

# OFFICE OF THE GENERAL COUNSEL

## Legal Advisory

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**Charles F. Robinson**  
General Counsel  
Vice President for Legal Affairs

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### SUMMARY

Supreme Court ruling in closely-watched sex discrimination case is likely to deter large class actions.

If you have any questions regarding the issues raised by the *Wal-Mart* decision, please contact:

**Allison Woodall**  
Managing Counsel  
Labor, Employment & Benefits  
[Allison.Woodall@ucop.edu](mailto:Allison.Woodall@ucop.edu)

**Karen Petrulakis**  
Deputy General Counsel  
Litigation, Labor & Employment  
[Karen.Petrulakis@ucop.edu](mailto:Karen.Petrulakis@ucop.edu)

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## *WAL-MART STORES, INC. v. DUKES* - U.S. SUPREME COURT REJECTS NATIONWIDE CLASS ACTION ALLEGING DISCRIMINATORY PAY AND PROMOTION PRACTICES

On June 20, 2011, the U.S. Supreme Court rejected a nationwide class action brought by current and former female Wal-Mart employees alleging sex discrimination. Seeking to represent 1.5 million current and former female Wal-Mart employees, the plaintiffs had claimed that Wal-Mart allowed local supervisors to exercise their subjective discretion over pay and promotion matters, which disproportionately favored male employees. They also alleged that Wal-Mart had a corporate culture that permitted bias against women, which permeated the local supervisors' discretionary decisions. The plaintiffs relied on statistical evidence about pay and promotion disparities between men and women, anecdotal reports of discrimination from 120 female employees, and expert testimony that Wal-Mart's corporate culture made it vulnerable to gender discrimination.

The U.S. Supreme Court, in a 5-4 decision, concluded that the plaintiffs failed to demonstrate the existence of common questions of law or fact capable of class-wide resolution. The Court stated that Wal-Mart's policy of allowing discretion by local supervisors over employment matters, by itself, could not show that Wal-Mart operated under a general policy of discrimination, even if the discretionary system produced a racial or sexual disparity. Instead, the plaintiffs needed to identify a specific employment practice tying all 1.5 million claims together – and had failed to do that. The lawsuit, the Court said, lacked the glue to hold together the plaintiffs' claims of systemic discrimination and instead sought to sue “about literally millions of employment decisions at once.”

The Court also ruled unanimously that the plaintiffs could not bring class claims for back pay under the class action rule designed for obtaining an injunction against a defendant's future misconduct. The Court held that, in cases seeking individualized monetary relief, the class action should proceed under the rule requiring that each class member receive notice and an opportunity to opt out, and the defendant should have the opportunity to litigate any statutory defenses to individual claims.

In general, this decision will make it more difficult for plaintiffs to pursue large-scale, geographically diverse class actions, not just in employment discrimination cases but also in other types of business and consumer cases. While class actions remain possible and will continue to be filed, they will likely be smaller and more focused as a result of this decision.