform economy*, para. 290 (ILC.113/Report V(1) 2024), <https://www.ilo.org/resource/conference-paper/realizing-decent-work-platform-economy>.

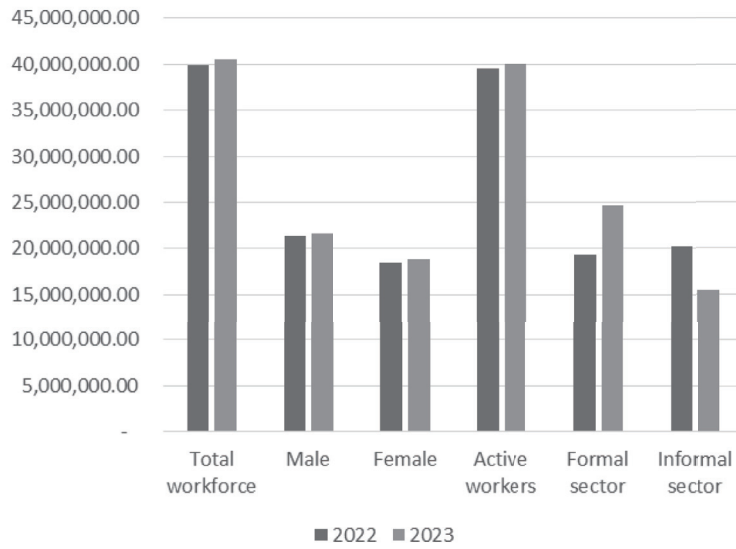


Figure 1. Number of people in Thai labor market in 2022–2023 by sector and gender

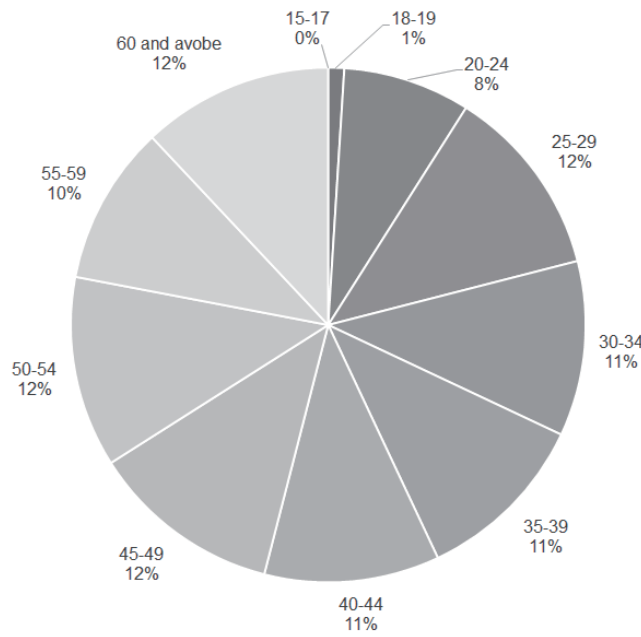
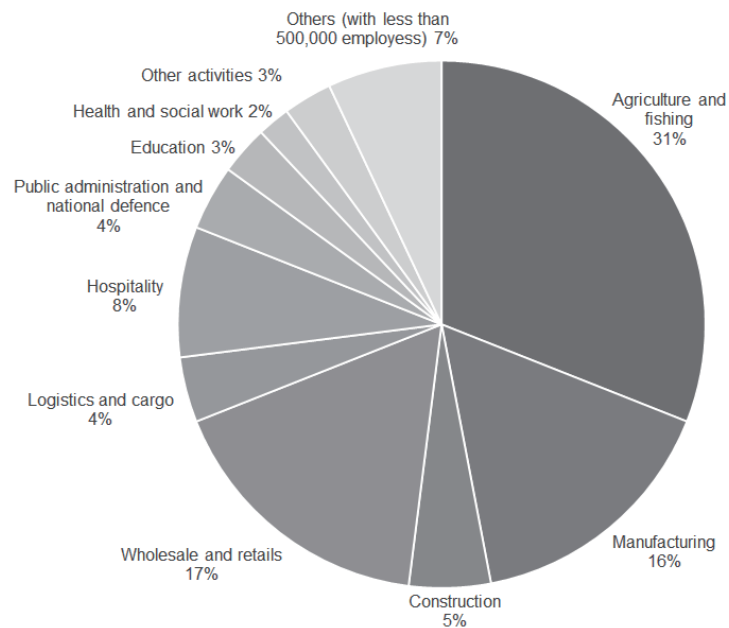


Figure 2. Labor force participation rate in Thailand by age group (2023)



