



# **ROCUNITED**

**RESTAURANT OPPORTUNITIES CENTERS UNITED**

## **SECRETARY OF LABOR VIOLATIONS?**

**THE LOW ROAD BUSINESS MODEL OF CKE RESTAURANT INC'S ANDREW PUZDER  
BY RESTAURANT OPPORTUNITIES CENTERS UNITED**

**IN COLLABORATION WITH CORPORATE ACCOUNTABILITY INTERNATIONAL**

**JANUARY 10, 2016**

### **EXECUTIVE SUMMARY**

- Questionnaire about working conditions draws unprecedented response from CKE Restaurants workers eager to share their stories about wage theft and sexual harassment on the job. 891 CKE workers reached out to ROC, and 564 completed surveys about their working conditions. Seventy-six percent of respondents were women.
- Sixty-six percent of women at CKE Restaurants reported experiencing unwanted sexual behaviors at work, compared to 40% of women in the fast food industry overall, according to a national survey. Women working at CKE reported over 1.5 times the rate of sexual harassment reported for the industry overall.
- Due to severe understaffing in the company, almost a third (28%) of respondents worked off-the-clock. Approximately one third reported a wide range of wage theft violations, including not receiving required breaks, and overtime pay.
- Seventy-nine percent of CKE Restaurants workers reported that they have prepared or served food while sick, this is higher than the rate in any of the cities we have previously surveyed.

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## **INTRODUCTION**

Donald Trump's choice of Andrew Puzder, CEO of CKE Restaurants- the parent company of fast-food chains Carl's Jr. and Hardee's- for Secretary of the Department of Labor calls into question the priorities of the incoming administration. This nomination proposes charging a champion of the National Restaurant Association and a prominent opponent of minimum wage and other regulations protecting workers' rights with implementing the mission of the Department of Labor. This mission includes promoting the welfare of wage earners, improving working conditions, and, most significantly, enforcing worker protections. To carry out this mission of the Department of Labor, one would expect its leadership to have experience in ensuring worker protections. On the contrary, under Puzder's leadership, CKE Restaurants has been subject to multiple lawsuits for discriminating against workers and failing to pay overtime, and accused of firing workers for protesting against poverty wages.<sup>1</sup>

To assess Puzder's ability to uphold the mission of the Department of Labor, the Restaurant Opportunities Centers United sought to conduct a survey of CKE workers on their wages and working conditions. ROC was overwhelmed with the response; over 564 CKE workers completed the survey. A high percentage of non-managerial staff reported wage and hour violations, age discrimination, and higher-than-industry-standard rates of sexual harassment, in particular from customers.

**\*\*BOX\*\***

### **Puzder and the Other NRA**

As CEO of CKE Restaurants, Puzder was one of the most active members of the National Restaurant Association (NRA), and one of the industry's most visible opponents of minimum-wage increases and policies that improve working conditions.<sup>2</sup> As a supporter of the NRA, Puzder stands with the country's most anti-worker trade lobby, which is led by brand-name industry giants like McDonald's, YUM! Brands (the owner of Taco Bell and KFC), Disney, and Darden Restaurants (the owner of Olive Garden and Capital Grille). The NRA, alongside its members and supporters, has been at the forefront

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<sup>1</sup> Kira Lerner and Alice Ollstein, "The CEO of a chain that underpays and mistreats workers is about to lead the Labor Department, 1/4/2017, *Thinkprogress*, available at <https://thinkprogress.org/puzder-labor-abuses-f235d772bc8c#.x6oqtoksr>

<sup>2</sup> National Restaurant Association, "NRA applauds Puzder as labor secretary", December 8, 2016, available at <http://www.restaurant.org/News-Research/News/NRA-applauds-Puzder-as-labor-secretary>

of efforts to oppose minimum wage increases around the country, especially for tipped workers earning the subminimum wage, as well as other policies that would benefit millions of low-income working people like earned sick time and fair scheduling laws.

**\*\*END BOX\*\***

## **METHODS**

Over a two-week period, from December 19<sup>th</sup> through January 7<sup>th</sup>, ROC United conducted outreach via social media to current CKE workers, seeking respondents to a short 45-question survey on wages and working conditions at CKE Restaurants. Over the course of its 15-year history, ROC has conducted surveys with more than 8000 restaurant workers, and has never received such an overwhelming response to a worker survey in such a short period of time. During this two-week period, we communicated with 891 CKE workers, and received completed surveys from 564 of them. 61% of workers we spoke with were from Carl's Jr. and Green Burrito, and 39% were from Hardee's and Red Burrito. Respondents were 77% women, 22% men, and 2% transgender and other. We then conducted eighteen more in-depth interviews with workers who responded to the survey.

## **WAGE AND HOUR VIOLATIONS**

“When the labor is too high, I am asked to clock out. If I did not finish a task, sometimes I complete it while off the clock in order to not get yelled at the following day.” - Cashier at Carl's Jr., California

Puzder has a demonstrated record of failing to enforce wage and hour laws at CKE Restaurants. When the Department of Labor conducted 4,000 investigations into the country's largest fast food brands, more than half of Carl's Jr. and Hardee's restaurants investigated were found to have at least one wage and hour violation.<sup>3</sup> CKE Restaurants settled three class action lawsuits in 2004 for \$9 million, related to the improper classification of employees as exempt under California's wage and hour laws.<sup>4</sup> Our survey revealed that many workers at CKE Restaurants continue to struggle with wage and hour law violations. Based on our interviews, these issues can be traced back to severe understaffing in the company, with workers reporting that they remained working after clocking out to assist their co-workers. Seventy-seven percent of respondents reported that they do not have enough staff to perform their jobs well, and 36% reported that they do not have enough time to finish their work, or perform high quality work.

### Required Breaks

“We never have enough people to give breaks” – Shift Leader, Hardee's, Alabama

In California, where the plurality of CKE Restaurants workers surveyed are located, the law requires at least a 30 minute meal break when the work period is five or more hours, and a second thirty minute break if the work period is ten or more hours. Unless employees are completely free from their work duties, these breaks must be paid. Many other states have laws that mandate breaks for workers. These laws were passed to give workers needed rests from their duties and time to eat during

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<sup>3</sup> Benn Penn, “Is Franchise Model a Recipe for Fast-Food Wage Violations?” September 14, 2016, *Bloomberg*, available at <https://www.bna.com/franchise-model-recipe-n57982076930/>

<sup>4</sup> Carla Mozee, “CKE Restaurants to settle 3 lawsuits.” August 6, 2004, *Marketwatch*, available at <http://www.marketwatch.com/story/cke-restaurants-to-settle-class-action-suits-for-9m>

extended work periods. Yet, almost one third (32%) of CKE Restaurants workers we surveyed told us that they do not receive meal breaks when they work more than five hours per day

