

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

FILE NO.  
101254

COMMISSIONER OF LABOR OF  
THE STATE OF NORTH CAROLINA,  
CHERIE BERRY

ORDER

Complainant

v.

BILL'S BARBECUE & CHICKEN  
RESTAURANT, INC.  
d/b/a BILL'S BARBECUE & CHICKEN  
RESTAURANT  
PO Box 3509  
Wilson, NC 27895

Respondent

THIS CAUSE came on for telephonic hearing before Christine M. Ryan, the undersigned Hearing Officer designated by the Commissioner of Labor of the State of North Carolina in accordance with 13 NCAC 12.0905 on May 5, 2017, for the Respondent's alleged failure to comply with the provisions of Chapter 64, Article 2 of the North Carolina General Statutes entitled "Verification of Work Authorization," commonly known as "E-Verify".

The Complainant was present through Angela Leon, Senior Investigator. The Respondent appeared via telephone through its Catering Manager, Nellie Ampley.

Pursuant to N.C. Gen Stat. §64-30(l), the Commissioner shall hold a hearing if the investigation reveals that a complaint is not false and frivolous to determine if a violation of N.C. Gen. Stat. §64-26 has occurred, and, if appropriate, impose civil penalties in accordance with Chapter 64, Article 2 of the North Carolina General Statutes.

Based upon the facts and evidence presented at the hearing, and with due consideration of the contentions of both parties, the undersigned Hearing Officer hereby makes the following Findings of Fact and Conclusions of Law and enters an Order accordingly:

**FINDINGS OF FACT**

1) Complainant, Commissioner of Labor of the State of North Carolina (hereinafter Commissioner) is charged by law with the responsibility for enforcement of the provisions of the Verification of Work Authorization Act, Chapter 64, Article 2 of the North Carolina General

Statutes, (the "Act") as well as regulations adopted pursuant thereto.

2) Respondent, Bill's Barbecue & Chicken Restaurant, Inc. d/b/a Bill's Barbecue & Chicken Restaurant, (hereinafter Respondent) is a North Carolina corporation doing business in Wilson, NC. At all times relevant to this matter, Respondent was in the business of operating a restaurant called Bill's Barbecue & Chicken Restaurant in Wilson, NC.

3) Respondent is an employer within the meaning of N.C. Gen. Stat. §64-25(4) and all of Respondent's employees referred to in the Complaint are "employees" within the meaning of N.C. Gen. Stat. §64-25(3).

4) Respondent at all times relevant to this matter, employed 25 or more employees in North Carolina, as employee is defined in N.C. Gen. Stat. §64-25 (3).

5) On or about June 28, 2016, Complainant received an anonymous complaint that alleged that Respondent was not verifying the work authorization of its employees as required by Chapter 64, Article 2 of the North Carolina General Statutes.

6) Prior to June 28, 2016, the Complainant had not received a complaint against Respondent.

7) An Investigator for Complainant investigated the allegation, and concluded that the complaint was not false and frivolous.

8) A telephonic hearing was held on May 5, 2017 to review the investigative case file resulting from the complaint pursuant to N.C. Gen. Stat. §64-30 and 13 NCAC 12.0905.

9) Evidence provided by Respondent to the Hearing Officer prior to and during the hearing showed that, while Respondent had not enrolled in the "E-Verify" program prior to June 28, 2016, Respondent was enrolled in "E-Verify" as of the date of the hearing.

10) Respondent provided testimony at the hearing that the employee responsible for E-Verify was not conducting E-Verify as instructed and Respondent was unaware of that until after the employee was separated and the complaint was filed. Respondent further testified that it would take all measures necessary to E-Verify current and past employees consistent with the E-Verify program.

11) On July 10, 2017, Respondent provided a sworn statement that it had submitted the information necessary to verify the work authorization of all employees currently employed or previously employed by Respondent prior to the hearing. A copy of the statement is attached as **Exhibit A**.

12) There were two (2) employees, BF and AI, that Respondent was unable to E-Verify.

13) Respondent also provided further information that Employee BF was hired on February 19, 2015, and separated on May 9, 2016. Employee AI was hired on either February 27, 2015 or March 2, 2015 and separated on March 30, 2015.