**Figure 3. Share of workers by industry in Thailand (2023)**

## II. Basic structure of the Collective Labor Relations Law

Although Thailand has yet ratified ILO Conventions 87 and 98, the right to organize has been granted to employees in the private sector through legislative instruments for quite some time.<sup>4</sup> In the early days, employees in employment relationships were mostly Chinese immigrant workers. At that time, Thais preferred to work as self-employed and enjoy their freedom. Consequently, the law was primarily utilized by immigrant employees who worked under employment contracts.<sup>5</sup>

The current Labor Relations Act in Thailand has been in force since 1975. It is the main instrument regulating collective bargaining and all industrial actions. Its provisions cover labor dispute resolution, industrial actions, and the procedure for forming a labor union. The Act requires each labor union to protect employees' interests in regard to their working condition. The objectives of the union must also include the promotion of a better relationship between the employer and employees. In order to establish a union, at least 10 eligible persons must submit a written application, together with rules of the union, to the register officer.<sup>6</sup> The Labor Relations Act requires that eligible persons who may form a union must be employees who hold Thai citizenship, at the age of majority or older, who work for the same employer or at least in the same industry.<sup>7</sup>

Once a labor union is established, the Act grants unions the following powers and duties:<sup>8</sup>

- requesting negotiation, negotiating, and concluding collective agreements;
- managing and performing any act for the benefit of their members, subject to the labor union's

4. Earnest L. Fogg, "Labor Organization in Thailand," *Industrial and Labor Relations Review* 6, no. 3 (April 1953): 368–377.

5. Earnest L. Fogg, "Labor Organization in Thailand," 368 & 375.

6. Section 89, Labor Relations Act.

7. Section 88, Labor Relations Act.

8. Section 98, Labor Relations Act.

objectives;

- providing information services to facilitate job searches for their members;
- advising members and representing them in work-related disputes or complaints;
- providing services related to the allocation of money or properties for the welfare of their members or the public interest;
- collecting membership fees and dues at the rate determined by the union's regulations.

One of the most important functions of labor unions is to negotiate in the collective agreements. The Act requires that both employers and unions shall start the process of negotiation once the other party expresses their request to negotiate on collective agreement.<sup>9</sup> The Act sets the details regarding timeframes and requirements for strikes and lock outs.<sup>10</sup> All industrial activities are protected against unfair labor practices which include dismissal.<sup>11</sup>

However, this legal provision solely pertains to employees within the private sector.<sup>12</sup> Despite industrial actions being permitted among civil servants, public sector employees, and state enterprise employees, they are regulated by distinct legal statutes. Consequently, due to this constraint, the majority of workers in emerging forms of work, such as platform workers, lack the right to organize under the Labor Relations Act.

Apart from a labor union, the Act allows employees in workplaces with 50 or more employees, by their own choosing, to establish an employee committee.<sup>13</sup> The employee committee is a representative body of employees who are not affiliated with a labor union. Unlike unions, employee committees represent all employees in the workplace, whether or not they are member of any labor unions. The functions of an employee committee also differ from those of a union. The employee committee aims to demand better benefits and resolve any disputes between the employer and the employees. However, the committee does not have the right to engage in any labor relations activities. Under the Labor Relations Act, employers are required to meet with the employment committee every three months in order to review the terms of benefits, discuss working regulations, hear employees' complaints, and settle any labor disputes. The Act also empowers the committee to file a complaint with the Labor Court if the committee determines that any of the employer's actions are unfair or cause damage to employees.

Unless permission is granted from the Labor Court, the members of the employment committee also have immunity from dismissal, wage reduction, discipline, or any other act that forces a committee member to resign.<sup>14</sup> In addition, in order to prevent prejudice, an employer may not give or promise to give any monetary benefits to committee members, except their wages, overtime pay, bonus, and other benefits that the committee members are entitled to as regular employees.<sup>15</sup>

### III. The current state and challenges of labor unions

According to data provided by the Labor Relations Bureau, Department of Labor Protection and Welfare, only 530,202 employees in Thailand were union members in 2023 (Table 1). This figure represents 2.1%

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9. Section 15 & 16 Labor Relations Act.

10. Section 22–26 and 34, Labor Relations Act.

11. Section 31, 121–124, Labor Relations Act.

12. Section 4, Labor Relations Act.

13. Section 45, Labor Relations Act.

14. Section 52, Labor Relations Act.

15. Section 53, Labor Relations Act.

**Table 1. Number of unions and union members in Thailand between 2019–2023**

(As of the end of each year)

Year	2023	2022	2021	2020	2019
Number of state enterprise unions	45	45	45	47	48
Number of state enterprise union members	142,143	144,514	152,338	153,876	170,599
Number of private sector unions	1,292	1,424	1,432	1,422	1,401
Number of private sector union members	388,059	509,020	458,052	454,539	449,371
Total	530,202	653,534	610,390	608,415	619,970

of formal sector employment, marking a decrease from 3.4% in 2022.<sup>16</sup> The percentage has consistently remained very low for many decades since the inception of labor unions. This positions Thailand as the country with the lowest labor union rate in the world.

