

December 14, 2016

Puzder Nomination Could Be the End for Overtime Rules

The president-elect's nomination of Andy Puzder for secretary of labor may very well be the nail in the coffin for the [new overtime rules](#).



Puzder, CEO of CKE Restaurants, has for years been an outspoken critic of Obama employment initiatives. Several of those efforts, especially the overtime rules, are all dead given this appointment, says [John Husband](#), a partner at [Holland & Hart](#) and editor of the [Colorado Employment Law Letter](#).

The overtime regulations, which would have required employers to pay overtime to all employees earning less than \$913 per week (which amounts to \$47,476 annually), were scheduled to take effect December 1.

A federal district court judge issued a temporary injunction with just days to spare, halting the rules' implementation. The U.S. Department of Labor (DOL) appealed the injunction order to the 5th U.S. Circuit Court of Appeals, which agreed to fast-track its review. Still, the expedited schedule puts final briefings after the inauguration.

Once Donald Trump takes office, DOL probably will withdraw its appeal before the court makes a decision. His choosing Puzder makes that even more likely, Husband told BLR®.

H. Juanita Beecher, of counsel with [Fortney & Scott](#), said the rules were dead either way. "There was a lot of unhappiness among Republicans anyway." If anything, the nomination just emphasizes that unhappiness, she said.

Puzder's Positions

Puzder has been criticizing the overtime rules since 2014 when President Obama directed DOL to draft them. And as recently as May, he said in an op-ed for *Forbes* that the rule wouldn't



benefit workers as DOL has claimed. In the real world, he wrote, employers will just make changes to offset the cost of compliance. “[T]his means reduced opportunities, bonuses, benefits, perks, and promotions,” he said.

Puzder also has, in various op-eds and blog posts, been an outspoken supporter of automation in businesses (such as ordering at restaurants) and immigration reform. And he has been critical of the National Labor Relations Board’s recent efforts to create “joint employer” relationships between companies and their franchisees.

Reactions

The incoming chair of the House Committee on Education and the workforce, Rep. Virginia Foxx (R-NC), called Puzder a terrific choice. He will help the country recover from “years of extreme regulations and sluggish economic growth,” she said in a statement.

Employee advocacy organizations had a different take. “It’s hard to think of anyone less suited for the job of lifting up America’s forgotten workers—as Trump had campaigned on—than Puzder,” said Christine L. Owens, executive director of the National Employment Law Project. “Puzder will be there for his low-wage-industry CEO buddies, who are now salivating over the prospect of rolling back the Obama administration’s efforts to raise pay for low-wage workers, improve workplace safety, and increase corporate accountability for wage theft and other violations.”

What’s Next

Confirmation hearings can begin before Trump is sworn in but nominees can’t be confirmed until after the inauguration. For example, a hearing for Sen. Jeff Sessions (R-AL), who Trump nominated for attorney general, is scheduled for January 10 and 11, according to the Senate Judiciary Committee.

Puzder’s hearing has not been scheduled but Beecher said he likely would be part of a second round of confirmations. Trump probably will prioritize the departments of State and Defense, for example, she said.

Puzder’s confirmation could be delayed if he proves controversial, Beecher said, but “I don’t think it’s going to take too long,” she added. The Republicans have a majority and, in the end, the votes are probably there, Beecher said, estimating that he could be installed in February.

If he’s confirmed, Husband says there’s a good chance Puzder’s DOL would try to overhaul wage and hour laws. These laws are outdated, and don’t reflect the current state of business in the U.S., Husband added.

Puzder’s opinions on immigration also could mean an increase in nonimmigrant visas, for which DOL has authority, Beecher said. He has very strong opinions on immigration and has raised some eyebrows among some conservatives, Beecher said, adding that the topic is likely to come up during his confirmation hearing.

And regardless of whether Puzder is confirmed quickly (or at all), Trump has promised to rescind various Obama executive orders on his first day in office. It may not happen quite that



quickly, Beecher said, “but by the first of February, we’ll have a pretty good idea which will stand.”

*Need to learn more? Join us December 14 for the live webinar [**The Trump Presidency: What Will Survive—and What Won’t—from the Obama Regulatory Agenda**](#). In addition to the overtime rule, a number of regulations are scheduled to go into effect in the next couple of months, so it’s very important for employers to know what they should expect to be enforced under President Trump. During this in-depth webinar, featuring a live Q&A, Beecher and David Fortney, also of Fortney & Scott, will explain how employers can manage their regulatory requirements amid the transfer of presidential power. For more information, [click here](#).*

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