Almost one third (32%) of all CKE Restaurants workers, and 21% of workers in California we surveyed told us that they do not receive meal breaks when they work more than five hours per day. Many workers cited low staffing levels as an obstacle to receiving breaks. As a Shift Leader at a Hardee's in Missouri explained, "We only have two employees on the clock so there is no time for a break." Echoing this analysis, a Shift Manager at Carl's Jr. told us "[We] Don't have enough crew persons [sic] to give breaks." Not only do many CKE Restaurants workers not receive a 30 minute meal break for every five hours worked, but nearly half (45%) of those surveyed told us that they are not allowed a ten-minute rest break for each four-hour period worked, a requirement in California and several other states. Twelve percent of California workers reported not receiving a ten-minute break, as did 61% of workers in other states. A Cashier at Hardee's described to us how his restaurant assigned breaks based on the ratio of sales-to-labor expense they were experiencing: "The computer system would tell the percent they were spending on labor compared to the sales, and that would often dictate the breaks."

#### Working 'Off the Clock'

"If closing, they'd have you clock out at closing time regardless if you're done working" – Crew Member at Carl's Jr.

More than one quarter (26%) of workers reported that they have worked 'off the clock' at CKE Restaurants. For some workers this involved having their timecards altered to reflect less time than they actually worked, as a Cashier at Carl's Jr. relayed: "My hours get changed in the computer and my signature is forged on my payroll papers so I never see it." Another Cashier at Carl's Jr. told us that these practices are encouraged by managers "trying to save money" on labor costs. Other workers reported that they worked off the clock before and after their scheduled shifts in order to complete necessary prep and cleaning tasks.

**\*\*STARTBOX\*\***

**Puzder's disdain for wage and hour laws is reflected in this comment from a 2009 interview:**

"Have you ever been to a fast food restaurant and the employees are sitting and you're wondering, 'Why are they sitting?'" Puzder asked. "They are on what is called a *mandatory break* [emphasis his]." He shared a laugh with the interviewer, saying the so-called nanny state is why Carl's Jr. doesn't open up any new restaurants in California anymore.<sup>5</sup>

**\*\*ENDBOX\*\***

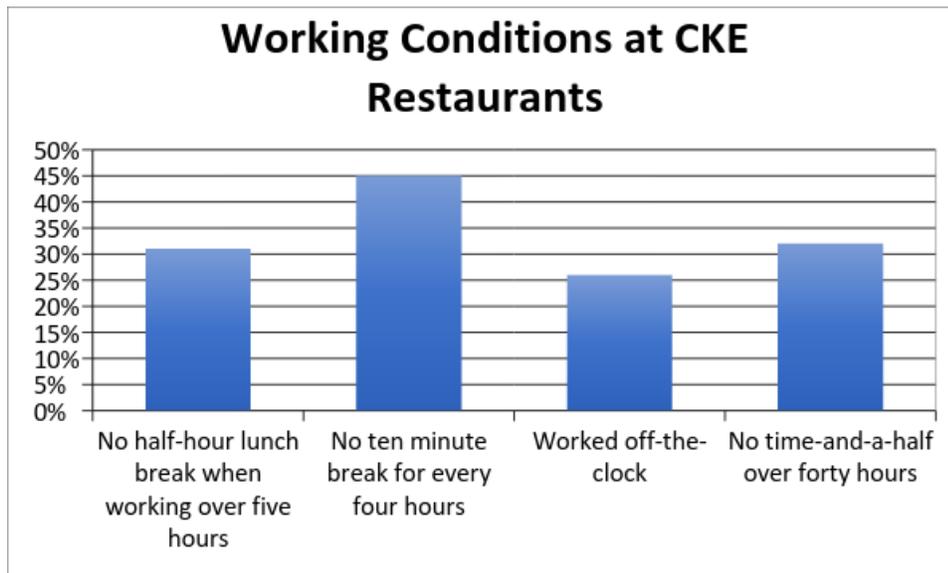
#### Overtime

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<sup>5</sup> Tom Philpott, "Trump's Pick for Labor Secretary Doesn't Think Workers Should Get Breaks." December 28, 2016, *Motherjones*, available at <http://www.motherjones.com/environment/2016/12/our-new-labor-overlord-thinks-workers-shouldnt-get-breaks>

Nearly one third (32%) of workers reported that they’ve worked over 40 hours a week without being paid time and a half. Workers told us that management’s push to control labor costs can result in unpaid work. As a Cashier at Carl’s Jr. explained, “Every time I [wanted] overtime they made me clock out and sometimes never even paid me for my overtime.” An hourly Shift Leader at Carl’s Jr. elaborated on the pressures he faces to save labor expenditures:

“I end up working through my breaks to continue cleaning or to make sure the drive thru doesn't fall behind. There is no down time for me; I'm always cleaning or helping employees finish their duties so they can go home and we can save labor. My district manager is always pressuring us to save more...I tend to clock out and continue to prep or clean to help the next shift without "wasting" labor. My district manager is always saying we need to save more.”

