

Truck Act

Principal Act

Act. No. 1895-06	<i>Commencement</i>	26.9.1895
	<i>Assent</i>	26.9.1895

Amending enactment	Relevant current provisions	Commencement date
Act. 1934-06	s. 3	
1934-17	ss. 8-14	
1983-12	ss. 1-11, 12(1)-(2)	
2006-08	ss. 2, 12(1), (3)-(4), 14	20.4.2006

English sources

Truck Act 1831 (1 & 2 Will.4 c.37)
Employer's and Workmen Act 1875 (38 & 39 Vict. c.90)
Truck Amendment Act 1887 (50 & 51 Vict c.46)
Truck Act 1896 (59 Vict. c.44)

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AN ACT TO CONSOLIDATE THE LAW RELATING TO TRUCK.

Short title.

1. This Act may be cited as the Truck Act.

Interpretation.

2. In this Act, unless the context otherwise requires,—

“contract” includes any agreement which creates or purports to create an obligation between employer and worker;

“Director of Employment” means the Director of Employment of the Government of Gibraltar;

“employer” includes all masters, foremen, managers, clerks and other persons engaged in the hiring, employment or superintendence of the labour of any worker;

“wages” mean any remuneration contracted to be given to a worker in respect of his services;

“worker” does not include a domestic or menial servant, but save as aforesaid, means any person who, being a labourer, servant in husbandry, journeyman, artificer, handicraftsman, miner or otherwise engaged in manual labour, whether under the age of twenty-one years or above that age, has entered into or works under a contract with an employer, whether the contract be made before or after the coming into operation of this Act, be express or implied, oral or in writing, and be a contract of service, or a contract personally to execute any work or labour.

Wages to be paid in coin.

3. The entire amount of the wages earned by or payable to a worker in respect of any labour shall be actually paid to such worker in the coin (including currency notes) for the time being legally current in Gibraltar, and every payment made to any such worker by his employer, of or in respect of any such wages, by the delivering to him of goods, or otherwise than in the current coin (or currency notes), shall be and is hereby declared to be illegal and void:

Provided that it shall be lawful for an employer with the consent of the worker to pay a worker his wages by cheque.

Prohibition of charges against advances.

4. Whenever by agreement, custom or otherwise, a worker is entitled to receive in anticipation of the regular period of the payment of his wages an advance as part or on account thereof, it shall not be lawful for the employer to withhold such advance or make any deduction in respect of such advance on account of poundage, discount, interest or any similar charge.

Prohibition of condition as to place where wages are to be spent.

5. No employer shall, directly or indirectly, by himself or his agent, impose as a condition, express or implied, in or for the employment of any worker any terms as to the place at which, or the manner in which, or the person with whom, any wages or portion of wages paid to the worker are or is to be expended, and no employer shall by himself or his agent dismiss any worker from his employment for or on account of the place at which, or the manner in which, or the person with whom, any wages or portion of wages paid by the employer to such worker are or is expended or fail to be expended.

Goods supplied not to be set off against wages.

6. In any action brought by a worker for the recovery of his wages, the employer shall not be entitled to any set-off or counter-claim in respect of any goods supplied to the worker by any person under any order or direction of the employer, or any agent of the employer, and the employer of a worker or any agent of the employer, or any person supplying goods to the worker under any order or direction of such employer or agent, shall not be entitled to sue the worker for or in respect of any goods supplied by such employer or agent, or under such order or direction, as the case may be.

Advances of wages.

7. Nothing in this Act contained shall extend to prevent any employer from advancing to any worker any money to be by him contributed to any friendly or other provident society duly established according to law, nor from advancing to any worker any money for relief in sickness of himself and family, or for the education of any child or children of such worker, nor from deducting or contracting to deduct any sum or sums of money from the wages of any worker for the education of any child or children of such worker.

Imposition of fines.

