

What Will DOL's Immigration Policy Look Like Under Puzder?

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President-elect Donald Trump has nominated Andrew Puzder, the chief executive of CKE Restaurant Inc., for secretary of the U.S. Department of Labor. Puzder had a successful legal career before being named president and chief executive officer of Hardee's Food Systems and then CKE, a franchise of 3,700 restaurants around the world. He has been actively involved in politics and frequently gives political commentary on the economy and job growth.



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Since immigration was the cornerstone of Trump's campaign, his immigration platform included a broad-based vision to prioritize the jobs, wages and security of American workers, implement new immigration controls to boost wages and ensure that open jobs are offered to Americans first, and enforce current immigration laws. Trump also campaigned on vetting immigration applicants to guarantee they support American values and selecting immigrants based on their likelihood of success in America.

Trump's 10-point plan to achieve this vision focused heavily on curbing illegal immigration. He emphasized increasing enforcement of immigration laws, securing the borders and suspending the issuance of visas to any place where there is inadequate screening. The 10-point plan also stresses reforming legal immigration to serve the best interests of America and its workers, keeping immigration levels within historic norms.

During the Republican primary, Puzder outlined the major principles on immigration he felt the eventual Republican candidate should support, including sovereignty, border security, enforcing current laws, addressing the undocumented population and protecting the privilege of American citizenship. He will now have the opportunity, to a somewhat limited degree, to put some of these principles in place. While the DOL has an important role in protecting American workers in the legal immigration context, many of Trump's and Puzder's top immigration priorities fall under the purview of the U.S. Department of Homeland Security. General John Kelly, a retired U.S. Marine Corps commander who has knowledge and experience in drug and human trafficking, counterterrorism and securing the U.S. southern border, has been selected to lead the DHS.

Some of Trump's most ardent supporters were initially concerned about Puzder's nomination. Although Puzder is an outspoken critic of illegal immigration, he has stated in the past that he is a "fan" of legal immigration and supports hiring foreign nationals for jobs that are difficult to fill. These statements were disconcerting to many of Trump's supporters who take a more "hardline" position on immigration. In

response to the controversy, Puzder recently stated that as secretary of labor he would “fiercely defend American workers” and do his part to establish new immigration controls and ensure that jobs are offered to American workers first.

Puzder spent the majority of his career in the restaurant industry, which is one of the nation’s largest employers of immigrants (in general) and immigrants living in the country illegally (in particular). In his recent statement, Puzder indicated that his experience makes him one of the best people for the job of secretary of labor. He stated he “knows the system from the inside” and “will not provide guest worker visas to companies that break the rules, and will support reforms to raise wages for Americans.”

The DOL’s policies in the legal immigration process will likely evolve in the coming years under the new administration. The DOL plays a critical role in the adjudication of nonimmigrant H-1B visas, one of the most controversial visa programs in use today. The H-1B allows employers to hire foreign nationals in certain specialty occupations. While the visa petition is adjudicated by the DHS, in the context of the H-1B the DOL must approve labor condition applications designed to prevent an adverse wage impact on U.S. workers.

Similarly, the DOL administers the permanent labor certification (PERM) process, which allows an employer to hire a foreign worker to work permanently in the U.S. The DHS requires employers to obtain a labor certification from DOL stating that there are “not sufficient U.S. workers able, willing, qualified and available to accept the job opportunity in the area of intended employment” thus hiring a foreign worker will not adversely impact U.S. workers.

The DOL has also been actively involved in supporting President Barack Obama’s 2014 immigration accountability executive actions. The agency established the Interagency Working Group for the Consistent Enforcement of Federal Labor, Employment and Immigration Laws, which brought together agencies responsible for worker protection to identify policies that protect workers in the U.S. regardless of immigration status. The working group sought to facilitate better communication between immigration and labor agencies, disseminate information to workers regarding their rights, strengthen the process for staying removal of undocumented workers who have workplace claims, and facilitate communication with enforcement authorities. Based on the success of the interagency collaboration, the DHS and DOL expanded a memorandum of understanding between the two agencies regarding worksite enforcement activities to include the U.S. Equal Employment Opportunity Commission and National Labor Relations Board.

The DOL also included a review of the PERM program and relevant regulations as one of the agency’s efforts to support Obama’s immigration executive initiatives. Specifically, the agency planned to seek out ways to modernize the U.S. worker recruitment requirements, clarify employer obligations to ensure PERM positions are open to U.S. workers, address case processing times and assess other administrative issues with the program. The PERM review has since been canceled.

Trump and Puzder have both expressed support for skilled, legal immigration. On the other hand, Trump has proposed a wage floor for the H-1B category, and a requirement that employers show that they have not been able to find U.S. workers before sponsoring foreign workers for H-1B positions. Since the current H-1B and PERM processes are governed by statute, any such changes would require new legislation.

Puzder supported comprehensive immigration reform (in contrast to Trump, who opposes such legislation), however, in the past he spoke out forcefully against Obama’s unilateral executive actions on

immigration. In doing so, he emphasized the need to follow the rule of law and legislate any needed fixes to the country's immigration system. To the extent that the DOL's efforts to support the legacy of Obama's executive actions overstep the agency's delegated authority, its likely Puzder will reverse the agency's course. Or, he may continue the work of the Interagency Working Group for the Consistent Enforcement of Federal Labor, Employment and Immigration Laws in order to work closely with the DHS and other agencies on immigration enforcement.

In reality, it is still unclear how much legal immigration policy will change in the new Trump administration. Both Trump and Puzder have worked in industries that rely heavily on foreign nationals. It is entirely possible that under the Trump administration legal immigration will stay within historic norms, as laid out in Trump's 10-point plan. Given the selection of General Kelly as secretary of the DHS, it seems very clear that there will be an enforcement crackdown on those who violate current immigration laws.

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