

EMPLOYMENT SECURITY COMMISSION OF NORTH CAROLINA
RALEIGH, NORTH CAROLINA

INTERPRETATION NO. 108

TO: R. F. Martin, Director

FROM: R. B. Overton, Senior Attorney

RE: Interpretation of Section 96-8(g)(1) of the Employment Security Law of North Carolina Since January 1, 1949 – Definition of Employment – Whether Home Workers are in Employment

You submitted a memorandum requesting an interpretation as to whether home workers are in employment under the provisions of the Employment Security Law. This matter was delayed for the reason that it appeared that your questions were answered in Interpretation No. 79, prepared by Mr. Billings soon after the amendments to the Employment Security Law by the Legislature in the 1949 session. Mr. Billings' interpretation was adopted on May 24, 1949. However, after further discussion with you, I will attempt to set forth some general rules as they specifically apply to home workers.

The Supreme Court of North Carolina in the case of Hayes v. Elon College, 224 N.C. 11, in passing upon whether or not individuals performing services for Elon College were in employment or were independent contractors, set forth the general rule to be applied as follows:

“The retention by the employer of the right to control and direct the manner in which the details of the work are to be executed and what the laborers shall do as the work progresses is decisive, and when this appears it is universally held that the relationship of master and servant or employer and employee is created.

“Conversely, when one, who exercising an independent employment, contracts to do a piece of work according to his own judgment and methods, and without being subject to his employer except as to the result of the work, and who has the right to employ and direct the action of the workmen, independently of such employer and freed from any superior authority in him to say how the specified work shall be done or what laborers shall do as it progresses, is clearly an independent contractor.

“The vital test is to be found in the fact that the employer has or has not retained the right of control or superintendence over the contractor or employee as to details.”

You will note from the above general rule as enunciated by the Supreme Court it is held that the retention by the employer of the right to control and direct the manner in which the details of the work are to be executed and what the laborer shall do as the work progresses is decisive. The Court said that when it appeared that such rights were retained by the employer, then in that event it was universally held that the relationship of master and servant or employer and employee was created and conversely, it held that where such rights of control were not retained that the status was that of an independent contractor.

The Court further set forth in that opinion certain criteria which should be given weight and emphasis in determining the relationship between the parties, those being: (1) Is the individual laborer engaged in an independent business; (2) Is such individual to have the independent use of his special skill, knowledge, or training in the performance of his work; (3) Is such individual doing a specified piece of work at a fixed price or for a lump sum or upon a quantitative basis; (4) Is such individual not subject to discharge because he adopts one method of doing the work rather than another; (5) Is such individual not in the regular employ of the contracting party; (6) Is such individual free to use such assistants as he may think proper; (7) Does such individual have full control over such assistants; and (8) Does such individual select his own time. All of the above questions are pertinent in deciding whether or not an individual is an employee or an independent contractor. However, the lack of one is not decisive.

Thus, in determining whether or not a home worker is an employee or an independent contractor, it is important that the Field Representative or other agent of the Commission apply the tests as hereinbefore enumerated. If it should appear that the alleged employer does not retain any right to control or direct the manner in which the details of the work are to be executed and what the individual shall do as he works, then it would appear that such individual should be held to be an independent contractor. If the employer does retain such rights, irrespective of whether he exercised those rights, such individual should be held to be an employee. The question as to who owns the machinery or equipment used in connection with the work may be of importance, but the main question is, as above stated, the right to control the details of the performance of the work.

The United States Circuit Court of Appeals in the case of Glenn v. Beard, reported in 142 F.2d 376, held that home workers are not subject to the right of control, except as to result to be accomplished, are independent contractors. Thus, it was held that individuals were not employees of X for purposes of unemployment taxes under the following circumstances: Such individuals were engaged under contract with X to

manufacture comforters and quilts on material and in accordance with specifications furnished by X, and, upon delivery of completed comforters and quilts were paid amounts agreed upon. The work was to be done within a designated period but at such time and places as were agreeable to the workers, workers could do the work personally or by agents he selected, and X could not withdraw work while it was being worked upon within the time provided in the contract; no inspections were made on work while in progress, and no supervision was exercised over the work by X. Workers were free to work when they desired, and as they desired, or as their other household or farm duties permitted, and they were free to engage in similar work for other concerns at the same time. The Bureau of Internal Revenue further sets forth that they will accept and abide by the ruling in the above case in all cases of home worker where the circumstances surround the performance of work and do not differ materially from those present in that case.

Therefore, under the law of this State where it is shown that the alleged employer does not in fact retain the right to control the details of the performance of the work as it progresses, such individuals should be held to be independent contractors. However, it must be borne in mind that if it should appear that the alleged employer does retain the right to control the details and methods of employment as the work progresses – such as the regulation of hours and regular inspection of work, and in those cases where the alleged employer owns the machines or tools and restricts the use thereof to work in its behalf – then that is indicative of control, and such individual would not be an independent contractor but would stand in the relationship of an employee.

Adopted as an official Interpretation of the Commission on March 24, 1952.