8.(1) An employer shall not make any contract with any worker for any deduction from the sum contracted to be paid by the employer to the worker, or for any payment to the employer by the worker, for or in respect of any fine, unless—

- (a) the terms of the contract are contained in a notice kept constantly affixed at such place or places open to the workers and in such a position that it may be easily seen, read and copied by any person whom it affects; or the contract is in writing, signed by the worker; and

- (b) the contract specified the acts or omissions in respect of which the fine may be imposed, and the amount of the fine or the particulars from which that amount may be ascertained ; and
 - (c) the fine imposed under the contract is in respect of some act or omission which causes or is likely to cause damage or loss to the employer, or interruption or hindrance to his business; and
 - (d) the amount of the fine is fair and reasonable having regard to all the circumstances of the case.
- (2) An employer shall not make any such deduction or receive any such payment, unless—
- (a) the deduction or payment is made in pursuance of, or in accordance with, such a contract as aforesaid ; and
 - (b) particulars in writing showing the acts or omissions in respect of which the fine is imposed and the amount thereof are supplied to the worker on each occasion when a deduction or payment is made.
- (3) This section shall apply to the case of a shop assistant in like manner as it applies to the case of a worker.

Deductions for negligent work.

- 9.(1) An employer shall not make any contract with any worker for any deduction from the sum contracted to be paid by the employer to the worker, or for any payment to the employer by the worker for or in respect of bad or negligent work or injury to the materials or other property of the employer, unless—
- (a) the terms of the contract are contained in a notice kept constantly affixed at such place or places open to the worker in such a position that it may be easily seen, read and copied by any person whom it affects; or the contract is in writing, signed by the worker; and
 - (b) the deduction or payment to be made under the contract does not exceed the actual or estimated damage or loss occasioned to the employer by the act or omission of the worker, or of some person over whom he has control, or for whom he has by the contract agreed to be responsible; and
 - (c) the amount of the deduction or payment is fair and reasonable, having regard to all the circumstances of the case.
- (2) An employer shall not make any such deduction or receive any such payment unless—

- (a) the deduction or payment is made in pursuance of, or in accordance with, such a contract as aforesaid; and
- (b) particulars in writing showing the acts or omissions in respect of which the deduction or payment is made and the amount thereof are supplied to the worker on each occasion when a deduction or payment is made.

Deductions in respect of materials.

10.(1) An employer shall not make any contract with any worker for any deduction from the sum contracted to be paid by the employer to the worker, or for any payment to the employer by the worker for, or in respect of, the use or supply of materials, tools or machines, standing room, light, heat, or for or in respect of any other thing to be done or provided by the employer in relation to the work or labour of the worker unless—

- (a) the terms of the contract are contained in a notice kept constantly affixed at such place or places open to workers, and in such a position that it may be easily seen, read and copied by any person whom it affects; or the contract is in writing signed by the worker; and
 - (b) the sum to be paid or deducted under the contract in respect of materials, tools or machines, standing room, light, heat or any other thing, does not exceed, in the case of materials or tools supplied to the worker, the actual or estimated cost thereof to the employer, or in the case of the use of machinery, light, heat or any other thing in this section mentioned, a fair and reasonable rent or charge having regard to all the circumstances of the case.
- (2) An employer shall not make any such deduction or receive any such payment unless—
- (a) the deduction or payment is made in pursuance of, and in accordance with, such a contract as aforesaid ; and
 - (b) particulars in writing showing the things in respect of which the deduction or payment is made and the amount thereof are supplied to the worker on each occasion when a deduction or payment is made.

Recovery of payments or deductions.

11. Any worker or shop assistant may recover any sum deducted by or paid to his employer contrary to section 8, 9 or 10 provided that proceedings for such recovery are commenced within six months from the date of the deduction or payment sought to be recovered, and that where he has consented to or acquiesced in any such deduction or payment, he shall only recover the excess which has been deducted or paid over the amount (if any) which the court may find to have been fair and reasonable, having regard to all the circumstances of the case.

Production and copies of contract.

12.(1) Every employer who has made any contract purporting or intending to operate as a contract under section 8, 9 or 10, shall, on demand in writing by the Director of Employment, produce the contract or a true copy thereof at any convenient time and place to be named by the Director of Employment, and the Director of Employment or someone acting on his behalf shall be at liberty to take a copy of the same or of any part thereof, and the employer of any worker or shop assistant who is party to any such contract shall at the time of making the contract give the worker or shop assistant a copy of the contract or of the notice containing its terms.

