

STATE OF NORTH CAROLINA)
COUNTY OF WAKE)
)
)
)
COMMISSIONER OF LABOR OF)
THE STATE OF NORTH CAROLINA)
JOSH DOBSON)
)
Complainant)
)
v.)
)
Drake's Fresh Pasta Company)
dba Drake's Fresh Pasta)
636 Southwest Street)
High Point, N.C. 27260-8107)
)
Respondent)

FILE NO
201908

ORDER

THIS CAUSE came on for telephonic hearing before Kisha Holmes, the undersigned Hearing Officer designated by the Commissioner of Labor of the State of North Carolina in accordance with 13 NCAC 12.0905 on January 31, 2023. The hearing is based on the alleged failure of Drake's Fresh Pasta Company, dba Drake's Fresh Pasta to comply with the provisions of Article 2 of Chapter 64 of the North Carolina General Statutes, "Verification of Work Authorization," commonly known as "E-Verify."

The Complainant was present through Lori Burns, Western District Supervisor. The Respondent was represented by Rick Drake and Simone Drake, along with their Counsel, Attorney Donovan J. Hylarides, all of whom appeared via telephone.

Pursuant to N.C. General Statute § 64-30(1), 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 the Chapter 64, Article 2 of the North Carolina General Statutes (hereinafter "the Act").

Based upon the facts and evidence presented at the hearing, and with the due consideration of the contention 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 for the State of North Carolina, (hereinafter "Complainant") is charged by law with the responsibility for enforcement of the provisions of the Act, as well as rules and regulations adopted pursuant thereto.
- 2) Respondent, Drake's Fresh Pasta Company dba Drake's Fresh Pasta, (hereinafter Respondent") is a valid North Carolina corporation doing business in High Point, North Carolina. At all times relevant to this matter, Respondent was in the business

of operating a pasta manufacturing company called Drake's Fresh Pasta in High Point, North Carolina.

- 3) Respondent is an "employer" within the meaning of N.C. General Statute 64-25(4) and all of Respondent's employees referred to in the Complaint are "employees" within the meaning of N. C. General Statute § 64-25(3).
- 4) Respondent, at all times relevant to this matter, employed 25 or more employees in North Carolina, as defined in the Act.
- 5) On or about February 15, 2022, Complainant received an anonymous complaint, which alleged that Respondent was not verifying the work authorization of its employees as required by the Act.
- 6) Prior to February 15, 2022, 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 telephone hearing was held on January 31, 2023, to review the investigative case file resulting from the complaint, pursuant to N.C. General Statute § 64-30 and 13 NCAC 12.0905.
- 9) Evidence provided by the Respondent to the Hearing Officer prior to the hearing showed that Respondent created an E-Verify account on February 28, 2022.
- 10) Evidence provided by the Respondent to the Investigator and to the Hearing Officer, prior to the hearing, showed that the Respondent did not process E-Verify on employees within 3 business days.

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 this Act.
- 3) Respondent is required to verify the work authorization of its employees under the Act.
- 4) The complaint filed against Respondent on February 15, 2022 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 was 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 was enrolled in the E-Verify system and had verified the work authorization of its current and prior employees utilizing the E-Verify system.
- 7) Because of the verification of work authorization that occurred between the time the complaint was filed and the hearing, Respondent is now in compliance with the E-Verify requirements pursuant to N.C. Gen. Stat. 64-26(a).

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 is hereby ordered to file the enclosed sworn affidavit (Exhibit B) within three (3) business days of this Order.

This the 22 day of March, 2023.



Kisha Holmes
Administrator
Hearing Officer

CERTIFICATE OF SERVICE

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

Drake's Fresh Pasta Company
dba Drake's Fresh Pasta
636 Southwest Street
High Point, North Carolina 27260-8107

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

THIS THE 22 DAY OF March, 2023.



Kisha Holmes
Administrator
Hearing Officer
North Carolina Department of Labor
1101 Mail Service Center
Raleigh, North Carolina 27699-1101
919-707-7980

STATE OF NORTH CAROLINA)
)
COUNTY OF Guilford)
)

SWORN AFFIDAVIT
INVESTIGATION 201908

1. I am Simone Drake, and I hold the position of V.P. with Drake's Fresh Pasta Company dba Drake's Fresh Pasta (Respondent) in the North Carolina Department of Labor Investigation 201908.
2. I certify that Respondent was required to enroll in E-Verify under Article 2 of Chapter 64 of the North Carolina General Statutes, Verification of Work Authorization.
3. I certify that Respondent enrolled in E-Verify effective 2-28-2022.
4. Following enrollment in E-Verify, an E-Verify check was requested on all employees working for the time period of this investigation.
5. Pursuant to the provisions of N.C. General Statute § 7A-98, Unsworn declarations under penalty of perjury, I state under penalty of perjury under the laws of North Carolina that the foregoing is true and correct.

Executed on the following date:

This the 22nd day of March, 2023.

Signature: Simone Drake

Print Name: Simone Drake