

PUBLICATION

Wal-Mart Escapes Largest Employment Class Action in History

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The U.S. Supreme Court has handed a major victory to the nation's largest retailer by dismissing a lawsuit that would have been the largest class action of employment claims in U.S. history. Plaintiffs sought to certify a nationwide class of all current and former female employees since 1998. Plaintiffs claimed that Wal-Mart discriminates against female employees with respect to pay and promotions.

In order to successfully certify a class, the Plaintiffs were required to show that the members of the class were subject to a common policy or practice. This is known as the "commonality" requirement. Plaintiff claimed that Wal-Mart had a corporate culture that encouraged paying women less and failing to promote them. Plaintiffs relied on expert testimony from a sociologist to establish the alleged corporate culture. However, the evidence in the record indicated that pay and promotion decisions were made at the discretion of the local store managers. Plaintiffs attempted to argue that the de-centralized decision-making encouraged disparate treatment of women, but the court rejected this argument. The Court recognized that store-by-store discretion was inconsistent with common treatment. Therefore, the Court held that the nationwide class was inappropriate and dismissed the case.