

## United States Supreme Court Denies Class Certification Status in *Wal-Mart Stores, Inc. v. Dukes*

On June 20, 2011, the United States Supreme Court issued a unanimous ruling denying class certification status in a decade-old gender discrimination lawsuit against the country's largest retailer in *Wal-Mart Stores, Inc. v. Dukes*. The decision overruled the Ninth Circuit's decision to certify as a plaintiff class "all women employed at any Wal-Mart domestic retail store at any time since December 26, 1998, who have been or may have been subjected to Wal-Mart's challenged pay and management track promotions policies and practices."

The three named plaintiffs alleged that Wal-Mart's practice of allowing local managers discretion over pay and promotions created an unlawful and unfavorable disparate impact on *all* of Wal-Mart's female employees.

The Court agreed with the reasoning of the dissent in the District Court for the Northern District of California, which stated (in part) that the class members "held a multitude of different jobs, at different levels of Wal-Mart's hierarchy, for variable lengths of time, in 3,400 stores, sprinkled across 50 states, with a kaleidoscope of supervisors (male and female), subject to a variety of regional policies that all differed... They have little in common but their sex and this lawsuit."

In denying certification to the proposed class, the Court held that questions common to the class sufficient to allow certification must relate to the same injury, which is more than the same violation of law, but must be of "such a nature that determination of its truth or falsity will resolve an issue to the validity of each one of the claims in one stroke." The Court acknowledged that this necessarily involved an overlap with the merits of the underlying claims, but that the evidence plaintiffs presented was insufficient to demonstrate the commonality of the claims.

Significantly for employers, the Court held that in the class action setting, the policy of allowing management discretion over pay and promotion was the "opposite of a uniform employment practice that would provide the commonality needed for a class action; it is a policy *against having* uniform employment practices." The Court also held that it is a "very common and presumptively reasonable way of doing business-one that we have said 'should raise no inference of discriminatory conduct.'"

If you have any questions concerning the issues raised in this alert, please contact [Theresa Sprain](#) the author of this alert, or any of [Womble Carlyle's Labor & Employment attorneys](#).

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