

## **The Informally Employed in the Philippines: Issues in Job Security of Tenure, Social Security Coverage and Measurement**

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### **Abstract**

Informal employment is persistently pervasive in the Philippines with 2021 estimates indicating more than 7 in 10 Filipino workers as informally employed, defined as workers lacking effective coverage from labor and social protection laws. About 44% of the informally employed were working in the formal sector, 50% were in the informal sector and the rest in private households. The paper examines the issues of security of tenure, social security coverage, and measurement of informal employment in the Philippines. Philippine labor laws provide full protection for workers in regular employment including the security of tenure, and full entitlement to mandated wages and social benefits. To save on labor costs, many employers who are legally obligated to pay about two-thirds of the social security contribution on behalf of every employee, evade or avoid compliance by non-declaration of some employees or misclassifying workers as independent contractors. The paper recommends the enactment into law of the Magna Carta for Workers in the Informal Economy, the adoption of social security schemes that consider the limited contributory capacity of informal workers, the promotion of collective representation and

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bargaining for informal workers, the strengthening of labor enforcement, and the inclusion of questions in the Labor Force Survey that measures the informality of employment in the context of Philippine labor laws.

**Keywords:** Informal sector, informal economy, dual theory, labor market regulation, social security, security of tenure

## **Introduction**

The informal economy is an important part of the Philippine economy and is estimated to account for more than 70% of total employment and about one-third of the country's GDP (Cabegin, 2022). Statistics on informal employment are key to monitoring the attainment of the United Nation's Social Development Goals of decent work for all (Goal 8), ending poverty (Goal 1), reducing inequalities in income (Goal 10), promoting peaceful and just societies, and building effective and inclusive institutions at all levels (Goal 16). The presence of a large informal economy presents a challenge to policymakers as this is characterized by poor and unsafe working conditions, low productivity and wages, limited access to credit and training, and a lack of legal and social protection. Hence, without the savings necessary to hedge against economic downturns, workers in informal employment are highly vulnerable to negative external shocks, such as the COVID-19 pandemic, that adversely affected jobs and incomes. The pervasive and persistent informality of the Philippine economy and workforce hinders the promotion of decent work and eradication of extreme poverty, weakens the generation and mobilization of fiscal resources, and subverts the human right to a life of dignity (Ohnsorge, Okawa, and Yu, 2021).

Notwithstanding its importance, the Philippine Statistics Authority does not produce annual statistics on informal employment as the nationwide quarterly Labor Force Surveys do not collect information that would capture the dimension of informality in employment. The Philippines also lacks an integrated legal framework to facilitate the transition of workers from the informal to the formal economy with the Philippine Congress yet to approve a bill providing for a Magna

Carta for the workers in the informal economy, the first version of which was filed more than two decades ago in the 12<sup>th</sup> Congress of the Republic in 2001 (e.g., House Bill 900: An Act Providing for a Magna Carta for the Informal Sector, Institutionalizing Mechanism for Implementation Thereof and for Other Purposes).

This paper contributes to filling in the knowledge gap by discussing the issues of the lack of social security coverage, collective representation, and measurement of informal employment and provides: (a) recommendations to promote more inclusive employment and social protection legislations, and; (b) alternative definitions of informal employment in line with international standards that can be readily operationalized in Philippine labor force surveys to ensure timely and more accurate statistics that better captures the quality of the Philippine labor market, and more specifically, provide the basis for the formulation and evaluation of targeted programs that facilitate the transition from informal to formal employment and providing a way out for workers in informal employment from being trapped in poverty.

### **Theoretical perspectives**

Modernization theory which dominated during the second half of the 20<sup>th</sup> century asserted that the existence of the traditional/informal economy is a transitory phase in the process of economic development (Lewis, 1954; Rostow, 1956). It contended that the traditional/informal sector would eventually fade away with the gradual absorption of its labor surplus into the formal modern economy as the economy transitions into the various stages of development from the traditional agriculture-based economy to the beginning of industrialization, urbanization, and international trade, and culminating in the final stage of a highly industrialized and technologically advanced economy. Contrary to the postulate of modernization theory of informality being a transient phase of economic development, the informal economy has persisted and remained pervasive in many countries (Clement, 2015; Hart, 1973; ILO, 1972, 2011). Bonnet et al. (2019) estimated that 61% of the global workforce 15 years old and over were informally employed, with the corresponding figures for developing and emerging countries at 90% and 67%, respectively.

An alternative theory is the dualism theory that segments the labor market in two, namely, the primary, modern, or formal segment which is characterized by high wages and job security, decent working conditions, access to human resource development, and opportunities for professional advancement; and the secondary, traditional or informal segment which is characterized by job insecurity and precariousness, low productivity, substandard working conditions, and ease of entry that allows workers excluded from the formal sector to enter into to avoid unemployment (Doeringer & Piore 1971; Fields, 1975; Gordon et al., 1982; Harris & Todaro, 1970). There is limited free mobility between the two segments trapping those in secondary/informal employment in the disadvantaged sector throughout much of or all their work life.

The segmentation of the labor market can be due to other several factors (Dickens & Lang, 1985; Reich et al., 1973; Rubery, 2007; Singer, 1970 including: (a) the presence of monopolistic capitalism and oligopolistic corporations that wield superior control in both the product and factor markets, including the power to differentiate the terms and conditions of employment in the labor market; (b) the growing working class and labor movements that threatened the consolidation of corporate power who responded by dividing the labor market into segments of the primary and core workforce who are well-paid and with job security, employment and social security protection, and access to human capital development resources, and the secondary workforce who possess skills that are less valuable to employers or easily replaceable, are lower-paid and lack job security and access to training; (c) employer strategies of undermining labor movement through increasing use of both permissible and prohibited labor contracting and hiring of workers into non-standard forms of employment (e.g., independent contractors, dependent contractors, pseudo self-employed, etc.) who are outside of the full coverage of employment and social security protection legislations; (d) the exclusion of workers in informal and nonstandard employment from employment and social protection legislations, incentivizing firms to hire workers in irregular employment to cut on labor costs and avoid paying the statutory employee benefits; and (e) complex and costly regulations of formalization that pushes micro and small scale entrepreneurs to operate outside government regulations and workers with low human and financial capital within the informal sector.

