

Bank of America Seeks Lawsuit Immunity from Fired Employees

By [Elinor Comlay](#)
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Bank of America Corp. is telling fired employees that they cannot accept job offers from competitors for three months unless they give up either deferred compensation or their right to sue the bank, according to documents reviewed by employment lawyers.

Employees who get the pink slip at the nation's largest bank are told that under a federal law they will be paid for a notice period, allowing them time to find a new job.

But if they go to work for a competitor during that period, they must either sign a waiver effectively giving up their right to sue for discrimination, or give up uncollected deferred compensation, according to a lawyer who has represented these clients, a former employee and lawyers who have reviewed documents obtained by Reuters.

Bank of America spokeswoman Jessica Oppenheim disputed their version of events, calling their description of the bank's policies inaccurate, but she declined to elaborate.

Employment lawyers said Bank of America's steps reflect a shifting balance of power on Wall Street -- banks increasingly have the power to name their terms when hiring and firing employees as the number of jobs in the industry shrinks.

Although Bank of America is cutting the jobs, the bank is trying to prevent former employees from taking any clients with them, as well as immunize itself from possible lawsuits, lawyers explained.

Key banking industry employees often take "gardening leaves" spanning several months when voluntarily resigning and moving to a rival. But many lawyers say it is a new twist to request fired staff to give up their right to sue or else be classed as resigning from the paid notice period, therefore forfeiting previously earned compensation.

"What Bank of America is doing is warping the statute to their advantage," said David Wechsler, a lawyer at Wechsler & Cohen in New York who has represented Bank of America employees in this situation.

"I find this unusually offensive," he said.

Some courts may question whether the employees were coerced into signing the agreement, said Susan Joffe, an assistant professor at Hofstra University School of Law in New York, who previously practiced employment law. Courts tend to

respect severance agreements but the employee must sign voluntarily, Joffe explained.

Contesting Bank of America's pressure to sign agreements could take months of legal wrangling, by which point the bank will have essentially enforced a gardening leave, lawyers said.

Giving up deferred compensation or the right to litigate would amount to a big hit for many Bank of America employees. Much of their 2007 bonuses were paid in deferred compensation.

Employees who take a three-month leave are also giving up a fair amount, although it is unclear how many fired employees would hope to receive an immediate offer elsewhere in the current job market. Banks typically pay traders bonuses, for example, based on the annual profit generated by that trader.

A fired trader who is forced to sit out a notice period and avoid working from now until the beginning of August has just five months to generate a year's worth of revenue.

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Measures restricting fired employees' rights are becoming increasingly common in a market where jobs are scarce. Bank of America said in December it plans to cut 30,000 to 35,000 jobs over three years to help save \$7 billion in annual costs. It had about 243,000 employees at the end of last year.

"The real issue is that the banks have a lot of control in this kind of economy to do whatever they want to do," said Linda Friedman, a Chicago-based employment lawyer at Stowell & Friedman.

Some lawyers also expressed concern about a clause in Bank of America's severance agreement that requests that employees not solicit any of their former clients at the bank.

"It's a way to backdoor the anti-competition provision," said Richard Roth, founder and partner of The Roth Law Firm in New York City, who has seen the documents but has not represented anyone in this situation.

"While it is legally permissible to prohibit an employee from competing, the wording of the agreement is without doubt aggressive," he said.

"It has the practical effect of placing a financial handcuff on the employee by prohibiting him from conducting (the same) business anywhere else."

(Reporting by Elinor Comlay, additional reporting by Dan Wilchins, editing by Matthew Lewis)