



# BURR ALERT

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## Employment Law Changes in the Trump Administration

By Amy Jordan Wilkes

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When Donald Trump takes office in January 2017 he will enjoy Republican majorities in both the House and Senate, which should allow him to take quick action on a number of employment law issues. Although there is some uncertainty regarding Trump's positions and priorities, it seems clear that the Trump administration will favor fewer regulations and will likely roll back certain employee-friendly initiatives pursued by the Obama administration.

Perhaps the most significant development affecting employment laws in the Trump administration is Trump's recent nomination of Andrew Puzder for Secretary of Labor. Like many Trump appointees, Puzder has no prior experience in political office and has served as the CEO of CKE Restaurants, Inc. (the parent company of Hardee's and Carl's Jr.) since 2000. Puzder has frequently voiced strong criticism of what he views as over-regulation by the government, and Trump has said that Puzder "will save small businesses from the crushing burdens of unnecessary regulations that are stunting job growth." Below are some of the areas where employers are likely to see changes and emphasis in the upcoming months.

**Overtime Rules:** Puzder and the Trump administration will likely reverse or suspend changes to the Fair Labor Standards Act's overtime exemptions that were scheduled to take effect December 1, 2016.<sup>1</sup> Under those regulations, overtime protections would be extended to approximately 4.2 million workers by increasing the minimum salary level necessary to qualify for the white collar exemptions from \$23,660 per year to \$47,476 per year and the minimum salary to qualify for the highly compensated employee exemption from \$100,000 per year to \$134,000 per year. Puzder has called the regulations a barrier to the middle class that will negatively affect employees by turning entry-level management positions into hourly jobs and leading employers to eliminate positions, reduce hours, and accelerate plans for automation.

**Minimum Wage:** Puzder has also been an outspoken critic of increases to the federal minimum wage, which currently stands at \$7.25 per hour. Puzder believes that a low minimum wage is necessary to protect entry level jobs which he has described as a "gateway to better opportunities." Puzder also believes states and cities are in a better position to set wages than the federal

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<sup>1</sup> On November 22, 2016, Judge Amos Mazzant of the U.S. District Court for the Eastern District of Texas issued a preliminary injunction preventing the regulations from taking effect.

government and that "states and cities should be allowed to adjust the minimum wage based on regional economic conditions or local needs." Although Puzder is opposed to the \$15.00 per hour minimum wage that many Democrats have advocated, he has signaled that he may be open to a more moderate increase to \$9.00 or \$10.00 per hour, which Trump has also said he supports.

**Pay Equity:** Although Vice-President elect Mike Pence has publicly opposed new pay equity legislation, Trump has signaled that he supports equal pay for equal work.

**Maternity Leave and Childcare:** Maternity leave and childcare are one of the few areas where Trump supports increased regulation. Trump has announced a plan to enhance unemployment insurance to include six weeks of paid maternity leave. Note, however, that the Trump plan does not appear to include leave for new fathers, and it would not extend to other types of leave under the Family Medical Leave Act. In addition to paid maternity leave, Trump has also said that he wants to incentivize employers to provide childcare in the workplace.

**Immigration:** Given his vocal stance on immigration issues, it is likely that the Trump administration will push for nationwide E-Verify, which is currently mandatory for private employers in only a handful of states. H1-B visas for highly skilled workers will likely be harder to obtain, and employers should also expect an increase in I-9 audits and be prepared to show that their employees are eligible to work in the United States.

**OSHA:** The Trump administration will likely end, or dramatically scale back, the Obama administration's emphasis on aggressive OSHA enforcement (and corresponding high dollar penalties) and focus instead on a pro-business model of increased outreach/training and voluntary compliance. Trump is also expected to repeal or withdraw new OSHA anti-retaliation regulations that prohibit mandatory post-accident drug testing and safety incentive programs and scale back the electronic injury and illness reporting requirements for employers with 250 or more employees that are set to take effect January 1, 2017.

**National Labor Relations Board:** The National Labor Relations Board's pro-employee slant in recent years will likely come to an end in the Trump administration. The Board currently has two vacancies for Trump to fill, which will give conservative appointees a majority. The new Board may take a number of pro-business actions including: relaxing the standard for employers to be considered "joint employers," making class action waivers arbitration agreements lawful, reversing the rule that allows temporary employees to join the bargaining unit, disallowing "micro" bargaining units, slowing down the "quickie" election process, narrowing what constitutes "protected concerted activity," and becoming more lenient when it comes to employee handbooks. Puzder has also strongly opposed the current NLRB's liberal interpretation of "joint employer," especially where the NLRB has sought to hold franchisors responsible for labor violations committed by franchisees.

**Equal Employment Opportunity Commission:** Under the Obama administration, the EEOC has focused on an enforcement agenda involving gender identity/sexual orientation, national origin discrimination, and pay equality. It remains to be seen if the Trump administration will similarly prioritize these issues, particular those concerning LGBT individuals. In addition, the EEOC's proposed regulations implementing changes to the EEO-1 reporting process that would require employers to provide employee pay data that are scheduled to become effective in March 2018 may also be revised or rescinded. Finally, the EEOC will likely face increased budget scrutiny in the Trump administration, which could hamper enforcement efforts.

Please contact Burr & Forman LLP's labor and employment team with questions about upcoming legal changes in the Trump administration or other employment law questions.

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