Other schools of thought on the informal economy summarized by Wilson (2011) and Chen (2012) included the legalist/neoliberal and the structuralist/neo-Marxist approaches. The legalist approach views the informal economy as resulting from state overregulation (e.g., high tax burden, minimum wages, social security protection laws, regularization of employment status) that increases the costs and barriers to formal sector employment (de Soto, 1989, 2000; Elgin & Solis-Garcia, 2015; Loayza & Rigolini, 2011). Many small and micro entrepreneurs who want to avoid the time and costs associated with formal registration take the rational choice of operating their businesses informally (de Soto, 2000; London & Hart, 2004; Perry & Maloney, 2007). This perspective advocates reducing the regulatory burden of registering and doing business and prescribes policies for transitioning informal labor and units to formality including access to credit and financial resources, support services, and space for livelihood activities, and improving access to regional and international markets.

The structuralists (Castells & Portes, 1989, Portes & Schauffler, 1993) asserted that the formal and informal sectors are interlinked, with the latter subordinated and exploited by the former. Employers in the formal sector achieve a competitive edge by outsourcing the production of cheaper input supplies to informal entrepreneurs and hiring of informal labor characterized by low pay and lack of coverage of labor and social protection laws. The informal sector produces inexpensive goods and services demanded by low-wage workers in both the informal and formal sectors. Hence, the informal sector subsidizes the formal sector by providing access to cheaper and more flexible labor and lower-cost intermediate inputs, that increase competitiveness and capital accumulation. The structuralist or neo-Marxist perspective views the informal economy as expanding with increased globalization and industrialization that is likely to spur increased labor contracting and informal arrangements to minimize costs and maximize profits.

### **3. Conceptual issues: informal sector, informal employment, and informal economy**

The concepts of the informal sector and informal employment were adopted respectively in the 15<sup>th</sup> and 17<sup>th</sup> International Conference of Labour Statisticians (ICLS). The International Labour Organization

(ILO) Resolutions Concerning Statistics of Employment in the Informal Sector Adopted by the 15<sup>th</sup> ICLS defines the informal sector as production units operating on a small scale and at a low level of organization with little or no division between labor and capital as factors of production and with the primary objective of generating income and employment for the persons concerned (ILO, 1993). This concept which is based on the characteristics of enterprises and production units is linked to the framework of the System of National Accounts to include the contribution of the informal sector or informal enterprises in the calculation of the Gross Domestic Product.

In the Philippines, the definition of the informal sector is operationalized in the National Coordination Statistical Board (NSCB) Resolution No. 16, Series of 2003 which specifies the criteria for identifying the informal sector as follows (NSCB, 2003), as follows:

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Legal organization:	Household unincorporated enterprises are units engaged in the production of goods, and/or services that are not constituted as legal entities independent of the households or household members that own them.
	They comprise of (a) informal own-account enterprises or household unincorporated enterprises owned and operated by own-account workers, either alone or in partnership with members of the same or other households which may employ unpaid family workers as well as occasionally or seasonally hire workers; (b) enterprises of informal employers owned and operated by own-account workers either alone or in partnership with members of the same or other households which employ one or more employees continuously.
Type of accounts/ bookkeeping:	No complete set of accounts that will distinguish production activities, flows of income, and capital between the households and the enterprises
Production destination:	At least some market output, hence not entirely for own consumption

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The NSCB Resolution No. 16-2003 excluded the following enterprises from the informal sector: (a) single proprietorships, partnerships, and corporations; (b) quasi-corporations; (c) units with 10 or more employees (unless they satisfy all the criteria for an informal sector); (c) units engaged in professional services

(unless they satisfy all the criteria for an informal sector); (d) farms managed by cooperatives; (e) farms, regardless of size, keeping sets of accounts separate from the households.

Being limited to informal enterprises, the definition of the informal sector does not capture all the dimensions of informal employment that may result from increasing use by formal firms of non-standard work arrangements including contract or temporary or contingent work. Employment in the informal sector is not synonymous with the concept of informal employment which encompasses all individuals with informal jobs. The definition of informal employment adopted by the 17<sup>th</sup> International Conference of Labour Statisticians is based on the characteristics of the job (rather than of the enterprise or the place of work of the worker) and refers to “all remunerative work that is not registered, regulated or protected by existing legal or regulatory frameworks, as well as non-remunerative work undertaken in an income-producing enterprise” (ILO, 2003). Informal employment can therefore be carried out not just in the informal sector but also in the formal sector and private households if the worker is engaged in productive activities that are sufficiently and effectively covered by labor and social protection laws and programs.

The operational concept of informal employment is constructed from the status-of-employment or class-of-work classification and includes as follows:

- Employees (i.e., individuals employed by an employer) also known as wage and salaried workers who are in informal employment (e.g., not effectively covered by national labor legislation for the security of tenure, entitlement to wage-related benefits, and social security). Employees are classified as regular or permanent employees, project employees, seasonal employees, casual employees, fixed-term contractual employees, and paid apprentices who are covered by an apprenticeship agreement.
- Own-account workers (i.e., self-employed workers without employees) in their own informal enterprise (e.g., not

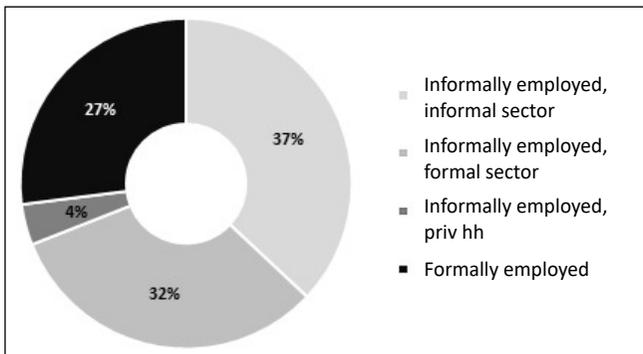
registered under specific forms of national legislation or do not have a complete set of accounts).

