

# SNIFFEN & SPELLMAN, P.A.

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## LABOR AND EMPLOYMENT ALERT

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### **Wal-Mart Stores, Inc. v. Dukes – Class Certification Denied**

Today, the United States Supreme Court overturned (5-4 decision) the Ninth Circuit Court of Appeals' decision in Dukes v. Wal-Mart Stores, Inc. (Case No. 10-277) which granted class certification to current and former female Wal-Mart employees. The proposed class consisted of all current and former female Wal-Mart employees since 1998 impacted by Wal-Mart's alleged company-wide practices that discriminated against female workers (approximately 1.5 million). The Court's ruling means the Plaintiffs cannot proceed as a certified class; rather, each employee must individually proceed against Wal-Mart. In denying class certification, the Court held that there was no commonality of questions of law or fact, because "proof of commonality necessarily overlaps with [the female employees] merits contention that Wal-Mart engages in a pattern or practice of discrimination." Further, the Court determined the statistical evidence Plaintiffs offered in support of Wal-Mart's alleged pattern or practice was insufficient to link the numerous individual decisions on which the statistical evidence was based as to why female employees may not have advanced. Essentially, given the multiple bases for the decisions of individual managers at Wal-Mart stores across the United States, the female employees did not have enough in common for class certification purposes.

As background, the case involves female employees alleging that Wal-Mart had a policy of paying women less than men for the same jobs and giving them fewer promotions. The female employees further seek back pay from Wal-Mart, which the Court explicitly ruled could not be included in such a class action, based on the number of factors that would have to be determined for each alleged Plaintiff. Importantly, the United States Supreme Court did not rule on the merits of Plaintiffs' discrimination claims.

The order is available at the following link: [Dukes v. Wal-Mart Stores, Inc.](#)

News Sources: [CNN](#); [Fox Business](#); [MSNBC](#)

### **Past Issues of the Labor and Employment Alert Posted on Website**

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