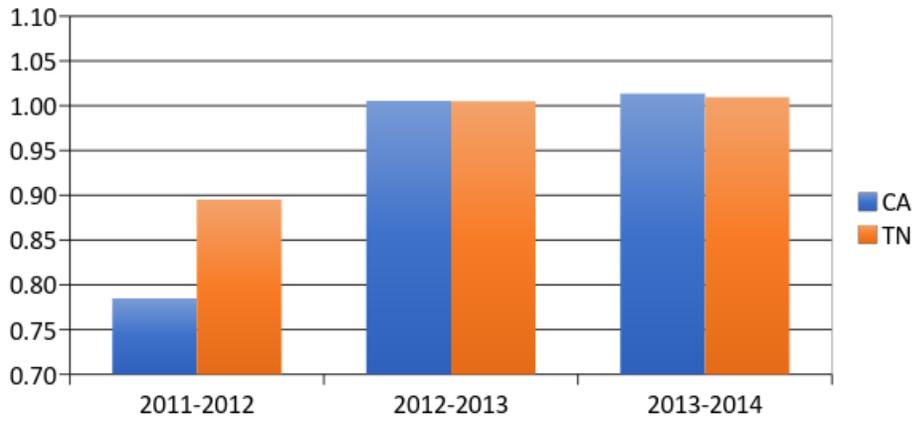


**BOX: Comparison of Limited Service Restaurants and CKE Working Conditions in CA and TN**

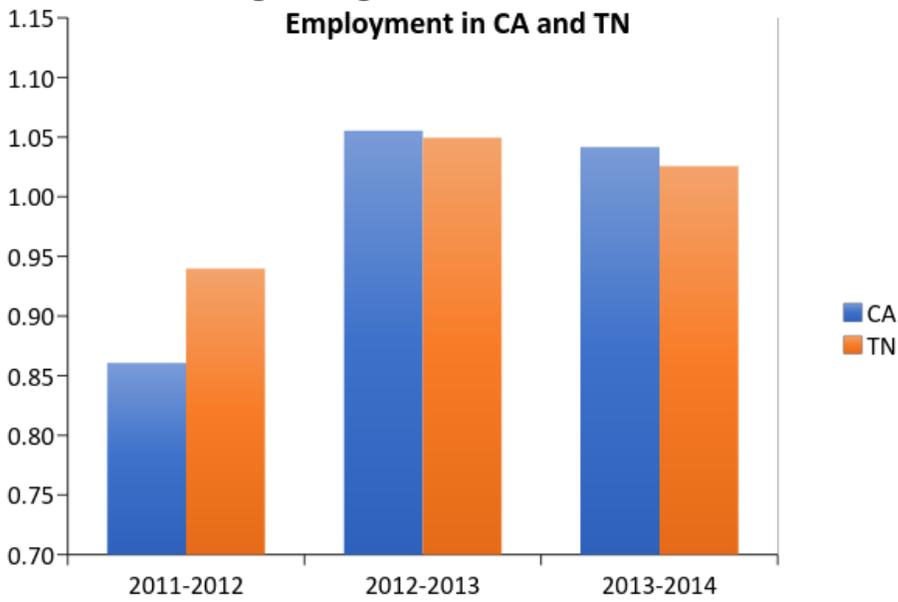
CKE recently moved corporate headquarters from California to Tennessee, and Puzder has stated that managers in California should move to Tennessee for greater opportunities. An analysis of limited service establishments in CA and TN finds growth rates comparable in the two states<sup>6</sup>, despite Puzder’s claims that California worker protections make the state unfriendly to restaurant growth. However, a comparison of working conditions at Carl’s Jr. restaurants in California and Hardee’s restaurants in Tennessee tells a different story.

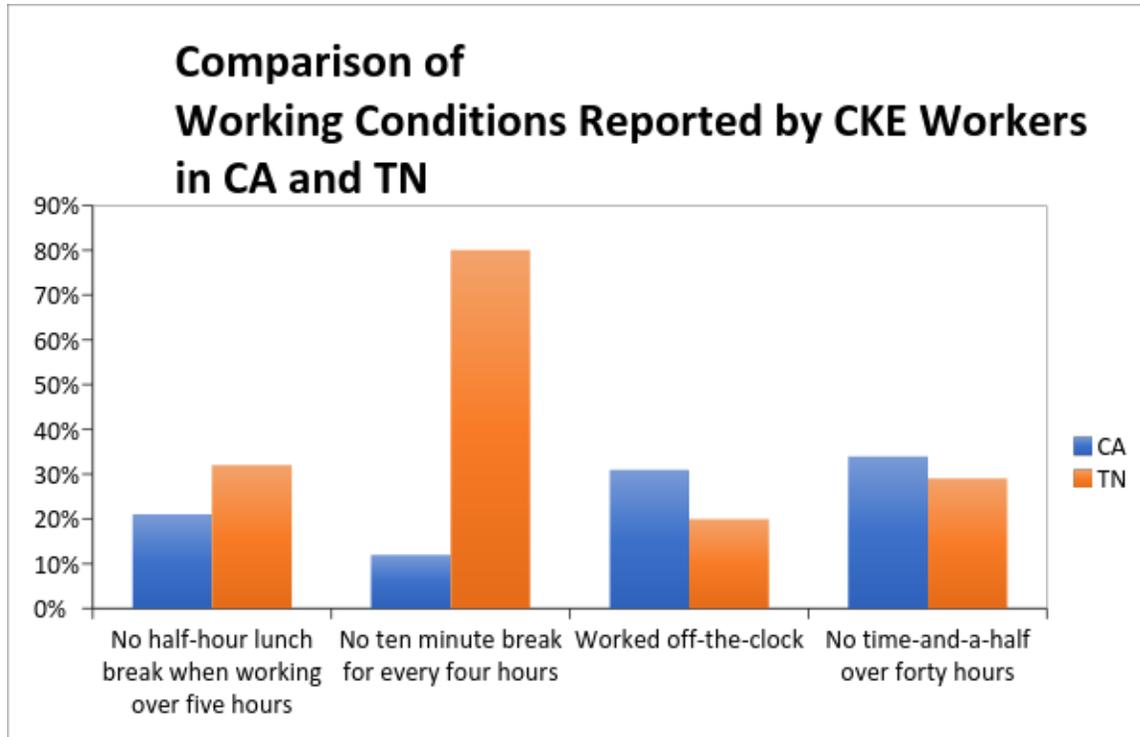
<sup>6</sup> County Business Patterns, 2011-2014.

### Percentage Change in Limited Service Restaurants in CA and TN



### Percentage Change in Limited Service Restaurant Employment in CA and TN





## HEALTH AND SAFETY VIOLATIONS

“A lot of times we just had to be very quick...which isn't always the safest thing. I was washing dishes and one of the grills that collected grease above the chicken fryers fell into the oil and splashed me...I had burns up and down my arm. The store manager wanted me to just go to the doctor through my parent's insurance (dad was a Marine) and my mom said no because she didn't think the government should pay for a work incident, so I filed a claim and went through the company's process. I knew the store manager was unhappy about that because she didn't want any injuries to show up on her record.” - Cashier at Hardee's, North Carolina

CKE Restaurants has struggled with safety violations in its restaurants, at times creating an unsafe working environment for employees and an unsafe dining experience for customers. The company has been cited by OSHA twenty one times since 2009 with many of the citations being for serious workplace hazards.<sup>7</sup> One of the most serious citations, where the company was fined \$23,420, was issued after an employee was hospitalized due to suffering with severe burns as a result of being instructed to follow a dangerous cleaning protocol that exposed the worker to water ranging from 180-212 degrees.<sup>8</sup>

<sup>7</sup> Occupational Safety and Health Administration Establishment Search, available at <https://www.osha.gov/pls/imis/establishment.html>

<sup>8</sup> Occupational Safety and Health Administration inspection number 317143477, available at [https://www.osha.gov/pls/imis/establishment.inspection\\_detail?id=317143477](https://www.osha.gov/pls/imis/establishment.inspection_detail?id=317143477)

“Last year, with my old [General Manager], a cook was asked to clean a vent and fell from a ladder. She was sent home but returned the next day because she needed to pay her bills.”- Shift Leader, Carl’s Jr.

