

PUBLICATION

The New Overtime Rule - The Plot Thickens

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January 31, 2017

This is a brief update to the court machinations in the DOL's appeal of the Texas Court's decision to issue a preliminary injunction barring the implementation of the Final Overtime Rule. That appeal is now before the Court of Appeals for the Fifth Circuit, generally known as an employer-friendly circuit.

On January 26, 2017, the DOL filed an unopposed motion to extend the deadline to March 2, 2017, to file its motion in support of its appeal of the Final Overtime Rule. The unopposed motion for extension of time stated that the extension was "necessary to allow incoming leadership personnel adequate time to consider the issues." The AFL-CIO has also attempted to intervene in the case because of concerns that President Trump's nomination of Andrew Puzder for Labor Secretary demonstrates the administration's intent to defeat the changes that would have been brought about by the Final Overtime Rule.

Puzder's nomination has been riddled with controversy. He is and has been an outspoken critic of the Obama administration labor policies. In a [Forbes Op-Ed](#) piece that was published shortly after the announcement of the new overtime rule, Puzder wrote that the new regulations would "simply add to the extensive regulatory maze the Obama Administration has imposed on employers." He opposes an increase of minimum wage beyond \$9.00/hour, supports deregulation and is a strong opponent of the Affordable Care Act. Puzder's opponents, both labor groups and Democrats, have come out in full force and are trying to make an issue of his record as the CEO of CKE Restaurants. Senators Patty Murray, D-Wash., and Elizabeth Warren, D-Mass., held a press conference January 10 criticizing Puzder for alleged violations of wage and hour, safety and equal employment opportunity laws at Carl's Jr. and Hardee's (mostly franchise) restaurants. The Restaurant Opportunities Centers United, an advocacy group for restaurant employees, released a survey of CKE workers, many of whom accused the chain of labor law violations. Two-thirds of women in the survey said they had been sexually harassed on the job. But in a battle of surveys, the Employment Policies Institute released [another survey](#) the same day that found that employees of Hardee's and Carl's Jr. franchises were overwhelmingly satisfied with their work environment.

Puzder has yet to be confirmed as Labor Secretary. His hearing, which was originally scheduled for January 17, has been postponed by the Senate leadership and is now rescheduled for February 7. News organizations recently reported that Puzder was having second thoughts about serving due to the weight of the scrutiny and criticism he is receiving. Shortly after the "second thought" stories were published, however, Puzder wrote a simple tweet stating, "I am looking forward to my hearing." Almost two dozen Senate Democrats are calling for Hardee's and Carl Jr.'s fast-food workers to testify at Puzder's confirmation hearing.

A nominee is confirmed, however, with a simple majority of 51 votes and Republicans hold a 52-to-48 majority in the Senate. Therefore, it seems unlikely that Democrats will be able to actually block Puzder's appointment. They can, however, certainly prolong the process and make it more difficult. Between Inauguration Day and a Puzder's Senate confirmation, the cabinet position will essentially be rendered empty. Puzder's opponents and proponents will just have to wait a little longer to see what actions he will take once he takes office and whether the DOL will continue with its appeal of the overtime ruling.