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CLAIMS OF FAILURE TO PAY OVERTIME MAY COST BANK OF AMERICA

Bank of America faces claims under federal and state wage and hour laws totaling in excess of \$200 million for failure to pay overtime to tellers, personal bankers, sales specialists and customer service workers at over 6,000 retail banks and call centers. The suit consolidates twelve federal cases alleging violations of the Fair Labor Standards Act and its state law equivalents in California and Washington, and seeks certification as a collective or class action covering twenty additional states.

Plaintiffs' attorneys allege that employees were required to work through meal and rest breaks and after regular hours, and instructed not to record their time, or that time records were altered to delete overtime worked. "It is also a red flag that you have these very busy retail bank tellers working 40 hours [per week] on the nose for year after year." said plaintiffs' attorney Brendan Donelon.

While these claims concern hours worked by workers correctly classified as non-exempt, the suit draws attention to the very high stakes involved in wage and hour lawsuits generally. Banks have traditionally relied on the assumption that many employees are exempt from payment of overtime because they are in "white collar" positions. However the rules for exemption are narrow and recent US Department of Labor interpretations have narrowed them further. Similarly, the DOL's Wage & Hour Division has beefed up its investigation of "off the clock" work by non-exempt employees.

Practice Pointers:

- Conduct a wage and hour audit to ensure whether employees are correctly classified as exempt under **current** definitions of the various "white collar" exemptions – pay particular attention to lenders: the rules have tightened.
- Maintain accurate and updated job descriptions that reflect the characteristics of the particular exemption relied on, and monitor to ensure that the actual duties performed are those in the job description.
- Make sure non-exempt employees record **all** hours worked on a daily basis, and have a supervisor review and sign off on the time records weekly.
- Have clear policies for non-exempt employees requiring pre-approval for overtime, and prohibiting "Blackberry time" – checking emails and making calls outside normal work hours.

For further guidance, please visit our website for details about our [Bankers' Overtime Exemption Guide™](#), which has been updated to reflect the latest judicial decisions and DOL regulations.