Despite the enactment of the Labor Relations Act in 1975, various challenges persist in the implementation of industrial activities. These challenges include:

Firstly, workers in the public sector, including civil servants and employees of governmental agencies, remain unable to establish a labor union. Despite constitutional guarantees affirming the right to organize for all individuals, there is a lack of specific legislation delineating the scope of their bargaining rights with their employer, namely the government. Consequently, no labor union exclusive to public sector employees has been formed to date.

Secondly, the Labor Relations Act requires that the union founder need to hold Thai nationality. Consequently, although foreign workers are permitted to join union membership, they lack the autonomy to form unions independently.<sup>17</sup> This specific legal provision contradicts the fundamental principle of freedom of association, which grants every worker and employee the right to establish a labor union irrespective of nationality.<sup>18</sup>

Thirdly, although the right to strike is allowed in Thailand, only private sector employees can exercise it. A notable portion of union members, approximately 30%, who are state enterprise employees, encounters limitations on exercising fundamental industrial activities, such as striking.<sup>19</sup> This constraint hampers the efficacy of collective bargaining and undermines its effectiveness as a mechanism.

Lastly, as previously mentioned, a considerable number of workers in emerging forms of employment are precluded from unionization due to their non-employee status. The Labor Relations Act provides protection solely to employees with formal employment relationships, thereby excluding these workers from its coverage.<sup>20</sup>

These challenges collectively impede the full realization of industrial rights for many workers in Thailand, particularly those in the public sector, state enterprises, and the informal sector. Consequently, workers in these sectors encounter barriers to fully engaging in collective bargaining with their employers.

16. "Number of Labor Organization in Thailand," Labor Relations Bureau, Department of Labor Protection and Welfare, accessed January 10, 2024, <https://relation.labour.go.th/2017-08-25-04-50-47>.

17. Section 88, Labor Relations Act.

18. *See* Article 2, ILO Convention no. 87 - Freedom of Association and Protection of the Right to Organise Convention, 1948 (Workers and employers, without distinction whatsoever, shall have the right to establish and...).

19. Section 33, State Enterprise Labor Relations Act.

20. Section 4 & 5, Labor Relations Act.

#### IV. The role of the state, labor unions and other worker representatives in the era of diversified workers

The informal sector workforce now accounts for approximately half of the total workforce. Historically, this group of workers has received limited rights and protections from the government. Although informal workers have the option to voluntarily contribute to the Social Security Fund,<sup>21</sup> the benefits offered, albeit supplemented by partial subsidies, do not encompass essential healthcare provisions, which are important. Moreover, there have been no legal provisions safeguarding wages, job security, occupational safety, or worker's compensation for these individuals working in the informal sector. However, these issues have gained more attention from both society and governments globally, especially in light of technological advancements and the widespread adoption of digital technologies, which have catalyzed a shift in work trends.

In December 2021, the Cabinet endorsed the Ministry of Labor's proposal for drafting legislation aimed at safeguarding independent workers. As of March 2024, the time when this paper is written, Thailand is in the process of revising the Draft law on Promotion and Protection of Independent Workers. The introduction of this Draft law signifies the Thai government's acknowledgment of labor protection issues facing workers in emerging forms of work. Unprecedentedly, this Draft law introduces various protections for independent workers, including:

- Specifying a minimum working age of 15 years.<sup>22</sup>
- Mandating clear wage agreements in written contracts.<sup>23</sup>
- Outlining procedures for freelancers and independent workers to form unions, requiring a minimum of 15 workers for union formation.<sup>24</sup>
- Endowing independent workers' unions with significant powers, including the ability to collectively bargain with employers on behalf of their members.<sup>25</sup>
- Enabling independent workers to initiate negotiation processes for labor disputes by submitting requests to independent labor inspectors.<sup>26</sup>
- Prohibiting unjustifiable work suspensions for independent workers.<sup>27</sup>
- Granting state intervention in cases of unfair collective agreements.<sup>28</sup>
- Establishing an independent worker fund to support independent workers.<sup>29</sup>
- Imposing non-criminal penalties, except for in cases involving the employment of workers below the age of 15 where criminal penalties may apply.<sup>30</sup>

In general, it is evident that this Draft law aims to establish protections for workers in the emerging forms of work. Apart from addressing issues related to wages and safety, the Draft law grants rights to organize and collectively bargain with employers. This shows that the law in Thailand is moving in the same direction as international trends. The ILO Centenary Declaration for the Future of Work, adopted by the International

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21. Section 40, Social Security Act.

