

FEBRUARY 20, 2017 | REGULATORY & GOVERNMENT OVERSIGHT

Trump Taps Alex Acosta for New Department of Labor Secretary

As readers of this [blog](#) are aware, President Trump originally chose Andrew Puzder, the CEO of CKE Holdings, the parent company of Carl's Jr. and Hardee's, as his Secretary of Labor. However, on February 15, 2017, one day prior to his confirmation hearing, Mr. Puzder withdrew his name from consideration amidst reports that he would not receive the required Senate votes necessary for confirmation based in part on allegations that he failed to pay workers overtime pay, condoned sexual harassment, and opposed legislative efforts to address those problems. The next day, President Trump officially tapped former U.S. Attorney Alex Acosta for the position. As Labor Secretary, Acosta will oversee the federal apparatus that investigates violations of minimum wage, overtime and workplace safety laws and regulations.

If confirmed, Acosta would be the first Hispanic member of President Trump's cabinet. Mr. Acosta has a strong background in public service. After graduating from Harvard Law School, he clerked for Judge (now Supreme Court Justice) Samuel Alito on the Third Circuit Court of Appeals. He has also served as a member of the National Labor Relations Board, head of the U.S. Department of Justice's Civil Rights Division (both of which he was appointed to by President George W. Bush), and U.S. Attorney for the Southern District of Florida. Most recently, Acosta served as Dean of the Florida International University School of Law. Should he be confirmed, Acosta's public and private experiences (he also practiced law at Kirkland & Ellis) should enable him to take into account numerous perspectives in his new role.

At this stage, Acosta's views on various pressing issues at the Department of Labor — such as consideration of a higher minimum wage or the [proposed new overtime regulations that currently are on hold](#) — are largely unknown. Nonetheless, while Puzder was harshly criticized for his anti-regulatory positions (he was a vocal critic of the Obama Labor Department's overtime regulations and efforts to increase the federal minimum wage) and numerous other controversies relating to his personal life, Acosta has so far avoided such controversy. Moreover, Acosta has already been vetted by the Senate multiple times for the positions he held during the Bush administration. For those reasons, as well as Acosta's combination of academic and practical legal experience, it is expected that his confirmation process will not suffer the same fate that ultimately forced Puzder to withdraw.

The immediate reaction to the announcement of Acosta's nomination was in stark contrast to how many viewed Puzder and lends further credence to the belief that his nomination will be accepted. Notably, AFL-CIO President Richard Trumka responded to the news of Acosta's nomination by stating:

“Working people changed the game on this nomination. Unlike Andy Puzder, Alexander Acosta’s nomination deserves serious consideration. In one day, we’ve gone from a fast-food CEO who routinely violates labor law to a public servant with experience enforcing it.”

This reaction by labor unions to Acosta’s nomination may be partly attributable to the belief that he is more of a “mainstream” nominee and more predictable than Puzder, which may provide at least some comfort to employers. At the same time, most pundits believe that Acosta has the unique ability to take both employer and employee points of view into account when making decisions, which makes him particularly qualified for this position.

Ultimately, it is likely that, as would have been the case under Puzder, employers may benefit from Acosta’s authority to reallocate agency resources away from agency enforcement actions for labor law violations. Under Obama, the Wage and Hour Division had been very active in enforcing labor laws and investigating industries and workplaces with a history of labor law violations. One can assume that, based on the first month of the Trump Administration, Acosta may have a mandate to slow down enforcement and/or conduct fewer investigations. Acosta’s confirmation process, and then his first few months as Labor Secretary (assuming he is confirmed) will provide us with the necessary information to assess how employers will be affected by this new leader at the DOL.