- Employers with hired workers in their own informal enterprise.
- Unpaid family workers.

The informal sector is a subset of the informal economy defined in the ILO Recommendation No. 204 on the transition from the informal to the formal economy, as “all economic activities by workers and economic units that are – in law or practice – not covered or insufficiently covered by formal arrangements” (ILO, 2015). The informal economy is therefore an umbrella concept that encompasses informality in both production units and employment relations and includes workers employed in the informal sector or informal enterprises, as well as those informally employed in the formal sector and private households.

Estimates in 2021 indicated that 73% of Filipino workers were informally employed - 37% were employed in the informal sector, 4% in private households, and 32% of workers were informally employed in the formal sector (Figure 1).

Figure 1. Distribution of workers (%) by informal employment status and sector, 2021\*



Source: 2008 Informal Sector Survey; Labor Force Survey, 2021; Author's calculations.

\*2021 estimates of informal employment were calculated using the characteristics of workers with the highest rates of informality (i.e., more than 90%) in the 2008 Informal Sector Survey such as non-wage workers, workers paid in kind, *pakyaw*, or per-piece arrangements, and those involved in seasonal or short-term work, or those with no fixed employer.

#### 4. Selective application of labor laws to regular employment

The application of Philippine labor laws and statutes is predicated on the presence of an employer-employee relationship and excluding workers with no definite employer (e.g., self-employed workers, independent contractors, and freelancers). The full coverage of employee entitlements for the security of tenure, collective representation, wage-related benefits, service, parental leaves, and social protection depends on the type of employment status. The Philippine Labor Code identified six types of employees (Articles 295 and 58 of the Philippine Labor Code as amended), while fixed-term contractual employment is recognized under the National Civil Code:

- a. a **regular or permanent employee** or one who has been engaged to perform tasks that are usually necessary or desirable in the employer's usual business or trade; or has rendered work or service for at least a year for the activity he or she is engaged in.
- b. a **probationary employee** is an employee who serves a probation or trial period (generally a maximum of six months) during which he/she is evaluated by the employer to determine fitness for regular employment based on reasonable standards known to him at the time of engagement.
- c. a **project employee** whose employment has been set for a specified project or undertaking within a determined or determinable duration which is made known at the time of the engagement of the employee.
- d. a **seasonal employee** whose employment is only for the duration of the season.
- e. a **casual employee** is neither a regular, project, or seasonal worker, and performs activities that are incidental to the business or trade of the employer. A casual employee is deemed regularized after his engagement in a job has lasted for one year, whether continuously or not.
- f. an **apprentice** who is a worker covered by a written apprenticeship agreement which is an employment contract that binds the employer to train the apprentice and the latter, in turn, to accept the terms of the training.

- g. a **fixed-term contractual** employee where the employer and the employee mutually entered into a valid employment agreement for a pre-determined date of completion. A fixed-term employment contract is valid if the following conditions are met: (d.1) the fixed period of employment was knowingly and voluntarily agreed upon by the parties, without any force, duress, or improper pressure being brought to bear upon the employee and absent any other circumstances vitiating the employee's consent; or (d.2) the employer and employee dealt with each other on more or less equal terms with no moral dominance whatever being exercised by the former on the latter.

Although not unlawful, the Philippine Jurisprudence determines that fixed-term contractual employment is the exception and not the general rule (*Price v. Innodata Philippines, Inc.*, G.R. No. 178505, September 30, 2008). Fixed-term employment is highly regulated to ensure that the imposition of a fixed period of employment is not intended to circumvent the acquisition of an employee's security of tenure (*Brent School Inc. et al. v. Zamora*, G.R. No. L- 48494 February 5, 1990; *Claret School of Quezon City v. Sinda*, G.R. No. 226358, October 9, 2019).

The rights to security of tenure and coverage of employee benefits and entitlements vary by type of employment status (Table 1). Regular employees have a vested right to the full coverage of labor and social protection laws including security of tenure and all statutory mandated wage-related benefits and social benefits. Casual employees have the least protection from labor and social protection laws among the seven types of employees but have more protection than workers without a definite employer such as independent contractors, freelance workers, self-employed workers, and other informal sector workers such as unpaid family workers.

Table 1. Employee benefits and entitlements by type of employment status\*

Type of entitlement	Employment status				
	Regular/ Permanent Employee	Probationary Employee	Project/ Seasonal/ Fixed-Term/ Apprentice Employee	Casual Employee	Workers with no definite employer (e.g., independent contractors, freelancers)
<b>Security of tenure</b>	An employee cannot be terminated except for just causes or authorized causes provided by law	An employee cannot be terminated except for just causes or failure to meet the standards for regular employment made known to the employee at the time of engagement and after due process	An employee can be lawfully terminated at the end of the specified duration of the project/ season/ contract	A casual employee's work can be terminated at any time the employee or employer decides to end it.	Services can be terminated due to a breach of contract or upon expiration of the contract
<b>Right to self-organization for the purpose of collective bargaining</b>	All employees of enterprises, whether operating for profit or not have the right to self-organization for the purpose of collective bargaining  (Article 253, Philippine Labor Code)				May form organizations for their mutual aid and protection but not for the purpose of collective bargaining
<b>Wage related benefits</b>					
At least the minimum legislated wage	All employees are subject to Wage Orders except for workers in registered BMBEs or retail & service establishments regularly employing not more than 10 workers				✗
Overtime pay	✓	✓	✓	✓	✗
Holiday pay	All employees are entitled to holiday pay except for domestic workers, managerial employees, field personnel, and workers in enterprises employing less than 10 workers (Article 94a, Philippine Labor Code, as amended)				✗
Service incentive leave of 5 days per year of service	All employees who have rendered at least one year of service are entitled to a service incentive leave except for workers in retail & service establishments regularly employing less than 10 workers (Article 95b of the Philippine Labor Code, as amended)			✗	✗
Parental leaves (Maternity, paternity, solo parent)	✓	✓	✓	✗	✗
13 <sup>th</sup> -month pay	Employees who have worked for at least a month during the calendar year				✗
Separation-pay	Granted to employees terminated due to authorized causes			✗	✗
<b>Mandated social benefits</b>					
SSS	✓	✓	✓	✗	✗ except as a fully contributing voluntary member
Pag-IBIG	✓	✓	✓	✓	✗ except as a fully contributing voluntary member

