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Finally We Have a Labor Secretary – Alexander Acosta

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On Thursday, April 27, 2017, Alexander Acosta was confirmed by the United States Senate to serve as the first Secretary of Labor in the Trump Administration. As we reported in an [earlier article when Acosta was first nominated](#) by Pres. Trump, in this role, Sec. Acosta will oversee the federal department that develops and interprets labor regulations and investigates alleged violations of minimum wage, overtime, and workplace safety laws and regulations. 

The Senate approved Acosta by a vote of 60-38, meaning there was some cross-party support, despite the party-line vote on Acosta's nomination by the Senate Health, Education, Labor and Pensions Committee. This marks the fourth time Acosta has been confirmed by the Senate, including his prior positions in the Bush Administration.

Specifically, during the Bush Administration, Acosta served as a member of the National Labor Relations Board for approximately eight months. In 2003, President Bush appointed him to Head the Civil Rights Division at the U.S. Department of Justice's, a position which he held for about two years, before being appointed to serve as the United States Attorney for the Southern District of Florida. Most recently, Acosta was the Dean of Florida International University's School of Law.

At this point, it is still uncertain what jurisprudence Acosta will bring to the role of Secretary of Labor. The Trump Administration and its [initial Secretary of Labor nominee, Andrew Puzder](#), who withdrew from consideration back in February, have taken [aggressive stands on deregulation](#). However, Acosta's positions on regulation and enforcement have not been as clearly expressed, and his prior experience as a prosecutor may suggest a more measured approach in managing the enforcement responsibilities of the various agencies under his direction. We will have a better idea of Acosta's approach soon, however, because there are a number of time sensitive issues that will need his prompt attention upon being sworn in. 

In particular, we expect that one immediate priority for Acosta will be evaluating the Department of Labor's position as to the Fiduciary Rule. This Rule expands the definition of fiduciary to a much broader group of financial professionals who work with retirement plans or provide retirement planning under ERISA, including subjecting them to all the requirements that come with that status. In February, President Trump issued a

Presidential Memorandum directing the Department of Labor to examine this Rule for its adverse impacts on investors and access to retirement services, and potentially to rescind or revise the rule if those adverse impacts are found.

Another priority for Acosta will be addressing the [DOL's promulgated overtime regulations](#) that were set to more than double the threshold salary level required to classify as an exempt employee, expanding overtime eligibility to millions of employees nationwide. These regulations have been challenged in court and a Texas federal judge enjoined the rule back in November. The DOL appealed that decision to the Fifth Circuit at the tail end of the Obama Administration, but no determination has yet been made as the proceeding has been delayed until the new Secretary of Labor has been confirmed and given time to assess the rule and the DOL's position. During his confirmation hearing, Acosta expressed a belief that the current threshold salary level of \$23,660 is no longer sufficient and should reflect the increased cost of living, but that the new level of \$47,476 is too high. Indeed, in the hearing, Acosta expressed preference for a threshold amount somewhere in the middle.

Then there is the litany of Obama-era OSHA rules that are in various stages of legal challenge. Eyes have been on how and whether Trump's OSHA defends the legal challenges to new OSHA regulations, like the [Electronic Injury Recordkeeping and Anti-Retaliation Rule](#), and the Crystalline Silica Standard. We have already seen other OSHA rules ([the Volks Rule](#) and [the FAR/DOL Contractor Blacklisting Rule](#)) repealed, and yesterday, OSHA backtracked on an Obama-era interpretation allowing union representatives to participate in OSHA inspections at non-union workplaces. Will OSHA's regulatory landscape continue to unravel under the leadership of Sec. Acosta? We will have to wait and see, but as with other Labor issues, we may not have to wait long.

In sum, Acosta will be stepping into a position facing multiple issues that will require his immediate attention, scrutiny, and evaluation. Beyond addressing the regulatory issues, Sec. Acosta will also be faced with managing [a budget that, under Trump's proposed plan, would see a 21% cut to DOL](#) funding. While, this is only a proposed budget, cuts to individual agency budgets are likely, and managing a smaller budget, in and of itself, will likely be a significant challenge for the new Labor Secretary.

Although Acosta's exact approach to running the DOL is uncertain, there is little doubt that under the influence of the White House, this will be a more employer-friendly DOL than we have seen in the prior eight years.