

STATE OF NORTH CAROLINA )  
COUNTY OF WAKE )

FILE NO.  
107483

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

ORDER

Complainant )

v. )

COOK OUT-EAST INC. )  
d/b/a COOK OUT )  
15 Laura Lane Suite 300 )  
Thomasville, NC 27360 )

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 January 31, 2019, 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 Lori Burns, Senior Investigator. The Respondent appeared via telephone through its Counsel, Bernard Tisdale.

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, Cook Out-East, Inc. dba Cook Out, (hereinafter Respondent) is a North Carolina corporation doing business in multiple locations in North Carolina. At all times relevant to this matter, Respondent was in the business of operating restaurants called Cook Out in multiple locations throughout North Carolina.

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 February 12, 2018, 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 February 12, 2018, 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 January 31, 2019 to review the investigative case file resulting from the complaint pursuant to N.C. Gen. Stat. §64-30 and 13 NCAC 12.0905.

9) Respondent's counsel stated that, while Respondent had not enrolled in the "E-Verify" program prior to February 12, 2018, Respondent was enrolled in "E-Verify" effective March 1, 2018 and remained enrolled in "E-Verify".

10) Respondent's counsel stated that Respondent was conducting an E-Verify evaluation on all new employees hired on or after March 1, 2018 within 3 business days of hiring. However, he stated that the E-Verify Memorandum of Understanding would not allow Respondent to retroactively E-Verify employees hired prior to the E-Verify effective date of March 1, 2018.

11) As a result of Respondent's inability to retroactively E-Verify current or former employees, there were a total of 119 employees who were hired by Respondent prior to March 1, 2018, who worked at least nine (9) calendar months during 2017 or 2018 and who were not E-Verified. A list of those employees is attached as **Exhibit A**.

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 February 12, 2018 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) On March 1, 2018, after the complaint but prior to the hearing in this matter, Respondent enrolled in the "E-Verify" system and had verified the work authorization of all of its employees hired after March 1, 2018, utilizing the "E-Verify" system.

7) Respondent failed to conduct an E-Verify evaluation at any time on a total of 119 employees who had worked 9 months in either 2017 or 2018.

8) Respondent is now in compliance with the E-Verify requirements for new hires but failed to comply with the requirements Article 2 of Chapter 64 for 119 current or former employees hired prior to March 1, 2018.

9) Respondent violated the E-Verify requirements due to the failure to E-Verify the 119 employees hired prior to the March 1, 2018 enrollment date in the E-Verify program.

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 was required to conduct an E-Verify evaluation but failed to conduct an E-Verify evaluation for 119 employees during 2017 and 2018, and is therefore in violation of Article 2, Chapter 64 of the North Carolina General Statutes.
- 3) Respondent is hereby Ordered to file the enclosed sworn affidavit (**Exhibit B**) within three (3) business days of this Order.

This the 25<sup>th</sup> day of March, 2019



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:

COOK OUT-EAST, INC.  
d/b/a COOK OUT  
c/o Attorney Bernard Tisdale  
201 South College Street  
Suite 2300  
Charlotte, NC 28244

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

THIS THE 25<sup>th</sup> DAY of March, 2019.



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Christine M. Ryan  
Administrator  
Hearing Officer  
North Carolina Department of Labor  
1101 Mail Service Center  
Raleigh, NC 27699-1101  
919.707.7978

