

EMPLOYMENT SECURITY COMMISSION OF NORTH CAROLINA
RALEIGH, NORTH CAROLINA

INTERPRETATION NO. 158

TO: R. F. Martin, Director

FROM: R. B. Billings, Attorney

RE: Interpretation of Section 96-8(g)15 (formerly Section 96-8(g)(7)(0)) of the Employment Security Law of North Carolina, Defining Casual Labor

Under the Act the provisions of Section 96-8(g)15 provide that the term “employment” shall not include casual labor not in the course of the employing unit’s trade or business. Casual labor is not specifically defined in the Act, and as stated by the Supreme Court of Pennsylvania such term is not capable of scientific definition.

In applying the provisions of the North Carolina Act it must be kept in mind that unless the services are performed outside of the course of the employing unit’s business it is not exempted because it may be casual labor. In other words, any services performed in the course of the employing unit’s business come within the definition of employment even though such services may be casual in nature, it being presumed, of course, that the services are being performed by an employee of the employing unit and are not excluded under any other provision of the Act.

Under the rulings of the authorities by which casual labor is defined and the statutes excluding such labor, it is generally stated that labor which is occasional, incidental, irregular, haphazard, or unplanned, or which may arise out of an emergency, is considered “casual labor”.

Casual labor has been discussed by the Supreme Court of North Carolina in the case of Shoup v. American Trust Company, 245 N.C. 682. In this case the court used the following language in the treatment of this subject:

“In our opinion the foregoing authorities do not support the appellant’s contention in light of the facts before us. It is clear that *Metcalf v. Sweeney*, supra, as well as the textbook authorities cited, support the view that the servant or employee should be excluded where the employment was casual, but included where there was continuity and permanence of employment. Therefore, it becomes pertinent and important to see what is meant by ‘casual’ in this connection as meaning ‘occasional; incidental; happening at uncertain times; not stated or regular.’ In the case of *Van Nuys v. Levine*, 165 A. 885, 886, 11 N. J. Misc. 309, the Court defined as ‘casual employment’, ‘employment for a

particular job which is not to be continued at regular or recurring intervals.’ In *Dobrich v. Pittsburgh Terminal Coal Corp.*, 145 Pa. Super. 87, 20 A. 2d 98, 900, the Court quoted with approval from the cases of *Cochrane v. William Penn Hotel*, 140 Pa. Super. 323, 13 A. 2d 875, affirmed 339 Pa. 549, 15A. 2d 43, the following: ‘Applying it (casual) as practically as possible to the subject of employment, it may be said in general that if a person is employed only occasionally, at comparatively long and irregular intervals, for limited and temporary purposes, the hiring in each instance being a matter of special engagement, such employment is casual in character. On the other hand, even though an employment is not continuous, but only for the performance of occasional jobs, it is not to be considered as casual if the need for the work recurs with a fair degree of frequency and regularity, and, it being thus anticipated, there is an understanding that the employee is to perform such work as the necessity for it may from time to time arise.’ Likewise, in *Flynn v. Carson*, 42 Idaho 141, 243 P. 818, the Court held that regular recurring employment, though only on Saturday nights of an extra bus trip, is not a ‘casual employment’. Moreover, the above quotation from Page on Wills contains the statement that a ‘gift to employees or servants is a gift to those who are employed with some degree of regularity and continuity.’”

In another case involving an interpretation of the phrase “casual labor” as used in the Pennsylvania Unemployment Compensation Act, the Supreme Court of Pennsylvania in *Flaherty v. Unemployment Compensation Board of Review*, 112 A.2d 451 (1955), made the following observation:

“As to what constitutes an employment casual in character, it is obvious that the term ‘casual’ is not capable of scientific definition. Involved in it are the ideas of fortuitous happening and irregularity of occurrence; it denotes what is occasional, incidental, temporary, haphazard, unplanned. Applying it as practical as possible to the subject of employment, it may be said in general that if a person is employed only occasionally, at comparatively long and irregular intervals, for limited and temporary purposes, that the hiring in each instance being a matter of special engagement, such employment is casual in character * * * (But) Even if there be but a single or special job involved, this does not conclusively stamp the employment as casual. If the work is not of an emergency or incidental nature but represents a planned project, and the tenure of the service necessary to complete it and for which the employment is to continue is of fairly long duration, * * * the employment is not casual.”

It is suggested that in dealing with whether services are casual within the meaning of the Act the standards set forth in the two decisions quoted should be applied. In making application of the rule as set forth by the North Carolina Court, it must be decided whether the work is occasional, incidental, temporary, haphazard, and not planned, and whether such work is recurring and whether such service occurs at comparatively long and irregular periods for limited and temporary purposes. If the services are of such nature, it should be found to be casual labor.

It is well to keep in mind that where certain individuals over a given period of time perform services which may or may not be casual, it should be ascertained how often or how frequently the individuals perform the services during the particular period in question. In other words, if an individual, for instance, is working as a carpenter for a given period of time, we should find out how regularly during the period he worked – whether he worked once a day, once a week, once a month, or for only a few hours during the period. This is one of the most important facts to establish.

The provisions of the Federal Unemployment Tax Act concerning casual labor are more specific than the section of the North Carolina law dealing with this exemption. For that reason we are not to be guided by the rulings of the federal authorities, although as a practical matter, it is felt that services which have been held to be casual labor under the Federal Unemployment Tax Act would be considered casual labor in defining such term under the North Carolina Act.

Adopted as an official Interpretation by the Commission on July 28, 1959.

This Interpretation cancels and replaces Interpretation No. 56, adopted April 17, 1945.