

Supreme Court Limits Class Actions in Wal-Mart Victory

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Supreme Court's unanimous decision in favor of Wal-Mart restricts the ability of plaintiffs to seek certification of a class for damages.

On June 20, 2011, the Supreme Court of the United States issued its highly-anticipated ruling in *Wal-Mart Stores, Inc. v. Duke*. The Court unanimously held that the Ninth Circuit Court of Appeals erred in affirming the certification of the class under Rule(b)(2) of the Federal Rules of Civil Procedure. A 5-4 majority further held that the plaintiffs failed to carry their burden of establishing commonality under Rule 23(a)(2).

The majority held that Rule 23(a)(2) requires a party seeking certification of a class to demonstrate more than the mere existence of common questions; rather, the party seeking certification must demonstrate that class-wide proceedings will generate common answers to those questions. The Court ruled that the plaintiffs failed to come forward with "significant proof" that Wal-Mart operated under a general policy of discrimination. The Court concluded that evidence that Wal-Mart's policy of discretion produced an overall sex-based disparity was insufficient. Because there was "no convincing proof of a company wide discriminatory pay and promotion policy," the plaintiffs failed to establish the existence of *any* common question.

The majority also held that the class was improperly certified under Rule 23(b)(2) because the monetary relief sought by the plaintiffs was not merely incidental to the injunctive or declaratory relief that they requested. The Court concluded that Rule 23(b)(2) does not authorize class certification when each class member would be entitled to an individual award of monetary damages, which, in this case, was the request for backpay.

Justice Ginsburg, Justice Breyer, Justice Sotomayor and Justice Kagan concurred in the majority's reversal of certification of the class under 23(b)(2), but found that the majority erred in its analysis under Rule 23(a)(2). The concurring Justices stated that the case should have been remanded to the district court for analysis under Rule 23(b)(3). They also criticized the majority for conducting a "dissimilarities" analysis under Rule 23(a)(2) which essentially grafted onto Rule 23(a)(2) the predominance analysis required under Rule 23(b)(3).

The Court's ruling greatly restricts the ability of plaintiffs to seek certification of a class for damages without meeting all of the requirements of Rule 23(b)(3), including predominance and superiority, by seeking certification under Rule 23(b)(2). Plaintiffs also will no longer be able to satisfy their burden under Rule 23(a)(2) simply by identifying the common issues in the case. Rather, plaintiffs must now present significant proof that the common questions can be answered with common proof.

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