

EMPLOYMENT SECURITY COMMISSION OF NORTH CAROLINA
RALEIGH, NORTH CAROLINA

INTERPRETATION NO. 184

TO: R. F. Martin, Director

FROM: R. B. Billings, Attorney

RE: Interpretation of Section 96-8(6)g7 of the Employment Security Law of North Carolina - Employment of Stepson by Stepfather

The question has been raised as to whether a minor stepson in the employ of his stepfather is engaged in exempt employment under Section 96-8(6)g7. This provision reads as follows:

“The term ‘employment’ shall not include:

“7. Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of twenty-one in the employ of his father or mother;”

Should the statute be interpreted to mean that the exemption applies only in those cases where a child under the age of 21 is employed by his natural father or mother?

It has been ruled by the Attorney General that the exemption does not apply to services performed by a father or mother employed by an administratrix of a son’s estate.

In his ruling the Attorney General stated:

“* * * To my mind the statute intended to exempt this family employment as long as the individuals were alive and in close personal relationship with each other. It was not intended to carry this exemption beyond the boundaries of death and over into the field of a symbol or legal fiction such as a personal representative who may or may not be a relative. * * *” (Interpretation No. 115)

In the present case the exemption is not carried over into a field of a symbol or legal fiction. The administratrix or personal representative in the capacity as such has no family relationship upon which may exempt services could be based. In the ruling referred to it was also pointed out that under the law the legal representative of the deceased person was a distinct employing unit. This was also true with respect to the ruling which was made concerning the case in which the father and mother worked for a partnership composed of two sons. Here the partnership was considered

as a separate legal entity and a distinct employing unit, and the exemption was held not to apply in such case.

The services exempted under the section referred to, Section 96-8(6)g7, are based upon and are excepted from employment because of the existence of a family relationship between the employee and the individual employing him. In construing the Federal Unemployment Tax Act concerning the same type of exemption contained in the Act, the Bureau of Internal Revenue has held such services to be exempt. We quote from the ruling of the Internal Revenue Bureau as follows:

“Services performed by a foster parent in the employ of his or her foster child, by a stepparent in the employ of his or her stepchild, and by a child under the age of 21 in the employ of his or her foster parent or stepparent, are excepted.” S.S.T. 313 (CB 1938-2, 335).

The Bureau of Internal Revenue has limited the exemption, however, by a ruling, E. M. T. 436 (CB 1942-2, 209), with respect to a father’s services for the administratrix of his son’s estate. Such services were held not exempt from the tax provisions on the principal that, generally, any services by employees after the employer’s death are performed in the employ of the employer’s estate which is a new employing unit. It does not appear, therefore, that the opinion of the Attorney General, Interpretation No. 118, is in conflict with the ruling of the Internal Revenue Bureau insofar as a father’s services for the administratrix of his son’s estate are concerned.

The basis of the exemption is that it is a family exemption and intended to allow a parent, foster or otherwise, to engage the services of a child whom he or she as a general rule supports, either voluntarily or by a legal obligation, without the further obligation of paying unemployment compensation contributions for any reimbursement that may be given for the services. This is the view taken by the Montana agency with respect to that type of employment.

The Unemployment Compensation Division in the State of North Dakota in an interpretative opinion relating to the same type of services stated the following:

“The relationship of a minor stepchild to its stepfather is not essentially different from a relationship of a child to his normal parent. It can be safely assumed that in most cases a stepfather provides support for his stepchild much as he would for a natural child. Under the circumstances, it is proper for him to utilize the services of such stepchild. Services performed by a minor stepchild for his stepfather do not constitute employment under the terms of the statute.”

It is our opinion that the services of a stepchild performed for a stepfather should not be considered as employment, and such services, in our opinion, are exempt under

Section 96-8(6)g7, and that such exemption would also apply to services performed by an adopted child or foster child in the employ of his stepfather or stepmother.

Adopted as an official Interpretation of the Commission on May 21, 1963.