



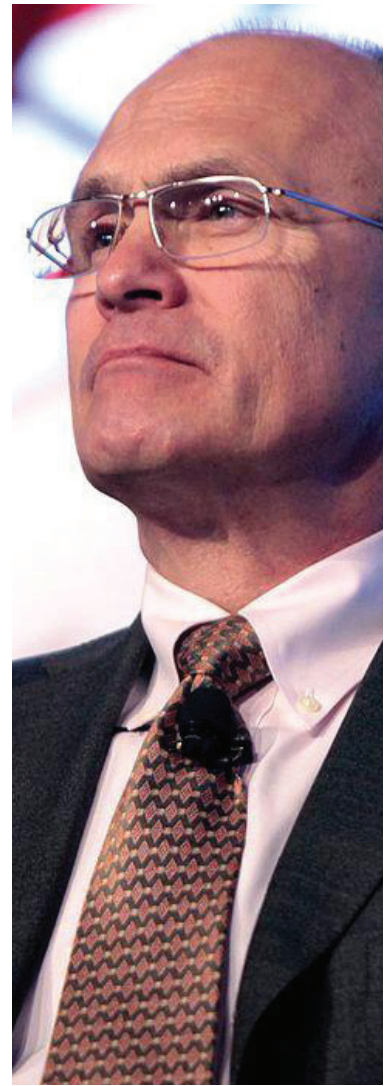
INVESTIGATING

LABOR SECRETARY NOMINEE

ANDREW PUZDER

AND HIS FAST FOOD EMPIRE

A Special Series • February 2017



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Introduction

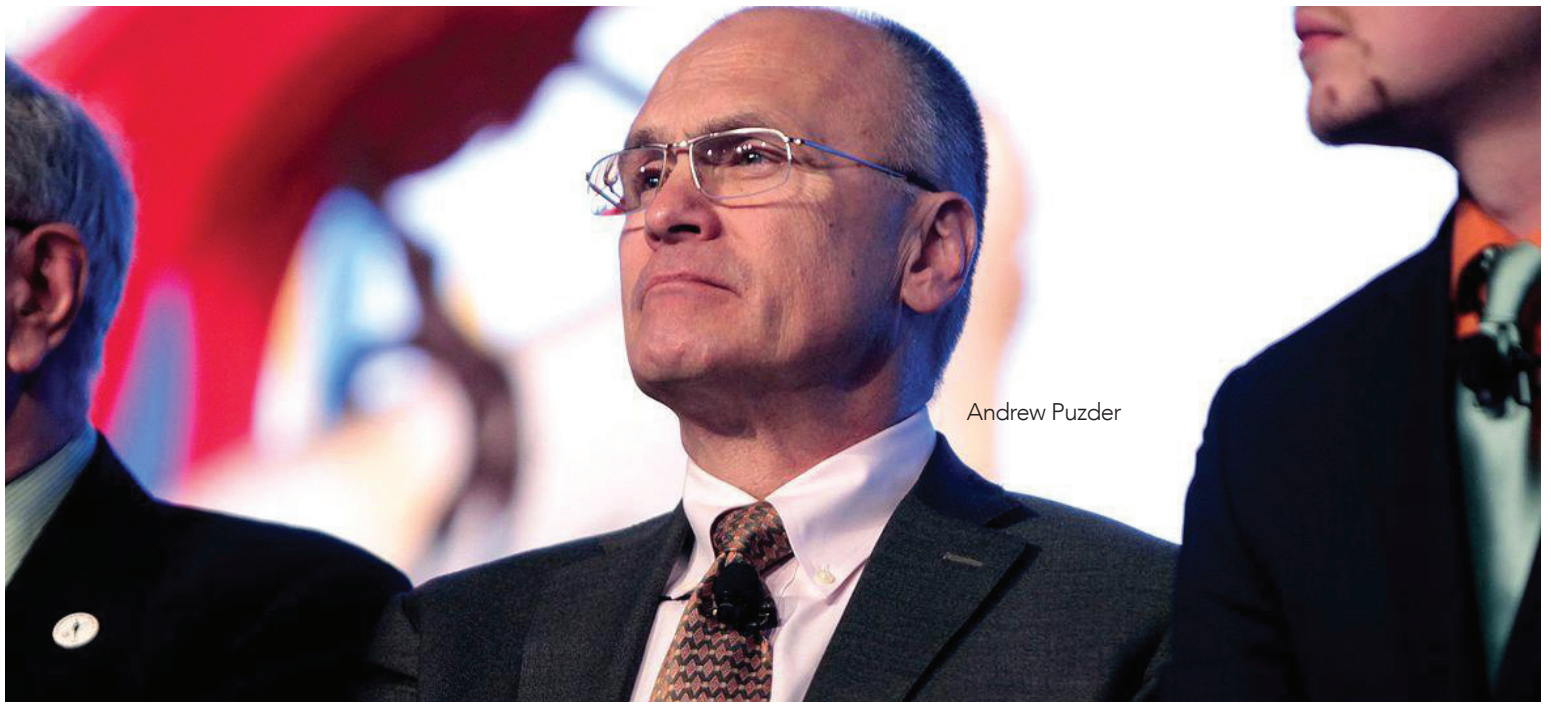


The withdrawal of Andrew Puzder from consideration as Donald Trump’s secretary of labor dealt another blow to an administration reeling from a succession of setbacks. But as Capital & Main reported during its six-week investigation into Puzder and his tenure as CEO of the fast food empire CKE Restaurants, Puzder was a remarkably flawed choice to head a department charged with protecting the rights of American workers.

Among our most disturbing findings was that CKE had the highest rate of federal civil rights lawsuits of any major U.S. burger chain. Capital & Main’s story about CKE’s discrimination problem was cited by Senator Elizabeth Warren in a letter to Puzder -- part of a chain of events that led to the decision to withdraw his name. The wave of bad news also included our story, co-published by Newsweek, uncovering allegations that Puzder sexually harassed a high-ranking CKE executive, whose 2004 lawsuit contained detailed and disturbing charges against the CEO and other high-ranking corporate leaders.

Media scrutiny, including the investigative stories by Capital & Main, played a critical role in exposing Puzder’s troubling track record and raising questions about his qualifications. Our coverage of Puzder was co-published, republished or cited by numerous national media outlets, including the following:

- Newsweek** (co-published)
- International Business Times** (co-published)
- The American Prospect** (co-published)
- Fast Company** (co-published)
- MSNBC** (cited)
- The New Yorker** (cited)
- U.S. News and World Report** (cited)
- Los Angeles Times** (cited)
- Chicago Tribune** (cited)
- Mother Jones** (cited)
- Huffington Post** (republished and cited)
- Altnet** (republished)
- OC Weekly**



Andrew Puzder

Photo: Gage Skidmore

Co-published by *Newsweek*

Labor Secretary Nominee Puzder Sexually Harassed Senior CKE Female Executive, 2004 Lawsuit Alleged

By Robin Urevich

Capital & Main has discovered a lawsuit by a former corporate executive alleging sex discrimination and sexual harassment by Donald Trump’s Labor Secretary nominee, Andrew Puzder, and other male executives at CKE Restaurants.

Puzder, whose Senate confirmation hearing is Thursday, is already facing intense opposition from critics, many of whom have cited the corporation’s treatment of both its mid-level managers and store employees during Puzder’s tenure as CEO. CKE is the parent company of Carl’s Jr. and Hardee’s.

Caroline Leakan, a onetime CKE vice president of investor relations, filed a lawsuit in 2004 in Santa Barbara Superior Court. The suit alleged that Leakan was fired for demanding the same raises male colleagues received. Leakan sued Puzder and the company, along with CFO Ted Abajian and his predecessor,

for sex discrimination, sexual harassment, retaliation, wrongful termination and violation of California’s Equal Pay Act.

Leakan alleged that CKE executives would make lewd comments as they screened the company’s sexually charged ads in her office. She described one ad that showed “a voluptuous blond woman writhing on top of a mechanical bull in a sexual fashion...The male executives wryly commented that they needed to remove themselves from the office because of their sexual reaction to the viewing of the commercial.”

Puzder himself behaved inappropriately, Leakan alleged, causing her “considerable discomfort and humiliation.”

“Puzder made it a habit of reaching down to his genitals and ‘adjusting himself’ in front of Plaintiff,” Leakan’s complaint also asserted.

Leakan described a February 2004 investor conference call in which she told Puzder that the company's conferencing equipment wasn't working, and he would have to sit close to her to be heard on the phone. "Moving closer to plaintiff, Puzder replied in a sexual tone, 'Oh, this could turn out to be a very interesting call, very interesting!'" the lawsuit noted.

Leakan claimed that Puzder talked often about his wife's body. "He even commented upon his wife's body dimensions during investor meetings," her complaint said. "Puzder also touched and rubbed his wife in an explicit, sexual manner in front of plaintiff and other company personnel during executive business trips."

On one occasion, Puzder allegedly looked Leakan up and down and asked if she'd lost weight, commenting that she "looked really good."

