



# United States Supreme Court Rules in Favor of Wal-Mart and Against Certification of Nationwide Class of Female Workers

## Articles

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On June 20, 2011, the U.S. Supreme Court issued its long-awaited decision in the highly publicized Wal-Mart employment discrimination case: The Court reversed a lower court decision that had certified a class of approximately 1.6 million female Wal-Mart employees. In perhaps the largest employment discrimination claim ever, the Court rejected the proposed nationwide class of female workers who claim Wal-Mart discriminated against them. Although the decision did not affirmatively absolve Wal-Mart of discrimination, the Supreme Court's decision is seen as a major victory for the retail giant and will significantly restrict such broad class actions against large employers in the future.

The plaintiffs were a proposed class of female Wal-Mart employees who allege gender discrimination under federal law based on company-wide statistics that show women receive lower pay and fewer promotions compared to their male counterparts. Specifically, the plaintiffs argue that Wal-Mart's culture and the company's policy of allowing local managers wide discretion in determining salary and promotions improperly fostered discriminatory conduct.

The real issue before the Supreme Court was whether such a broad gender claim could be brought on behalf of so many female workers nationwide. In order for a class of plaintiffs to be certified, federal law requires that the individual claims are sufficiently similar to each other that they can be tried in one courtroom, with a sufficient number of common issues of law and fact. In addition, such "class actions" can only have monetary awards for the employees when the financial damages sought do not predominate over non-monetary claims. If accepted as a class action, then literally millions of female Wal-Mart employees could have been compensated monetarily even though only a handful of actual employees would have ended up presenting their claims in court.

The 9th Circuit Court of Appeals ruled that the plaintiffs met both key requirements -commonality and predominance of non-monetary claims - but the Supreme Court reversed and denied certification of the female employees as a class. It is perhaps surprising that the Supreme Court's ruling was unanimous on one issue: whether monetary issues predominated over non-monetary relief. Both liberal and conservative judges agreed that such a massive class of employees could not sue collectively because an individualized monetary damage assessment would be needed for each member of the class, making money damages not just an "add-on" but the key issue in the case.

The decision with respect to whether or not the class met the "commonality" requirement was not nearly as clear-cut. The Court split on this issue 5-4, with the majority finding that the class of plaintiffs lacked a sufficiently common contention. Justice Antonin Scalia wrote for the majority:

The only corporate policy that the plaintiffs' evidence convincingly establishes is Wal-Mart's "policy" of allowing discretion by local supervisors over employment matters. On its face, of course, that is just 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. It is also a very common and presumptively reasonable way of doing business - one that we have said "should itself raise no inference of discriminatory conduct."

Simply put, the class action was rejected because there was no showing that Wal-Mart's general policies affected employees nationwide - it did not become discriminatory simply because Wal-Mart deferred to the local or regional level for pay and promotion decisions.

As a result of this ruling, the Wal-Mart plaintiffs are left to bring separate claims against the company, perhaps in much smaller classes or individually. The decision represents a major victory for Wal-Mart, since individual claims are more difficult and less tempting for employees to pursue. On a broader level, the decision will make large, national class actions more difficult to pursue, as mere statistical evidence of disparity among classes of workers will be insufficient in most cases to achieve class certification.

If you have any questions regarding this ruling, please contact a member of Archer's Labor and Employment Department at (856) 795-2121.

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