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National Employment Law Project

Before Members of the United States Senate

January 10, 2017

The Senate Committee on Health, Education, Labor and Pensions (HELP) has scheduled a hearing next week on the confirmation of CKE Restaurants, Inc. CEO Andrew Puzder who has been nominated to serve as the nation's 27th Secretary of Labor. Tasked with leading a department that administers 180 federal laws affecting workplace practices of roughly 10 million employers and covering about 125 million workers, the Secretary of Labor is the nation's preeminent regulator, enforcement officer and champion of and for working people. The history of the Labor Department overall as well as comparisons of how workers have fared under previous administration provide useful guides for determining what the nation needs in a Secretary and how committee members should assess nominees.

**Origins of the Labor Department:** In the early 20<sup>th</sup> century, federal engagement in and oversight of “commerce” and “labor” resided in a single cabinet agency, called the Department of Commerce and Labor. Frank Morrison, then Secretary of the American Federation of Labor, noted that combining the Department of Commerce with the Department of Labor was contradictory in nature in testimony before Congress.<sup>1</sup>

Mr. Morrison explained that the role of a Secretary of Commerce was to “promote the interests of trade and industry,” while the Secretary of Labor should be charged with “supporting higher pay and better working conditions for the worker.” The often competing interests of labor and commerce, Mr. Morrison opined, transformed the Office of the Secretary of Labor and Commerce into a “Dr. Jekyll and Mr. Hyde”.

Congress recognized the competing missions of this hybrid department and in 1913, established two separate Cabinet agencies. To make clear its intention regarding the distinct role of the Department of Labor (DOL), Congress affirmed in DOL's enabling legislation that its mission is to “foster, promote, and develop the welfare of the wage earners, job seekers, and retirees of the United States; improve working conditions; advance opportunities for profitable employment; and assure work-related benefits and rights.”

Fast forward to today, a little over 100 years after creation of the Department of Labor, and the nomination of Andrew Puzder threatens to resurrect –de facto – the very conflicts Congress sought to untangle and end when it created two distinct departments, one of Commerce and the other of Labor. With Mr. Puzder's nomination, I fear we find ourselves on the precipice of

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<sup>1</sup> <https://www.dol.gov/oasam/programs/history/dolorigabridge.htm>

returning to a situation in which workers do not have an agency and Secretary dedicated to advocating for their rights and interests. Instead, all indications in the public record, including Mr. Puzder's stated views on matters subject to Labor Department jurisdiction, are that the nominee elevates ***profits over the working people who create them***, and prioritizes ***commerce and customers***, over ***workers and wages***.

**DOL's Operations in Recent Years:** For the past eight years, the Obama Department of Labor has successfully rebuilt a robust regulatory and enforcement apparatus, powerfully advancing the rights of workers under some of our nation's most important employment laws and bringing standards up to date for the modern workforce. This approach was in contrast to the Bush Administration's philosophy for DOL, which prioritized "compliance assistance" and allocated so many resources toward employers that the Government Accountability Office issued two different reports in early 2009, indicting the Bush Wage and Hour Department for all but abandoning workers with claims of unpaid wages in far too many circumstances. By contrast, since 2009, the Department of Labor has been instrumental in securing nearly \$1.6 billion<sup>2</sup> in back wages for more than 1.7 million workers, an increase of \$140 million<sup>3</sup> over the full eight years of the Bush Administration.

Equally important, the Obama DOL took up the call to update and promulgate critical guidelines ensuring that workers finally receive long overdue benefits and protections. Among other things, the Wage and Hour Division finally mandated that professional home care workers, who care for our ill and elderly family members, receive the most basic of protections, minimum wage and overtime pay. The Division also finalized regulations that will restore the vitality of the overtime protections under the Fair Labor Standards Act, ensuring that as many as 12.5 million white collar workers have guaranteed overtime pay rights. (NELP is working with allies to help ensure the courts ultimately uphold this regulation, and we will be at the forefront of groups working for its quick implementation once affirmed).

DOL's Employee Benefits Security Administration promulgated a commonsense regulation to ensure that workers who invest their hard-earned wages in retirement accounts can depend on financial advisors to put the worker's best interests first, not their own. The Occupational Safety and Health Administration (OSHA) maximized enforcement resources to bring work-place fatalities down from 3.7 per 100,000 workers in 2008 to 3.4 per 100,000 in 2015, and issued a much-belated update to silica exposure rules, which will save the lives of more than 600 workers each year, and strengthened anti-retaliation protections for workers who complain about unsafe job conditions.