Our survey suggests health and safety violations are widespread at the company. Many workers pointed to threadbare staffing levels and oversized workloads as two factors driving the violations. As a result, one in five (20%) said they have been pressured to get work done in a way that could cause injury to themselves or others and nearly one third (31%) told us that they have gotten sick or injured at work. Workers described how they struggle to navigate slippery floors, endure grease burns, and clean hoods over hot charbroilers without personal protective equipment. One crewmember at Carl’s Jr. in CA told us management requires her to “do the charbroiler hoods and vent [without] letting it cool down and potentially falling onto the char itself.”

### **WORKING WHILE SICK**

“Not only myself but almost every employee has gotten the flu at some point because we were starting to get sick, but because no one would cover our shifts, we got worse at work and got each other even more sick. – Shift Leader, Carl’s Jr.

Nearly four out of five (79%) of CKE Restaurants workers reported that they have prepared or served food while sick. With 69% of workers reporting that they do not have access to sick leave, many CKE Restaurants employees have little option but to come into work while sick in order to make ends meet. One Crewmember from a Hardee’s in GA told us of coming down with “the flu from someone having it at work”. A Shift Leader described how this cycle of contagion played out at a Carl’s Jr. in California:

“Our job requires a doctors note if we’re sick, so if you know you have a cold and are sneezing and coughing while there they still want a note if you call in sick even though they can tell. One of my co-workers had just gotten a cold and they made her work saying if she didn’t have a doctors note that they’d punish her by taking her hours for the following week so as a result she came and worked sick all day, customers were feeling uneasy because of her coughing. The next day I woke up with a cold as well.”

### **BOX: Andrew Puzder Executive Compensation**

During his years as a fast food CEO, Puzder has made more money than any of his ordinary employees could ever dream of. According to Institute for Policy Studies analysis of the most recent data, Puzder has made as much as \$10 million per year in total compensation. Special executive “perks” made up just a small portion of this pay, and yet these rewards dramatically illustrate the challenge of Puzder’s labor policy positions. For example:

- Puzder opposes mandatory sick leave policies for workers and wants to get rid of the Affordable Care Act. At the same time, he himself has enjoyed huge reimbursement checks from his company for medical and dental costs — above and beyond his regular employer-provided health insurance benefits. In just one year, these reimbursements totaled an astounding \$61,000. In contrast, only 9% of CKE non-managerial staff have access to health-care through their employer.

- Puzder has said he would like to replace employees with robots who "[never take a vacation.](#)" Meanwhile, he has pocketed as much as \$11,000 per year from the company to cover the cost of his personal leisure trips. CKE has also covered the cost of personal income taxes related to those trips. And to make sure he travels in style, the company has forked over as much as \$60,000 for his transportation via company car or jet. For leisure time closer to home, the company covers the tab for private social and recreational club dues, which ran more than \$3,000 one year.
- Puzder has criticized rules that ensure a short [break](#) for workers on a long shift, a time that might be used for rest or perhaps to make a personal phone call. The CEO's own personal cell phone is covered by the company, at a rate that must be one of the highest in the world — as much as \$4,424 per year.

YEAR	TOTAL COMPENSATION	TOTAL PERKS	SELECT PERKS				
			TRIP AWARDS	CELL PHONE	MEDICAL REIMBURSEMENT	CLUB DUES	CORPORATE CAR AND JET
<a href="#">2012</a>	4,485,055	174,211	-	2,134	47,927	2,112	59,338
<a href="#">2011</a>	10,117,351	308,350	3,424	4,424	29,825	486	30,979
<a href="#">2010</a>	7,288,188	351,188	-	3,167	28,917	2,187	42,064
<a href="#">2009*</a>	5,663,780	519,927	11,181	3,515	60,740	3,040	39,437
Total	27,554,374	1,353,676	14,605	13,240	167,409	7,825	171,818

Source: Institute for Policy Studies analysis of SEC filings. CKE, now privately held, has not been required to report compensation data since 2012.

## DISCRIMINATION AND UNFAIR TREATMENT

CKE Restaurants has struggled to create fairness in the work environment for workers of color and women, as evidenced by the history of Equal Employment Opportunities Commission (EEOC) charges filed against the company, which have included racial harassment and pregnancy discrimination. Our survey suggests that these kinds of practices may be widespread across the company. Nearly 20% of workers told us that they have been the target of discriminatory harassment at work, citing age, gender, and race as the most prominent factors in the harassment. Fourteen percent of workers reported facing discrimination with regard to promotion, discipline, or pay, and 40% reported that they have been given less favorable shifts, less hours, or passed over for a promotion and/or paid less than other workers doing similar work. More than one third (36%) of respondents reported that they were treated unfairly in their job. Specific fairness issues that employees described included racist behavior by managers and supervisors, anti-immigrant sentiment from managers and supervisors, favoritism, nepotism, and sexual harassment.

### CKE RESTAURANTS WORKERS FACING DISCRIMINATION AT WORK

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14% Responded that they've faced discrimination in relation to promotion, discipline, or pay

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**Of those who reported discrimination, reported that a factor was:**

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40%	Age
33%	Race
20%	Gender
15%	Sexual Orientation
12%	Language
9%	Religion
48%	Other

**BOX:****Puzder Profile: Lobbying and Political Contributions**

Andrew Puzder's nomination as Secretary of Labor is troubling not only because of his long and extensive track record of opposing workers' rights, but also because of his personal bankrolling of Trump's campaign. CKE Restaurants, the International Franchise Association (IFA), and the National Restaurant Association (NRA) spent millions of dollars on the 2016 election to shape political outcomes and millions more lobbying to cut protections, benefits, and pay for workers.

Puzder was a core member of the Trump campaign's fundraising team. Total political contributions from Andrew Puzder and his wife Deanna Puzder (not including contributions by CKE Restaurants) during the 2016 election cycle was \$626,300.<sup>9,10</sup> In May 2016, the Puzders donated \$75,000 to the Trump Victory PAC,<sup>11,12</sup> a joint fundraising committee for Trump and the Republican National Committee (RNC) This stands out as by far the largest direct contribution to Trump's campaign of any fast food CEO. And their role in the Trump campaign extended far beyond direct political contributions. The Puzders were also named "presidential trustees" to the Trump Victory PAC to act as lead bundlers to fundraise from their extensive networks for Trump and the RNC.<sup>13,14</sup> In

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<sup>9</sup> Corporate Accountability International analysis of Andrew Puzder's political contributions, data accessed at <http://www.campaignmoney.com/finance.asp?type=in&cycle=16&criteria=puzder&fname=andrew>

<sup>10</sup> Corporate Accountability International analysis of Deanna Puzder's political contributions, data accessed at <http://www.campaignmoney.com/finance.asp?type=in&cycle=16&criteria=puzder&fname=deanna>

<sup>11</sup> Corporate Accountability International analysis of Andrew Puzder's political contributions, data accessed at <http://www.campaignmoney.com/finance.asp?type=in&cycle=16&criteria=puzder&fname=andrew>