At a company holiday party Puzder hosted, the CEO allegedly mocked Leakan for her defense of the company's sexually suggestive TV ads. Leakan had been quoted saying CKE didn't use sex to sell burgers. But in court papers, Leakan recounted that her boss repeatedly told his guests, "Of course we use sex to sell," laughing each time he did so.

On a flight home from a business trip, another executive allegedly told Leakan that he couldn't wait to get home "to get laid," and proceeded to describe his sexual needs to Leakan. "During a separate conversation in Plaintiff's office, the executive told Plaintiff that he should have taken her on a recent vacation in Mexico 'to help her relax.'"

The company denied all of Leakan's allegations in its 2004 answer to her lawsuit. Based on the court's schedule of hearings and references to settlements made by both parties, it appears that CKE reached a settlement with Leakan just two months after she filed suit. The settlement amount remains undisclosed.

In response to Capital & Main's questions about the Leakan case, a company spokeswoman cited a confidentiality agreement that bars all parties from discussing it.

"Without reference to this case, anyone can say almost anything in a lawsuit and they often do. Allegations are just that: unproven allegations."

Leakan said in a text message that she was bound by what she called a gag order in the case and could not discuss it. Leakan's

attorney didn't respond to Capital & Main's interview request.

Leakan's lawsuit detailed her troubles at CKE, beginning shortly after her hiring when she told her boss, then-CFO Dennis Lacey, she was pregnant, and ending with her firing some 17 months later, allegedly in retaliation for requesting raises that she said male colleagues had received.

Lacey unleashed a torrent of abuse after learning she was pregnant, Leakan said in court documents. "Lacey continued to treat plaintiff and other female employees in a hostile and demeaning manner," Leakan's complaint reads. He was loud, abusive and allegedly referred to Leakan and other women as "stupid" and "an idiot," rolled his eyes at Leakan's comments and became "angry, annoyed and resentful" when she took time off for prenatal medical appointments.

The former CFO shared his belief that women "should stay at home with the kids" and told her that he wouldn't be surprised if she didn't return to work after maternity leave, Leakan claimed in her lawsuit.

Leakan said that she appealed to the company's senior vice president for human resources, but claimed that instead of an investigation into her allegations, the human resources manager simply suggested Leakan do as she had done when faced with similar harassment and discrimination by CFO Ted Abajian: threaten to quit.

The company has faced court action for pregnancy discrimination in the past, including a 2005 lawsuit brought by the federal Equal Employment Opportunity Commission on behalf of Lori Donohue, a biscuit maker at an Arkansas Hardee's who was allegedly fired for her pregnancy. The company entered into a consent decree with the government, promising not to discriminate on the basis of pregnancy, to train its managers in relevant civil rights law and to pay Donohue \$8,500 in damages.

The company currently faces additional employee lawsuits, including suits over wage and hour laws, and sexual harassment. An Orange County judge recently agreed to postpone a hearing on an age and disability discrimination lawsuit against CKE until June when company attorneys pointed to potentially prejudicial bad publicity brought about by Puzder's nomination. ©

Additional reporting by Roxane Auer.



Photo: Gage Skidmore

Managers Who Worked With Trump's Labor Secretary Nominee Question His Qualifications for Post

By Capital & Main Staff

Over the past few weeks, Capital & Main has interviewed half a dozen current and former managers at CKE, the company run by labor secretary nominee Andrew Puzder. We asked them about their experiences working with Puzder and inside the company he oversaw. Here are some excerpts from our interviews.

RON SUCKLE,
former corporate risk management manager:

- He basically treated the employees like chattel. He refused to offer full-time jobs to more than a very few people.
- His predecessor, the founder, Carl Karcher, was human and

definitely treated employees as people — that definitely changed when Puzder came along.

- [CKE] didn't offer a pension. It offered a no-match 401(k). You could put money into it. Some companies match one-to-one. Their contribution was zero cents on the dollar.
- He's the antithesis of someone who should be the Secretary of Labor. He's anti-labor. He doesn't believe in the minimum wage.
- Puzder doesn't believe in overtime. He basically believes workers should be used and not nurtured.

**BLANCA CARBAJAL,
former district manager who was fired in
2015 after 34 years:**

- I am living a nightmare. I feel like I am being discriminated [against] for my age, for being a woman, for doing my job. I cannot even go into a Carl's Jr., because it's so upsetting for me to just pass by a store that I dedicated my life, my family, everything to — for them to let me go just because they wanted to? I just don't understand why.
- I worked very, very hard to be where I was at, being a district manager. And for somebody to decide, we just don't need you anymore, with no explanation given — I feel like I'm useless. My career is thrown in the trash. Everything I gave to this company is thrown in the trash, which is not fair.

A FORMER DEPARTMENT DIRECTOR:

- It is very much ego driven — Andy-driven. All of the workers in the restaurant are looked at as a commodity.
- It wasn't ever a priority to make sure we took care of everyone. Certainly it was never, "Let's take care of people on the front lines"...It was, "Shut up, keep your head down and be happy you have a job."
- There was never, ever a woman in charge at any executive level that had an impact.

A CURRENT MANAGER:

- There seems to be a glass ceiling that women can't make it past.
- People totally dislike the man. He's very arrogant.... People shook in their shoes when he walked in.
- He's very rude. If you were a white, blond cashier you did a great job. If you were an overweight person, [other managers] highly recommended we try to get rid of you.

- A former vice president of human resources and training:
- He did not really like minimum wage laws at all. I heard him say that before. He wasn't a fan of giving people raises.
- If you have an employee that you're a little iffy on, you don't give them a raise, because it would be difficult to get rid of them. I mean, [at CKE] it's all about being able to fire people.
- I don't think he should be labor secretary since he doesn't believe in the minimum wage. In my opinion, that kind of disqualifies you right there.
- The very first thing they tell employees, if it's the case, is, "You're in a right-to-work state. We can fire you if we want." Really gives you a warm feeling.
- Everybody else lets you get your unemployment compensation, but not Hardee's or, you know, CKE. If you leave or you've been terminated, and you qualify for unemployment in your state — anybody else I've ever worked for said, "We're not [contesting] your unemployment." But they do. I mean, they really nickel-and-dime it.

A FORMER MANAGEMENT EMPLOYEE:

- People want to work someplace where it matters...I don't think Andy Puzder made Carl's a restaurant that was an employer of choice.
- I wanted to get out of there and be developed. I moved on because I wasn't going to go anywhere.
- Has he ever stood in employees' shoes? How does Andy Puzder help Donald Trump with job creation when he has such a myopic business experience? How can he represent a broader spectrum of employees and employers when he's only been focused on such a narrow segment of the business community that hires fairly unskilled labor? He's not focused on being an employer of choice. ☹



Co-published by *The American Prospect*

Andy Puzder's Answer to Labor Critics: Blame Our Franchises

By Bill Raden

When Andrew Puzder faces Senate hearings next week on his nomination as labor secretary, much of the questioning will focus on his management of CKE Restaurants, the Carpinteria-based franchiser of the national Hardee's, Carl's Jr., Green Burrito and Red Burrito fast-food chains.

Both Puzder and CKE have been under unflattering scrutiny since December, when Donald Trump announced the nomination, citing the fast-food executive's "extensive record fighting for workers" — a claim disputed by critics of Puzder's nomination who point to the fact that only last month workers at restaurants owned by CKE filed 33 complaints against the company, including 22 wage and hour violations, seven unfair labor practices charges and four allegations of sexual harassment.

Responding to a January 23 Capital & Main investigation of the franchise system, which found that under Puzder's leadership, CKE's Carl's Jr. and Hardee's restaurants ranked first among major U.S. hamburger chains in the rate of federal employment discrimination lawsuits, CKE spokesperson George Thompson countered that CKE only owns six percent of the restaurants in Capital & Main's data set, and that "94 percent of the restaurants you've counted are ones over which Andy has had zero oversight and management control."

It's a familiar defense for franchisors, for whom maintaining the appearance of "zero oversight" is at the very heart of a business that profits by transferring the risk of local business conditions and the liabilities of direct employment onto franchisees. But that defense was perhaps dealt its severest blow by the August 2016 agreement struck between the labor department and

Subway, the world's second-largest franchisor. That public memorandum of understanding with the DOL's Wage and Hour Division to do training and compliance assistance at all of its franchisees dramatically reset the bar for what an above-board business could and should be doing.

The landmark agreement was immediately recognized by industry attorneys as potential evidence for establishing the fact that, contrary to decades of franchise agreement disclaimers, a franchisor does possess the ability, whether exercised or not, to directly or indirectly affect the terms and conditions of employment of its franchisees' employees.

"CKE and its franchises," said National Employment Law Project attorney Cathy Ruckelshaus, "have been operating underneath the laws for decades. Putting it in a franchise agreement that [CKE is] not responsible for wage theft or compensation or discrimination doesn't make it so."

Still, insisting that there is a wide distance between itself and its franchisees has benefits for CKE.

"First of all, you don't have all the labor constraints," explained a former Hardee's executive, who spoke to Capital & Main on condition of anonymity. "You don't have labor. It's just five percent off the top with no real risk. ... So it's the way to go. I mean, [the risk] is not by a little — it's considerable. You could have a company restaurant that you build and they put the Walmart six miles down the road and a McDonald's on the mall pad, and you're not getting anybody. If it's a franchisee, that's not your problem. None of that crap is really your problem. ... Andy said for many years that he wanted to leave California, because of all the labor laws and the taxes. So he's moving to Tennessee, where there's also no personal income tax."

