

Supreme Court Dismantles Nationwide Class Action Against Wal-Mart

June 21, 2011

In a widely anticipated opinion, the Supreme Court overturned a lower court's decision to certify a class of approximately one and a half million current and former female Wal-Mart employees. Although the decision does not require or even suggest changes to employer day-to-day behavior, it will make it more difficult for employees to bring class action lawsuits.

The employees alleged that Wal-Mart's pay and promotion policies - which give significant discretion to local managers - constitute unlawful sex discrimination. In *Wal-Mart Stores v. Dukes*, the Supreme Court addressed two issues when it examined the lower court's decision to certify an enormous nationwide class for all female employees.

First, the Supreme Court found that such a massive class did not satisfy Rule 23(a)'s requirement that "there are questions of law or fact common to the class." Wal-Mart, for example, did not utilize a "biased testing procedure" or "operate[] under a [uniform] general policy of discrimination." Instead, the employees offered expert testimony and statistics that purported to show Wal-Mart's "strong corporate culture" was vulnerable to gender bias, and as a result, local managers' discretion inherently led to sex discrimination. The Supreme Court rejected the argument: "In a company of Wal-Mart's size and geographical scope, it is quite unbelievable that all managers would exercise their discretion in a common way without some common direction." Put another way, the plaintiff "wish[ed] to sue about literally millions of employment decisions at once. 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."

Second, the Supreme Court unanimously found that the lower court improperly certified the class with respect to backpay claims under Rule 23(b)(2). This Rule, according to the Court, allows for class certification when "a single injunction or declaratory judgment would provide relief to each member of the class." It does not, however, contemplate claims for individualized relief, such as the employees' backpay claims.

Guidance for Employers

The Court's decision places a significant hurdle in front of employees bringing class actions. Employees will have a difficult time certifying broad class actions unless they are able to point to a specific employment practice that is common to all class members. While this ruling does not alter an employer's responsibilities under general employment discrimination laws, it will likely significantly change the size and scope of employment class actions.