<sup>12</sup> Corporate Accountability International analysis of Deanna Puzder's political contributions, data accessed at <http://www.campaignmoney.com/finance.asp?type=in&cycle=16&criteria=puzder&fname=deanna>

<sup>13</sup> Nick Gass, "Hardee's executive makes list of Trump, RNC bundlers", May 24, 2016, *Politico*, available at <http://www.politico.com/story/2016/05/list-trump-rnc-bundlers-223525>

<sup>14</sup> Nick Gass, "Trump, RNC expand fundraising operation", July 1, 2016, *Politico*, available at <http://www.politico.com/story/2016/07/donald-trump-rnc-fundraising-225042>

addition to his contributions and fundraising for Trump, Puzder separately contributed over \$250,000 to the RNC.<sup>15</sup>

Given the Trump campaign's refusal to fully disclose the identities and contributions of its bundlers, it is not possible to know the full extent of the Puzder's direct contributions and fundraising on behalf of the Trump campaign.<sup>16</sup> Puzder's outsized contributions to the Trump Victory PAC may well have secured him a coveted position in the incoming administration where he can oversee the very rules he has opposed for years as a fast food CEO. This clear instance of pay-to-play is unacceptable and highly concerning.

Beyond Puzder's political activities, he has deep relationships with anti-labor trade associations like the NRA and IFA. He has been lauded as "an active member of" the NRA by its President & CEO Dawn Sweeney and currently serves on IFA's board of directors.<sup>17, 18</sup> Both groups advance anti-worker policy agendas, targeting protections like affordable healthcare provisions and overtime pay. Combined, the NRA, IFA, and CKE Restaurants spent over \$2.3 million on the 2016 election<sup>19, 20</sup>. The NRA is also a powerful force on Capitol Hill on a range of issues from workers' rights to public health. It spent over \$3.2 million lobbying in the first three quarters of 2016 alone,<sup>21</sup> opposing pro-worker bills like the Raise the Wage Act (H.R. 2150) and supporting anti-labor policies like the Forty Hours is Full Time Act (S.30), which would deny benefits to employees who work less than 40 hours per week.

Andrew Puzder's explicit ties to anti-labor organizations, along with his personal contributions in the 2016 election, raise serious questions about his ability to serve the interest of working families as Secretary of Labor. Aside from his own dismal track record on labor issues, Puzder has a vested interest in and actively advocates on behalf of organizations that spend millions of dollars every year to undermine basic protections for working people. Putting Puzder in charge of the Department of Labor is perhaps the very definition of having "the fox guard the henhouse."

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<sup>15</sup> Corporate Accountability International analysis of Andrew Puzder's political contributions, data accessed at

<http://www.campaignmoney.com/finance.asp?type=in&cycle=16&criteria=puzder&fname=andrew>

<sup>16</sup> Ryan Koronowski, "Trump's secret bundler list", November 3, 2016, *Thinkprogress*, data accessed at <https://thinkprogress.org/trumps-secret-bundler-list-312feacf3d8c#.fzejekb38>

<sup>17</sup> National Restaurant Association, "NRA applauds Puzder as labor secretary", December 8, 2016, available at <http://www.restaurant.org/News-Research/News/NRA-applauds-Puzder-as-labor-secretary>

<sup>18</sup> International Franchise Association's Board of Directors available at <http://franchise.org/board-of-directors>

<sup>19</sup> Corporate Accountability International analysis of Restaurant Industry contributions, data accessed at <https://www.opensecrets.org/industries/indus.php?ind=G2900>

<sup>20</sup> Corporate Accountability International analysis of International Franchise Association contributions, data accessed at <http://www.campaignmoney.com/political/committees/international-franchise-association-franchising-political-action-committee-inc.asp?cycle=16>

<sup>21</sup> Corporate Accountability International analysis of National Restaurant Association's contributions, data accessed at <https://www.opensecrets.org/lobby/clientsum.php?id=D000000150>

## SEXUAL HARASSMENT

“I have been sexually harassed by multiple male customers.” – Woman Cashier at Carl’s Jr. in Washington State

Puzder has been in the media spotlight for his controversial defense of an ad campaign featuring scantily-clad women devouring cheeseburgers.<sup>22</sup> While Puzder has publicly stated that it is “American” to attract customers with sexualized commercials,<sup>23</sup> this attitude appears to have an impact on the many women working at CKE Restaurants who must deal with the consequences of these ads in the form of sexual harassment.

“Customers have asked why I don’t dress like the women in the commercials.” Crew member, Hardee’s, Tennessee

Our survey finds that sexual harassment is uniquely pervasive at CKE Restaurants; two thirds (66%) of women workers reported that they have experienced sexually harassing behaviors at their workplace from either management, co-workers, or customers. This sexual harassment rate at CKE Restaurants is over 1.5 times greater than the norm in fast food, which was found to be 40% in a 2016 survey of women fast food workers.<sup>24</sup> Sexual harassment in the industry is much higher than the rest of the economy; the restaurant industry has five times the rate of sexual harassment as other sectors.<sup>25</sup> Thus, CKE Restaurants has 1.5 times the rate of sexual harassment of fast food overall, in an industry that already has the highest rates of sexual harassment of any industry.

- **Sixty six percent of women at CKE Restaurants have experienced unwanted sexual behaviors at work, compared to 40% of women in the fast food industry overall. Fifty six percent of women reported unwanted sexual behaviors from customers and guests.** Sexual harassment in the restaurant industry is much higher than in the rest of the economy; the restaurant industry has five times the rate of sexual harassment as other sectors. Women working at CKE reported over 1.5 times the rate of sexual harassment reported for fast food overall, in an industry that already has the highest rates of sexual harassment of any industry.

The women that we surveyed reported that in their workplaces, the owners, management, or supervisors carried out one or more of a range of sexually harassing behaviors including remarking inappropriately on their appearance, showing them sexually explicit photos, deliberately touching, leaning over, cornering, or grabbing the employee, and asking women to flirt with guests.

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<sup>22</sup> Grace Guarnieri, “Andy Puzder’s burger-eating bikini babes: Trump’s Labor Secretary pick identifies with his company’s racy ads”, December 8, 2016, *Salon*, available at <http://www.salon.com/2016/12/08/andy-puzders-burger-eating-bikini-babes-trumps-labor-secretary-pick-identifies-with-his-companys-racy-ads/>

<sup>23</sup> Ibid.

<sup>24</sup> Hart Research Associates, “Key Findings from a Survey of Women Fast Food Workers,” October 5, 2016, available at <http://hartresearch.com/wp-content/uploads/2016/10/Fast-Food-Worker-Survey-Memo-10-5-16.pdf>

<sup>25</sup> ROC United, Forward Together, et al, October 7th, 2014, *The Glass Floor: Sexual Harassment in the Restaurant Industry*. New York, NY: Restaurant Opportunities Centers United.

