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LAW AND LEGAL ISSUES

LOs claim Bank of America did not pay overtime in class action suit

By [Maria Volkova](#) December 07, 2023, 4:00 a.m. EST 2 Min Read



A group of former loan officers are suing Bank of America for alleged "failure to pay overtime and partial failure to pay minimum wage." Numerous companies in the financial services space have recently faced similar allegations including [Rocket Mortgage](#), [CrossCountry Mortgage](#) and [Freedom Mortgage](#).

Bank of America's practices "systematically and willfully violated the Fair Labor Standards Act and the labor laws of dozens of states for at least seven years, likely much longer and through today," claims the class action suit lodged in a federal district court in North Carolina Nov. 30.

Plaintiffs allege that it did so by misclassifying thousands of loan officers across the country as exempt employees under the FLSA and state labor laws. On the basis of this misclassification, the bank "simply did not track or pay overtime to thousands of other loan officers across the country," the lawsuit said.

Bank of America declined to comment.

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In the suit, the former loan officers claim the bank made them "routinely work nights, weekends and in excess of 60 hour weeks," which helped generate "billions of dollars for Bank of America."

Per the FLSA, employers must compensate workers for each hour worked, along with overtime pay equal to 1.5 times the regular rate of pay every hour worked beyond 40 hours per week. Those who work on a commission basis, like loan officers, are also entitled to overtime.

The named plaintiffs, including Russell Pfeffer, David Dessner, Adam Sherman, Frank Cronin, Roger Rojas, Jason Auerbach were employed by the bank in New York, Connecticut, South Carolina and Florida. They represent four separate class action suits against the bank wrapped into one.

All of the plaintiffs, including Pfeffer, allege upper management was fully aware loan officers were working overtime.

"[It was] permitted and effectively required [that] overtime hours [were] part of Pfeffer's job function. Pfeffer was not paid overtime wages in any amount for work hours in excess of 40 hours in any workweek during the three years preceding the filing of this action," the court document said.

The class action also critiques how Bank of America pays its commissioned employees, which it says at times would result in loan officers not getting paid minimum wage. The suit claims that in months in which commissions were less than the balance of draws, Bank of America rolled over a "draw" deficit recoverable against future commissions.

"Bank of America implemented and maintained its recoverable semi-monthly 'draw' against commissions structure in willful disregard of statutory, regulatory and judicial authority that the

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Plaintiffs are seeking to recover all unpaid overtime compensation, unpaid minimum wages and liquidated damages for the three years preceding the date of this complaint, as well as attorneys' fees and costs, prejudgment interest and other relief as provided by law.

Separately, the bank has been under [fire from the Consumer Financial Protection Bureau](#), receiving a fine of \$12 million for failing to collect the race, ethnicity and sex of mortgage applicants and then reporting to the bureau that the applicants had chosen not to respond. The CFPB said hundreds of loan officers working for the bank had violated the requirements of the Home Mortgage Disclosure Act. Congress passed HMDA in 1975 to gather data on mortgage applicants that could be used to determine if financial institutions were discriminating against potential borrowers.

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