



With New OT Regs Looming, Lawyers Advise Early Planning

News

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John Thompson was quoted in *Law360* on May 26, 2015. The article “With New OT Regs Looming, Lawyers Advise Early Planning” discussed how the U.S. Department of Labor’s ongoing push to narrow the white collar exemptions to the Fair Labor Standards Act could bring millions more workers under the aegis of federal overtime requirements.

John was quoted on how the new rule might change the litigation landscape and what employers can do to get their houses in order.

Even with questions still open, there are steps that concerned employers can — and should — take in light of the overhaul of the FLSA exemption regulations, lawyers said. Putting off assessing how the regulations may affect your business and waiting too long to formulate a game plan is a recipe for disaster, said John.

“You don’t want to be doing this in the two-week run up to the effective date of the new regulations,” John said.

One of the reasons a move to a California-style duties test would be so vexing is because it’s very hard to measure how much time a given employee spends on specific tasks, Thompson said. Such a move would “generate a great deal of litigation,” according to John.

But the potential move to a quantitative duties test, and disputes over how allegedly misclassified workers spend their time, represent the most fertile ground for litigation if the regulations are proposed and finalized as expected, John said.

“It’s hard to say until we see them,” John said of the regulations, “but I think this more than 50 percent thing, which everybody seems to think is going to happen, will certainly be at the forefront of the litigation theories under these new rules, assuming it gets adopted.”

John likewise recommended plugging in possible annual salary thresholds for exempt workers — such as \$40,000 and \$50,000 — and seeing how paying those wages would affect the business.

John added that employers should think about whether there are alternate exemptions that they haven’t used in the past that could be relevant.

To read the full article, please visit [Law360](#).

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