A 2010 study led by labor economist David Weil, who went on to head the DOL's Wage and Hour Division (WHD) during the final two years of the Obama administration, concluded that for an industry based on low wages, narrow profit margins and extreme competition, shifting the direct employment of workers to franchisees can be a recipe for wage and overtime violations. Weil reasoned that franchising incentivizes noncompliance because franchisees pay royalties linked to revenues rather than profits. By typically paying the franchisor a straight five percent of gross sales, the franchisee can only maximize profits

out of the difference between sales and costs. The franchise agreement effectively ties the franchisee's hands on the product side and pressures it to cut corners off the labor side to improve its bottom line.

Focusing on the franchise relationship and applying the concept of joint employment in the Fair Labor Standards Act (FLSA) — a concept on the labor and employment law books since the 1930s and taken from the very broad definition of what it means to employ — became an enforcement doctrine at the WHD under Weil. During the Obama years, the WHD conducted nearly 4,000 investigations at the 20 largest fast-food brands, turning up more than 68,000 FLSA violations and successfully recovering \$14 million in back wages for roughly 57,000 employees.

To discover how much influence CKE exerts over its franchisees, Capital & Main analyzed a 2012 Carl's Jr. "franchise agreement" contract — the ironclad compact that dictates every aspect of CKE's relationships to over 2,200 Carl's Jr. or Hardee's franchisee-owned stores — and compared it to four of its fellow billion dollar-plus burger heavyweights: Burger King, Wendy's, McDonald's and Jack in the Box.

Though this contract (which is the last publicly available CKE franchise agreement) doesn't differ substantively from its industry peers, the 51-page document outlines what is clearly a granular level of control by CKE corporate overseers that seems starkly at odds with the corporation's claims that franchisees are free and autonomous agents. CKE's rules obligate franchisees to adhere to what the corporation refers to as the company's "System," a broad and highly detailed set of specifications and procedures "developed and owned" by CKE.

The System spells out everything — from the look of the restaurant, to the making, marketing and selling of the products it offers, to the training and governance of employees. A franchisee must obtain CKE approval for the location of a restaurant, its layout and design, its promotional materials, its menu items, its vendors and its bookkeeping system. It must submit weekly and annual financial reports to CKE and, for its part, CKE can audit or inspect a restaurant at any time, as well as order training for franchise employees, demand repairs or major renovations at the franchisee's expense.

CKE leaves a mere two areas solely to the discretion of the franchisee: The pricing of menu items; and anything related to workers in terms of employment and compensation. The agreement also requires franchisees to notify CKE of civil suits or labor violations, “including, without limitation, all laws or regulations governing or relating to ... immigration and discrimination, occupational hazards and health insurance, employment laws.”

The agreement then binds the deal with an insistence that CKE’s left hand can’t know what its right hand is doing.

“This Agreement does not create a fiduciary or other special relationship between the parties,” it says. “Franchisee is an independent contractor and is solely responsible for all aspects of the development and operation of the Franchised Restaurant,” and “CKE has no responsibility ... in the event the development or operation of the Franchised Restaurant violates any law, ordinance or regulation. The sole relationship between Franchisee and CKE is a commercial, arms’ length business relationship.”

Maintaining this “arms’ length business relationship” turns out to be a fairly boilerplate aspect of all the franchise agreement language that Capital & Main examined. But for an industry well-known for its meticulously proscriptive supervision of its brands, the zero-oversight defense has sprung some leaks in recent years.

It was decisively breached in another, 2014 application of joint-employment rules against McDonald’s, this time by National Labor Relations Board general counsel Dick Griffin, when the NLRB issued 13 complaints against McDonald’s and some of its franchisees for unfair-labor practices, and named McDonald’s Corporation as a joint employer with joint liability. The board based its rationale on the fact that the fast-food behemoth’s franchise agreement orders its franchise owners to strictly follow its rules on food, cleanliness and employment practices, and that McDonald’s often owns the restaurants that franchisees use.

What’s especially revealing about the uniformity of the franchise agreements between different corporate brand owners is that the rate of labor violations could vary so widely among the franchise systems — by as much as 20 federal

employment discrimination lawsuits per billion in sales, according to the Capital & Main review. That different franchise systems could have different rates of noncompliance, said NELP’s Ruckelshaus, suggests the common denominator is the franchisor rather than the franchise agreement.

“There’s clearly a culture in these restaurants [of] noncompliance with a lot of the basic labor and employment laws,” she explained. “And it doesn’t have to be that way. The franchisor can definitely send out a message to its franchisees that they want them to be compliant with labor and employment laws and treat their workers fairly and all the things that most businesses would do.”

Though CKE’s official corporate policy prohibits discrimination based on race, color, religion, gender, age, sexual orientation, national origin or disability, Puzder’s outspoken antipathy to most employment regulations sends a somewhat more ambivalent message. In op-eds, the CEO condemned both the NLRB’s joint-employer standard (a “lose-lose scenario” with “potentially devastating economic effects”) as well as the Obama administration’s overtime rule that doubled the salary threshold under which workers get time-and-a-half pay when they work more than 40 hours in a given week.

“CKE is a textbook case of how franchising can enable some businesses to evade responsibility for labor violations committed in establishments that bear their name, sell their products and adhere to their rules,” said Alison Morantz, Stanford Law School’s James and Nancy Kelso Professor of Law. “Although such abuses are widespread, they can be substantially reduced with legal and regulatory tools that already exist, and have been used successfully in the past.”

Which is why the role of Andrew Puzder would be pivotal at the Department of Labor.

“If,” Morantz continued, “the new administration turns a blind eye to abusive labor practices — or tries to strip federal inspectors of the tools it has available to enforce wage and hour laws — it will encourage franchisors like CKE to deprive hardworking Americans of the basic legal protections that ensure everyday accountability, justice and fair play in the labor market.” TM

Additional reporting by Roxane Auer and Holly Myers.



President Trump with Secretary of Labor nominee Andrew Puzder

Photo: Mike Segar/REUTERS

Co-published by *Fast Company*

Employees Paint a Troubling Portrait of Company Run By Labor Nominee Puzder

By Robin Urevich

As the chief executive officer of CKE Restaurants, Andrew Puzder employs some 70,000 American workers (including workers at franchised restaurants) at Carl's Jr. and Hardee's restaurants, and at corporate offices. Puzder, who is President Donald Trump's nominee for labor secretary has called his workers the "best of the worst" of the American workforce, and once noted of his store managers, that "you're lucky if they have a high school diploma." He contributed nearly \$700,000

thousand to the Trump campaign and has vociferously voiced his opposition to California's overtime rules, federal sick pay regulations and Obamacare.

Puzder is a 66-year old attorney who helped legendary Carl's Jr. founder Carl Karcher out of legal and financial jams in the 1980s and '90s. The two became close and Puzder took the reins as CEO in 2000.

He commands loyalty from some of his workers, but not the affection that many felt for Karcher. Some employees, from line workers to upper-level managers, are bitter about the company's employment practices and question his fitness to serve as the nation's top labor official.

Former employees and one current worker—some of whom spoke to Capital & Main on condition of anonymity, cited the disinterest and even disdain they said he showed for his own workers. They describe him as smart, articulate and competent – but also cutthroat, fostering an atmosphere at corporate headquarters where backstabbing is common and camaraderie is rare. (Puzder did not respond to interview requests for this article.) It's an epithet that might fit a slew of contemporary CEOs, but in Puzder's case the stakes are much higher because this particular CEO could soon run a vast federal bureaucracy that is responsible for the well-being of American workers. Puzder's critics fear that as CKE goes, so will the Department of Labor.

Puzder's is the story of a man whose accomplishments in business, and a lifelong interest in public policy and politics, might have outshone the indifference with which his own employees say he treats them, if he were nominated for nearly any other post. But as nominee for secretary of labor, Puzder's track record as an employer is front and center, and that's why, some workers say, they've chosen to share their experiences, despite their doubts and fears about doing so publicly.

A manager who currently works at the company and fears he'll be fired if he gives his name, recalled Puzder's visits to Hardee's in the early 2000s, when the CEO was looking to boost sales at the then-troubled brand. "People would shake in their shoes as he came in," the manager said. "He was very rude...If you were a white, blond cashier, you were doing a great job. If you were an overweight person, it was highly recommended that we try to get rid of you. We were trying to change our image at the time."

In 2011, Puzder told a reporter at National Restaurant News that during the Hardee's turnaround he issued a memo saying "no more people behind the counter unless they have all their teeth." The company got into legal trouble because of its image-consciousness in 2005, when it settled a lawsuit with the federal Equal Employment Opportunity Commission on behalf of a

woman with facial deformities who said she'd been denied a job at Hardee's while other similarly qualified people were hired.

