

ALERTS AND UPDATES

Supreme Court, in Wal-Mart Employment Discrimination Case, Changes the Landscape of Class Action Litigation

June 22, 2011

On June 20, 2011, the U.S. Supreme Court issued its decision in [*Wal-Mart Stores v. Dukes*](#), which overturned certification of a class of 1.5 million current and former female Wal-Mart employees alleging gender discrimination. This ruling will make it more difficult for plaintiffs to bring nationwide class action claims, as the Court noted that class actions are an "exception" to the general rule that litigation should be brought only by named parties. Through this decision, the Supreme Court has changed the landscape of class action litigation, since courts are now expected to require more evidence of commonality before certifying a class of plaintiffs.

Case Background

The plaintiffs in *Dukes* alleged that Wal-Mart permits its local managers to use discretion in making pay and promotion decisions, and that the local managers employ their own subjective criteria in making those decisions. As a result, the plaintiffs alleged that pay and promotion decisions are disproportionately in favor of male employees. In essence, the plaintiffs alleged that Wal-Mart has a "corporate culture" that permits bias against women, which has resulted in male employees' earning more money and holding a disproportionate number of leadership positions.

In a 5–4 opinion, the Supreme Court ruled that the plaintiffs had not met the class certification requirements under Federal Rule of Civil Procedure 23(a)(2), which requires the putative class members to establish that they share common questions of law and fact. The Court also ruled that the plaintiffs could not be certified as a class under Federal Rule of Civil Procedure 23(b)(2), which allows for class actions when plaintiffs seek an injunction or other declaratory relief for the entire class.

The ruling holds plaintiffs in class litigation to a strict burden of establishing commonality among all putative class members. It is no longer sufficient for the plaintiffs to establish that there are common issues raised by the claims. Now the plaintiffs must be able to show that they have all suffered the same injury. Furthermore, the common injury suffered by all plaintiffs must be capable of class-wide resolution. In the opinion, the Court stated: "Without some glue holding the alleged *reasons* for all those decisions together, it will be impossible to say that examination of all the class members' claims for relief will produce a common answer to the crucial question *why was I disfavored*."

In *Dukes*, the plaintiffs' allegation that there was a "corporate culture" that resulted in bias against women was insufficient to establish that Wal-Mart "operates under a general policy of discrimination." The Court found that a policy permitting local managers to use discretion in pay and promotion decisions was the opposite of a uniform company-wide policy, and as a result, the plaintiffs had failed to identify one specific employment practice that was applicable across the entire purported class.

What This Means for Employers

The *Dukes* opinion will undoubtedly have a significant impact on the ability of plaintiffs to successfully prosecute class action cases in the employment area. In light of this decision, it is important for companies to review their employment policies and practices to ensure compliance with the equal employment opportunity laws, and to conduct supervisory and management

training to ensure that your front-line supervisors and more-senior-level managers make employment-related decisions consistent with applicable federal and state employment laws. In so doing, companies will minimize the risks of expensive class action employment litigation based upon such policies or practices.

For Further Information

If you have any questions about this *Alert*, would like assistance reviewing employment policies and practices, or would like to explore employment-related training of supervisory and management teams, please contact any of the [attorneys](#) in our [Employment, Labor, Benefits and Immigration Practice Group](#), any of the [attorneys](#) in our [Trial Practice Group](#) or the attorney in the firm with whom you are regularly in contact.

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