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## W A G E A N D H O U R

# What to Expect From Department of Labor Nominee Andrew Puzder

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*Special to the Legal*

President-elect Donald Trump announced in December his intention to nominate Andrew Puzder as the next secretary of the U.S. Department of Labor (DOL). A labor department led by Puzder is likely to bring significant shifts in the department's approach to the full range of employment and labor issues, including the minimum wage, overtime, and overall enforcement and oversight of wage-and-hour laws, among other changes. Puzder's own ruminations on these issues in books, blog posts, speeches and media coverage offer insight for employers and employees on the philosophy he will bring with him to the Trump administration should he be confirmed by the Senate.

Puzder currently serves as the chief executive officer of CKE Restaurant Holdings Inc. (CKE), the parent company of the Carl's Jr. and Hardee's restaurant chains. CKE owns or franchises more than 3,250 restaurants in the United States and 26 foreign



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countries. Puzder has filled the CEO role at CKE since 2000. Prior to being hired as executive vice president and general counsel of CKE three years prior to his ascendance to the CEO position, Puzder was a practicing attorney in St. Louis.

As reported by CNN Money, Trump transition spokeswoman Liz Johnson indicated that, "As labor secretary, Andy's focus will be on working with President-elect Trump to advance policies that will protect American workers, eliminate burdensome regulations that stunt wages and suppress growth, and establish new immigration controls that put American workers first."

Speaking on Nov. 17, at the Restaurant Finance & Development Conference on "the impact of over-regulation on the restaurant industry," Puzder articulated his general world view that, "More government is not the solution to every problem, it's the problem to every solution." Puzder's 2010 book (which he co-authored with David Newton) titled "Job

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Creation: How it Really Works and Why Government Doesn't Understand It" delves into this topic as well, advocating for "a comprehensive, independent, nonpartisan cost-benefit

analysis” of regulations with an eye toward eliminating “regulations whose costs bear little or no relationship to their financial or societal benefits and which impose government-created barriers to free enterprise.”

Puzder has been a staunch opponent of the \$15 minimum wage, expressing concerns that such an increase would have a negative impact on businesses and workers. On Fox Business in May 2016, Puzder cited to a Congressional Budget Report that indicated the minimum wage could be raised to about \$9 per hour “without much impact on jobs,” suggesting that he is open to a more modest uptick in the federal minimum wage. Back in October 2014, Puzder authored a piece in The Wall Street Journal advocating against an increase in the federal minimum wage to \$10.10, a proposal that was advanced by President Barack Obama at the time. In an April 2016 interview, Puzder stated that “businesses will move out of [California if the \$15 minimum wage goes into effect], marginally profitable businesses will close, and businesses that manage to survive will more efficiently manage their labor by reducing hours to the bare minimum, automating as many positions as they possibly can, and raising prices as high as the market will bear.”

Puzder also has expressed his opposition to DOL regulations that would have more than doubled the salary level for employees to qualify as exempt from the Fair Labor Standards Act’s overtime requirements under the executive, administrative, and professional exemptions. In May 2016, writing for Forbes in a post titled “The

Harsh Reality of Regulating Overtime Pay,” Puzder advocated against the White Collar Overtime Regulations (that have since been preliminarily enjoined by the U.S. district court in Texas, which injunction has been appealed to the U.S. Court of Appeals for the Fifth Circuit). Puzder cited to CKE Chief Operating Officer Eric Williams, who worked his way up in the organization from crew member, as an example of an individual who was given opportunity as an exempt manager to rise through the ranks. Williams was critical of the regulations when he testified in July 2015 before the House Education and the Workforce Subcommittee on Workforce Protections at a hearing regarding the regulations. Puzder wrote in his Forbes blog that the overtime rule devalues “career progression and forces some businesses to turn entry-level management careers with salaries and performance-based bonuses into hourly jobs to ensure they don’t get dinged with unexpected and excessive overtime costs.”

Perhaps Puzder’s most immediate impact on the wage and hour front at the DOL could be a reconsideration of the Administrator’s Interpretations (AI) issued by Wage and Hour Division Administrator David Weil. Puzder is on record strongly opposing the NLRB’s joint employer analysis, which found that employees of McDonald’s franchisees were jointly employed by the franchisor (as well as the franchisee). The Jan. 20 AI on joint employment under the FLSA and Migrant and Seasonal Agricultural Worker Protection Act (MSPA), which set forth an expansive definition of joint employment, could easily be

the first AI to be rescinded, with the July 15, 2015, AI on the application of the FLSA’s definition of “employ” to “the identification of employees who are misclassified as independent contractors” potentially not too far behind.

Given his public statements and philosophical perspective, it’s safe to say Puzder will arrive at the DOL with his free market views in tow, and with a desire to reduce government regulation. Of course Puzder serves at the pleasure of the president, who, based on his policy priorities articulated to date likely will be focused at the outset on the repeal of the Affordable Care Act (which Puzder wholeheartedly supports) as well as immigration-related initiatives. What seems certain is that the labor department will look very different in 2017, especially when compared with the DOL under Secretary Thomas E. Perez and Obama. •