Table 1. Employee benefits and entitlements by type of employment status (cont.)

Type of entitlement	Employment status				
	Regular/ Permanent Employee	Probationary Employee	Project/ Seasonal/ Fixed-Term/ Apprentice Employee	Casual Employee	Workers with no definite employer (e.g., independent contractors, freelancers)
Philhealth	✓	✓	✓	✓	✗ except either as a fully contributing voluntary member or with subsidized contributions from the government

\*V - entitlement applicable to the worker; ✗ - entitlement not applicable to the worker

#### 4.1 Security of tenure and wage-related benefits

Security of tenure is granted only to regular employees who cannot be terminated except for just or authorized causes provided by law<sup>2</sup>. Project and seasonal employees can be legally terminated at the end of the specified duration of the project or season while a casual employee can be terminated anytime if the contract includes a provision that the employment is subject to the availability of funds or the need for the service.

In the Philippines, the job security of tenure is both a constitutionally guaranteed right and a statutory right. Article XIII, Section of the 1987 Constitution of the Philippines states, “The State shall afford full protection of labor...They shall be entitled to security of tenure, humane conditions of work, and a living wage”. In its declaration of basic policy, Chapter 1, Section 3 of the Labor Code of the Philippines affirms that “The State shall afford protection to labor, promote full employment, ensure equal work opportunities regardless of sex, race or creed and regulate the relations between workers and employers. The State shall assure the rights of workers to self-organization, collective bargaining, security of tenure, and just and humane conditions of work”.

The granting of the right to job security of tenure is a social justice measure. Philippine jurisprudence states that:

“Employment is not merely a contractual relationship; it has assumed the nature of a property right. It may spell the difference whether or not a family will have food on their table, a roof over their heads, and education for their children. It is for this reason that the State has taken up measures to protect employees from unjustified dismissals. It is also because of this that the right to security of tenure is not only a statutory right but, more so, a constitutional right<sup>3</sup>”.

In keeping with the spirit of the Constitution, the Philippine Labor Code regards a regular employment status for employees as the norm and the rest of the employer-employee work arrangements as exceptions to the general rule, with provisions for transitioning to regularization for those in a project, seasonal, fixed-term contract, and casual employment. For example, casual employees attain regular employment status after being engaged in a job for one year regardless of employment continuity while project and seasonal employees are considered in regular employment if they are repeatedly hired to perform activities that are integral to the business or trade of the employer. According to Philippine jurisprudence, the continuous rehiring of an employee for the same tasks is a badge of regular employment, as repeated and continuing need for the performance of a job is sufficient evidence of the necessity if not indispensability of that activity to the business<sup>4</sup>.

Jurisprudence also categorized fixed-term contractual employment as an exception rather than the general rule of engaging workers in regular employment and applicable in special cases where a fixed-term contract is an “essential and natural appurtenance” such as overseas employment contracts and appointments to administration positions in educational institutions such as university presidents and college deans who are expected to step down from their office upon the completion of their term unless re-elected<sup>5</sup>. Fixed-term contract employment is deemed as regular employment after repeated

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3 Gonzales v. NLRC and Ateneo de Davao University, G.R. No. 125735, August 26, 1999.

4 Universal Robina Sugar Milling Corporation and Cabati v. Acibo et al., G.R. No. 186439, January 15, 2014; Abasolo v. National Labor Relations Commission, G.R. No. 118475, November 29, 2000.

5 Brent School Inc. et al. v. Zamora, G.R. No L-48494, February 5, 1990; Price v. Innodata Philippines, Inc., G.R. No. 178505, September 30, 2008.

extension or renewal of the contract for the same work that is usually necessary or desirable to the business or trade of the employer<sup>6</sup>.

The increasing non-standardization of work arrangements, including the engagement of misclassified independent contractors or freelancers, has eroded the rights of workers to security of tenure and contributed to the rising informalization of employment in the formal sector. Unlike fixed-term contractual employees, independent contractors are treated as self-employed workers who do not have an employer-employee relationship with the entity that contracted his/her services. Employers misclassify workers as independent contractors to save on labor costs by circumventing the employee's rightful acquisition of a regular employment status that affords him/her tenurial security and the full entitlement of statutory mandated wage-related benefits and social security coverage.

#### **4.2 Statutory mandated social benefits**

By Philippine laws, an employer in the private sector is legally and morally obligated to provide their employees with the statutory-mandated social benefits and must pay a monthly contribution to the following funds: (a) Social Security System (SSS) for private sector employees and Government Social Security System for public sector employees; (b) Philippine Health Insurance Corporation (Philhealth), and; (c) Home Development Mutual Fund or Pag-IBIG (*Pagtutulungan sa kinabukasan: Ikaw, Bangko, Industriya, Gobyerno*) Fund. Philhealth members and their qualified dependents (e.g., spouse, children below 21 years old, dependent parents) are entitled to subsidized medical care costs including room and board fees during hospital confinement, physician fees, medicines, laboratory tests, and surgical procedures, and treatment of catastrophic illnesses such as leukemia, end-stage renal disease, prostate cancer, breast cancer, cervical cancer, and specific diseases such as tuberculosis, malaria, and HIV-AIDS. Pag-IBIG members are entitled to dividends from a savings program, and housing and multi-purpose loans. The SSS is a social insurance program that provides social protection for SSS members and their beneficiaries and includes benefits listed in Table 2.