“My old GM was a creep and told the group of cashiers that "sex sells" and that some of the girls need to wear makeup and try to look nicer. It hurt their feelings I could tell, and he told me and the other girl that we look good, but creepily.” – Crew Member, Carl’s Jr. New Mexico

However, the single largest source of sexually harassing behavior was from customers. Fifty six percent of women workers reported sexually harassing behavior from customers. One woman we spoke with who works as a cashier at Carl’s Jr. in California described her alarming experience: “I continually get notes left on tables from customers, customers flirt or ask me out. I have also been followed outside the store by customers.”

FIGURE: HAVE YOU EVER EXPERIENCED ANY OF THE FOLLOWING FROM A CO-WORKER, CUSTOMER, OWNER, MANAGER, OR SUPERVISOR AT YOUR JOB?

	Have you ever experienced any of the following from a co-worker, customer, owner, manager, or supervisor at any restaurant job?
61%	Sexual teasing, jokes, remarks, or questions
42%	Sexually suggestive looks or gestures
43%	Pressure for dates
30%	Deliberate touching, leaning over, cornering or pinching
26%	Comments about your sexual orientation
25%	Comments about your gender or your gender identity
13%	Inappropriate kissing, patting, fondling, or groping
17%	Been told to alter your appearance beyond the restaurant’s dress code, i.e. “be more sexy” by wearing tighter clothing or wearing make-up
18%	Been shown sexually suggestive photo (calendars, magazines, pictures on a phone or computer)
17%	Texts of a sexual or inappropriate nature
22%	Letters, e-mails, phone calls, or other materials of a sexual nature
13%	Been told to flirt with guests
11%	Been told to expose or show any part of your body
16%	Witnessed indecent exposure
4%	Rape or attempted rape
66%	Any type of inappropriate sexual behavior

**\*\*BOX\*\***

### **CARL’S JR. AND HARDEE’S WORKERS DESCRIBE THEIR EXPERIENCE OF SEXUAL HARASSMENT AT WORK**

- “Store manager talks sexually and is handsy” – Crewmember, Hardee’s, TN
- “Customers will make sexual remarks to me” – Cashier, Hardee’s, MI
- “Customer asked to see my chest, when I told other managers nothing was done and the district manager doesn't allow us to make decisions” – Assistant Manager, Hardee’s, MI
- “Customers asked to have intercourse” – Cashier, Hardee’s, TN
- “A co-worker has sexually harassed me and multiple girls and nothing was done about it” – Cashier, Carl’s Jr., WA

- “[Sexual harassment] from customers almost everyday” – Cashier, Carl’s Jr., CA
- “Customer in drive thru sexually harassed me” – Shift Leader, Carl’s Jr., CA
- “Men hit on me when I’m by the dumpster” – Cashier, Carl’s Jr. and Green Burrito, UT

**\*\*END BOX\*\***

**\*\*BOX\*\***

### **What are one or two improvements that you would most like to see in your workplace?**

- “Less discrimination, more schedule coordination.” - Shift Leader, Carl’s Jr. CA
- “Pay increase, follow up on promotion offers, bonus” -Crew Member, Carl’s Jr., WA
- “Respect for one another despite the position we are working” - Crewmember at CJ/GB in CA
- “Fair treatment and proper days and times to do hard chores that are split upon every employee” – Crewmember, Carl’s Jr., CA
- “More people on the clock. Well-deserved breaks. Better updated equipment (they reboot a lot, just one little nudge and it cuts off and restarts. So annoying while taking orders) ...Not to treat us like the scum of the earth.” - Cashier Carl’s Jr., TX
- “Full time hours to crew who request it...I have rent to pay. I don’t even make enough to qualify for Obamacare subsidies for healthcare [and] my job refuses to provide.” – Crew Member, Hardee’s, GA.
- “Improvement in scheduling. Manager often schedules short staffed days and employees call in. Four people aren't enough to run the store, one person isn’t enough to close. When short staffed, few or no people get breaks and people often work when sick.” – Cashier at Carl’s Jr., WA
- Our supervisor doing work also, and setting examples better. Also having enough people on each shift and sufficient time to clean. – Crewmember, Hardee’s, TN

**\*\* END BOX\*\***

**\*\*BOX\*\***

### **CKE RESTAURANT WORKERS SPEAK OUT ABOUT ABUSIVE SUPERVISORS/MGMT**

- “Sometimes I get blamed for stuff I have no control over.” Shift Leader, Carl’s Jr.,NM
- “General manager needs to quit showing favoritism.” Crew, Hardee’s, GA
- “Not just myself, but the majority, or if not all of my fellow cashier's get yelled at and talked down on by the manager, shift leaders, and even a few of the cooks.” Cashier, Carl’s Jr., CA

**\*\*END BOX\*\***

### **CONCLUSION**

The nomination of Andrew Puzder, CEO of CKE Restaurants, as Donald Trump’s choice for Secretary of Labor, calls into question the priorities of the incoming administration. The mission of the Department of Labor includes promoting the welfare of wage earners, improving working conditions, and, most significantly, enforcing worker protections. To carry out this mission of the Department of Labor, one would expect its leadership to have experience in ensuring worker protections. On the contrary, under Puzder’s leadership, CKE Restaurants has established a record of multiple lawsuits for discriminating against workers and failing to pay overtime, and has been accused of firing workers for

protesting against poverty wages. Workers at CKE restaurants have spoken of extensive wage and hour violations and excessive rates of sexually harassing behavior from guests and customers associated with a brand that has sought to sexualize women as a hamburger-marketing tool. These findings call into question the viability of Andrew Puzder for the role of the nation's Secretary of Labor.

## **APPENDIX \*\*WORKER PROFILES\*\***

My name is Abel and I have worked in the restaurant industry since I was 10 years old, beginning in my parent's Mexican restaurant where I grew to love cooking and connecting with people through food and hospitality. I appreciate how you can build a relationship with someone while sharing a meal.

Before I came to Carl's Jr, I worked at several restaurants, doing everything from line cook to Front of the House Supervisor for a large chain. I experienced opening up new restaurants for this chain.

Early last year I was hired as Assistant Manager for Carl's Jr. I was scouted for the position by the General Manager and hired to work \$11.50 an hour 40 hours a week. However, during my interview with the District Manager, I was informed that I would be working at a different location farther from my home.

When I started working at the new location, I could sense right away that this location's General Manager was not happy with me being hired. She did not fully train me for my all my managerial responsibilities, and when I asked her about receiving training materials, her response was, "I trained myself, so you should do the same. Don't expect training materials." I felt unsupported, despite being more than willing to make the effort to learn.