One former department director at the company's Carpinteria, California offices, who signed an agreement not to speak publicly about CKE when she left her job, and who asked not to be named, confirms that Puzder is highly image-conscious and sometimes puts his own fiercely partisan political interests ahead of the company's. She said her willingness to speak up didn't sit well with Puzder. She describes staff members painstakingly polishing her boss's op-eds and watching him spend tens of thousands of dollars to spruce up a Southern California Carl's Jr. ahead of a campaign stop by then-presidential candidate Mitt Romney, who Puzder backed in 2012.

LaTonya Smith, a former manager-in-training at a Hardee's restaurant in Birmingham, Alabama, describes working 100-hour weeks, scrubbing and polishing to perfect her restaurant's health department rating, only to lose her job when she told her manager she had to leave work early for an emergency medical appointment for her spiking blood pressure. "They don't give women a chance," Smith told Capital & Main.

Smith filed a complaint about her dismissal with the federal Equal Employment Opportunity Commission that claimed, "Hardee's is a largely male dominated culture through the supervisor ranks and physically demanding...Women employees are viewed as being less strong than male employees." She ultimately sued Hardee's for race and gender discrimination and settled for an undisclosed amount.

Dozens of employee lawsuits and complaints filed with federal and state agencies similarly describe a male-dominated workplace where racial, gender and age discrimination, along with sexual harassment, are tolerated, but reporting those abuses is not. In court documents and interviews, workers allege that reporting discrimination has caused the company to retaliate against them, and has cost some employees promotions, or even their jobs.

Interviews with management employees, most of whom have left CKE, reveal a company where even higher-level workers are dispensable. The former department director who worked with Puzder in Carpinteria said, "It was shut up, keep your head down and be happy you have a job." Former manager Ron Suckle,

who worked in risk management at the Carpinteria offices, said CKE's company culture came from Puzder: "On the executive level of CKE, it was a boy's club, a white boy's club. He basically treated the employees like chattel."

The company's nine-member executive management team is all-male. Among its corporate peers — the nine U.S. burger chains with \$1 billion or more in annual sales — it is one of only three companies with an all-male executive management team. The team consists of a single person of color, Chief Operations Officer Eric Williams, who is African-American.

While CKE's competitors are far from achieving gender and racial equality in their top ranks, some have made more progress than CKE in diversifying their leadership. Sonic Drive-In, which is about the same size as CKE, also includes nine executive managers, four of whom are women. McDonald's lists 16 top executives, among them seven women. At Jack in the Box, four of the 12 highest-ranking executives are women; two are non-white. Wendy's and Burger King's executive teams also include female leaders. Only the company's smaller competitors are completely led by men. Capital & Main couldn't immediately confirm the ethnic make-up of top executives at most burger companies that compete with CKE.

"The diversity of a management team is a good indicator of diversity at all levels of a company," said Jennifer Chatman, a professor of management at the Haas School of Business at the University of California, Berkeley. "If there are women and racial minority members at the highest level of the company, it means that the company has made an effort to hire, develop

Racy TV commercials don't help matters, Chatman said. Carl's Jr.'s include the innuendo-heavy three-way bacon burger spot, which shows a trio of nearly identical blond models in bikinis lustily feeding each other strips of bacon as they tout the "three-way."



and promote people who are not members of our society's historically dominant and high status group — white men."

Racy TV commercials don't help matters, Chatman said. Carl's Jr.'s include the innuendo-heavy three-way bacon burger spot, which shows a trio of nearly identical blond models in bikinis lustily feeding each other strips of bacon as they tout the "three-way."

"Leaders looking for justification for why they should hire or treat people differently based on gender would find support based on this ad campaign," Chatman said. "[The ads] give people in the organization clues about what the culture of the organization is—what's likely to be rewarded, punished and overlooked," she said.

Puzder personally participated in auditioning models for the signature ads, said a former company vice-president who didn't want her name used, and enjoyed being on the set during filming, the former department director told Capital &

Main. Indeed, in 2015, he told Entrepreneur magazine that the brand aimed at young hungry guys reflected his own personality.

Still, Cathy Kellner-Diaz, a vice-president of international marketing, spoke enthusiastically about her work at the company, arguing that she and other women have enjoyed opportunities for advancement at CKE.

"I'm proud to be a woman in this organization," Kellner-Diaz said. Puzder recruited her from an ad agency where they had worked together. "We've had a productive and successful relationship," she said. "Andy brought me to CKE because I'd definitely achieved results. It was a great compliment."

With Puzder's confirmation facing an avalanche of opposition from labor and women's groups, COO Williams penned an op-ed in Business Insider last week crediting the CEO with mentoring and helping him reach the top at CKE.

Company spokesman George Thompson said that some 29 percent of vice-presidents are people of color, and a third are women. He cited several other individuals who started at the bottom and built rewarding careers at CKE, such as Enrique Delgado, a company vice-president who began cleaning tables and serving food, and James Spear, an African-American man who started at the company 16 years ago as a crew member and now serves as vice-president of operations.

Notwithstanding such individual successes, men and women who have served in management in the company say the glass ceiling is firmly intact at CKE. Management's lower ranks— the relatively low-paid restaurant managers and their supervising district managers, are majority women and people of color, but their numbers shrink significantly in upper management.

A former manager, who didn't want her name published because she's now an executive at another restaurant chain, said one reason it's tough to move up in the company is that it offers no clear path to advancement. "No one is investing in your professional development." She added that there are no performance evaluations, and that bonuses are given at the company's discretion, with no clear criteria for earning one.

"It's sold to people as, 'You might make more money,' but it doesn't work that way," she said.

"I had to do a lot of pushing just to get a raise," said the former department director who'd agreed not to speak publicly against CKE Restaurants. It was tough to advocate for herself, she said. "If you went to HR [human resources], you were a troublemaker. You wouldn't be invited to meetings – or I wouldn't be."

"Certainly, having clear criteria for what makes you promotable and what constitutes justification for raises are bread-and-butter practices," Jennifer Chatman said. "The less codified and clear the criteria are, the more there's potential for inequities to occur. That's Organizational Behavior 101."

A company spokeswoman did not answer questions about the company's policies on performance evaluations, job postings or bonuses. Some companies, like McDonald's, detail a commitment to diversity and programs to achieve it on their websites. When asked if CKE had a similar document, a spokesman responded that the company is committed to equal employment opportunity and follows anti-discrimination laws.

The same manager who recalled Puzder's visits to Hardee's also noted that the company encouraged discrimination in not so subtle ways. He said that if a restaurant's clientele was half black and half white, a manager would be encouraged to hire workers that reflected that demographic mix. He said that higher-ups, not including Puzder, would sit down with a restaurant manager and ask her to look around the dining room. Then, they would ask her to look at her crew members. It wasn't said out loud, but the people who ran the restaurants were led to believe that upper management wanted to hire workers that matched the racial make-up of a restaurant's clientele.

It is unclear how widespread this practice was, but as Capital & Main has previously reported, two managers at different Hardee's franchises in Alabama said in court documents that they were subject to similar policies. One alleged that a white manager was hired to replace her because her store's customers were mostly white, and another manager said she was directed to hire white workers at restaurants where their customers were also mostly white.

Puzder's confirmation has been postponed for a fourth time, at least in part because he was slow to submit some of the paperwork required of cabinet nominees. When he does appear at his next hearing, now scheduled for February 16, some of his workers –past and present—will watch the proceedings with trepidation.

"He's the antithesis of someone who should be labor secretary," Ron Suckle said. "He's anti-labor. He basically believes workers should be used and not nurtured." TM

Additional reporting by Dean Kuipers and Bill Raden.



Photo: Daniel Acker/Bloomberg via Getty Images

Co-published by *International Business Times*

Andrew Puzder's House of Debit Cards

By Dean Kuipers

Torrance Chambers has been calling Andy Puzder for weeks to talk to him about a problem with his paycheck from the Hardee's restaurant where he works in Birmingham, Alabama. Ordinarily, Chambers wouldn't bother the CEO of the fast-food chain's parent company, CKE, Inc., but he claims his shift leader, store manager and several higher-ups told him no one else could help him. Chambers said his store issues paychecks only in the form of a prepaid Visa debit card, and it comes with fees. He'd prefer to get a paper check or a direct deposit, the

way he has had at other jobs.

"In order to get the money out the card, you have to go to the ATM, and the one I have to go to, they charge \$3.95 for every transaction I have," said Chambers. He said he's also charged different fees for using the card in stores and for paying his bills, and there's no option to get his full paycheck at any particular bank or store without being charged.

"Including food and gas and everything, in a week, total, I'm outta

Chambers said his store issues paychecks only in the form of a prepaid Visa debit card, and it comes with fees. These fees mean that Chambers' real wages are significantly less than the national minimum wage required by law, \$7.25 an hour.

\$80 [just on transaction fees]. And I'm only gettin' paid roughly \$250 a week," he said. These fees mean that Chambers' real wages are significantly less than the national minimum wage required by law, \$7.25 an hour.

Having received no return call from Puzder, Chambers filed a complaint with the U.S. Department of Labor on January 25, 2017, alleging minimum-wage violations related to the cards, as well as other problems at the store. (CKE did not respond to queries related to this article.)