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6 Samonte, et al. v. La Salle Greenhills, Inc., G.R. No.199683, February 10, 2016.

With a wider range of social benefits, the monthly contribution rate for the SSS fund is also higher – more than three times – that of the Philhealth or Pag-IBIG funds. In 2023, for example, the monthly contribution rate is 13% of the monthly salary credit for the SSS fund compared to 4% for either the Philhealth or Pag-IBIG funds (Table 3). The employer counterpart of the contribution burden is 65% to 68% for the SSS fund, 50% for the Philhealth fund, and up to 67% for the Pag-IBIG fund. The SSS tax accounts for the lion’s share of the employer’s contribution to mandated social benefits of the employees and is increased from 8.5% of an employee’s monthly salary credit in 2022 to 10% in 2025 (Section 4, Republic Act No. 11199 otherwise known as the Social Security Act of 2018). The employer’s contribution rate for an employee’s SSS is four times more than the employer’s contribution rate for either the employee’s Philhealth or Pag-IBIG coverage. The total employer contribution rate is 12.5% to 14% of an employee’s monthly salary credit for the three social funds, which includes a 2% contribution rate each for the Philhealth and Pag-IBIG funds.

Table 2. List of SSS benefits

Sickness benefit	daily cash allowance paid for the number of days a member is unable to work due to sickness or injury.
Maternity benefit	daily cash allowance granted to a female member who is unable to work due to childbirth or miscarriage.
Disability benefit	cash benefit granted either as a monthly pension or a lump sum amount to a member who becomes permanently disabled, either partially or totally.
Retirement benefit	cash benefit granted either as a monthly pension or a lump sum to those who can no longer work due to old age
Death benefit	a cash benefit granted as a monthly pension or lump sum amount to the beneficiaries of a deceased member.
Funeral benefit	cash benefit for the funeral expenses of the deceased member.
Unemployment benefit	cash benefit granted to employees who are involuntarily separated from employment.

Table 2. List of SSS benefits (cont.)

Employees' compensation program benefits	compensation package to employees or their beneficiaries in cases of work-related sickness, injury, or death, including (a) loss of income benefit due to work-related disability; (b) medical benefit or reimbursement of costs of medicines and rehabilitation appliances, and hospital ward services and medical care costs for work-related illness or injury; (c) monthly cash allowance for work-related permanent disability; (d) rehabilitation services benefit; (e) death benefit or monthly income benefit to surviving beneficiaries of employees who suffered from a work-related death; (f) funeral benefit – a cash benefit for funeral expenses of employees who suffered from a work-related death.
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Table 3. Employer and employee contribution rate to SSS, Philhealth, and Pag-IBIG funds

Type of social fund	Employer contribution rate	Employee contribution rate	Total contribution rate	Employer's share (%) to the total contribution rate
<b>SSS fund</b>				
2022	8.5%	4.5%	13%	65.4%
2023-2024	9.5%	4.5%	14%	67.9%
2025	10%	5%	15%	66.7%
<b>Philhealth fund</b>	2%	2%	4%	50%
<b>Pag-IBIG fund</b>				
Monthly income of PHP 1,500 & below	2%	1%	3%	66.7%
Monthly income over PHP 1,500	2%	2%	4%	50%
<b>Total (SSS, Philhealth, &amp; Pag-IBIG)*</b>				
2022	12.5%	8.5%	21%	59.5%
2023-2024	13.5%	8.5%	22%	61.4%
2025	14%	9%	23%	60.9%

\*The computation for the total joint contribution rate includes the Pag-IBIG contribution rate for those with monthly income above PHP1,500. Source: Revised guidelines on Pag-IBIG fund membership, Home Mutual Development Fund (HMDF); Section 4a, Republic Act No. 11199.

## 5. Causes of low social security coverage

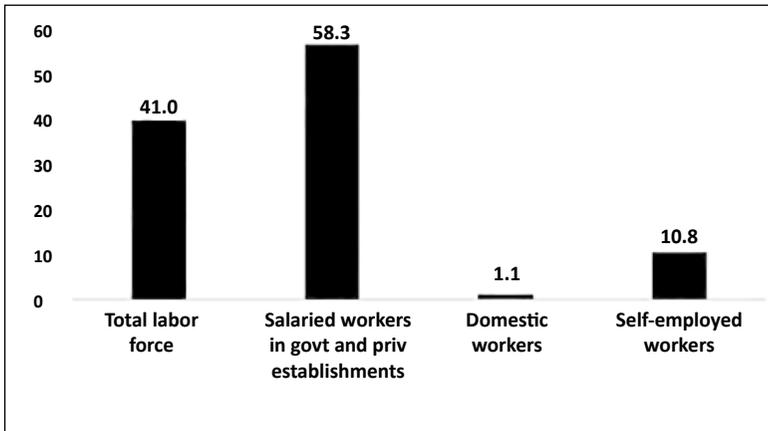
The United Nations Office of the High Commissioner for Human Rights recognizes the right to social security as a fundamental human right that guarantees the protection of individuals, particularly those in vulnerable situations, from adverse risks that lead to loss of jobs and incomes such as work-related injury or sickness that leads to a temporary or permanent disability, or death, unemployment, maternity, and retirement from work due to old age. The provision of social security benefits is crucial to fully realize the human right of a life with dignity.