As an Assistant Manager, I was constantly pressured to cut labor costs – this meant that employees were stressed out and customer service suffered because there weren't enough employees working on my shifts.

Favoritism was also a huge problem at Carl's Jr. The General Manager would staff her and her favorite crew members' shifts fully, while leaving mine and others' shifts working with skeleton crews.

When I was scheduled to work graveyard shift, the favoritism in scheduling also led to me not receiving proper breaks. I would always have to clock out, but many times I would have to work during my breaks – I had to get up to take customer orders, expedite orders, and receive payment. I was never compensated for working through my breaks, even after I brought this issue to the attention of the District Manager and General Manager. Their responsive was that I was an Assistant Manager and that sometimes I would have to work through my breaks. However, I was an hourly employee and I knew that it was illegal. There were times when I would come home from a hectic shift where I wasn't able to take my breaks, and I would have nightmares of working at the restaurant – bagging orders and ringing in orders on the screen.

I suspect that other coworkers also experienced wage theft – I witnessed others working through their breaks or taking their breaks late. Everyday I also saw Post It notes in the manager's office that had owed hours written on them, for example, "I owe Abel 5 hours ."

Around the end of October, the restaurant had a plumbing problem in the restaurant, in between the drive-through station and the center post where orders were expedited. I called the General Manager and she told me that a repair crew would come and begin jackhammering the floor, and at that point she wanted me to close the dining room. She instructed me to keep the drive through open, but that I would have to go outside the restaurant to take customer orders – however it is against company policy for any employee to go outside to work after dark. This was clearly posted in our drive-through station. My shift ended at 12am, and my relief was a young woman who would work 12am - 6am. I recommended to my coworker that she should not go outside. When I returned to work a couple days later, I was given a final warning write up for making that decision.

Throughout my time at Carl's Jr, I contacted corporate HR to try to get some advice. I thought HR was there to help us and they did in the beginning. They recommended that I take medical leave to deal with the stress, but after returning from medical leave, I was told that I would not be guaranteed to return to work full time.

My experience at Carl's Jr left me feeling hopeless. I tried to communicate the problems I experienced with my superiors, and yet the problem continued and nothing was done about it. If Andrew Puzder allowed these things to happen at a company like Carl's Jr, how would he protect workers across the country?

-- Abel Gonzalez, 42 years old, Carl's Jr., California

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My name is Ashlee Sutphin and I live in Piney Flats, Tennessee. I was a shift leader at Hardee's until just recently, when I quit after I decided I should no longer have to put up with the poor working conditions. I was being paid \$7.50/hour to handle the drive-thru, cashier, and other front of house positions, while also occasionally working in the back when my help was needed. We were repeatedly told that we would receive raises but not ever see the promises come to fruition. One of my former coworkers was still making \$7.50/hour after being with the company for over two. Because of the false promises, our biscuit maker recently quit to find another job that doesn't string her along the way Hardee's did.

Working at Hardee's was very difficult. It was not uncommon for coworkers of mine to come in sick. I can recall multiple instances when the cooks in the back would be puking off into the garbage can and then finish up an order. Employees routinely worked while having pneumonia. We also couldn't plan when to make doctor visits because we would get the schedule on Saturday for Monday - meaning we would only have a two day notice of our upcoming schedule. Sometimes when we would request a day off for doctor's appointments or for important family matters, they would simply ignore the request, leaving us to scramble to come up with an alternative plan.

While working on the grill, many of the employees, including myself, would get burned from the grease that would shoot up from the sizzling hot grill. When I asked about obtaining burn cream to alleviate the pain, I was told that they did not have any at the time. Over time I realized that this wasn't on accident – they in fact never had burn cream during future incidents. Basic medicinal items like a first-aid kit or band aids were absent from our store, even though people would accidentally cut themselves (myself included) from the laborious work.

I've even experienced wage theft. Our general manager would occasionally have me handle laundry duties and then proceed to not pay me for the work that I did. I was promised I would be paid in cash, but to this day I still haven't seen a single penny.

Even when it came to training us for positions, they invested as little amount of resources as possible. I never received any formal training for the positions I learned. Instead, we were forced to figure it out as we went along, which certainly had an impact on the quality of the food and the morale of our staff.

On top of the company underpaying us, we were continually pressured to clock out early. Management was always looking to cut labor costs every way possible, making it impossible to make a living while working there. To put these words into perspective, my final paycheck for the last two weeks I worked was not even \$300 – and that was not the first time I received such a small paycheck from Hardee's against my will.

The overarching theme of the anecdotes that I've shared with you is that the company just doesn't care about the wellbeing of their employees. Even when my papaw (grandfather) passed away, instead of allowing me to take the day off, they forced me to work on the day of his funeral. In fact just this past Christmas Eve, management told us that we would be receiving holiday pay only to find out when we showed up that no one was going to receive holiday pay. I later found out that the general manager actually received a bonus for keeping the labor costs so low. This is not the right way to run a business.

Since I left Hardee's, I've found a much better job, making \$15/hour doing housekeeping. I am not nearly as stressed as I used to be and I feel like I am actually being treated well. Thank you for listening to my testimony. I hope my words shed some light on the difficult working conditions that I and countless other employees of Hardee's have had to endure for too long.

-- Ashlee Sutphin, Hardee's, Tennessee

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My name is Roberto Ramirez, and I am a member of ROC United. I have been working in the restaurant industry for more than 18 years, from fast food to casual dining. It is a trade that I've learned out of necessity but it became something that I enjoyed doing. Most of my experience in the industry has been working for Carl's Jr in Los Angeles where I reside. When I started, I really wanted to make a good impression on my managers – I was always on time and I was always ready to learn other positions to be able to help in different areas of the restaurant. At the beginning, even though the pay wasn't great, the work environment was really good. My co-workers were very happy to be working and to see each other everyday. Then a few years ago, things started to change. Management started cutting hours and employees were made to perform the work of more than one person. I was told to do prep work, cleaning work and cashiering work, even food running work since we are the only fast food chain that delivers the food to the guests' table. For many years, I started working 30 minutes before my clock-in time to make sure that I finished all my duties on time. Our restaurant was located beside a school, and our mornings were always very busy. My managers were aware that I was working those extra 30 minutes but I was never paid for that time or asked to clock in when I started working early. Managers would become very upset if I didn't finish my duties before the end of my shift, and several times they retaliated against me for it - they would cut my hours, change my schedule or send me home early. My last incident with them was when I went on vacation. I requested my paycheck of \$150 and I was told that it was being processed, but then I never heard about it again. Then my manager got transferred and I asked for my check from the new

manager. After a few days she told me that it was cashed by the manager who was just transferred, but one of my coworkers told me that she saw the check and recognized the signature of the new manager. I was outraged, not for the amount of the check, but for management stealing from me. I complained to the district manager whom came to the store to tell me that there was nothing I could do and if I wanted to still fight for it I would do it outside the restaurant by filing a lawsuit against the manager but I couldn't involve the restaurant. Then they started cutting my hours, and one of my coworkers even told me that my manager was pressured to get me out of the restaurant. They ended up firing me. I didn't know what to do at the time, but now I want to let everyone know that we are the only ones to stop the abuse and this mistreatment, that everyone has rights in this country and we need to learn them so we can defend ourselves. This happened to me for many years and I would hate that future generations would experience the same situation that I did. There are a lot of things to work on and only together we can do it.

