

# Presidential Pulse

## *Changes That Influence Business*



### Labor Issues

By [Lawrence Lorber](#)

The last #1 hit the Beatles recorded in 1970 was The Long and Winding Road, written by Paul McCartney. The song has been described as a metaphor for the journey the Beatles took from the clubs of Liverpool to the roof at Abbey Road Studio. Andrew Puzder, the Secretary-designate of the US Department of Labor may not wind up on the roof of the Francis Perkins Building singing to his fans but he may take the title of this iconic song as a metaphor for his own journey from Trump Tower to the Francis Perkins Building. Mr. Puzder has found out that being designated by the President-elect as cabinet member starts a very long journey until the fires of a confirmation hearing and then to his swearing in. In the case of Mr. Puzder, the Senate HELP Committee announced for the fourth time that his confirmation hearing, scheduled for February 7 has again been postponed. And as of this writing, a new date has not been scheduled. The reason advanced for the delay, and there is no public reason to doubt it, is that Mr. Puzder has yet to complete the various submissions to the Government Ethics Office and the Senate HELP Committee required for consideration. As the CEO of a large privately held company – CKE Restaurants - and one that is regularly under the purview of the Department of Labor, there are undoubtedly complicated financial issues to be resolved.

And in addition, as has been publicly discussed, Mr. Puzder's nomination has drawn questions from impacted parties, including the labor unions, employee rights advocates and others (including career employees of the DOL itself) questioning his commitment to the mission of the Department of Labor. However, Mr. Puzder has also expressed many ideas as to how to move the workplace into the 21st Century and has expressed an interest in modernizing the Department of Labor. Mr. Puzder has brought these questions into play because unlike some of the other nominees, Mr. Puzder has a long history of commenting on labor and employment policy issues. As the executive of a fast food company, Mr. Puzder has publicly questioned the effects of raising the minimum wage and other labor regulatory activity which he believes inhibits the advancement of workers and the growth of job creating business, such as the NLRB's and the Department of Labor's change in the joint employer standard. While Mr. Puzder's observations and a book he authored were made as a private citizen, many question whether he will bring those beliefs into the Secretary's Office. Certainly these issues will be dealt with extensively when and if Mr. Puzder faces his confirmation hearing. The Senate HELP Committee has several Democratic Senators, including Sen Murray (Wash), Senator Sanders (Vt.), Senator Franken (Minn.), Senator Warren (Mass.) as well as Senators Casey, Bennet, Whitehouse, Baldwin, Murphy, Kaine and Hassan who will be sure to probe deeply into Mr. Puzder's background and beliefs. While the Republicans, led by Chairman Alexander and including such longtime members as Senator Hatch, Enzi (both former Chairs), Burr, Isakson, Paul, Collins, Cassidy, Young, Roberts, Murkowski and Scott can be expected generally to come to the aid of Mr. Puzder, the hearing promises to be an "interesting" one.

However, while all of the focus remains on Mr. Puzder, the nomination process is a long and drawn out process, and at a cabinet agency such as the Department of Labor, the various agency heads, Assistant Secretaries, and Solicitor are critical to implement the policies of the administration and the Secretary. To date, there have been no nominations or announcements of intent to nominate any of these key positions. And there are several key appointed positions, such

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as the Director of the OFCCP, the members of the Administrative Review Board and other important positions which have to be filled. So that even if Mr. Puzder finally does get to raise his hand and swear fealty to the Constitution, his will be a lonely tenure until he gets to put in place his key deputies to run the various components of a very complex Department. While actions have been taken, such as the monthly BLS data reports and regularly scheduled audits and reviews, the key issues facing the Department will certainly not be addressed until all the key players are in place.

In addition, focus on the Department of Labor should not obscure the status of the various adjudication and administrative agencies commissions and boards that are critical to understanding the full panoply of labor and employment policy enactment and enforcement. And here there are similar voids in the governing process. By statute or tradition, these agencies are governed by Boards or Commissions the majority of which are normally members of the President's party. However, in every key agency, the President has designated the remaining sole Republican member as Acting Chair, so that when and if the Administration gets to nominate and fill the various empty seats, the President can either remove the "acting" appendage from the title of the designated individuals and appoint them as "permanent" chair or give that title to the new members. So for example, at the NLRB there are two vacancies to be filled by Republicans and the lone Republican Member Phil Miscimarra has been designated Acting Chair. The key General Counsel's seat will not be vacant until the fall. So too at the EEOC, Commissioner Victoria Lipnic has been designated Acting Chair and the one current vacancy will be filled by a Republican nominee. However, there will not be a Republican majority at least until the fall or end of the year so that initiatives requiring Commission action will undoubtedly be long in coming. Too, the President has to nominate an EEOC General Counsel. So too at the Occupational Safety and Health Review Commission, the OSHA adjudicatory body there are two members and Heather MacDougall has been named Acting Chair. At the Merit Systems Protection Board, there is only one currently confirmed member, Mark Robbins, and he has been designated Vice Chair. And at the Federal Labor Relations Authority, Patrick Pizzella has been designated Acting Chair and there is one Democrat holdover.

This is not to assume that these positions are not important. But rather in the swirl of a new administration, with perhaps more focus and controversy on the cabinet level nominees, the regulated community should not expect immediate attention will be given to all of their issues. And while the agencies are still fulfilling their designated tasks, assume that there will be no new landmark actions commenced. And in fact, because of the lid put on public announcements or press releases, do not expect to hear of new cases or settlements unless in a court decision. However, to conclude this theme, the Trump Administration is certainly not adopting a Let It Be attitude to labor and employment policy. Rather, it is beginning to turn its focus on these positions and issues but the result may still be in the distance.

We will continue to monitor these developments and will keep you informed of changes. If you would like to subscribe to future Presidential Pulse alerts, [click here](#).

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