

# Employment Bulletin - June 22, 2011

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## U.S. SUPREME COURT ENDS MASSIVE CLASS ACTION AGAINST WAL-MART

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On Monday, the Supreme Court handed down its heavily anticipated decision in *Wal-Mart Stores, Inc. v. Dukes*, regarding whether or not the plaintiffs could pursue sex discrimination claims on behalf of more than one and half million current and former female employees of Wal-Mart. The Court found that the case could not proceed as a class action because the alleged class did not share common questions of fact or law. Further, the Court held that claims for individualized relief (such as backpay) do not satisfy the requirements for a class to be certified under the federal rules.

In *Dukes*, three female employees brought suit for gender discrimination under Title VII. They alleged that Wal-Mart has a “strong and uniform” corporate culture that permits bias against women and that this culture resulted in lower pay and fewer promotions for female employees compared to male employees. In support of their claims, the plaintiffs relied upon statistical evidence and testimony from a sociologist who opined that the company was vulnerable to gender discrimination. The plaintiffs sought to bring their claims as a class action on behalf of more than a million and half women who worked at Wal-Mart stores throughout the country since 1998.

The California District Court granted the plaintiffs’ request to treat the case as a class action, and the Court of Appeals for the Ninth Circuit affirmed the class certification order. The Court of Appeals held that the case could be tried as a class action because there was a common question of “whether Wal-Mart female employees were subjected to a single set of corporate policies . . . that may have unfairly worked to unlawfully discriminate against them in violation of Title VII.”

On certiorari, the Supreme Court addressed the appropriateness of class action status, not the merits of the plaintiffs’ allegations of gender discrimination. In reversing the class certification decision, the Court held that the class members’ experiences were too different to be adequately represented by the named plaintiffs. It explained that plaintiffs failed to establish that Wal-Mart operated under a general policy of discrimination. To the contrary, Wal-Mart maintained a corporate policy forbidding discrimination, and the plaintiffs’ evidence established that local store supervisors exercised discretion over employment matters. A majority of the Court thus concluded that the named plaintiffs could not pursue their claims of gender discrimination on behalf of a nationwide class of former and current female employees. Further, the Court unanimously found that the plaintiffs could not sue as a group because each woman may be entitled to different damages.

The decision in *Dukes* is important for employers because it limits plaintiffs’ ability to pursue discrimination class actions on behalf of a geographically dispersed and decentralized workforce. The Court recognized that it is presumptively reasonable for employers to give discretion to local managers over employment decisions and that the grant of such discretion “should itself raise no inference of discriminatory conduct.” Thus, the decision should discourage similar types of class action lawsuits in the future. However, wage and hour issues, which often are the product of corporate-wide policies, remain susceptible to class action treatment. Further, the decision in *Dukes* is based on federal rules on class actions. States have their own rules regarding class actions, which might encourage the plaintiffs’ bar to bring smaller discrimination class actions in state courts and to evade federal court jurisdiction.