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Acosta Defends Epstein Plea At Labor Committee Hearing

By *Vin Gurrieri*

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Law360 (May 1, 2019, 6:35 PM EDT) -- U.S. Secretary of Labor Alex Acosta forcefully pushed back Wednesday as Democratic lawmakers voiced concerns that his alleged mishandling of a decade-old sex crime case against millionaire Jeffrey Epstein meant he might also let employers off easy for workplace law violations.

At a wide-ranging hearing before the House Committee on Education and Labor, lawmakers quizzed Acosta on a variety of issues facing the [U.S. Department of Labor](#), ranging from the agency's budget to regulatory initiatives and enforcement priorities. But one area where Acosta received strident criticism was over a nonprosecution deal he struck with Epstein in a teen sex trafficking case when he was the U.S. attorney for the Southern District of Florida about a decade before he became labor secretary.

U.S. District Judge Kenneth A. Marra [found in February](#) that Acosta and other prosecutors had misled Epstein's victims about the existence of the nonprosecution agreement, thereby violating their right to be informed under the Crime Victims' Rights Act. That decision came several months after The Miami Herald published an investigative series that said Acosta gave Epstein the deal in exchange for a guilty plea to lesser state charges. The [unusually](#)

lenient agreement called off potential federal charges not only against Epstein but also against alleged co-conspirators.

Democratic Rep. Frederica Wilson of Florida expressed concern during Wednesday's hearing that Acosta's alleged mishandling of the Epstein case was an indication that he won't adequately protect workers' interests over those of industry.

But that assertion drew a sharp rebuke from Acosta, who said the [U.S. Department of Justice](#) has long taken the position that the Crime Victims' Rights Act wasn't violated in the Epstein case.

"I understand that the judge disagreed with the [DOJ's] position, but we acted consistent with DOJ protocol, rules and regulations and that's the position of the department based on my understanding of the litigation," Acosta said, adding that the DOJ's position hasn't changed across different administrations and attorneys general.

"This matter was appealed all the way up to the deputy attorney general's office, and not because we weren't doing enough, but because the contention was that we were too aggressive," Acosta added.

Besides the Epstein case, Acosta also fielded pointed questions from committee Democrats on various recent regulatory initiatives by the DOL, with most of the queries focusing on the Labor Department's [recent proposal](#) to overhaul its white-collar overtime exemption regulations.

The proposed regulation would update the Fair Labor Standards Act's overtime exemptions for executive, administrative and professional, or EAP, workers, replacing a previous version issued by the Obama administration.

If it is finalized without major changes, the rule will hike the DOL's salary threshold for white collar workers to qualify for one of the EAP exemptions to \$35,308 per year or \$679 per week — up from the \$23,660 annual salary that was set when the rule was last updated in 2004, but lower than the \$47,000 cutoff the Obama administration had proposed in 2016.

Rep. Virginia Foxx of North Carolina, the top Republican on the committee, expressed concern that the Obama-era overtime regulation is still pending at the Fifth Circuit and could conceivably be revived before the DOL is done with the current rulemaking process to replace it.

Acosta, however, sidestepped her request for "assurances" that the proposed replacement rule would be finalized "in a timely manner," with the labor secretary simply reiterating that the proposed regulation has been issued and the public notice-and-comment period is ongoing.

In response to a question on the overtime rule from Democratic Rep. Mark Takano of California, Acosta defended the DOL's decision to appeal a ruling that blocked the Obama administration's version of the rule — the same one the DOL is currently trying to replace — to protect the agency's ability to issue such a rule at all.


"I think it's important when these rules are called into question, the U.S. government should defend them where appropriate," Acosta told Takano. "We can disagree with the policy underlying the rule and we can still appeal the rule."

In a notable regulatory tidbit, Acosta divulged to lawmakers that the agency is working with the [U.S.](#)

[Securities and Exchange Commission](#) on a new fiduciary rule.

An Obama-era version of the rule issued by the DOL requiring retirement advisers to put their clients' interests before their own when selling retirement investments was [struck down](#) by the courts.

"Based on our collaborative work we will be issuing new rules in this area," Acosta said, but declined to offer a time frame for when any such rules might be issued.

Acosta also addressed several other hot-button employment topics during the hearing. He weighed in on the [U.S. Supreme Court's](#) landmark decision last year in [Janus v. AFSCME](#) , which deemed it unconstitutional for public-sector unions to collect so-called agency fees from nonunion workers that cover the costs associated with collective bargaining without their explicit consent.

The labor secretary told lawmakers he believes Janus was a "correct and appropriate" decision, and that the DOL is enforcing the law in the wake of Janus "to the extent that it comes within our authority."

Acosta also responded to a question about the minimum wage from the Education and Labor Committee chairman, Democratic Rep. Bobby Scott of Virginia, by saying the Trump administration doesn't "support a change to the federal minimum wage at this time."

--Editing by Marygrace Murphy.