-- Roberto Ramirez, Carl's Jr., California

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My name is Zuleyma and I live in Arizona. I am now 25 years old and I recently left my job at Carl's Jr. for a better paying position as a security guard. I began working at Carl's Jr. at the age of 16 with the hope of saving enough money over the years to enter a nursing program after completing high school. After starting at minimum wage, I worked for 8 years and advanced to the position of supervisor but the pay was still exceptionally low. When I left my position recently I was being paid \$10.75 per hour. Arizona's minimum wage just increased to \$10.00 per hour. Besides the indignity of low pay, which never allowed me to save enough money for nursing school, I was often forced to work while I was sick. In addition, I was sometimes forced to work "off the clock" and I wasn't always paid overtime when working more than 40 hours a week. While working at Carl's Jr. I suffered a few injuries at work including a twisted knee and an arm injury. I was sent to a company doctor where I received substandard treatment. During my time at Carl's Jr. we were constantly understaffed often forcing workers to perform the jobs of two people without any increase in pay. I am very angry that Carl's Jr. pays such low wages that it is impossible to participate in the American dream of paying for my education or owning a home.

--Zuleyma, Carl's Jr., Arizona

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My name is June Navarro and I am 17 years old and I am working in my first job at Carl's Jr. where I have been working for 7 months at Nevada's minimum wage of \$8.25 per hour. While many people believe that only young people like myself work for minimum wage at places like Carl's Jr. I have co-workers in their late 40's who are also only getting paid minimum wage. The thing that makes working for minimum wage at Carl's Jr. is the constant and intentional understaffing which basically forces workers to do two jobs while being paid--or underpaid--for one. For example, when I was hired, I was trained on a one person/one station policy, meaning that the person working drive-thru didn't work the counter. We are constantly being forced to perform two jobs during our shift. While I am fortunate enough to have been accepted at UNLV where I will be studying political science in the fall, I really feel that franchises like Carl's Jr. which pay their CEO millions of dollars should pay workers more than poverty wages. I had planned to work at Carl's Jr. to save some money for college, but I don't even make enough for that. I will be getting a job on campus to help with expenses. I know that I am one of the lucky ones, but it is unfair that my 40 year old co-workers struggle to make ends meet while working at Carl's Jr.

-- June Navarro, Carl's Jr., Nevada

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I worked at Hardee's in North Carolina from around 2006 until 2011. As an employee, it was very clear to me the top priority for the store was profit - regardless of how that impacted workers or customers.

When I started, I made \$5.85 an hour and the only wage increases I ever received were due to the federal minimum wage increases. Hourly, the supervisors looked at the cost of labor compared to sales, and whenever that ratio was supposedly too high, they kicked people off the clock. There would be times when we would not be allowed to clock-in for our shift and would have to wait until the supervisors let us. We never had paid sick days. If we were sick, we could call out, although there was pressure not to do so - both from management as well as the fact that many of us could not afford to lose a shift.

We were constantly understaffed, which led to long wait times for customers and just incredibly stressful situations for us workers. I can't count the number of times I was yelled at because food took too long or an order was messed up...all because we only had three or four workers in the entire store, even during a major rush period. There was a timer for the drive-thru, but the store manager told us to just tell the customers to park after they paid so average wait time would seem low. After I turned 18, I no longer was legally required to have breaks, so I was not always given one (breaks were typically determined by the ratio of labor costs to sales....if we were slow, we'd get breaks, if not, oh well).

The store manager put profit over absolutely anything else. Once, while I was cleaning equipment, I was burned. The store manager wanted me to use my personal insurance to go to the doctor because she did not want it to be reported. I refused and filed a claim. She tried to make it seem like it was in my best interest to use my own insurance, but I knew she didn't want me to file a claim because workplace injuries impacted her bonus.

Her concern over profit was seen in the way she treated the most desperate employees. Because we worked in an area with few jobs other than service jobs, many of the people I worked with relied on Hardee's to get by, so really feared getting fired. The assistant manager, who did not qualify for overtime because of her position, only made around \$25-30K a year and was constantly working 60-70 hour weeks. I saw a supervisor be forced to unload the truck off the clock.

We had to be incredibly stingy with any food or supplies. All food had to have timers on the container that listed the time the food should be thrown away. But, if we had not sold the food or if the produce looked okay, we would be told to change the timers instead of throwing the food away.

The internal dynamics within the store were also not healthy. The store manager had clear favorites, especially those who shared the same religious beliefs as her. This resulted in her favorites getting the best shifts. A supervisor also had inappropriate interactions with me when I first started working there. Once, he just grabbed me and kissed me while we were cleaning in

the back. It was very confusing - as a teenager, I wasn't totally sure what to make of my relationship with him. I felt very pressured by him.

The store is incredibly hierarchical and, especially in a state like North Carolina, there is absolutely no respect for the rights of workers. Because this was my first job, I just felt like this is how it is to work. Your boss tells you to do something and you do it or you get fired. I needed to save money for school, so I worked there.

It might sound surprising that anyone would put up working in a place like this, but most of the people who work at businesses like Hardee's feel like they do not have options. I now have a college degree and knowledge of the legal system, so of course now I would have walked out fairly quickly, but most people do not have that option. I also have learned through school and other jobs what my rights are and how to assert them....but you don't learn that knowledge or those skills at Hardee's.

While I'm sure many executives higher up would blame the store manager for these incidents - and while she definitely implemented many of the specific unspoken policies - the executives created the culture in which these practices thrived. The company only cared about profit - and clearly turned their head to anything blatant (such as overworking the assistant manager) and obviously never did any sort of internal audits (otherwise, I'm sure they would of caught on to the fact that we used food until it was gone, even if it should be thrown out). It is both bewildering and infuriating that someone who ran a business that created a culture of profit over the interests of either workers or customers is going to be in charge of enforcing labor laws.

Most of the people I worked with were single moms in way worse off financial situations than me and didn't have other choices. Working there, you do not feel empowered enough to challenge anything, so you just accept the injustice.

-- Christina, Hardee's, North Carolina