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Gallagher Sharp Newsflash: Class Action Employment

On June 20, 2011, the Supreme Court of the United States issued a much anticipated decision in *Wal-Mart Stores, Inc. v. Dukes*, Slip Opinion No. 10–277, decertifying in favor of Wal-Mart a nationwide class of plaintiffs in a sex discrimination case filed pursuant to Title VII. The purported class was to include approximately 1.5 million plaintiffs who were current or former Wal-Mart employees. These purported class members all allegedly suffered sexual discrimination at the hands of Wal-Mart when they were denied equal pay and promotions in violation of Title VII.

A class action is a lawsuit whereby an individual or group of individuals (the class representative(s)) seeks court approval to represent a larger group, the entire class. Three women with notably different employment histories with Wal-Mart were the putative class representative seeking certification. Wal-Mart is the nation's largest private employer operating approximately 3,400 stores and employing more than one million throughout the company. Wal-Mart's policy permits local managers to exercise broad and largely subjective discretion in making employment decisions. The Wal-Mart plaintiffs claimed that the exercise of independent managerial discretion was the common thread which bound all members of the class together. The District court certified the class and the 9th Circuit Court of Appeals affirmed.

The Federal Rules of Civil Procedure set forth the four requirements that the plaintiffs must meet in order to have a class action certified. The decision in the *Wal-Mart* case focused on commonality. The plaintiffs claimed that the common fact permeating the cases was the use of managerial discretion at the local level to make employment decisions. However, the United States Supreme Court was not persuaded by this argument and found the policy of individual managerial discretion was just the opposite of a uniform employment practice and it was, in fact, a policy against having a uniform practice. In determining that class certification was not warranted, the Court concluded that the plaintiffs and potential class members had "little in common but their sex and this lawsuit."

Accordingly, the Court found that plaintiffs were unable to meet the commonality requirement and that the class should not have been certified.

The bar for class actions in Title VII cases is high. As a result of *Wal-Mart*, it is likely to be decidedly more difficult for employees to bring companywide or nationwide class actions against corporations.

The full opinion can be found at: <http://www.supremecourt.gov/opinions/10pdf/10-277.pdf>.

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