

# OSHA

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## Trump nominates R. Alexander Acosta to be secretary of labor

President Donald Trump on Feb. 16 nominated former Justice Department official R. Alexander Acosta as secretary of labor after his first choice fell through.

Trump tapped Acosta one day after fast-food executive Andrew Puzder withdrew his name from consideration.

Instead, lawmakers will turn their attention to Acosta, a veteran of public service. He was appointed in 2003 by President George W. Bush to serve as assistant attorney general for the Justice Department's Civil Rights Division. He also has been a member of the National Labor Relations Board, and currently is dean of the law school at Florida International University.

"He'll be a tremendous secretary of labor," Trump told White House reporters, according to news reports.

Sen. Patty Murray (D-WA) said she would support Acosta's nomination only if he showed that he could fight for all workers at all levels of an organization. Murray is the ranking member of the

Senate Health, Education, Labor and Pensions Committee.

"I look forward to carefully reviewing Mr. Acosta's qualifications and background, and meeting with him to discuss his plans and vision for the department," Murray said in a press release. "I have some initial concerns about his record, and especially based on what we've seen in past nominees from President Trump, I will continue to insist on a rigorous and thorough vetting process in which senators get the information we need and have all reasonable questions answered."



Acosta

On the other side of the aisle, Rep. Virginia Foxx (R-NC) expressed her support for Acosta. Foxx is chair of the House Education and the Workforce Committee.

"Alexander Acosta has the depth of knowledge and experience necessary to make a fine secretary of labor," Foxx said in a press release. "We urgently need new leadership at the department who will take on the special interests

and put America's workers and job creators first. It is my hope the Senators will thoroughly and swiftly vet Mr. Acosta's nomination so we can begin to move the department in a better direction."

At press time, the Senate had not yet voted on the resolution. Read it at <http://sh-m.ag/2m3rkOA>.

### Puzder withdraws name

Puzder pulled out of the running one day before the Senate was scheduled to vote on his nomination. He did not provide a reason for withdrawing his nomination

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## Senate votes to block federal contractor disclosure requirements

After a narrow vote in the Senate, the so-called “blacklisting” rule that sought to force federal contractors to disclose previous labor-law violations is all but eliminated.

President Donald Trump is expected to sign a resolution to undo the Fair Pay and Safe Workplaces Executive Order, which former President Barack Obama introduced in July 2014. As part of the executive order, employers bidding for federal contracts worth at least \$500,000 were required to disclose any of 14 established violations of workplace protections during the previous three years.

The House on Feb. 2 voted 236-187 to repeal the federal contractor disclosure requirements. On March 6, the Senate followed suit by voting 49-48 to undo the requirements.



Advocates of the rule say it is necessary to protect workers against contractors that neglect worker safety in the name of profits. However, critics claim it punishes contractors based on allegations of fault that have not been proven.

Sen. Lamar Alexander (R-TN), who serves as chairman of the Senate Health, Education, Labor and Pensions

Committee, praised the decision. “The Senate today did the right thing by overturning the harmful Obama administration ‘blacklisting’ regulation that could have prevented our nation’s federal contractors from receiving a federal contract for an alleged labor violation before any wrongdoing has been proven,” Alexander said in a press release. “I’m urging President Trump to sign this legislation as soon as possible.”

But Sen. Patty Murray (D-WA) said eliminating the rule would weaken worker safety. Murray is the HELP Committee’s ranking member.

“Let’s be very clear – in rolling back these protections, President Trump and his party are yet again breaking their campaign promise to put workers first,” Murray said in a press release.

Photo: BackyardProduction/istockphoto

## ASK THE EXPERT

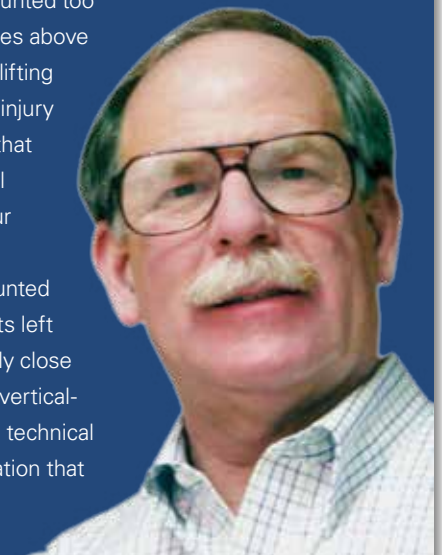
with Rick Kaletsky

**Q:** Please provide some hints on where to locate portable fire extinguishers.

**A:** One OSHA standard indicates that portable extinguishers shall be mounted, conspicuous and readily accessible. Another OSHA standard obligates that they be kept in designated places at all times except during use. Why have them mounted? By having an extinguisher on a mount clip (or similar set-up), there is far less chance it will be left in a random location. By mounting, you can count on an extinguisher being in the designated place when you need it promptly.

I have witnessed some extremely poor extinguisher locations. I have seen an extinguisher directly behind the swing of a door, that could be banged into the extinguisher or more likely into the person retrieving it, when evacuees hustled through the doorway

in an emergency. I have seen one mounted too close to a fixed object only a few inches above it, presenting a likelihood that a quick lifting of the extinguisher would result in an injury to the back of the hand or fingers. In that case, the extinguisher might very well be dropped. For the winner, I turn your attention to what I recently spied in a lobby. There was an extinguisher mounted in the corner quite close to a wall on its left side, while its right side was extremely close to an active, old-style, easy-to-touch, vertical-grill radiator. It is one thing to violate a technical standard, but another to create a situation that is plainly dangerous and absurd.