The non-coverage, in law or practice, of employees of legislated social security benefits is another criterion for informal employment. Republic Act 11199 or the Social Security Act of 2018 promotes universal social protection in its declaration of policy (Section 2):

It is the policy of the State to establish, develop, promote, and perfect a sound and viable tax-exempt social security system suitable to the needs of the people throughout the Philippines which shall promote social justice through savings, and ensure meaningful social security protection to members and their beneficiaries against the hazards of disability, sickness, maternity, old age, death, and other contingencies resulting in loss of income and financial burden. Towards this end, the State shall endeavor to extend social security protection to Filipino workers, local or overseas, and their beneficiaries.

Social security coverage of Filipino workers remains low with only 4 out of 10 workers covered by a retirement pension from the SSS and GSIS, respectively for private and public sector workers (Figure 2). Close to 60% of salaried workers in government and private establishments are covered by a statutory retirement pension scheme while the corresponding figures are only 1% and 11% for domestic workers and self-employed workers respectively.

Figure 2. Percent with pension coverage through SSS, GSIS



Source: Philippine Statistics Authority (2019); Author's calculations.

### 5.1 Avoidance and evasion of social security tax registration by employers

Employers, along with all their employees regardless of status except those in casual employment, are required to register with the Social Security System. Employers need to withhold the employees' monthly social security contributions and to remit to the SSS both the employee's and the employer's portion of the social security tax, which are respectively 8.5% and 4.5% of the employee's monthly salary credit in 2022 (Section 4a, Republic Act No. 11199).

The following are two ways in which an employer can evade the payment of social security tax (Allingham & Sandmo, 1972; Bailey & Turner, 1997):

- a) ***Non-declaration of employees.*** Employers who perceive that the benefits (e.g., savings) obtained from not declaring or registering with the SSS some or all their covered employees are higher than the cost of failing to remit the correct amount of the required social security contributions (e.g., including the associated penalties and fines and the probability of being caught) are incentivized to disregard or defy the mandate for compulsory social security coverage of all employees.

- b) ***Misclassification of employment status.*** Employers also avoid paying social security contributions by misclassifying some workers who work for them as independent contractors or freelancers who do not have an employer-employee relationship with them, hence, absolving them from the legal obligation to pay the employer portion of the social security tax on behalf of their employees.

Many platform-mediated workers such as the food delivery drivers of the Philippine foodpanda and GrabFood are incorrectly classified as independent contractors. The characteristics of their jobs resemble those of a regular employee (e.g., they perform tasks that are essential to the business and trade of the companies principally offering food delivery services via a platform, the algorithm management used by the platform companies determines the means and methods of how the delivery drivers perform their tasks including the guidelines to discipline, suspend or terminate the worker) while failing to satisfy the requirements for an independent contractor.

Employment is deemed regular unless proven otherwise, and the employer bears the burden of proving that a person whose services it pays is not a regular employee but an independent contractor<sup>7</sup>. Jurisprudence recognizes independent contractors as individuals who possess peculiar or unique skills, or talent status that would distinguish them from ordinary employees, and they enjoy independence and freedom from the control and supervision of the employer<sup>8</sup>. Examples of cases of independent contractors are that of Mr. Sonza and Ms. Tianco who are famous television and radio personalities and who have the liberty on what to say and discuss in their shows in their own manner, or that of Mr. Bernarte, a skilled basketball referee who makes independent judgments in officiating professional basketball games<sup>9</sup>. Owing to their special skills, independent contractors have the power to negotiate and bargain on the terms and

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7 Alba v. Espinosa, et al. G.R. No. 227734, August 9, 2017.

8 Paragele, et al. v. GMA Network, Inc., G.R. No. 235315, July 13, 2020.

9 Bernarte v. PBA, G.R. No. 192084, September 14, 2011.

conditions of their engagement and are highly compensated. They, therefore, need less protection from the law than an ordinary worker.

Such is not the case for platform-mediated food delivery drivers whose tasks cannot be considered separate and distinct from the undertakings of the platform company, whose performance is supervised and monitored via the company's digital management system, who do not possess unique skills that allow them to negotiate independently for specific terms of their engagement, and who are meagerly compensated.

The Courts ruled that “with the proliferation of contracts seeking to prevent workers from attaining the status of regular employment, it is but necessary for the courts to scrutinize with extreme caution their legality and justness. Where from the circumstances it is apparent that a contract has been entered into to preclude the acquisition of tenurial security by the employee, they should be struck down and disregarded as contrary to public policy and morals. In this case, the “contract of service” is just another attempt to exploit the unwitting employee and deprive him of the protection of the Labor Code by making it appear that the stipulations of the parties were governed by the Civil Code as in ordinary transactions”<sup>10</sup>.

## **5.2 Low social security tax coverage among the informal sector workers**

The failure to register with the SSS by informal sector workers is not necessarily intended to violate social security legislation but is more likely because they could not afford to pay the entire social security contribution rate that includes both the employee's and the employer's share. As aforementioned, only one in 10 self-employed workers is covered by a self-funded statutory pension scheme. A crucial factor in the social security coverage gap between salaried workers and self-employed workers is the regressive structure of Philippine social security taxation which falls more heavily on the self-employed

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10 Chavez v. NLRC, Supreme Packaging, Inc & Lee, G. R. No. 146530, January 17, 2005.

workers characterized by marginalization and fluctuating earnings that may be too low to be effectively taxable. Unlike employees who pay between 4.5% to 5% of the total SSS contribution rate (with the employer paying the rest), self-employed workers are treated as both an employee and employer by tax authorities and must pay the entire 13% to 15% SSS contribution rate of net earnings from self-employment. Based on estimates from the October 2020 Labor Force Survey, 8 out of 10 self-employed workers are in the industries of farming, hunting, fishing, and retail trade which are associated with subsistence businesses with high levels of informality (Cabegin, 2020) and characterized by low productivity, low and unstable wages, and poor working conditions.