It's not the first such complaint against the company, as a 2014 Department of Labor investigation found that the company's use of debit cards violated minimum wage laws. The agency ordered CKE to pay \$2,071.98 to an undisclosed number of employees, again at a Hardee's in Alabama, for similarly issuing cards that incurred fees. Investigation documents state outright that the company refused to pay the money, stating it would mean "changing the payroll practices of the company," but it is unclear how the case was resolved or if any changes to the payroll cards were ever made.

CKE is one of many employers now paying with plastic. Prepaid debit cards are a common way to pay employees at American mega-employers like Walmart and Home Depot, as well as many other burger chains such as McDonald's, Burger King, and Sonic Drive-In. Almost half of U.S. states also pay their government employees with cards. The cards are usually offered as an option for those employees who don't have bank accounts and want to avoid high fees at check-cashing locations.

According to a 2016 report by Restaurant Opportunities Centers (ROC) United, an advocacy group for restaurant employees, 7.4 million American workers received their payroll via debit card in

2015, and that number is expected to rise to 12.2 million by 2019. The cards are popular with some employees and very popular with payroll companies, who see huge savings by going paperless. The ROC United report found, for instance, that Darden Restaurants, the parent chain of Olive Garden, Yard House and LongHorn Steak House restaurants, saved \$2.75 per check per pay period by going to plastic, saving the company \$5 million a year.

In New York City, Deyanira Del Río, co-director of the New Economy Project, which helped implement new state rules regarding payroll card use, said that in surveying New York state workers, NEP, Retail Action Project and NYPIRG found two egregious problems that she compared directly to what Chambers said he experienced with Hardee's in Alabama: Some workers could not access their full pay without paying some kind of fee; workers also said they were coerced or pressured by management into taking the card even if there were other options like

direct deposit or a paper check. Similarly, Chambers said he was unaware if any other option existed, because multiple managers informed him he could not have a paper check or direct deposit.

"On the part of employers, the motivation is to offset the costs of their payroll processing," said NEP Campaigns Coordinator Andy Morrison. NEP led a labor-civil rights working group that pressed for the New York rules, which go into effect next month and are touted as the toughest in the nation. Plastic payroll is cheaper and also harder to track, since there's no paystub or statement. The payroll card companies, which are often the same or affiliated companies as the rest of the prepaid debit card industry that is dominated by such giants as Visa and Mastercard, can offer cheaper services to employers because

they make huge profits on all those card fees.

This schedule of fees, as provided by the 2016 ROC United study and other reports, shows just how many times the card company is touching a worker's money:

- **ATM fee, typically anywhere from \$1 to \$3.95**
- **Point of Sale (swipe) fee (the merchant also pays an interchange fee on this)**
- **ATM balance inquiry fee**
- **Optional paper statement fee**
- **Point of Sale decline fee**
- **Overdraft fee**
- **Card-to-card transfer fee**
- **Fee to talk to customer service if there is a problem (such as the payroll not loading on payday, which is a common occurrence)**
- **Monthly maintenance fee**
- **Card replacement fee**
- **Inactivity fee if the card isn't used often enough**

Del Rio pointed out that the cards are marketed as a vehicle to help the low-wage worker manage his or her money by limiting the amount they can spend – since the cards are not linked to other accounts or to a card that would cover over-limit spending – but most don't realize they'll still get dinged for hitting the limit. "These payroll cards are supposed to help you manage your spending and not go over, but you can actually trigger overdraft fees with a lot of these cards. And those can be quite high, like \$30 to \$40," she said.

The ROC United study detailed other hidden problems that put workers into the red. For instance, Darden employees interviewed for their study found that some gas stations put a hold on a prepaid debit card for \$75 to \$150 and left it on there for several days. Employees unaware of the hold often went over their card's limit or got POS declines, incurring more fees, causing them to call in to make a balance inquiry, which also incurred more fees, and reported not having the money they needed on time to pay their

rent and other expenses.

The study surmised: "Payroll cards should be offered as one of several free and safe ways for workers to receive their wages rather than be used as a vehicle for steering employees towards costly and unwieldy accounts."

To date, Alabama has no state regulations governing the issuance of payroll debit cards. Federal regulations don't directly address them, either, other than requiring that payroll cards be insured with deposit insurance (unlike other prepaid debit cards).

But in 2013, the Consumer Financial Protection Bureau – the agency created by the Dodd-Frank Wall Street Reform and Consumer Protection Act passed in the wake of the Great Recession – issued a stern warning that federal law prohibits employers from mandating that workers take their pay on plastic. They must also be offered a choice of a paper check or a direct deposit. Acknowledging that the bureau had received reports that employers in the retail and food service industries were forcing their workers to take the cards, CFPB director Richard Cordray said at the time, "Today's release warns employers that they cannot mandate that their employees receive wages on a payroll card. And for those employees who choose to receive wages on a payroll card, they are entitled to certain federal protections."

Hardee's employees in Birmingham had filed complaints in the past claiming the company forced them to take the cards. The 2014 Department of Labor investigation into Hardee's in Birmingham addressed these claims and interviewed a company district manager who said that employees were required to take the plastic card for their first check and they could then receive their pay via direct deposit. Two years later, Torrance Chambers and at least one other employee in his store – which may not be the same store investigated in 2014 – insist that they were told it's the card or nothing.

One of the significant findings of the 2015-16 workgroup led by the New Economy Project was that workers were coerced into accepting the cards, regardless if other options were available. They even found one company that was taking a tiny kickback from the card company for every new account they enrolled in the card. Subsequently, New York's new labor rules expressly prohibit coercing workers to use the cards.

Morrison noted, "[New York's new rules have] been trumpeted as

the strongest in the nation, so in theory other states could follow suit.”

The 2014 Department of Labor investigation into Hardee’s in Birmingham documents company pushback similar to that seen in New York. That investigation found that fees incurred while using payroll debit cards at “ATMs, gas stations and grocery stores” reduced the received wages to below \$7.25 per hour, resulting in multiple Section 206 (Minimum Wage) violations of the Fair Labor Standards Act.

A Hardee’s Vice President of Payroll, interviewed for the investigation but whose name was redacted from released documents, stated that the “the card is designed to incur no fee’s [sic] and the employee’s [sic] should receive 100% of their money.” The vice president pointed out that, at the time of his interview in 2014, the card should work without ATM fees at PLUS and INTERLINK ATMs and at Kangaroo gas stations, as well as some other places, but that “it is up to the employees to use the cards wisely” and that “all employees are told this when they start working here.”

Chambers, who said he has been active in the movement to raise the minimum wage, ended up trying to call Puzder’s office to get help with his payroll card problems. Chambers, however, does not work for CKE itself, but rather for HNI LLC, a franchisee of

The 2014 Department of Labor investigation into Hardee’s in Birmingham documents company pushback similar to that seen in New York. That investigation found that fees incurred while using payroll debit cards at “ATMs, gas stations and grocery stores” reduced the received wages to below \$7.25 per hour, resulting in multiple violations of the Fair Labor Standards Act.



with these issues.”

Chambers thought that disqualified Puzder from being a good candidate for labor secretary. “It’s a terrible idea,” he said. “One, he’s not a people person. Two, he’s very inconsiderate. And furthermore, he’s just concerned about himself and no one else, so I really don’t think that he should be in that position.” ©

the Hardee’s chain. As detailed in Capital & Main’s companion piece about the relationship between CKE and its franchisees, the company demands that its franchisees adhere closely to what is referred to in its 45-page franchise agreement as the “System,” a zealously enforced operations guide regulating everything from burger look and taste to dining room design, to which products are used to clean the bathrooms — but which leaves employee hiring and firing, payroll and pricing to the franchisee.

Which means that Puzder is under no obligation to call Chambers back. But all Chambers wants is for the big boss to show him some love.

“Well, first off, if he’d show a little bit more concern with the employees, and come talk personally, then there wouldn’t be no complaint,” said Chambers. “[I want him to] just try to make it better for the employees and try to make ‘em happy, and he’s the only one that can do it. Without his say-so, it’s not going to be any progress



Andrew Puzder photo by Gage Skidmore

Co-published by *Newsweek*

Under Labor Secretary Nominee Puzder, Company Hit With Race Discrimination and Sexual Harassment Lawsuits

By Robin Urevich

Last month, when then-President-elect Donald Trump named fast-food CEO Andrew Puzder to head the U.S. Department of Labor, many observers were left scratching their heads. Some questioned whether a man who'd argued strongly against government regulation could become the chief enforcer of some of the same overtime and paid sick day laws he'd publicly opposed. Less than a year ago, Puzder said he favored replacing some employees with robots, in part because robots

don't file age, sex or race discrimination lawsuits.

Puzder, who heads CKE Restaurants, the parent company of Carl's Jr. and Hardee's burger joints, along with Red Burrito and Green Burrito shops, has also loudly proclaimed his opposition to Obamacare, as well as his enthusiasm for using sex to sell fast food. Carl's Jr. ads routinely feature bikini-clad models lustfully gobbling thousand-calorie burgers. "We believe in putting hot models in our commercials, because ugly ones don't

sell burgers,” reads a 2011 company press release.

