

Update On Trump's Line-Up For DOL And Supreme Court

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Regulation-weary employers excitedly anticipated the new Trump Administration – and its promises that ranged from repealing the Affordable Care Act to appointing a friendly U.S. Supreme Court Justice to abolishing the fiduciary and overtime regulations. But, change often comes slowly in government, and employer expectations have been frustratingly delayed by some unexpected upsets on Capitol Hill. Apart from the last-minute decision to withdraw the GOP healthcare bill, here's a quick update on two key Trump nominees.

Secretary of Labor

The ill-fated nomination of Andy Puzder for Secretary of Labor crumbled under rumors of economic conflicts and domestic abuse. Trump called Alexander Acosta off the bench and Acosta testified last week before a Senate committee, although his testimony was overshadowed by healthcare and Russian spying. Acosta brings a mix of government, prosecutorial and NLRB experience to the post. During his Senate hearing, Acosta kept his employment policy cards very close to the vest, deepening doubts among labor and employee advocacy organizations. More specifically, Acosta's testimony at his hearing suggests he would reverse course on the Obama administration's proposed overtime regulations, joint employer liability for franchisors, and the "fiduciary" rule for those who handle retirement benefits.

Supreme Court

Down the hall, Ivy League-educated 10th Circuit Court Judge Neil Gorsuch survived two long days of questioning at his Senate confirmation hearing for the Supreme Court vacancy, created in February 2016 by the death of Justice Antonin Scalia. Like the well-prepared Acosta, Gorsuch also revealed little of his philosophy, generating skepticism from critics. Senators grilled Gorsuch in particular on his dissenting opinion in a 2016 decision that involved an employee truck driver who was fired after he abandoned his trailer along the side of the road after the brakes on the trailer had frozen in subzero temperatures. The case, if you're interested in a late-night 23-page read, is [TransAm Trucking, Inc. v. Administrative Review Board](#). Gorsuch's dissent includes this observation: "It might be fair to ask whether TransAm's decision was a wise or kind one. But it's not our job to answer questions like that. Our only task is to decide whether the decision was an illegal one." Judge Gorsuch's position in this and other cases has solidified the opposition of many Democrats and organized labor.

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On Monday, Senate Judiciary Committee Democrats forced a one-week delay on a Gorsuch vote, and although there's talk of a filibuster, experts predict it will eventually fail. In sum, despite the resistance, Trump's nominees for DOL and the Supreme Court are likely to be confirmed.