



Open Letter

15 September 2021

Subject Observations and recommendations for the management policy of the Factory Sandbox by the Ministry of Labour

Dear Minister of Ministry of Labour

CC:

1. Minister of Public Health
2. Minister of Interior
3. Minister of Industry
4. Centre for COVID-19 Situation Administration (CCSA)
5. Thai Frozen Foods Association (TFFA)
6. Thai Tuna Industry Association
7. Federation of Thai Industries
8. Chamber of Commerce and Board of Trade of Thailand

On 30 August 2021, the cabinet acknowledged the report of the implementation of a pilot program for the prevention and control of communicable diseases in factories (Factory Sandbox) conducted by the Ministry of Labour. Starting since 13 August 2021, it has focused on workplaces, businesses and factories serving large scale export which plays a vitally important role to the national economy to ensure the continuation of industrial operation in four sectors including automobile, electronic parts, food and medical equipment. It took place in four target provinces including Nonthaburi, Pathumthani, Samut Sakhon and Chonburi with factories employing at least 500 workers and upward. This has been done in conjunction with disease control and prevention measures in response to the COVID-19 pandemic.

According to the Ministry of Labour, in the pilot area (Phase I), there were 387 participating workplaces with 474,109 insured workers. The Migrant Working Group (MWG) has these observations to make;

1. This program was put under the charge of the Ministry of Labour in collaboration with the Ministry of Public Health and the Ministry of Interior under the “Health Economics” concept to stabilize the economy while upholding the employment and ensuring the control and prevention of communicable diseases. MWG has found that even though the Ministry of Labour took the lead in the program, but the focus of the labour management has been placed on workers insured in the social security system pursuant to Section 33. As a result, some uninsured workers could be unaccounted for in this program even though they are employed by the participating factories.
2. In terms of labour protection and the promotion of decent work in the midst of the pandemic, according to our survey of workers within and outside the Bubble and Seal (BBS), the workers have to face similar programs including being suspended from their work and isolated if they are found to have close contact with infected persons

while there is no clarity regarding the payment of their wage during such quarantine. In practicality, the workers are forced to isolate themselves taking their days off or their annual leave which shall affect the exercise of their rights as an employee according to the labour protection law concerning annual leave. In terms of their accommodation, despite measures put in place by the public agencies, but according to cases reported to the MWG, the workers have to live in cramped and vulnerable places with insufficient supply of food and drinking water. If both parents participated in the program, their children would be left behind and unattended.

3. MWG has found the MoPH's Department of Disease Control's (DDC) has published a detailed guideline on "Disease Prevention and Control in Designated Area (Bubble and Seal - BBS) for Workplaces". In reality, all workers are required to have a Covid-19 test via RT-PCR to isolate infected persons and ensure they receive prompt treatment. They are also required to test themselves using Antigen Self-Testing Kit (Self ATK) every week. MWG notes that the DDC's guideline does not clearly mention as to who shall be held responsible for the testing costs. Just for the initial target group of 474,109 workers required to have RT-PCR, it would have cost at least one billion baht (at 3,000 baht/person). The weekly ATK tests would have cost 33,187,630 baht (at 70 baht/person/week). If they have to test themselves four times a month, they will need 1,896,436 self-test kits. A lack of clarity regarding who shall bear the expense for the tests besides, MWG has been informed by workers from the factories participating in the BBS program that many of them are forced to pay for the ATK test kits themselves. There is also insufficient ATKs for the workers. At present, the National Health Security Office (NHSO) has decided to procure 8.5 ATKs via the Government Pharmaceutical Organization (GPO) and the distribution targets shall include slums and fresh markets focusing on risk groups and those working with the community. And according to online news, the NHSO will start distributing such ATKs to the public the middle of September onward while the Factory Sandbox pilot program has started since late August 2021.

Therefore, to ensure economic stability and to protect employment as well as to control and prevent diseases as part of the Covid-19 pandemic response and to ensure the protection of people's rights according to the Constitution 2017, MWG has these recommendations for the Ministry of Labour and concerned agencies.

1. Produce a manual on the labour protection in designated disease control areas to set out clear guidelines for the employers and their employees. What should they do If they have to be suspended from their work, how they should take their days off. There should be clarity as to the payment of their wage during the quarantine, or the compensation. This is to ensure that while acting in compliance with measures for disease prevention and control, the workers shall not be deprived of their due rights as protected by the Labour Protection Act 1998. The Ministry of Labour must issue a notification specifying that the taking of sick leave for Covid-19 quarantine must be treated as a paid sick leave and they shall not be included in their normal sick leave provided that they may have to isolate themselves for a long time. Proactive testing should also be conducted among the workers in response to the outbreak. For example, the migrant workers should be allowed to submit their applications in their

languages and to submit them as a group through online complaints mechanism. Since the four industrial sectors are geared toward export, it is important to ensure the standards of goods are met as well as compliance with labour protection standards since it would be one of the requirements set forth by the buying countries. This action may have ramification on Thailand's image as far as the Business and Human Rights principles are concerned.

2. The Ministry of Labour should expand the program to also account for uninsured workers who are employed in the participating factories. These factories may employ both Thai and migrant workers and the latter are subject to labour management at different levels. Some migrant workers are in the process of becoming insured workers and having access to unemployment benefits. Therefore, if they are at risk and required to isolate themselves, they may not be able to exercise their rights according to the labour protection law.
3. The MoL should urgently meet with the MoPH to ensure sufficient supply of test kits for all workers participating in the program. And the MoPH should take the lead to outlay expenses to procure ATKs while refraining from charging either the employers or the employees. The MoPH's budget can be drawn from the one-trillion-baht emergency loan decree since the program serves medical and public health purposes with the existing earmarked budget of 63,898 million baht.¹ This shall also serve the purposes of the Constitution of the Kingdom of Thailand 2017's Section 47 paragraph 3 which prescribes that "A person shall have the right to the protection and eradication of harmful contagious diseases by the State free of charge as provided by law." Every country in the world including Thailand realizes and acknowledges that Covid-19 pandemic is an emerging disease that affects public health of all people and all aspects of national development.
4. The MoL should expedite the effort to ensure access to vaccination of all workers. This will help to reduce their vulnerabilities to the disease, sickness and deaths. It can also promote the good quality of life of the people and the fulfillment of Sustainable Development Goals (SDG). Thailand's SDG ranking has fallen from 41st last year to 43rd this year. It also serves Thailand's commitment on "No one safe until everyone safe" made during the Global Compact on Migration meeting at the United Nations in March 2021.
5. The Social Security Office (SSO) or the Division of Health Economics and Health Security, as the case may be, should ensure health facilities in the areas where the workers are eligible take the lead to provide healthcare in each spot of the Factory Sandbox. Otherwise, NHSO should coordinate for the provision of healthcare to all workers by drawing into the Health Insurance Fund and not charging either the workplaces or the workers.
6. Clear measures and guidelines should be put in place to monitor the accommodation for the isolated of workers at risk of infection provided by each workplace. It should focus on the provision of consumable supplies, preventing crowdedness and any

¹ https://resolution.soc.go.th/PDF_UPLOAD/2021/P_404380_3.pdf

vulnerable condition. Measures should be put in place to help if both parents have to be quarantined and their children could be left unattended.

With respect in human rights and human dignity
Migrant Working Group (MWG)

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