



Employment Law Advisory for 7/27/2011

Impact of Dukes on Wage and Hour Claims Uncertain at Best

In one of last month's Advisories, we reported on the United States Supreme Court's decision in Dukes v. Wal-Mart, in which the Court sided with employers by holding that it was inappropriate to resolve the claims of 1.5 million potential discrimination claimants in a single class action suit. Commentators have universally, and correctly, cited the *Dukes* decision as a significant victory for employers. Companies concerned about class action litigation should be careful to understand the limited protection that the *Dukes* decision may afford them in the claims most commonly at issue in class action suits, however.

In *Dukes*, the plaintiffs alleged that compensation and promotion decisions affecting them had been based on their gender. The Supreme Court refused to permit resolution of the discrimination clams of the entire group as a class action because the claims were the product of separate, independent decisions, rather than a single, common decision or practice. While the *Dukes* decision may be very useful to employers defending themselves against class action discrimination claims, it is likely to be much less useful in defending against the claims most frequently asserted against employers in class action suits- claims for violation of the wage and hour laws.

Individual decisions concerning compensation or promotions may affect large groups of employees only in rare instances, but single decisions regarding work hours or wage payment practices often affect substantial numbers of employees. A technology company's decision to classify its IT technicians as exempt or a real estate firm's decision not to schedule rest breaks and meal periods for its employees, for example, could apply equally to large numbers of employees. The logic that led the Supreme Court not to permit resolution of disparate discrimination claims in a single class action in Dukes would not apply, and arguably could lead to the opposite conclusion, in many wage and hour cases.

Wage and hour claims still represent the most common form of claim asserted against employers. Wage and hour suits may involve allegations of unpaid overtime, missed meal periods or rest breaks, or violations of any number of other arcane provisions in state and federal age and hour laws. When violations exist, they often exist with respect to a broad class of employees, rather than just one or two individuals. The *Dukes* decision is likely to have limited affect on class action suits for wage and hour violations, and employers should be careful not to draw false comfort from it. The importance of complying with wage and hour laws remains as great as ever.

If you have any questions about class action suits, wage and hour litigation, or any other issue relating to employment law, please contact one of our attorneys:

Daniel F. Pyne, III Richard M. Noack Ernest M. Malaspina Karen Reinhold

DPyne@hopkinscarley.com RNoack@hopkinscarley.com EMalaspina@hopkinscarley.com KReinhold@hopkinscarley.com



Erik P. Khoobyarian Shirley E. Jackson

EKhoobyarian@hopkinscarley.com SJackson@hopkinscarley.com