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Supreme Court Decertifies Wal-Mart Class

The United States Supreme Court issued its much-anticipated decision yesterday in *Wal-Mart Stores, Inc. v. Dukes*, de-certifying a potential class of 1.5 million female employees and former employees of Wal-Mart.

Background of Case

The plaintiffs allege that Wal-Mart discriminated against women in violation of Title VII of the Civil Rights Act of 1964. They seek injunctive and declaratory relief, punitive damages, and backpay on behalf of a putative class of 1.5 million female employees and former employees of Wal-Mart. The plaintiffs claim that local Wal-Mart managers exercise their discretion over employees' pay and promotions in a manner that benefits male employees and has a disparate impact on female employees, and that Wal-Mart's refusal to limit the local managers' authority amounts to disparate treatment of female employees. The District Court (N.D. Cal.) certified the plaintiff class, and the Court of Appeals (9th Cir.) substantially affirmed, concluding that the plaintiffs had satisfied Fed. R. Civ. P. 23(a) and 23(b)(2).

Supreme Court's Decision

In a portion of the case decided unanimously, the Court held that the plaintiffs' claims for backpay were improperly certified under Rule 23(b)(2) because the claimed "monetary relief is not incidental to the [claimed] injunctive or declaratory relief." The Court held that "claims for *individualized* relief (like the backpay at issue here) do not satisfy the Rule" because "Rule 23(b)(2) applies only when a single injunction or declaratory judgment would provide relief to each member of the class."

In a portion of the case decided by a 5-4 margin, the majority opinion defined the "crux" of the case as Rule 23(a)(2)'s requirement of "commonality-the rule requiring a plaintiff to show that 'there are questions of law or fact common to the class.'" The Court identified two methods through which a putative class of employment discrimination plaintiffs could establish commonality: (1) the employer's use of a biased testing procedure to evaluate employees; and (2) "[s]ignificant proof that an employer operated under a general policy of discrimination." The Court found the first method inapplicable, since Wal-Mart had no companywide testing procedure or evaluation method, but rather discretionary decision-making. Turning to the second method, the Court found "a general policy of discrimination" "entirely absent," citing Wal-Mart's policy forbidding sex discrimination. Justices Ginsburg, Breyer, Sotomayor, and Kagan dissented from this part of the majority opinion, stating that resolving the plaintiffs' claims "would necessitate examination of particular policies and practices alleged to affect, adversely and globally, women employed at Wal-Mart's stores," and that Rule 23(a)(2) requires nothing more.

Impact of Case

The *Wal-Mart* decision makes it much harder to certify a Rule 23(b)(2) class where the class members are seeking backpay or other monetary damages that vary widely among them. The decision also is likely to curtail the availability of class actions for claims alleging that employers discriminate in pay, promotion, or other employment decisions where such decisions are not based on a uniform or specific policy.