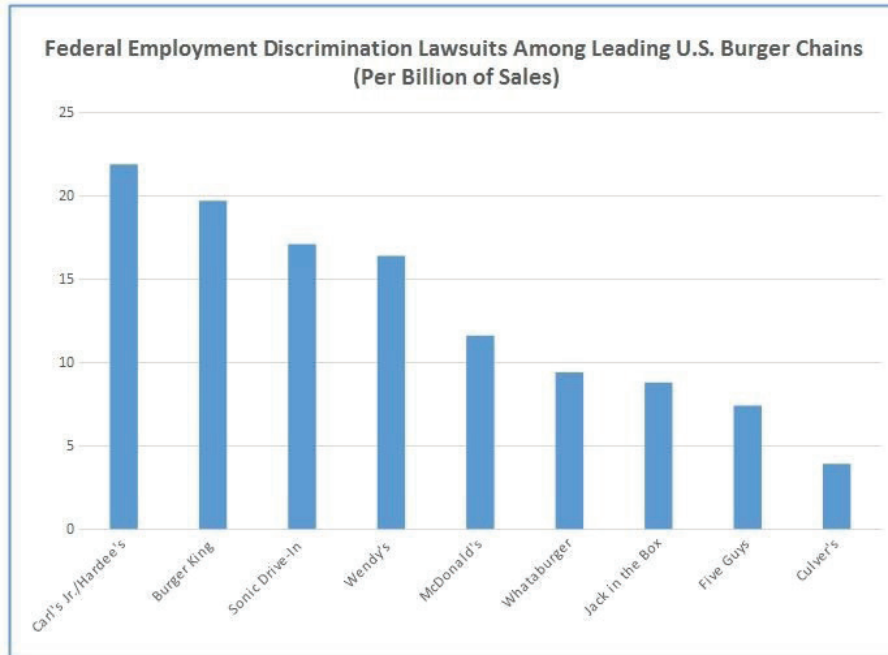
What is less well known is the company’s contentious record on civil rights. As Puzder, who is an attorney, may have inadvertently suggested in touting robots to replace workers, the company has a problem with racial discrimination and sexual harassment.

A Capital & Main investigation has found that since Puzder became CEO of CKE in

2000, Carl’s Jr. and Hardee’s have been hit with more federal employment discrimination lawsuits than any other major U.S. hamburger chain. As a defendant in such cases, it is number one among burger chains with \$1 billion or more in annual sales, with a higher percentage of racial discrimination and sexual harassment lawsuits filed by employees than McDonald’s, Burger King, Wendy’s and five other competitors. Only Sonic Drive-In had a higher percentage of U.S. Equal Employment Opportunity Commission cases among burger restaurants with more than \$1 billion in annual sales.

Racial discrimination and sexual harassment claims filed in federal court against the company and its franchisees read like stories from the 1940s or ’50s, before civil rights laws were ever enacted.

In 2000, Michal Harris-Galloway, who was a teenager at the time, began flipping burgers at a Carl’s Jr. in Elk Grove, near Sacramento, California. Two years later, work had become a nightmare for Harris-Galloway, who is African-American, when a company supervisor regularly used the N-word and spewed hate speech at work, according to an EEOC summary of her federal complaint. The EEOC summary of the charges against CKE claimed the boss shared his view that white



Source: U.S. Courts’ PACER Service

people were superior to those of other races. He boasted about the Confederate flag that he said flew over his home, and displayed a swastika and other white-power tattoos, and said he planned to ink another on his forehead depicting a black lynching victim.

When Harris-Galloway and a group of co-workers protested to a manager, the manager said that he himself was something of a racist, and did nothing, Harris-Galloway’s

attorney, Michael Nkosi, told Capital & Main. After she complained, he said, Harris-Galloway received threatening phone messages and was finally fired. “When you complain to management, you get terminated,” Nkosi said. “What kind of a world are we living in where there’s no recourse, no punishment?”

Tens of thousands of workers file complaints with the EEOC each year, but it files lawsuits on behalf of less than one percent of them. Commission attorney Marcia Mitchell, who represented Harris-Galloway, said the agency took her case both because the allegations were serious and the victims were so young.

As in many of the dozens of CKE discrimination cases that Capital & Main reviewed, the company didn’t go to trial and instead settled the case in 2005. CKE signed a federal consent decree that provided for a \$255,000 payment to Harris-Galloway and her co-workers. Under the terms of the agreement, the company agreed to a zero-tolerance policy for discrimination and retaliation, a complaint procedure and anti-harassment training for all workers within the company district that included the Elk Grove restaurant.

“Their job was to pay as little as possible and get out of the game

without being in the press too much,” Nkosi said.

In an email, CKE spokesman George Thompson did not comment on sexual harassment or race discrimination lawsuits against the company, although he argued that Puzder didn’t actually say, in an oft-quoted interview, that he wanted robots to take over from humans, and claimed the quote was part of a longer exchange, part of which went unreported.

Official company policy at CKE prohibits discrimination based on race, color, religion, gender, age, sexual orientation, national origin or disability, but in discrimination lawsuits against the company, workers have contended that CKE bosses, from line supervisors to general managers to district managers, have failed to honor it.

For instance, in 2010 at a Hardee’s in Knoxville, Tennessee, Johnny Page, Sr., an African-American man in his 20s at the time, claimed in court papers that he was subjected to a torrent of racial slurs and discrimination from his supervisor. Page alleged in court documents that his immediate boss called him “nigger,” “blackie” and “coon,” and once said, “Get your black ass back to work.” On another occasion, as the restaurant’s general manager looked on, the supervisor allegedly said, “Nigger you need to get back to work.” After that, the general manager herself sent Page a picture of what appeared to be a Ku Klux Klan lynching via text message. In it, according to the complaint, a black man was running from people dressed in white robes and hoods as a cross burned in the background.

Page didn’t return phone calls, but his stepfather, Paul Johnson, said Page stayed on the job because he was in a bind.

“He had to have a job to pay child support,” Johnson said. “Which would you rather do — get abused or go to jail?”

In court papers, Hardee’s denied charges of racial discrimination against Page. Attorneys for the company further argued that Page himself asked his manager to send the offensive text message. Still, the two parties reached a settlement, the terms of which are not public.

While Page said the managers failed to stop racial harassment

against him, another Hardee’s manager named Alice Leeth, who’d worked for the company 21 years, said her district manager ordered her to practice discrimination. Leeth, who is African-American, filed a federal lawsuit against a company franchisee. In her complaint, Leeth alleged that the franchisee directed her to hire 90 percent white employees at a Jasper, Alabama restaurant because most of the eatery’s clientele were white. She refused, saying that it would be illegal to do so, and alleged in court papers that as payback, she was removed from her position and sent to manage another Hardee’s some 50 miles from her home.

“I was shocked,” Leeth told Capital & Main, “because the guy that told me that was a black guy. I don’t think it was coming from him. I think it was coming from upper management.” Leeth said she was later fired. She settled her case, court filings show, but the settlement hasn’t been publicly disclosed.

And in Tuscaloosa, Alabama, Charlotte King, a black woman, alleged in her complaint that she managed a Hardee’s franchise for eight years until a new owner informed her that a white man with far less experience would begin making decisions at her store.

The complaint goes on to allege that the new owner told her that because most of the store’s clients were white, he needed a white manager. King alleged that she was fired after she objected to that and the store’s new practice of hiring white applicants while filing away the applications of African-Americans. King’s attorney said neither he nor his client could discuss the case because they’d reached a confidential settlement with the company.

While franchisees are nominally independent, a 2015 National Labor Relations Board ruling held corporate parent companies responsible for their labor practices, because they generally have at least indirect control over their labor policies. The Obama administration has also supported the so-called joint-employer rule, said George Washington University Law School Professor Michael Selmi, who teaches employment law and employment discrimination. Still, the issue is far from settled in the courts, Selmi said.

If racial discrimination is alleged to be blatant at CKE restaurants, gender bias is equally flagrant, say some of the women who have filed sexual harassment claims against the company.

Maya Raghu, director of workplace equality at the National Women's Law Center, which opposes Puzder's confirmation, argued that there is a pattern of women alleging egregious facts in such cases during his tenure.

"When they complain, complaints are ignored and managers don't respond."

Written policies alone don't combat sexual harassment, Raghu said. Instead, she contended that a company must create a culture where it is unacceptable and workers feel comfortable either intervening to stop it or reporting it. "That communication starts from the top," Raghu said.

In 2009, EEOC attorneys won a \$75,000 settlement for Alexious Cooper and other women at a Hardee's store in Livingston, Tennessee, calling the harassment they suffered "severe and pervasive." In court papers, attorneys alleged that male crew members rubbed or touched the women's buttocks or breasts at work. One co-worker threw hot food on a female employee and physically assaulted women workers with food and kitchen equipment. Lawyers for the EEOC also alleged that when Cooper complained to her supervisors, they did nothing to stop the abuse, and instead cut Ms. Cooper's work hours in retaliation, which Hardee's also denied. Cooper said in an email that she couldn't talk about the case, as it had already been settled.

