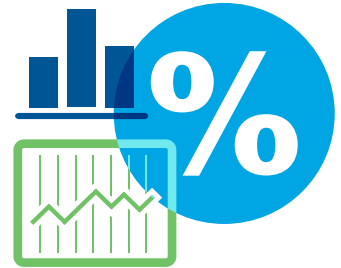


# Financial Services Employment Blog



## Too Personal To Proceed: Personal Bankers' Certification Bid Bounced Again

By Kyle Petersen and Molly Mooney

**Seyfarth Synopsis:** *The Second Circuit recently upheld a district court order denying a bid for class certification by personal bankers claiming their managers refused to approve timesheets with overtime hours, shaved reported overtime hours, and pressured them to work off the clock. Because the company's policy governing (and limiting) overtime work was lawful on its face, the bankers' claims hinged on the exercise of managerial discretion in applying those policies. The district court concluded that the plaintiffs failed to demonstrate sufficient uniformity in the exercise of managerial discretion, and the Second Circuit affirmed.*

As [noted earlier](#), the trial court's decision reflects reluctance by some trial courts to certify nationwide class actions based on local or even regionalized evidence of rogue managers deviating from company policy. The Court of Appeals has now given its [seal of approval](#) to that approach.

In *Ruiz v. Citibank, N.A.*, personal bankers from several states alleged that Citibank had a strict policy limiting overtime hours while also setting rigorous sales goals and quotas for the bankers that could not be achieved in a forty-hour workweek. The bankers also alleged that branch managers refused to approve timesheets with overtime hours, or shaved overtime hours off of the bankers' timesheets.

The bankers sought certification of a class consisting of bankers with claims under New York, Illinois, and District of Columbia law. Their attempt to establish commonality — primarily through anecdotal evidence of pressure to work off the clock and a not uncommon and entirely legal goal of reducing overtime work — fell short and was rebutted by putative class member testimony of variations across branches. For example, putative class members testified that individual branch managers had differing management styles for incentivizing and motivating employees to meet their sales goals — some plaintiffs were rewarded for positive sales performance, with no reference to overtime hours they worked in doing so, while others failed to achieve sales goals with no admonition. This, said the court, showed that the pressure to work off the clock was not uniformly felt and precluded the case from proceeding as a class. On appeal, the Second Circuit wholeheartedly agreed with the district court's "lucid and accurate analysis" and affirmed denial of class certification.

While not a game changer, this decision reaffirms the need for plaintiffs to come up with more than anecdotal evidence of allegedly systemic problems, and highlights how employers can use class member depositions to defeat class certification.

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