22. Section 30, Draft law on Promotion and Protection of Independent Workers.

23. Section 36, Draft law on Promotion and Protection of Independent Workers.

24. Section 14, Draft law on Promotion and Protection of Independent Workers.

25. Section 18, Draft law on Promotion and Protection of Independent Workers.

26. Section 48, Draft law on Promotion and Protection of Independent Workers.

27. Section 51, Draft law on Promotion and Protection of Independent Workers.

28. Section 42, Draft law on Promotion and Protection of Independent Workers.

29. Section 71, Draft law on Promotion and Protection of Independent Workers.

30. Section 115, Draft law on Promotion and Protection of Independent Workers.

Labour Conference at its 108th Session (2019), calls on all ILO Member States to put in place “policies and measures that ensure appropriate privacy and personal data protection, and respond to challenges and opportunities in the world of work relating to the digital transformation of work, including platform work.”<sup>31</sup> Since its initiation, the ILO has been working hard towards the adopting an International Labor Standards on platform workers and aims to complete them in the next couple of years.

According to the study by the ILO on “41 legislative instruments from around the world that deal explicitly with aspects of decent work on digital platforms,”<sup>32</sup> one can conclude that countries regulate platform work differently, but broadly encompasses which could be divided into 4 groups:<sup>33</sup>

- (a) amendments to existing labor legislation to include platform work (for example, in Belgium, Chile, Croatia, France, Italy and Portugal);
- (b) specific standalone legislation on platform work (for example, in China and the Canadian Province of Ontario);
- (c) sector-based legislation (for example City of Seattle and Washington State, United States); and
- (d) specialized laws that extend labor and/or social protections to platform work (for example, the social security laws of India and the Republic of Korea).

Thailand is moving in the same direction as China and the Canadian province of Ontario, both of which are passing specific standalone legislation on platform work. Although the issues covered in the Draft law are important and were mentioned in the ILO report (1948), the Draft is, however, still missing many other significant issues.

The Draft law and its proposed provisions have attracted much criticism and there is still ongoing debate regarding their appropriateness. Nonetheless, the government recognizes the importance of safeguarding this group of the workforce while also acknowledging the necessity for adaptability within this evolving forms of work. This contemporary work model not only enhances consumer access to services at reasonable prices, but also generates employment opportunities for a significant portion of the workforce. Without this sector, many individuals would face unemployment, and the government cannot ensure employment in the formal sector for all. Consequently, the Draft law was drafted to provide protection while ensuring the viability of enterprises. This indicates that the Draft law aims to avoid imposing excessive burdens on enterprises, and it does not include criminal punishments.<sup>34</sup>

Hence, in addition to the obligations incumbent upon enterprises regarding worker compensation, the Draft law stipulates that the government assumes the responsibility of promoting registered independent workers through various means. These include vocational training, job creation and security, job consulting services, occupational safety, social security, and rights to organize.<sup>35</sup> Furthermore, the independent fund is mandated to offer personal loans, accident insurance, and health insurance.<sup>36</sup> Platform workers are entitled to supplementary protection in the form of accident insurance and workmen’s compensation.<sup>37</sup>

Of all the rights and protections outlined in the Draft law, the right to organize stands out as particularly noteworthy. As previously mentioned, Thailand’s labor union rate in private sector ranks among the lowest in the world. It is hard to imagine a significant increase in labor union participation within the informal sector,

31. International Labour Organization, *Realizing decent work in the platform economy*, para. 1.

32. International Labour Organization, *Realizing decent work in the platform economy*, para. 98.

33. International Labour Organization, *Realizing decent work in the platform economy*, para. 99.

34. Section 117–124, Draft law on Promotion and Protection of Independent Workers.

35. Section 25, Draft law on Promotion and Protection of Independent Workers.

36. Section 26, Draft law on Promotion and Protection of Independent Workers.

37. Section 27, Draft law on Promotion and Protection of Independent Workers.

even with the legal affirmation of the right to unionize. Therefore, after the law is passed, the primary concern is whether independent workers' rights would be effectively protected if collective bargaining mechanisms prove unsuccessful. Moreover, if collective bargaining is not the primary method of safeguarding informal workers, it prompts consideration of whether we should diminish reliance on the freedom of the platform and workers to negotiate and instead implement labor standards through legislative instruments covering comprehensive protection in all aspects.

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