**EXHIBIT A**

Employee	Date Hired	Term Date
JN	1/12/2016	
CM	1/14/2016	
MV	1/14/2016	
EGR	1/18/2016	
JPN	1/18/2016	
BT	1/27/2016	
IMM	1/30/2016	
DH	1/31/2016	
CL	2/8/2016	
MT	2/8/2016	
JCX	2/9/2016	
KD	2/9/2016	
CC	2/10/2016	
KH	2/15/2016	
KL	2/15/2016	
SW	2/16/2016	
JF	2/17/2016	
LM	2/22/2016	
RJ	2/29/2016	
NM	3/2/2016	
BS	3/7/2016	
OM	3/13/2016	
DC	3/14/2016	
TM	3/16/2016	
ECC	3/28/2016	
MMM	3/28/2016	
RS	4/14/2016	
FMJ	5/12/2016	
JLP	5/24/2016	9/3/2017
JB	6/18/2016	
AM	6/24/2016	10/29/2017
CBR	6/28/2016	
AG	7/11/2016	
DS	7/18/2016	9/8/2017
LB	7/25/2016	
RH	7/27/2016	
FGG	8/15/2016	2/17/2018
JW	8/15/2016	
JGL	8/21/2016	
PMZ	9/27/2016	
FMC	9/28/2016	
JB	10/3/2016	1/19/2018
TP	10/25/2016	
ADA	10/29/2016	
DS	11/6/2016	9/18/2017

Employee	Date Hired	Term Date
DS	9/4/2017	
SC	9/18/2017	
EGL	9/21/2017	
RPV	9/21/2017	
MC	9/26/2017	
GD	10/2/2017	
WA	10/17/2017	
MM	10/29/2017	
KT	10/30/2017	
JRX	10/31/2017	
AL	11/1/2017	
ECP	11/1/2017	
YS	11/9/2017	
MP	11/13/2017	
AMD	11/24/2017	
CW	11/27/2017	
JS	11/27/2017	
JLH	11/30/2017	
AS	12/4/2017	
CM	12/4/2017	
MH	12/9/2017	
SP	12/27/2017	
TC	1/15/2018	11/30/2018
MJ	1/15/2018	
EF	1/17/2018	
SG	1/29/2018	
JRJ	2/28/2018	

DT	11/14/2016	1/7/2018
JAR	11/17/2016	
JT	11/18/2016	
JH	12/5/2016	
BS	12/18/2016	
MSA	12/21/2016	
AP	1/2/2017	
JL	1/11/2017	
AR	1/16/2017	
MP	1/20/2017	11/15/2017
BW	2/6/2017	
GLC	2/6/2017	
CR	2/20/2017	
JS	2/20/2017	
BJ	2/21/2017	
ABB	2/25/2017	
JRN	2/25/2017	
NGH	2/25/2017	
SM	3/11/2017	2/17/2018
BS	3/27/2017	
LB	4/3/2017	1/25/2018
DB	4/3/2017	
CC	2/24/2017	
PRT	4/24/2017	
ME	4/25/2017	
EG	5/2/2017	
EL	5/2/2017	
LK	5/22/2017	
CT	6/5/2017	
ABD	6/15/2017	
JBD	6/15/2017	
CP	6/19/2017	
KM	6/26/2017	
BCC	7/3/2017	
KH	7/7/2017	
JM	7/8/2017	
AP	7/17/2017	
JS	7/17/2017	
JLH	7/17/2017	
JRH	7/18/2017	
RMF	8/7/2017	
LM	8/14/2017	
MC	8/14/2017	
GE	8/21/2017	
KF	8/21/2017	
MM	8/22/2017	
JP	8/27/2017	

**EXHIBIT B**

STATE OF NORTH CAROLINA            )  
  )  
COUNTY OF Davidson                )

SWORN AFFIDAVIT  
INVESTIGATION 107483

1. I am Rich McCormick, and I hold the position of Insurance Administrator with Cook Out-East, Inc., d/b/a Cook Out (Respondent) in NC Department of Labor investigation 107483.

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 March 1, 2018.

4. Following enrollment in E-Verify, an E-Verify check was requested on all employees working at the time of enrollment and prior to enrollment, however retroactive enrollment was not permitted pursuant to the Memorandum of Understanding with the E-Verify program.

5. I certify that all employees hired on or after March 1, 2018 were evaluated using the E-Verify system within three (3) business days of hire.

6. 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.

7. 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).

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

This the 25 day of March, 2019.

*Rich McCormick*

Print Name: RICH MCCORMICK