

Wal-Mart Faces Class Action for Workers' Compensation Conspiracy

On behalf of Johnston, Moore & Thompson

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A class that could include as many as 6,900 Wal-Mart employees in Colorado is suing the retailer and its insurers in federal court for conspiring to interfere with their [workers' compensation](#)-related medical treatment. They're accusing the companies of violating the federal Racketeer Influenced and Corrupt Organizations Act (RICO) as well as Colorado's Consumer Protection Act.

Attorneys for the employees believe this could lead to class actions against Wal-Mart in other states with similar consumer protection laws, which prohibit employers from dictating the terms under which workers can obtain medical treatment for workplace injuries.

"The court was able to see that the case was really about the overall policy and procedure that Wal-Mart employed," the plaintiffs' lawyer told the National Law Journal in April. "It's a violation of the law for the employer to involve itself -- in any way -- in dictating the care of injured workers in Colorado."

The lawsuit names Wal-Mart, its workers' compensation insurer Home Assurance Co., its benefits adjuster Claims Management Inc., and care provider Concentra Health Services as defendants and co-conspirators.

What Is the Basis for the Claims Against Wal-Mart?

The federal lawsuit, *Gianzero v. Wal-Mart*, is based on claims by Ms. Gianzero and several other employees that Wal-Mart conspired with Home Assurance Co. and Claims Management Inc. to "dictate, withhold, delay, deny and/or interfere with" the type and duration of the medical care they were to receive after being injured on the job. The goal of the conspiracy? To save money.

One of the named plaintiffs, Ms. Jensen, claims that her care was intentionally curtailed after she was struck by a pallet at work in 2007. She appealed her workers' compensation claim to an administrative law judge who granted her request to be given a new doctor.

A physician who worked for Concentra provided affidavits on behalf of the plaintiffs saying that he felt pressured by his superiors to change his recommendations about medical care for injured Wal-Mart employees.

Wal-Mart argued that the class action was unjustified because some of the employees in the class had not suffered any harm from the allegedly unlawful policies, and that others hadn't made their

workers' comp claims until after the policies had been changed. Their arguments were denied, and a U.S. District judge certified the class action in March.

In its defense, Wal-Mart denies the allegations and also points out that, since their policies have been changed, the lawsuit is no longer relevant.

Related Resources:

- ["Rx for DISASTER! Suit Says Wal-Mart Messed With Workers' Med Treatment"](#) (The National Law Journal, April 2, 2010, via Law.com)
- "Wal-Mart Is Sued Over Care" (The Wall Street Journal, July 21, 2010)