Hardee's also settled a 2010 sexual harassment and disability discrimination lawsuit with Cynthia Schweik, a Tennessee woman who had claimed that a general manager repeatedly taunted her with unwanted sexually explicit comments. Schweik, who suffers from an anxiety disorder, alleged in her complaint that the manager would deliberately harass her to bring on a panic attack so he could mock her in front of the other workers. The manager allegedly called her dumb and

stupid, ridiculing her for her appearance and encouraging other workers to join in the abuse. Schweik alleged that the manager denied her work breaks so that she could take her medicine with food, and even denied her a break to get control of her breathing while she suffered a panic attack on the job.

In court papers, Schweik said she attempted to report the abuse to a district manager and said she even brought her concerns to the human resources director at a corporate seminar on sexual harassment. The district manager responded to those concerns by saying Schweik was oversensitive and said the general manager had been "having a bad day."

Hardee's denied all the allegations and settled the case, although the settlement is not public. Schweik didn't return email messages and her attorney declined to talk about the case, citing privacy concerns.

Sexual harassment is pervasive in the restaurant industry, not just at Carl's Jr. and Hardee's, but it's also preventable, Maya Raghu noted. It's a question of providing training that's relevant and repeating it so that workers and line managers understand that top bosses take it seriously.

It's unclear what Andrew Puzder's personal response, if any, to the charges of sexual harassment or racial discrimination at his company has been. But as he faces questioning from the Senate Committee on Health Education Labor and Pension next month, he may be asked to provide answers.

After all, at the Department of Labor, he would oversee agencies like the Women's Bureau, which ensures fair treatment of women at work, and the Office of Federal Contract Compliance Programs, which is specifically charged with rooting out the type of discrimination that has been repeatedly alleged at Carl's Jr. and Hardee's. TM

Additional research by Michael McNulty and Roxane Auer.



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Did Company Led by Trump Labor Secretary Nominee Puzder Purge Longtime Managers?

By Dean Kuipers

Wrongful-termination lawsuits suggest fast-food CEO's company found women and veteran managers inconvenient

Blanca "Letty" Carbajal was a true believer in Carl's Jr. Restaurants. When Andy Puzder, the CEO of the company that owns the Carl's Jr. and Hardee's fast-food chains, wrote in a *Forbes* op-ed that a manager in one of his businesses should work "like they own them," she took it to heart. Carbajal worked there 34 years and for the last six was a district manager, overseeing as many as nine Orange County stores, including five of the most profitable in Southern California. She was a single mother and still managed to be District Manager of the Year four years in a row.

But she found out in November 2015 that she didn't own anything, including her own future, when the company fired and replaced

her with a younger man. She was 51 years old.

"They told me my position was no longer available," Carbajal told *Capital & Main*. "And I asked: Did I do something wrong?" She said her profit reports were always among the highest and that her supervisor and the human resources representative in her dismissal meeting told Carbajal it wasn't her fault. "The main HR person said, 'Lady, you can walk away with your head high up. This has nothing to do with your performance.'"

In fact, her firing may have more to do with Puzder, now President Donald Trump's nominee for U.S. Secretary of Labor. A *Capital & Main* investigation has discovered a dozen wrongful termination suits filed by former California managers against Carl Karcher Enterprises (CKE) since 2014, most in Southern California and

many very similar in their claims of age and sex discrimination, or of being the result of retaliation for legal medical leave or for reporting safety violations. The pattern suggests that Puzder, who for over 16 years has publicly denounced labor regulations in the fast-food industry, and whose supervisory staff in Southern California has, according to court documents, talked openly about replacing older staff with younger blood, may have targeted longtime managerial employees like Carbajal.

Bloomberg News and others have pointed out that CKE is not the worst actor in an industry that seems to breed labor abuses. But taken together, the wage theft and safety violations well documented in these and other analyses, the wrongful termination lawsuits identified by Capital & Main and the large number of civil rights complaints brought against the company and settled for hefty amounts (see our companion story by Robin Urevich), create a portrait of a company whose CEO ignores many of the very labor regulations he would be charged with enforcing as the head of the Department of Labor.

“The model of the restaurants in that company is a low-wage, bad-jobs model,” said Catherine Fisk, a labor expert and Chancellors Professor of Law at the University of California, Irvine. “Obviously that’s cause for concern for policy makers, workers and anybody else who believes that a better economic and labor market strategy is to create good jobs – better paid [and with] more safety protections. A lot of advanced industrial economies have a very different strategy: You pay a little bit more, but the jobs are better jobs.”

While Fisk could not comment on the specifics of the wrongful-termination suits, she added, “Donald Trump ran on a campaign of Make America Great Again, that in the Rust Belt targeted workers who feel they’ve been left behind. So the business model of CKE [creates] exactly the kind of jobs that candidate Trump suggested would not be the dominant model. Making America Great Again is not minimum-wage jobs where you can be fired every time the company decides to change direction or there’s a new crop of young people that they can exploit.”

Carbajal was shocked when Jenny Ryu, her attorney at the firm Shin Ryu Bazerkanian, deposed her former supervisor, who alleged in the deposition that Carbajal was under-performing at work. Carbajal says this was never brought up at her termination and that she never had one meeting to discuss performance issues. Rather, she had a long list of company rewards, having received an

expensive watch, two diamond rings and lucrative bonuses from the company in recent years. She said what made her a target for dismissal was her age, her sex and her pay, which, with bonuses, amounted to about \$100,000 annually.

Still, she wasn’t quite willing to believe this betrayal until five months later, when her older sister, who wished to remain anonymous, was also fired. The sister was 53 years old and had worked for Carl’s Jr. for 35 years. She said she had been flown to Hawaii by the company as a reward for being named General Manager of the Year, then came home to learn she was fired. The sister has not filed suit, but she believes her award clearly indicates that she was a top-performing employee.

“I am living a nightmare,” said Blanca Carbajal. “I feel like I am being discriminated [against] for my age, for being a woman, for doing my job. It’s so upsetting for me to just pass by a store that I gave my life to, for them to let me go just because they wanted to. I just don’t understand why.”

Puzder’s 2010 book, written with Westmont College professor David Newton, hammers away at one central thesis that Puzder calls the “Certainty Factor.” He and Newton repeatedly claim government “doesn’t get it” that uncertainty kills entrepreneurship and ruins careers. According to *Job Creation: How It Really Works and Why Government Doesn’t Understand It*:

The two groups that comprise the private sector — businesses and individuals — make decisions about investing, borrowing, and spending based primarily on their expectations, or outlook, on the future. Certainty is then linked indivisibly to positive prospects, and the opposite is true, that greater uncertainty is directly related to negative future prospects. In this context, risk is inversely related to certainty.” [Their emphasis.]

But UC Irvine’s Catherine Fisk notes that it isn’t only corporate CEOs and entrepreneurs who fear economic risks.

“Low wages, job insecurity, no career trajectory – these things make workers feel anxious,” said Fisk. “Especially managers: How can you make hard choices for the benefit of the company if you worry that somebody is going to retaliate against you? So it’s not just low wages, it’s also the lack of trust and confidence that the employee feels. The employee thinks that the company doesn’t invest in the employees. Employees who are in fear for their jobs are unlikely to report unlawful activity, ranging from safety violations or pollution to outright corporate fraud and criminal activity.

Allen Graves is a Los Angeles attorney representing CKE managers in two ongoing class-action wage theft suits alleging denial of overtime pay, including cases that occurred when the company switched all of its managers from salaried to hourly employees in 2009.

“These are, every one of them, people who work very hard and give their lives to a company because they believe in their mission,” said Graves. “There is very high turnover in this business, and when you’re talking about a general manager you’re talking about someone who is company oriented, hardworking and dedicated. All they want is for the company to follow the law.”

Court documents filed by Cynthia Seddon claim that Seddon started working for CKE as a cashier in 1981 and eventually became a district manager overseeing Carl’s Jr. stores in Los Angeles and San Bernardino counties, winning a slew of awards along the way. Seddon’s district was ranked in the top 20 nationwide for performance from 2012 to 2015 and, in 2015, she herself was nationally ranked as the company’s seventh-best-performing DM.

But in 2012, according to pleadings in her wrongful-termination case, she got a new supervisor, Edwone Winbush, who, Seddon’s complaint claimed,

told Plaintiff and another GM that he wanted a 24 year old [sic] employee to be transferred into a store in the Plaintiff’s district. He described the young employee as the Company’s future: “He is young and I need more young male managers.” He later made a similar comment about needing “young male managers” in reference to a young male crew person who he promoted to Shift Leader without putting him through the customary training process.

The suit details comments and dialogues, which allegedly occurred over years, about wanting “new blood.” In March 2015, Seddon claimed in her complaint, Winbush explained to her they had to get rid of one DM in her region so she was fired. She noted in the complaint that several other DMs who were retained were the lowest-performing in the region, but they were young. Seddon was 51.

Jason Hill, an attorney at the San Diego law firm Cohelan, Koury & Singer, is representing a class of employees who may have been fired by CKE when they became inconvenient for the company. According to Hill, his client, Yessenia Lucero, was on maternity leave when she got a letter from CKE (included in her complaint)

announcing that she and “approximately 251 other employees,” were to be fired that day, (December 15, 2014, the date on the letter). CKE was selling 12 stores to a new franchisee, so they’d have to be rehired by the new company.

