

STATE OF NORTH CAROLINA
COUNTY OF WAKE

FILE NO.
108465

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

ORDER

Complainant

v.

NYC NCC LLC.
d/b/a A to Z Wireless
1603 Guess Road
Durham, NC 27701

Respondent

THIS CAUSE came on for telephonic hearing before Christine 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 April 25, 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 CEO Sofany Aziz and its Manager, Mohammad Aziz.

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, NYC NCC LLC, dba A to Z Wireless, (hereinafter Respondent) is a North Carolina corporation doing business in North Carolina. At all times relevant to this matter, Respondent was in the business of operating a cell phone store in 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 June 11, 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 June 11, 2018, the Complainant had not received a complaint against Respondent related to work authorization.

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 April 25, 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 maintained that, while Respondent had not enrolled in the "E-Verify" program prior to June 11, 2018, Respondent was enrolled in "E-Verify" in the second half of 2018 and remained enrolled in "E-Verify" as of the date of the hearing.

10) Respondent stated that Respondent was conducting an E-Verify evaluation on all new employees hired in the second half of 2018 within 3 business days of hiring. However, Respondent had eight (8) employees who had worked more than nine (9) months in calendar year 2017 but who had not been E-Verified prior to separation or after enrollment. 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 June 11, 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 business days, and therefore is not entitled to the presumption of compliance provided in 13 NCAC 12.0903(a).

6) During the second half of 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 enrollment, utilizing the "E-Verify" system.

7) Respondent failed to conduct an E-Verify evaluation at any time on a total of eight (8) employees who had worked 9 months in 2017.


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 enrollment.

9) Respondent violated the E-Verify requirements due to the failure to E-Verify the employees hired prior to the 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 eight (8) employees hired during 2016-2017, 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 26th day of APRIL, 2019



Christine Ryan
Administrator
Hearing Officer

CERTIFICATE OF SERVICE

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

NYC NCC LLC
DBA A to Z Wireless
5891 South Military Trail Suite A 11
Lake Worth, FL 33463

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

THIS THE 26th DAY of APRIL 2019.



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

FLORIDA
STATE OF ~~NORTH CAROLINA~~)
)
COUNTY OF PAINE BEACH)
)

SWORN AFFIDAVIT
INVESTIGATION 108465

1. I am Muhammad Aziz, and I hold the position of
Manager with NYC NCC LLC DBA A to Z Wireless
(Respondent) in NC Department of Labor investigation 108465.

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 10/3/2018,
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 possible for several terminated employees pursuant to the Memorandum of
Understanding with the E-Verify program.


5. I certify that all employees hired on or after the date of enrollment beginning in
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 30 day of April, 2019.



Print Name: Mohammad Aziz

Signature

STATE OF FLORIDA
COUNTY OF PALM BEACH

Sworn to (or affirmed) and subscribed before me this 30 day of April, 2019, by
MOHAMMAD M. AZIZ



(NOTARY SEAL)

Sandra Hawryluk

Sandra Hawryluk

Personally Known _____ OR Produced Identification
Type of Identification Produced FLORIDA DRIVER LICENSE