



Portfolio Media, Inc. | 230 Park Avenue, 7th Floor | New York, NY 10169 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

BoFA Cheats Mortgage Loan Officers Out Of OT, Suit Says

By Irene Spezzamonte

Law360 (December 1, 2023, 4:21 PM EST) -- Bank of America flouted federal and state laws by misclassifying mortgage loan officers as overtime-exempt even though they neither received a salary nor performed administrative duties, a group of workers said in a proposed class and collective action in North Carolina federal court.

Six mortgage loan officers said in their **complaint** Thursday that Bank of America never paid them overtime even though they regularly worked nights and 60-hour weeks because it misclassified them as overtime-exempt, in violation of the Fair Labor Standards Act and several states' laws.

"Notwithstanding that it knew, or should have known, that named plaintiffs and similarly situated loan officers were non-exempt, Bank of America created the fiction of an exemption by failing to comply with every requirement of the FLSA," the group said.

Russell Pfeffer, David Dessner, Adam Sherman, Frank Cronin, Roger Rojas and Jason Auerbach all claimed that Bank of America has been misclassifying them and its other mortgage loan officers as overtime-exempt since at least 2016.

The six said, however, that they didn't receive a salary or any sort of regular compensation. Instead, the bank paid them on a commission basis based on a percentage of mortgage and loan products they sold to customers, according to the complaint.

As a result of the misclassification, Bank of America didn't pay mortgage loan officers overtime even though they regularly worked overtime, nights and up to 60-hour weeks, generating "billions of dollars for Bank of America," the group said.

The group said the bank advanced a fixed draw against their commission twice a month. The bank would then recover that draw against their commissions every month, according to the complaint.

The commissions Bank of America paid were at the net of the draw, the draw for the preceding pay period for which no commissions are disbursed and a deficit balance of any earlier draw that was higher than the prior monthly commissions, the group said.

When the "commissions are less than the balance of draws, Bank of America rolls over a 'draw' deficit recoverable against future commissions," the group said.

Along with the collective claims, the suit also lodged class claims under the New York Minimum Wage Act, the Connecticut Wage Payment Law, the South Carolina Payment of Wages Act and the Florida Minimum Wage Act, laws of states where the named plaintiffs worked.

The group also said Bank of America failed to keep accurate records and "did not give notice of, and affirmatively misrepresented and obstructed, the right to overtime."

Barry R. Lax of Lax & Neville LLP, who is representing the workers, told Law360 on Friday, "We look forward to prosecuting our claims against Bank of America, and our clients look forward to finally receiving their earned compensation."

Bank of America did not immediately respond to requests for comment Friday.

The workers are represented by Jacob Wellman of Teague Campbell Dennis & Gorham LLP and Barry R.

Lax of Lax & Neville LLP.

Counsel information for Bank of America was not available Friday.

The case is Pfeffer v. Bank of America Corp. et al., case number 3:23-cv-00813, in the U.S. District Court for the Western District of North Carolina.

--Editing by Emma Brauer.

All Content © 2003-2023, Portfolio Media, Inc.