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Supreme Court Sets High Bar for Class Action Suits

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The U.S. Supreme Court overturned certification of a class of 1.5 million current and former female employees of Wal-Mart Stores, Inc. in the largest sex discrimination case in history. In a 5-4 decision, the Court found that plaintiffs had not cleared the "commonality" hurdle for class certification set by Federal Rule of Civil Procedure 23(a)(2), which requires parties to prove that claims of putative class members share common questions of law and fact.

Plaintiffs, current or former employees of Wal-Mart, sought judgment against the company on behalf of themselves and a nationwide class of female employees, alleging that Wal-Mart discriminates against women in violation of Title VII of the Civil Rights Act of 1964. Plaintiffs claim that local managers exercise their discretion over pay and promotions disproportionately in favor of men, which has an unlawful disparate impact on female employees.

The U.S. District Court for the Northern District of California certified the class, and the U.S. Court of Appeals for the Ninth Circuit substantially affirmed, concluding that respondents met Rule 23(a)(2)'s commonality requirement. The Supreme Court reversed, holding, among other things, that because the crux of a Title VII inquiry is "the reason for a particular employment decision," plaintiffs' varied factual scenarios rendered their case inappropriate for class treatment. "Without some glue holding together the alleged reasons for those [adverse employment] decisions, it will be impossible to say that examination of all the class members' claims will produce a common answer to the crucial discrimination question." ([Wal-Mart Stores, Inc. v. Dukes et al.](#), No. 10-277, 2011 WL 2437013 (U.S.) (June 20, 2011))

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