We could add to this list of major accomplishments of the Obama DOL but what bears noting is that even as DOL was moving aggressively to restore long neglected rights and benefits, the economy recovered from the deepest downturn since the Great Depression, and in recent

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<sup>2</sup> <https://www.whitehouse.gov/administration/cabinet/exit-memos/department-labor>

<sup>3</sup> <https://www.dol.gov/sec/media/reports/annual2008/2008annualreport.pdf>

years, has experienced robust job growth and even more recently, healthy wage growth. Starting in October 2010, employers have added new jobs for 74 consecutive months, the longest period on record; the private sector has added 15.6 million new jobs since March 2010<sup>4</sup>; and the unemployment rate has fallen from a high of 10 percent to 4.7 percent. In other words, this recent period during which DOL truly focused on the needs of workers, whether through vigorous enforcement of our laws or modernizing key regulations to make sure the rules aren't rigged in favor of the wealthy, was marked by growth and greater shared prosperity. This record contrasts with the preceding eight years, when cutting taxes and relaxing regulations did not induce prosperity and resulted, instead, in a net gain of only two million jobs and the country descending into the Great Recession.

The reality is that workers have made enormous progress over the past eight years, and cannot afford to take steps backwards on protections for wages, retirement security or workplace safety and health. Congress should not hand the keys of the Labor Department over to a new leader without ensuring that America's workers will be protected and prosperous under that leadership.

**The Nomination of Andrew Puzder:** Weighed against this backdrop, we see no justification for confirming Andrew Puzder's to be the Secretary of Labor. This is not because Mr. Puzder hails from the business community. We recognize that there are many business leaders who believe in the basic infrastructure of law and regulations administered by the Labor Department and who take into account the interests of all stakeholders—including their employees—in their business operations. We would support such a business leader for Secretary of Labor. Unfortunately, nothing in the public record about Mr. Puzder suggests that he is such a business leader, or for that matter, that protecting and promoting the interests of America's workers is or will be a paramount or even significant concern of his.

Mr. Puzder is a leader within an industry that routinely engages in the highest rates of wage and hour violations and that costs tax-payers billions each year as we subsidize low-wage work with our social safety net. He derides regulations that keep workers healthy and save their lives as too expensive and burdensome for employers. He complains about wage regulations designed to lift workers from poverty as "job killers" and opposes policies such as paid sick leave, paid family and medical leave, and fair and reliable scheduling that allow workers to balance their work and family obligations. And he opposes any meaningful increase in minimum wages. Through his own public statements, Mr. Puzder has in no way shown he is philosophically or temperamentally suited to being the leading advocate for our nation's workers, especially those most vulnerable to exploitation because of their race, gender, ethnicity or low-wage status.

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<sup>4</sup> [https://www.whitehouse.gov/sites/default/files/page/files/20170105\\_cea\\_furman\\_exit\\_memo.pdf](https://www.whitehouse.gov/sites/default/files/page/files/20170105_cea_furman_exit_memo.pdf).

During his tenure as CEO of CKE Restaurants, Mr. Puzder's restaurants have been found liable for wage and hour violations in 60 percent of the investigations into their practices, as well as being liable for 57 percent of health and safety investigations.

Mr. Puzder also speaks glibly about replacing workers at fast-food restaurants with robots in an effort to cut labor costs. As he notes, "Machines are always polite, they always upsell, they never take a vacation, they never show up late, there's never a slip and fall, or an age, sex, or race discrimination case."

Many women also have cause to wonder how Mr. Puzder views and values women in the workplace, including those who work at his company's restaurants. Puzder at least partially credits the success of his fast-food empire with its highly sexualized commercials featuring bikini-clad models suggestively eating hamburgers. He brags about how "very American" he finds these ads, which contain a parental advisory on You Tube, and notes that they have taken on his own personality. One does not have to be a prude to find these advertisements objectionable or to be concerned that the message they send to women and girls across the country, including those who work at Mr. Puzder's restaurants, is that the commercial value of women and their bodies matter more treating women dignity and respect.

On behalf of NELP and the wage-earners for whom we advocate, we urge that the Senate HELP committee submit Mr. Puzder to a vigorous examination of his work history and philosophies on issues that are related to the mission of the Labor Department.

What are his plans to develop the welfare of the wage-earner?

How does he plan to enhance opportunities for profitable employment?

How will he ensure worker protections and rights?

How will he improve working conditions?

The Committee should not be satisfied with mere platitudes. Unless Mr. Puzder can provide detailed answers about how his leadership of DOL will be one that values, serves and protects workers from exploitation, his nomination should fail.

Unless Mr. Puzder can provide adequate assurances that the welfare of America's workforce will take precedence over the bottom-line of CKE and the fast-food industry, you must reject his nomination.

And unless Mr. Puzder can demonstrate a genuine regard for all workers, *especially* those in our economy who earn the least, you must reject his nomination.

We have come too far from the days when a Dr. Jekyll/Mr. Hyde was entrusted to be the champion for our nation's workers, and we cannot go back there again.