



U.I. Bulletin 551
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SUBJECT: UI Treatment of Small Non-Profits for the Purpose of Determining Coverage

PURPOSE

The purpose of this Bulletin is to define, for unemployment insurance purposes, the manner of determining whether an employing unit that is a non-profit organization is an “employer” for unemployment insurance liability purposes.

BACKGROUND

Employing units in Vermont are generally subject to unemployment insurance taxation (“covered employment”) if they meet the statutory definition of an “employer” in 21 V.S.A. § 1301. Section 1301 contains a number of exemptions from the definition of “employer,” including one for small non-profit organizations. Specifically, an employing unit is not considered an employer if it meets the following definition:

(6)(A)(ix) The term "employment" shall also include service for any employing unit which is performed after December 31, 1971 by an individual in the employ of a religious, charitable, educational, or other organization but only if:

(I) the service is excluded from "employment" as defined in the Federal Unemployment Tax Act solely by reason of section 3306(c)(8) of that act; and

(II) the organization had four or more individuals in employment for some portion of a day in each of 20 different weeks, whether or not such weeks were consecutive, within either the current or preceding calendar year, regardless of whether they were employed at the same moment of time.

GUIDANCE

Note that the statute is silent as to whether the organization employs four or more individuals in Vermont or in all of its offices or places of business. Historically, the Unemployment Insurance Division has counted only employees physically performing services in Vermont. Recent litigation in other jurisdictions suggest that this is an impermissibly narrow reading of the statute.

Vermont’s small non-profit exemption is in conformity with the Federal Unemployment Tax Act (FUTA), which dictates that services for non-profit organizations be treated as covered

employment when “the total number of individuals who were employed by such organization in employment ... was four or more.” 26 U.S.C. § 3309(c). FUTA imposes no state-based geographic limitations on employment.

Vermont’s Unemployment Insurance Act is to be construed liberally in favor of claimants. Howard v. Dept. of Employment and Training, 153 Vt. 614 (1990). No claimant should be excluded from unemployment benefits unless the law clearly intends such exclusion. Jones v. Dept. of Employment Security, 140 Vt. 552 (1982). Courts in other jurisdictions with identical small non-profit exemptions have found that legislature did not intend that there be a geographical limitation on the minimum size requirement for non-profits. When the purpose of the law is to exclude small non-profit organizations from the provisions of the Act, imposing a localization or geographic limitation on the non-profit in question neither serves the purpose of the exemption nor provides the benefits of the Act to the claimants who should be afforded them. See Phoenix v. Summer Institute of Linguistics, 568 S.W.3d 39 (Mo. Ct. App. 2019); Laub v. Industrial Claim Appeals Office of State of Colorado, 983 P.2d 815 (Co. Ct. App.1999).

Accordingly, for the purposes of determining the size of a non-profit organization in accordance with 21 V.S.A. § 1301(6)(A)(ix), the Unemployment Insurance Division will include all employees of such organization performing services in the United States and not just those performing services in the State of Vermont.

A handwritten signature in black ink, appearing to read "Cameron Wood", is positioned above a horizontal line. The signature is stylized and somewhat cursive.

Cameron Wood, UI & Wages Division Director