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### **Dukes v. Wal-Mart Stores, Inc., Timeline** *A Decade of Pre-Trial Litigation in America's Largest Sex Discrimination Case*

#### **2001**

On June 19, six female Wal-Mart workers file *Dukes v. Wal-Mart Stores, Inc.*, a class action sex discrimination lawsuit against Wal-Mart and its Sam's Club division in the U.S. District Court, Northern District of California in San Francisco.

The women charge that Wal-Mart discriminates against them in promotions, job assignments, pay decisions and training, and retaliates against women who complain about such practices. The lead Plaintiff, Betty Dukes, is a cashier at a Pittsburg, Calif., Wal-Mart store. The others worked in California, Illinois, Ohio, Texas and Florida. [Note: U.S. District Court, Northern District of California, later limits the case to California Plaintiffs only.]

The Plaintiffs seek an order to reform Wal-Mart's practices, and to recover lost wages and benefits for all women who have been victims of its discriminatory practices. They also seek punitive damages to be set by the jury at trial.

#### **2002**

Under court-ordered discovery, Wal-Mart is required to disclose internal employment data. That data reveals that more than two-thirds of Wal-Mart's 1 million hourly employees are women, yet women hold fewer than one-third of management jobs, and only 15 percent of store manager positions. Women are paid less than men of equal seniority in every major job category, even though females on average had higher performance ratings and fewer turnovers than men.

The women's attorneys take statements from more than 110 women workers at Wal-Mart stores and Sam's Clubs in 30 states. Under oath, they describe a company-wide system of sex discrimination, typified by the following comments from supervisors:

- Retail is "tough" and not "appropriate" for women.
- Men "need to be paid more than women because men have families to support."
- "God made Adam first, so women would always be second to men."
- "Retail is just for housewives who want to make extra money."
- One woman is told she should "doll up" to get promoted.
- Another is told she got paid less than a lower qualified man because she "didn't have the right equipment."
- Numerous documents show that Wal-Mart's Board of Directors was informed that its diversity efforts lagged behind its competitors and were not effective. The

company's top personnel executive, who authored many of these documents, describes these documents as "lies" he made to get the board's attention.

- Female managers were required to go to Hooters sports bars as well as strip clubs for meetings and office outings.
- Over objections from a female executive, senior management regularly referred to female store employees as "girls" and "Janie Qs."

## **2003**

On April 28, the women submit their evidence and file a motion for class action certification in the U.S. District Court, Northern District of California. [A class action is a suit brought by individuals on behalf of a large group of people with the same basic claims. A judge has to decide if the case meets the legal requirements for a class action. If the requirements are met, the suit automatically covers class members. The case either goes to trial or the claims are resolved before trial in a settlement for the entire class.]

## **2004**

On June 22, the U.S. District Court certifies a national class including all women who worked at Wal-Mart retail stores (including Sam's Club) anywhere in the United States at any time since December 26, 1998. The size of the class is estimated at 1.6 million women, making it the largest civil rights case in United States history. The case is ordered to trial. Wal-Mart appeals the District Court's decision to the U.S. Ninth Circuit Court of Appeals.

A book about the case is published: *Selling Women Short: The Landmark Battle for Workers' Rights at Wal-Mart*, by journalist Liza Featherstone.

## **2005**

On Aug. 8, a three-judge panel from the Ninth Circuit hears Wal-Mart's appeal.

## **2006 - 2007**

After 17 months of deliberations, the Ninth Circuit affirms the District Court's decision, first on Feb. 6 and again in a revised opinion on Dec. 11.

## **2008**

Wal-Mart requests re-hearing *en banc* (in front of a larger panel of appellate judges).

## **2009**

The Ninth Circuit grants Wal-Mart's request for *en banc* review on Feb. 13. The case is argued before a panel of 11 Circuit Judges and is submitted for decision on March 24, 2009.

## **2010**

On April 26, after nearly a decade, the U.S. Court of Appeals for the Ninth Circuit rules in a 100-page decision that female employees who have worked at Wal-Mart stores at

any time since June 2001 are entitled to proceed with a massive class action lawsuit charging sex discrimination by America's largest retailer.

On August 25, Wal-Mart files a petition for a writ of *certiorari* — U.S. Supreme Court review — of the Ninth Circuit's order approving class action certification of the case.

On October 21, attorneys for the Plaintiffs file a brief opposing Supreme Court review of the Ninth Circuit Court's decision granting class action certification.

On Dec. 6, the U.S. Supreme Court announces it will grant review of the Ninth Circuit Court's decision.

### **March 29, 2011**

U.S. Supreme Court Justices hear oral arguments from the attorney for the Plaintiffs and the attorney for Wal-Mart.

Among the arguments made for the women:

- Wal-Mart's uniform pay and promotion policies for its retail store employees fail to provide any application or posting process for promotions to store management or job-related criteria for setting pay or making promotion decisions—standard practices in the American workplace. Instead, Wal-Mart has chosen to adopt and maintain highly subjective policies, which are implemented, monitored, and enforced on a daily basis by its Home Office to ensure consistency in results.
- Personnel decisions are exercised within a corporate culture that is rife with gender stereotypes demeaning to female employees: Wal-Mart executives refer to women employees as “Janie Qs,” approve holding business meetings at Hooters restaurants, and attribute the absence of women in top positions to men being more aggressive in seeking advancement. For example, women like named Plaintiff Christine Kwapnoski were told that men need to be paid more than women because “they have families to support.”
- As Wal-Mart has long recognized, its female workforce has borne the brunt of these subjective policies. Even though its own data shows that its female employees are, on average, better performers and more experienced than their male counterparts, women's pay lags far behind that of male employees in every major job in each of the company's 41 regions. Women at Wal-Mart also face a classic glass ceiling—while women comprise more than 80 percent of hourly supervisors, they hold only one-third of store management jobs and their ranks steadily diminish at each successive step in the management hierarchy.

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