Hill said this appears to be a violation of the WARN Act, which requires 60 days’ notice for this type of termination. But only about 15 to 20 people got the letter – all of whom, Hill said, were out on some kind of leave.

“Those were the people who, just as a matter of course, were out on disability for something – whether they got their hand burned, were out on pregnancy, out on this or that,” said Hill. The vast majority of the people were simply rehired by the new franchisee, but those 15 or 20 people who got the letter were not, creating the appearance that the company used the occasion to get rid of them because women on maternity leave and injured people are unproductive.”

“They sell these restaurants as though they’re plantations,” Hill continued. “I think they could have gone about it a better way and that they shouldn’t treat people like parcels of property, but that’s exactly what they did in this case.”

That reflects poorly on Puzder’s leadership, according to Hill, who was formerly a defense attorney working for corporate clients similar to CKE. “This is what’s troubling me, as a person who does labor and employment law on the plaintiff’s side,” said Hill. “You’re going to put this person in charge of labor rights? It boggles the mind.”

Other longtime employees are claiming wrongful termination due to illness or other inconveniences to CKE. According to filed lawsuit documents, Michelle Aljilani started working for CKE in 2004 as an accounts-receivable and billing manager in Orange County and developed kidney disease in 2013. She took a medical leave and when she returned received disciplinary write-ups and endured what she claimed was harassment for some memory issues that affected her work. She developed colon cancer in 2014, took another prolonged leave, and when she returned to work in 2015 was demoted and finally terminated in August, 2015. Other filed lawsuits show that Aljilani’s experience was not unique:

Katherine Petterez, a senior safety analyst with CKE in California, claimed that she had worked for the company for over 15 years before being fired in March, 2015. She had previously reported to Cal/OSHA that the company had some safety violations. According

to the complaint, she was replaced by someone younger.

A safety manager named Gena Castellon was let go and claimed it was also retaliation for reporting safety violations. The attorney for both Petterez and Castellon said both cases had been resolved and he was legally barred from commenting on them.

Kevin Lappi was CKE's vice president of risk management in California for 12 years, in charge of company safety, when he presented a series of safety concerns to senior management, including a stove hood design that was a fire hazard, new tiles that had caused an increase in falls in the stores, and an endemic water heater issue that was a potential Cal/OSHA violation. He was fired in 2014, purportedly because his position was "eliminated." In his court papers, the 61-year-old Lappi alleges that he was replaced by someone much younger. His attorneys have also said they were unable to comment on the case.

California's Labor Commissioner, Julie Su, responded to a request for comment on these wrongful termination suits with a statement that said: "California has led the way in protecting low-wage workers from wage theft, in raising minimum wages and establishing equal pay laws. We fuel the nation's fifth-largest economy by helping workers get ahead, because we know a race to the bottom for lower-paying jobs won't help California succeed."

In recent years, CKE has sold about 90 percent of its Carl's Jr./Green Burrito and Hardee's/Red Burrito restaurants to franchisees, and in a March, 2016 statement announced the imminent relocation of the company's headquarters from Carpinteria, California (Carl's Jr.) and St. Louis (Hardee's) to Nashville, saying, "Being highly franchised has also reduced our office space needs and, thus, made consolidating offices a more viable option." Bloomberg News also detailed how the company reduced its workforce in California and elsewhere. The wrongful-termination suits identified by Capital & Main – particularly the Lucero case represented by Jason Hill – raise questions as to whether the company handled this transition the right way. Critics say that rather than retain their best-performing and most loyal people, the company appears to be using the move to franchises in order to replace older, female, disabled, violation-reporting and higher-paid managers.

Puzder, who for nearly 20 years lived in upscale Montecito, near Santa Barbara, has long been vocal about his distaste for California's regulatory environment. But labor problems with the company have been well documented nationally. In a phone

interview, Saru Jayaraman, executive director of the Restaurant Opportunities Centers (ROC) United, which seeks better working conditions in restaurants, said that when Puzder was put forth as the nominee to head the Department of Labor, ROC United sent out a survey to CKE employees, and collected replies from 564 people over a two-week period, 76 percent of them from women.

"I've never seen such an immediate, overwhelming response from workers so upset about understaffing, upset about low pay, upset about the way they are treated, upset about harassment," said Jayaraman, who released the results of ROC United's survey January 10 on Capitol Hill.

The primary findings of the survey included:

- 66 percent of female respondents to the questionnaire had experienced sexual harassment at work with CKE, against an industry average of 40 percent.
- 28 percent of all respondees reported working off the clock due to understaffing. One shift leader from an Alabama Hardee's said, "We never have enough people to give breaks."
- One third reported wage theft, mostly for not being paid for skipped rest or meal breaks, as required by law, or not getting overtime pay.
- 79 percent said they had prepared or served food when they were sick, because understaffing meant they had to cover shifts.
- The survey also reports that large numbers of women say they were sexually harassed by fellow employees and by customers, which they feel is at least partly due to the company's ad campaign featuring burger-eating bikini babes.
- "Customers have asked why I don't dress like the women in the commercials," said one crew member from a Tennessee Hardee's.
- Attorney Graves put the Puzder appointment into perspective. "As an advocate I accept that we're going to have a conservative Republican labor secretary. I don't think this is a political issue. I think that we would be better served by a labor secretary whose company has not been so frequently sued for wage theft. I think it's more about obeying the laws than your policy positions on the laws." TM

Additional reporting by Roxane Auer.

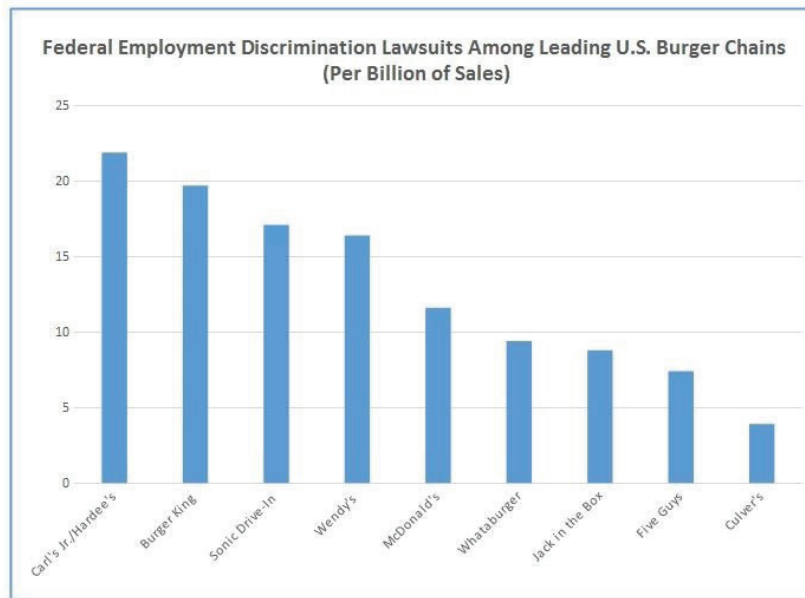
Labor Secretary Nominee's Company Has Been a Discrimination Lawsuit Magnet

By Danny Feingold

A Capital & Main Analysis has found that since Andrew Puzder became CEO of CKE Restaurants Inc. in 2000, the company, and its Carl's Jr. and Hardee's brands, have drawn the highest rate of federal employment discrimination and civil rights lawsuits among major U.S. burger chains.

The lawsuits encompass allegations of racial and gender discrimination, and of sexual harassment. Under Puzder, CKE and Carl's Jr. and Hardee's restaurants were sued for employment discrimination at nearly twice the rate of McDonald's and more than double that of Jack in the Box, heading a list that includes Wendy's, Burger King and four other chains, all of which had annual sales of more than \$1 billion in 2014. CKE and its Carl's Jr. and Hardee's brands had the highest rate, when adjusted for revenue. (The analysis for all of the burger chains included both corporate-owned and franchised restaurants.)

Puzder, who was chosen by President Donald Trump to be the new secretary of labor, is scheduled to appear before the Senate's Health, Education, Labor and Pensions Committee for confirmation hearings February 2. The committee,



Source: U.S. Courts' PACER Service

chaired by Republican Lamar Alexander, includes moderate GOP Senator Susan Collins, who was among 10 Republican senators who voted in 2013 for anti-workplace-discrimination legislation. "The workplace is simply no place for discrimination," Collins said at the time of the vote.

Senators Orrin Hatch and Lisa Murkowski, who also sit on the HELP committee, joined Collins in voting for the anti-discrimination bill. Another committee member, Senator Tim Scott,

sponsored a 2014 resolution to encourage racial diversity in the workplace and has spoken out forcefully against racial discrimination by law enforcement agencies. The 11-member Democratic minority includes Senators Bernie Sanders and Elizabeth Warren, as well as Hillary Clinton's running mate, Senator Tim Kaine.

There is little precedent for an American labor secretary to be associated with such an extensive record of alleged employment discrimination. If confirmed, Puzder would head the U.S. Department of Labor, which is charged with enforcing many of the nation's workplace-protection laws. ©

Additional reporting by Roxane Auer.



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