

## Barnes & Noble Cafe Managers Deserve OT Pay, Suit Says

By **Matthew Guarnaccia**

Law360, New York (September 20, 2016, 7:07 PM EDT) -- A Barnes & Noble cafe manager launched a proposed class action lawsuit in New York federal court on Tuesday alleging the bookstore giant classified managers as salaried employees under the Fair Labor Standards Act in order to avoid paying overtime, even though they perform a similar job function to nonexempt workers.

Former cafe manager Kelly Brown said Barnes & Noble hires limited staff for its cafes and strictly monitors the hours worked by nonmanagerial employees to prevent them from working more than 40 hours per week. Barnes & Noble instead relies on salaried managers to fill the gaps caused by the deliberate understaffing, including making coffee, preparing food and serving customers, which are also tasks performed by nonexempt employees.

"The primary duties of CMs do not fall within any of the exemptions under federal or state overtime laws," the complaint said.

According to the complaint, Brown worked as a manager at a Barnes & Noble cafe in Chicago from September 2012 to February 2015. During that time, Brown had no managerial responsibilities, such as hiring, firing or disciplining employees, and all managerial-type decisions instead came from store managers.

Brown performed virtually the same function as a nonsalaried employee but typically worked between 48 and 52 hours per week without compensation for working overtime, according to the complaint.

Brown alleged Barnes & Noble required cafe managers to undergo a training period of approximately three to six weeks, which on occasion included working more than 40 hours per week during that time. Barnes & Noble also failed to adequately keep records detailing the time worked by its managers, she said.

Brown said Barnes & Noble's nationwide policy is to uniformly classify cafe managers as exempt from federal and state overtime provisions despite performing similar job functions to regular employees. She argued that the bookstore giant knowingly misclassified its cafe managers, calling the policy "widespread, repeated and consistent."

Brown seeks to classify two Illinois-wide classes consisting of of cafe managers and managers in training, and two similar nationwide classes, who did not receive overtime compensation for their work. She brings claims under the FLSA and Illinois Minimum Wage Laws.

Brown asked for compensation of all unpaid overtime wages as well as liquidated damages, and interest. Brown also seeks an injunction against Barnes & Noble in order to discourage the company from continuing the practice.

The lawsuit comes more than a year after Barnes & Noble entered into an undisclosed settlement with assistant store managers that accused the company of not paying them overtime despite mostly performing "hourly duties." The case settled before a ruling could be issued on **class**

**certification.**

Representatives for Barnes & Noble declined to comment Tuesday.

Counsel for Brown did not respond Tuesday to a request for comment.

Brown is represented by Michael J. Palitz and Gregg I. Shavitz of Shavitz Law Group PA.

Counsel information for Barnes & Noble was not immediately available Tuesday.

The case is Brown v. Barnes and Noble Inc., case number 1:16-cv-07333, in the U.S. District Court for the Southern District of New York.

--Additional reporting by Jonathan Randles. Editing by Catherine Sum.