Unlike employees, workers with no definite employers (e.g., self-employed workers and employers in own-family farm or business) bear the administrative burden of both registering with the SSS and remitting regularly their SSS contributions, which they may find very time-consuming, costly, and difficult to comply with. In cognizance of the challenges faced by self-employed workers to fulfill the administrative and fiscal obligations of SSS membership because of their “intermittent income and varied work arrangements”, the SSS launched in 2022, the Contribution Subsidy Provider Program that is participated in by the government and private institutions and companies and which will finance the contribution payments of selected SSS members for at least 6 months (SSS, 2022).

## **6. Issues in measuring informal employment and employment in the informal sector**

Inclusion of the workers in the informal economy in the development process necessitates a timely and comprehensive database on their size and characteristics for better targeted and more effective programs, and monitoring and evaluation. Proposed bills in the 19<sup>th</sup> Congress for a Magna Carta for Workers in the Informal Economy provide the legislative framework for transitioning workers from informal to formal economy and stipulate the need for national and local level statistics on informal economic units and workers<sup>11</sup>. Below

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11 19<sup>th</sup> Congress House Bill Nos. 357, 2354, 1516, 1936, 2288, 2798, 4099, 4565, 4684, 5791 & Senate Bill Nos. 42, 96, 338, 1358.

are recommended revisions and additions for an expanded Labor Force Survey that includes questions on the informality of enterprises and employment.

### **6.1 Measurement of the informal sector**

The 15<sup>th</sup> ICLS Resolution encourages countries with a large informal sector to develop a “comprehensive system of statistics on employment in the informal sector to provide an adequate statistical base for the various users of the statistics, with account being taken of specific national needs and circumstances. The system to be developed should contribute to the improvement of labor statistics and national accounts as an information base for macroeconomic analysis, planning, policy formulation and evaluation to the integration of the informal sector into the development process and to its institutionalization” (ILO, 2003).

The informal sector refers to the informality in production units or enterprises (ILO, 1993) and is comprised of household enterprises or unincorporated enterprises owned by households. The informal sector enterprises are characterized by a lack of a formal bookkeeping system that allows them to organize business records for planning, monitoring, and evaluation of business progress, and the absence of registration with the tax authorities for payment of income taxes or social security contributions. The operationalization of the criteria for defining an informal sector includes (unincorporated small or unregistered) enterprises with at least some market output and without a complete set of accounts (e.g., balance sheets of assets and liabilities) which distinguishes the production of activities of the enterprise from other activities or not registered with national authorities in charge of collecting taxes on income and social security. In line with the NSCB Resolution No. 16-2003 & the 15<sup>th</sup> ICLS Resolution’s definition of informal enterprises, the paper proposes the addition of the following questions on registration and accounts system in the Labor Force Survey for wage workers in private establishments and non-wage workers:

Question	Proposed addition in the LFS*
Registration with national tax authorities	Is your business /the business in which you work registered with the: a. BIR?                    1__Yes    2__No b. SSS?                    1__Yes    2__No
Bookkeeping system	How does your enterprise/business maintain its records or accounts?  1-No written accounts kept 2- Informal records for personal use 3- Simplified accounting format required for tax payment 4-Detailed formal accounts (balance sheet) 5-Others (specify)_____
Legal organization	What is the legal status/organization of the enterprise where you work?  1-Single proprietorship (excluding farms) 2-Individual proprietor of farm 3-Partnerships 4-Corporations (stock, non-stock) 4-Cooperatives 5-Others (specify)_____
Employment size	How many people (including yourself) usually work in your business/business in which you work?  1-Less than 10 workers (micro) 2- 10-99 workers (small) 3- 100-199 workers (medium) 4-200 and above (large)

\*Source: 2008 Informal Sector Survey.

## 5.2 Measurement of informal employment

As aforementioned, informal employment refers to employment that is not covered or insufficiently covered by labor and social security laws. Based on this definition, Filipino workers can be classified as informally employed if they work in informal enterprises or if the terms of their wage employment are not covered by a written contract for regular employment, or if their employers do not pay for their social security contribution.

### a. Existence of a written employment contract for regular employment

The presence of a written employment contract has also been used as a qualifying criterion for formal employment. However, a written employment contract per se does not guarantee a regular employment status nor does its absence prove a lack of employer-employee relationship. An employment relationship exists when there is a consensual agreement (not necessarily in writing) between an employer and an employee on the reciprocal obligations in the performance of work by the latter in exchange for remuneration by the former who has the legal right (not necessarily the actual exercise thereof) to control the method and manner of performing the work (*Legend Hotel (Manila) vs. Realuyo*, G.R. No. 153511, July 18, 2012; *Almeda, et al. vs. Asahi Glass Philippines, Inc.*, G.R. No. 177785, September 3, 2008).

In the absence of a written contract, the employee is presumed to be a regular employee. In contrast, a written employment contract is a piece of necessary documentary evidence to prove that the worker is hired as a non-regular employee (e.g., project employee, seasonal employee, fixed-term employee, casual employee).

Since only regular employment is afforded the full protection of the right to security of tenure and coverage of all mandated wage and social benefits, the determination of informal employment among salaried and wage workers would require information on the employment status of the employee.

### **b. Social Security coverage**

The non-coverage, in law or practice, of employees of legislated social security benefits is another criterion for informal employment. The 2008 Informal Sector Survey determines the non-coverage of social security for salaried workers by the question: "Does your employer pay for your contribution to the SSS/GSIS?". The Social Security System (SSS) and the Government Insurance System (GSIS) are respectively the pension fund for workers in the private sector and public sector.

