

PUBLICATION

The Road to Confirming a Secretary of Labor

Authors: Elizabeth Ann Liner

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While the process likely did not go as President Trump originally anticipated, the long wait for a leader of the U.S. Department of Labor (DOL) finally concluded in April. After Trump's first choice, Andrew Pudzer, withdrew in the face of congressional opposition, Trump selected Alexander Acosta. Unlike Pudzer, Acosta had not publically taken a position on many of the hot issues such as the increased overtime salary threshold and the changes to joint employment evaluation, developed under the Obama Administration. On April 27, 2017, almost a month after testifying before the Senate Health, Education Labor and Pension (HELP) Committee, Acosta was finally confirmed by Senate in a vote of 60-38.

Acosta is from Miami, Florida, where he served as Dean of the Florida International University Law School. He received his undergraduate degree and juris doctorate from Harvard and practiced labor and employment law as an associate with Kirkland & Ellis from 1995 until 1997. Acosta served as law clerk to Justice Samuel Alito Jr. when he was serving on the Third Circuit Court of Appeals. He was appointed by President George W. Bush in December 2002 to serve on the National Labor Relations Board, where he participated in approximately 125 decisions – some pro-employer but not all, usually siding with Republicans. In August 2003, Bush appointed Acosta as head of the Department of Justice's Civil Rights Division, where he served for about two years before becoming the U.S. Attorney for the Southern District of Florida in 2005.

While we are not completely certain as to Acosta's strategies regarding many of the hot button issues that face the hospitality industry, he did testify during his hearing before the HELP Committee that he believed a raise of the previous overtime threshold was probably due. However, he indicated that the abrupt move to almost double the prior threshold was excessive and that he would be working with DOL staff to determine whether pursuing the appeal of the Fifth Circuit's stay of this rule is the best course of action. Acosta appeared to suggest that his strategy as leader of the DOL will also include reversal of or reigning in the joint employer liability doctrine developed by the Obama Administration.

Acosta has been described as an independent thinker, pro-free market and pro-free enterprise. He is a strong proponent of diversity and testified before Congress in support of protecting Muslim Americans in 2011. He has been the subject of investigation in the past as to whether his case assignments were made according to political affiliation. Generally, it seems that Acosta has many of the same views that were publicly expressed by Pudzer, but he is expected to be more balanced and mainstream in his approach and strategy for reaching his goals. His strategy and approach as head of the DOL will certainly be affected by the 21 percent budget cut Trump has proposed for the DOL. While we still don't have all the answers on what we can expect to see from the DOL under Trump's Administration, the long-empty seat of the Secretary of Labor has finally been filled, and it at least appears that employers can look forward to some relief from the burdens of the labor regulatory dilemma created during the eight years of Obama's Administration.