Former OSHA inspector turned consultant **Rick Kaletsky** is a 46-year veteran of the safety industry. He is the author of “OSHA Inspections: Preparation and Response,” published by the National Safety Council. Now in its 2<sup>nd</sup> edition, the book has been updated and expanded in 2016. Order a copy at [www.nsc.org](http://www.nsc.org), and contact Kaletsky with safety questions at [safehealth@nsc.org](mailto:safehealth@nsc.org).

## In Other News...

### OSHA delays effective date for beryllium rule

At press time, OSHA had delayed until March 21 the effective date of its final rule intended to protect workers from exposure to beryllium.

The final rule originally was scheduled to go into effect March 10. The delay resulted from a presidential directive detailed in a Jan. 20 memorandum that ordered the effective dates of pending regulations to be delayed for 60 days after the memorandum's date.

The postponement was intended to allow OSHA officials to further review new regulations, according to a notice published in the Feb. 1 *Federal Register*.

The extension will not affect the rule's compliance dates, the notice states. Employers will have one year to comply with most of the rule's provisions.

OSHA delayed the rule's effective date without the opportunity for public comment based on a good cause exemption "in that seeking public comment is impracticable, unnecessary and contrary to the public interest," the notice states.

### DOL renews maritime advisory committee charter

The Department of Labor has renewed the charter of the Maritime Advisory Committee for Occupational Safety and Health, which advises the secretary of labor on safety in the maritime industry.

MACOSH, established by DOL in 1995, is made up of 15 members who represent workers, employers, and government safety and health agencies. The committee offers recommendations to the secretary of labor about working conditions in the industry, as well as worker safety initiatives. All advisory committees are required to renew their charters every two years, according to the Federal Advisory Committee Act.

## OSHA STANDARD INTERPRETATIONS

*OSHA requirements are set by statute, standards and regulations. Interpretation letters explain these requirements and how they apply to particular circumstances, but they cannot create additional employer obligations. Enforcement guidance may be affected by changes to OSHA rules.*

### How OSHA uses formula to calculate incident rates

**Standard:** 1904

**Date of response:** Aug. 23, 2016

You state there is a bias against smaller employers in the formula used by OSHA to calculate incidence rates of occupational injuries and illness, and you ask if there is a different benchmark for smaller companies to use so that you can be fairly compared and scored. Incidence rates can be used to show the relative level of injuries and illnesses among different industries, firms or operations within a single firm. Because a common base and a specific period of time are involved, these rates can help determine both problem areas and progress in preventing work-related injuries and illnesses. An incidence rate of injuries and illnesses may be computed from the following formula: (Number of injuries and illnesses X 200,000)/Employee hours worked. The 200,000 figure represents the number of hours 100 employees working 40 hours per week and provides the standard base for calculating incidence rate for an entire year.

One injury or illness has a much greater effect on incidence rates in small establishments than on larger establishments. Any analysis must take this into account. Incidence rates take on more meaning for an employer when the injury and illness experience of his or her firm is compared with that of other employers doing similar work with workforces of similar size. The BLS publishes incident rates by size of establishment in the following categories:

- Size 1: 1-10 employees
- Size 2: 11-49 employees
- Size 3: 50-249 employees
- Size 4: 250-999 employees
- Size 5: 1,000 or more employees

These estimates are available at <http://www.bls.gov/iif/oshwc/osh/os/ostb4359.pdf>.

Aggregation of multiple years of data can alleviate the unfavorable effect a single case can have on a small establishment's incidence rate. For example, a small establishment can enter three years of injury and illness counts and three years of hours worked into the formula, while retaining the 200,000 constant. This would return an annualized rate for 100 FTE comparable to national rates. The increased hours worked figure would minimize any unusual swings in injury and illness counts.

Evaluation of injury and illness data is a vital component of hazard identification and abatement. However, it is only one component of an effective evaluation. OSHA strongly advocates the use of multiple variables to evaluate the effectiveness of an employer's safety and health program. While an injury and illness incident rate is a useful indicator of an establishment's safety and health environment, reliance on only one indicator can lead to wrong conclusions.

**Sincerely,**

**Amanda Edens, Director**

*Directorate of Technical Support and Emergency Management*

Excerpted from: [www.osha.gov/pls/oshaweb/owadisp.show\\_document?p\\_table=INTERPRETATIONS&p\\_id=31058](http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=INTERPRETATIONS&p_id=31058)

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but, in a statement provided to the *Associated Press*, said he was “honored to have been considered by President Donald Trump to lead the Department of Labor and put America’s workers and businesses back on a path to sustainable prosperity.”

In December, Trump described Puzder as an effective nominee because of his ability to help workers and small-business owners. Puzder is the chief executive of CKE Restaurants Holdings, the parent company of Carl’s Jr., Hardee’s and other regional fast-food chains.

Puzder’s decision elicited mixed reactions among members of Congress.

“This is disappointing news for our nation’s workers and job creators,” Foxx said in a press release. “Andy is a good man, and he would have been a strong secretary of labor. He promised to provide a clear break from the failed policies of the last eight years.”

Rep. Bobby Scott (D-VA) said he and other House Democrats had “serious concerns” about Puzder’s previous public statements and business practices.

“I hope that President Trump’s next nominee for secretary of labor will be someone who will fight for increased wages, safer working conditions, and retirement security for America’s workers,” Scott said in a press release.

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