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Supreme Court Rejects Massive Class Action Against Wal-Mart

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In a highly anticipated ruling, the U.S. Supreme Court issued its slip opinion in *Wal-Mart Stores, Inc. v. Dukes, et al.* (S. Ct. June 20, 2011), this morning. The case has been closely watched because of its massive ramifications. The proposed class in the case covered 1.5 million current and former Wal-Mart employees, and would have involved billions of dollars in potential damages. Plaintiffs claimed that the discretion afforded to local store managers over pay and promotions had an unfair, discriminatory impact on female employees.

The Court's opinion hinged on the application of Fed. R. Civ. P. 23, which regulates class actions. Among other things, Rule 23 requires that the claims of all potential class members share a common issue of law or fact. Here, that would require evidence that women were the victim of one common discriminatory practice. With respect to this issue, the Court issued a 5-4 opinion. Justice Antonin Scalia authored the opinion, and was joined by Chief Justice John Roberts and Justices Samuel Alito, Anthony Kennedy and Clarence Thomas. Justice Ruth Bader Ginsburg authored the dissent, and was joined by Justices Stephen Breyer, Sonia Sotomayor and Elena Kagan.

While the Court recognized that sufficient commonality might be established where an employer operated under a general policy of discrimination through which discrimination occurred via entirely subjective decision-making processes, it made clear that such a showing must rest on "substantial proof." Moreover, the Court recognized that allowing such discretion is a common, presumptively reasonable business practice that raises no inference of discriminatory conduct.

The Court then held that plaintiffs' proffered statistical evidence regarding national and regional data did little to explain whether discrimination was occurring at a store-by-store level. Moreover, the Court held that testimony from a small number of potential class members was insufficient to establish that the claims of the named class members shared anything in common with other members of the proposed class.

The significance of this aspect of the Court's opinion cannot be overstated. Without requiring a thorough evidentiary showing before a class can be certified based on the amorphous concept of managerial discretion, it would be possible to string together loosely connected claims into large class actions too costly to defend on the merits.

In a portion of its opinion joined in by all of the justices, the Court held that Fed. R. Civ. P. 23(b)(2) does not authorize class certification when each class member would be entitled to an individualized award of monetary damages. This aspect of the Court's holding was not surprising, but it is important because it forces employees to seek certification through the more rigorous standards of Fed. R. Civ. P. 23(b)(3), which requires heightened analysis by a court regarding the appropriateness of class certification.

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