

**Opinion No. 37-1693**

June 28, 1937

**BY:** FRANK H. PATTON, Attorney General

**TO:** Mr. Lake J. Frazier Assistant District Attorney Roswell, New Mexico

{\*130} Your letter of June 25 makes inquiry regarding firm having more than four employees during a twenty-week period in the year 1936, but which has not had as many as four at any time during the year 1937.

From an examination of the New Mexico Unemployment Compensation Act we find in Section 19 a definition of "employer" which reads as follows:

"Any employing unit which in each of twenty different weeks within either the current or the preceding calendar year (whether or not such weeks are or were consecutive) has or had in employment, four or more individuals (not necessarily simultaneously and irrespective of whether the same individuals are or were employed in each such week)."

Apparently from this provision it is the intention of the Act that any employer who had in his employ four or more persons during the year 1936 is subject to the Act and must pay the tax for the State of New Mexico throughout the year 1937, regardless of whether during the current year of 1937 he should have less than the number of four employees.

Also in Section 8 of the Act, paragraphs (a) and (b), there is a provision to the effect that when an employer once becomes subject to the act he remains subject to the act until a full calendar year has passed in which there are no twenty different weeks in which such employer employs four or more individuals.

For the reasons stated above, it is my belief that Mr. J. R. Modrall, who is the attorney for the Unemployment Compensation Commission was correct when he advised that this particular firm must pay the tax.