The paper proposes the collection of data that identifies the employment status of employees (i.e., regular/permanent, project/seasonal, contractual/fixed term, casual employment), and whether the employment is covered by a written contract and social security. The following questions on the status of employment, the presence of a written employment contract, and social security coverage are suggested for inclusion in the Labor Force Survey:

Question	Proposed revision/addition in the LFS
<b>Status of employment</b>	What is the status of your employment? Did [NAME] work as... 1- An employer in his/her farm or business 2- A paid family worker 3- An unpaid family worker 3- A permanent or regular employee 2- A project/seasonal employee 3- A contractual/fixed-term employee 4- A casual employee 5- A paid apprentice 6- A hired independent contractor/ freelancer 8- A non-employee member of a producer’s cooperative 9- A self-employed worker 10- A domestic worker
<b>Presence of a written contract for employment</b>	Are the terms of your employment covered by a written contract/agreement? 1-Yes, a written contract with an indefinite duration or with no predetermined termination date 2-Yes, a written contract with a predetermined termination date (e.g., project/seasonal/fixed-term contract, etc.) 3-Yes, an apprenticeship agreement 4- Yes, a freelance/independent contractor agreement 5-No written contract, working in a job for the same employer for at least one year, whether continuously or not 6-No written contract, other than the above
<b>Social Security coverage*</b>	Does your employer pay for your contribution to the SSS/GSIS? 1-Yes 2-No

Source: 2008 Informal Sector Survey

### 5.3 Operational definitions of employment in the informal sector and informal employment

Based on the above prospective questions to be included in the Labor Force Survey, the operational definition of informal employment and employment in the informal sector are as follows (Table 4):

- a. Informal sector employment** includes non-employee members of cooperatives, self-employed workers and employers and family workers in their own informal family-operated farm or business (i.e., business is not registered with the BIR & SSS) or does not maintain a complete systems of accounts (e.g., balance sheets of assets and liabilities).
- b. Informal employment** includes all informal sector employment as defined above and salaried workers without a written contract for regular employment or whose employers do not pay for the employee’s contribution to the SSS/GSIS.

Table 4. Operational definitions of informal employment and informal sector employment

Indicator	Employment status				Unpaid family worker
	Employees (including paid apprentices)		Employers, Self-employed workers, Independent Contractors, Freelancers, Non-employee members of a cooperative		
	Are the terms of your employment covered by a written contract for regular employment or an indefinite period? (1)	Does your employer pay for your contribution to the SSS/GSIS? (2)	Is your business / the business in which you work registered with the BIR & SSS? (3)	Does your enterprise/ business maintain detailed formal accounts (e.g., balance sheet)? (4)	
	At least one “No” answer in any of the above criteria		At least one “No” answer in any of the above criteria		
Informal sector employment					
Informal employment					

The definition of the informal sector can be expanded to include private establishments with less than 10 workers or operated informally (i.e., business is not registered with the BIR & SSS or does not maintain a complete system of accounts).

## **6. Policy and program recommendations**

For most of the workers in the informal economy, labor is the only resource they have for survival, and earning more from their labor is the only means to improve their overall well-being and achieve an acceptable standard of living. Transitioning the informal workers to formality is key to obtaining decent work and the right to life with dignity. The paper recommends the following reforms for more inclusive policies and programs to protect the marginalized and vulnerable workers in the informal economy and transition them to formality.

- 1.1 Enact into law the Magna Carta for Workers in the Informal Economy (MACWIE) which has been kept from being passed into legislation since its first version was introduced in the 12<sup>th</sup> Congress more than two decades ago, in 2001. The MACWIE entitles informal workers to rights to collective representation and negotiation; gender equity and nondiscrimination; just and humane conditions of work; access to social security and social protection programs; and occupational safety and health.
- 1.2 Promote universal social security coverage for all workers by adopting a combination of schemes as follows: (a) a direct contribution scheme for wage workers; (b) a government-subsidized indirect contribution scheme for informal workers who have very limited contributory capacity; and (c) a means-tested non-contributory scheme for those whose net earnings fall below the poverty threshold. Universal social security coverage builds resilience against external shocks that adversely affect incomes such as the COVID-19 pandemic.
- 1.3 Promote the organizing of informal workers into cooperatives, associations, or trade unions, and expand collective bargaining rights to include workers in the informal economy. Two models

for the collective representation and bargaining for self-employed workers identified by Slin (2021) are (a) expanding the scope of application of the Labor Code to include self-employed workers, and (b) establishing a system for the “most representative” association to bargain sector-wide a minimum standards agreement. Collective representation and bargaining are essential to ensure informal workers the right to just and favorable conditions of work. Organizing informal workers also lessens the administrative costs on the social security authorities in reaching out to the informal sector and the administrative burden of workers in registering with the system and remitting contributions.

- 1.4 Ratify ILO Convention 81: Labour Inspection Convention 1947, which calls for an adequate number of labor inspectors to effectively discharge the functions of ensuring compliance with labor standards and rights at work (Article 10). The problem of weak enforcement capacity of labor and social security laws and insufficient inspection visits lowers the probability of detection of a labor violation, such as the misclassification of workers as non-regular employees or independent contractors, and increases the likelihood of non-compliance. The international labor standard on the ratio of labor inspectors to the number of workers is 1/10,000 in industrial market economies and 1/15,000 for industrializing economies like the Philippines (ILO, 2006). The number of labor inspectors in the Philippines total 1,200 in 2021 (Patinio, 2021) which translates to one inspector for more than 35,000 employed population and more than 900,000 establishments. Out of the 1,080, 638 establishments in 2021 (PSA, 2022), only 90,327, or 8.4% were inspected by DOLE labor inspectors of the Department of Labor and Employment (Patinio, 2021).
- 1.5 Collect data regularly on the informal sector and informal employment by including in the Labor Force Survey questions that determine the informality of enterprises (i.e., registration with national tax authorities, bookkeeping system, legal organization, and employment size) and three questions that determine the informality of salaried employment (i.e., the nature/status of employment, the existence of a written contract for regular employment, and social security coverage).

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