

UNEMPLOYMENT COMPENSATION COMMISSION OF NORTH CAROLINA

INTERPRETATION NO. 33

TO: R. F. Martin, Director

FROM: Ralph Moody, Chief Counsel

SUBJECT: Liability Under Mandatory Provisions of Law Supersedes Voluntary Election – Termination of Coverage – Section 8(b) and (c) and Section 19(f) of the Unemployment Compensation Law

We have for some time in oral discussions advised different employees of the Commission that, in our opinion, an employer who becomes liable by voluntary election and who subsequently employs eight or more persons for as many as twenty weeks in a calendar year becomes an employer under Section 19(f)(1); that is, he becomes an employer under the mandatory provision of the law and this supersedes the voluntary election, or in other words, this by operation of law cancels out or renders the voluntary election nugatory and void.

Nearly all states that we know anything about who have considered this question agree that the above statement is correct. There is no use to cite an array of authorities on this question. One statement should be sufficient and perhaps the best statement is given by the Research Institute of America in its Social Security Coordinator. On page 2503 of Volume 1, we find the following:

“Automatic Coverage Supersedes Elective Coverage: Where an employer voluntarily elects coverage in a calendar year and later becomes automatically subject by employing a sufficient number of employees for a sufficient period of time during that same calendar year, his continued liability is based upon his automatic coverage and not his elective coverage. In such a case, the date on which the employer elected to become liable becomes immaterial and the employer is liable from the date upon which he would ordinarily become liable, usually January 1st of the year of coverage. Similarly, termination of liability will be governed by the provisions dealing with the termination of automatic coverage.”

From this statement, you are advised as follows:

1. That an employer who elects coverage becomes liable under the mandatory provisions of the Act when he employs as many as eight persons for twenty weeks and regardless of the date of election of coverage, the liability then extends back to the first of the year if such

employer had an employment record beginning from the first of the year, and if not, it extends back to the time when he first had employment in the calendar year and his tax liability should be based upon this record rather than when he first voluntarily elected.

2. When an employer who has become liable by voluntary election becomes automatically liable by a mandatory provision of the law, such as employing eight people for twenty weeks, the provision under which he terminates coverage should be the provision applied to such units who become liable by operation of the statute; that is, such an employer upon being automatically converted into a mandatory employer has the right to give notice of application for termination of coverage up until January 31st as provided by Section 8 of our statute.

Adopted as an official Interpretation by the Commission March 28, 1944.