

## What Does the Supreme Court Decision in Favor of Wal-Mart Mean?

In one of the most closely-watched cases of the Supreme Court's current term, the justices have delivered a huge victory to businesses trying to fend off costly class action lawsuit filed by employees. It's certainly big news when the U.S. Supreme Court dismisses a class action claim that could potentially have involved over 1.5 million women. This is especially true when the ruling is a 9 to nothing decision. It has been rare in recent years when the Supreme Court agrees on something this important. But the question for you is, "So what! What has this got to do with my company and business?"

The lawsuit claimed that Wal-Mart systematically paid women less and did not provide equal opportunity for advancement. It contended that all women employed by Wal-Mart since 1998 should be part of the class. The court's decision was not about the discrimination itself, but whether the technical rules for forming a class were followed. The court decided that the group could not be certified as a class (a group which has common interests and claims).

To form a class, you have to have so many members that it is impracticable to have separate trials for all of them. The Wal-Mart women certainly met that standard. But the members of the class have to share a well-defined common interest, and it must be clear that resolving the cases of the few actual representatives would effectively resolve all the cases of all the class members. The Supreme Court just didn't see that literally millions of separate employment decisions relating to women in many different jobs could be viewed as meeting the class requirements.

In addition, crucial to those bringing the Wal-Mart case was demonstrating that Wal-Mart had a company-wide discriminatory pay and promotion policy. But what Wal-Mart actually had was a company-wide anti-discrimination policy with pay and promotion decisions delegated to the store level. Plus, it was demonstrated that these policies had been widely distributed and taught to their managers and supervisors.

That, the court decided, just didn't suggest a company-wide policy or practice that would apply to all the members of the class. Michael Droke, an expert on labor and company law at Dorsey and Whitney, a labor law firm in Washington, DC, calls it "a terrific decision for employers." Droke says it frees companies to delegate decisions down to the "shop-floor level" without fearing they will be tarred with accusations of carrying out company-wide bias policies when an individual goes too far. "It helps prevent the use of the class action to attack those kinds of individual decisions."

So what should you do with this information?

Maybe the threat of a huge class action is lessened somewhat, but that doesn't mean that you can't be hit by an expensive individual suit, either about discrimination or pay practices. To fend off such suits, the essential rules remain the same:

1. Have a strong anti-discrimination policy.
2. Publicize the policy – train, train, train!
3. Train managers and supervisors in all aspects of these subjects and how to apply them
4. Enforce the policy – see that supervisors and managers know how to enforce the policy
5. Respond quickly and meaningfully to complaints or reports of violations of the policy
6. Audit regularly. It's not hard to discover discrepancies with regular auditing that will allow you to fix problems before they escalate into lawsuits.

Regular audits—the only way to find out if there's a potential lawsuit hiding in your employment actions. The only way to make sure that employees in every corner of your headquarters and every outlying facility are operating within policy guidelines is through a company-wide audit and survey.

If you're not auditing, someone's probably violating a policy right now. The rub is that for most HR and Operations managers, it's hard to get started auditing—where do you begin?

MuRF Systems has the expertise to assist you with your audit or even to conduct your audit for you. If your organization needs help with any of the issues discussed in this article, let us know. We would be glad to provide just the assistance you need.

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