Based upon the foregoing FINDINGS OF FACT, the undersigned Hearing Officer makes the following:

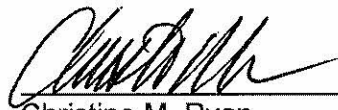
## CONCLUSIONS OF LAW

- 1) The foregoing Findings of Fact are incorporated by reference as Conclusions of Law to the extent necessary to give effect to the provisions of this Order.
- 2) The Respondent is subject to the jurisdiction and provisions of the Act.
- 3) Respondent is required to verify the work authorization of its employees under Article 2 of Chapter 64 of the North Carolina General Statutes.
- 4) The complaint filed against Respondent on June 28, 2016 was not false and frivolous.
- 5) At the time the complaint was filed, Respondent was not enrolled in the "E-Verify" system and was not verifying the work authorization of its employees within three employer business days, and therefore is not entitled to the presumption of compliance provided in 13 NCAC 12.0903(a).
- 6) At the time of the hearing in this matter, Respondent had enrolled in the "E-Verify" system and had verified the work authorization of almost all of its employees utilizing the "E-Verify" system, with the exception of Former Employees BF and AI.
- 7) Since Former Employee AI was employed less than nine (9) months in a calendar year, Former Employee AI does not meet the definition of "employee" under NCGS §64-25 (3) and was not required to be E-Verified.
- 8) Respondent is now in compliance with the E-Verify requirements with the exception of the failure to E-Verify Former Employee BF. Respondent has stated that they are unable to E-Verify Employee BF.
- 9) Respondent is in violation of the E-Verify requirements due to the failure to E-Verify Former Employee BF.

BASED UPON the foregoing Findings of Fact and Conclusions of Law, IT IS ORDERED as follows:

- 1) Respondent is currently in compliance with the requirements of Article 2, Chapter 64 of the North Carolina General Statutes.
- 2) Respondent failed to E-Verify one former employee and is therefore in violation of Article 2, Chapter 64 of the North Carolina General Statutes.
- 3) Respondent is hereby Ordered to file a sworn affidavit (Exhibit B) within three (3) business days of this Order.

This the 29<sup>th</sup> day of SEPTEMBER, 2017



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Christine M. Ryan  
Administrator  
Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this date served a copy of the foregoing ORDER upon:

BILL'S BARBECUE & CHICKEN RESTAURANT, INC.  
d/b/a BILL'S BARBECUE & CHICKEN RESTAURANT  
Registered Agent William L. Ellis, Sr.  
PO Box 3509  
Wilson, NC 27895

by depositing a copy of the same in the United States Mail, Certified Mail, postage prepaid at  
Raleigh, North Carolina.

THIS THE 29<sup>th</sup> DAY of SEPTEMBER 2017.



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Christine M. Ryan  
Administrator  
Hearing Officer  
North Carolina Department of Labor  
1101 Mail Service Center  
Raleigh, NC 27699-1101  
919 807-2801

STATE OF NORTH CAROLINA            )  
  )  
COUNTY OF Wilson                    )

SWORN AFFIDAVIT  
INVESTIGATION 101254

1. I am Chris W Earp, and I hold the position of  
Head of Operations with Bill's Barbecue & Chicken Restaurant, Inc. d/b/a  
Bill's Barbecue & Chicken Restaurant in Wilson, NC (Respondent).

2. I certify that Respondent was required to enroll in E-Verify under Chapter 64,  
Article 2 of the North Carolina General Statutes.

3. I certify that Respondent has enrolled in E-Verify effective  
10/13/2014.

4. Following enrollment in E-Verify, an E-Verify check was attempted on all  
employees working at the time of enrollment and prior to enrollment and was completed on all  
but one employee.

5. I certify that former employee BF was employed beginning February 19, 2015  
and ending May 9, 2016.

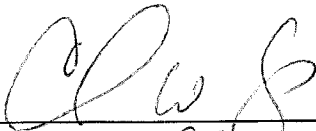
6. I further certify that Respondent did not conduct E-Verify during BF's employment  
and was unable to E-Verify BF following BF's separation.

7. I agree that Respondent was in violation of the requirements of Chapter 64,  
Article 2 and that Respondent has not previously been found in violation of said requirements.

8. I understand that failure to file this affidavit with the NC Department of Labor as required within three (3) business days of the related Order in this matter will subject Respondent to a civil penalty of ten thousand dollars (\$10,000) pursuant to NCGS §64-31 (b).

9. I declare under the penalty of perjury that the foregoing is true and correct.

This the 29 day of September, 2017.

  
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Print Name: Chris W. Earp