(2) A worker or shop assistant who is party to any such contract shall be entitled, on request, to obtain from his employer free of charge a copy of the contract or of the notice containing its terms.

(3) Every employer who has made any contract purporting or intending to operate as a contract under section 8 shall keep a register of deductions or payments, and shall enter therein every deduction or payment for or in respect of any fine purporting to be made under any such contract, specifying the amount and the nature of the act or omission in respect of which the fine was imposed, and this register shall be at all times open to inspection by the Director of Employment or someone acting on his behalf.

(4) A person who fails to comply with this section is guilty of an offence and is liable on summary conviction to a fine at level one on the standard scale.

Saving.

13. Nothing contained in section 8, 9 or 10 shall make lawful any contract or payment which is illegal under any of the other provisions of this Act.

Offences.

14. An employer or his agent who enters into any contract contrary to this Act, or makes any deduction or receives any payment contrary to this Act, or otherwise contravenes any of the provisions of this Act for which no other penalty is specially provided, is guilty of an offence and is liable on summary conviction for the first offence to a fine at level one on the standard scale, and for the second offence to a fine at level two on the standard scale, and in case of a third offence to a fine at level three on the standard scale:

Provided always that—

- (a) no person shall be punished as for a second offence under this Act unless ten days at the least have intervened between the conviction of such person for the first and the commission by such person of the second offence, but each separate offence

committed by any such person before the expiration of the term often days is punishable by a separate penalty, as though the same were a first offence ;

- (b) no person shall be punished as for a third offence under this Act, unless ten days at the least shall have intervened between the conviction of such person for the second and the commission by such person of the third offence, but each separate offence committed by any such person before the expiration of the term of ten days is punishable by a separate penalty, as though the same were a second offence ;
- (c) the fourth or any subsequent offence which may be committed by any such person against this Act shall be inquired of, tried and punished, in the manner hereinbefore provided in respect of any third offence ;
- (d) if the person or persons preferring any information is unable or does not see fit to produce evidence of any such previous conviction or convictions as aforesaid, any such offender shall be punished for each separate offence committed by him against the provisions of this Act by an equal number of distinct and separate penalties, as though each of such offences were a first or a second offence, as the case may be ; and
- (e) no person shall be proceeded against or punished as for a second or as for a third offence at the distance of more than two years from the commission of the next preceding offence.

Offences by agents.

15.(1) Where an offence for which an employer is, by virtue of this Act, liable to a penalty has in fact been committed by some agent of the employer or other person, such agent or other person shall be liable to the same penalty as if he were the employer.

(2) Where an employer is charged with an offence against this Act he shall be entitled, upon information duly laid by him, to have any other person whom he charges as the actual offender brought before the magistrates' court at the time appointed for hearing the charge, and if, after the commission of the offence has been proved, the employer proves to the satisfaction of the court that he had used due diligence to enforce the execution of this Act, and that the other person had committed the offence in question without his knowledge, consent or connivance, the other person shall be summarily convicted of such offence, and the employer shall be exempt from any penalty.

Disqualification of justices of the peace.

16. A person engaged in the same trade or occupation as an employer charged with an offence against this Act shall not act as a justice in hearing and determining such charge.

Partnerships.

17.(1) No person shall be liable to be convicted of any offence against this Act committed by his co-partner in trade, and without his knowledge, privity or consent, but it shall be lawful, when any penalty, or any sum for wages, or any other sum is ordered to be paid under the authority of this Act, and the person or persons ordered to pay the same neglects or refuses to do so, to levy the same by distress and sale of any goods belonging to any co-partnership, concern or business in the carrying on of which such charges may have become due or such offence may have been committed.

(2) In all proceedings under this Act to recover any sum due for wages it shall be lawful in all cases of co-partnership for the magistrates' court at the hearing of any complaint for the non-payment thereof, to make an order upon any one or more co-partners for the payment of the sum appearing to be due. In such case the service of a copy of any summons or other process, or of any order, upon one or more of such co-partners shall be deemed to be a sufficient service upon all.