

What's Inside?

EA Staff and Board	2
Unemployment Employee Terminated for Failure to Obtain Required License or Certification is Not Eligible for Unemployment Compensation	3
NLRB NLRB Proposes Procedures for "Quickie" Union Elections	4
Health and Wellness Avoiding Allergies	5
Lean Common Problems in Lean: What to Do About Them	6
Training Leadership Responsibilities for Guiding Change	7
Hotline Hits	8
Going Green Green Teams	8
EA Partners Eating Habits that Can Harm Teeth	9

U. S. Supreme Court Rejects Massive Class Action Against Wal-Mart

On June 20, 2011, the United States Supreme Court issued its long awaited decision in *Wal-Mart Stores Inc. v. Dukes, et al.* The plaintiffs in *Dukes* were current or former Wal-Mart employees who alleged that Wal-Mart's local managers exercised their discretion over pay and promotions disproportionately in favor of men, which had a disparate impact on women. They also claimed that Wal-Mart's failure to limit local managers' discretion and authority amounted to disparate treatment of women. They sought injunctive and declaratory relief on behalf of themselves and a nationwide class of female employees and damages. The class potentially included 1.5 million women working at more than 3,400 Wal-Mart stores across the country. The Court found that the case was not appropriate for class certification and ruled that the plaintiffs and potential class members will have to pursue their claims individually, or in smaller groups that have truly common legal claims.

(*Wal-Mart* continued on page 3)



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(Wal-Mart continued from page 1)

Under Federal Rule of Civil Procedure 23, a party seeking class certification must show that the class claims present “common issues of law and fact,” so that a decision on those issues applies to the entire class. The federal district court in *Dukes* certified the class of potential plaintiffs, finding that the plaintiffs demonstrated that Wal-Mart “has acted or refused to act on ground that apply generally to the class,” so that injunctive or declaratory relief would be appropriate for the class as a whole. The Ninth Circuit Court of Appeals agreed, and found that the class members’ individual claims for damages did not predominate over the common issues. The Ninth Circuit also ruled that the case could be managed by selecting and trying a random set of claims for valuation, and extrapolating the results of those claims to the claims not tried.

Justice Scalia wrote the Supreme Court’s main opinion, which focused on the requirement in class actions that all members of the class have common legal claims. In a discrimination case, this means that the alleged bias must have targeted each of the class members. The *Dukes* plaintiffs claimed that Wal-Mart had a “corporate culture” that institutionalized a bias against female workers, “thereby making every woman at the company a victim of one common discriminatory practice.” The Court found that the plaintiffs could not meet this standard because they were suing “about literally millions of employment decisions at once.” Even if class members suffered the same injury, there was insufficient evidence that they suffered that injury for the same reason. The plaintiffs were unable to offer “significant proof that Wal-Mart operated under a general policy of discrimination.” In fact, the Court noted, Wal-Mart’s stated policy prohibiting discrimination, taken together with its decentralization of decisions regarding pay and promotions “is just the opposite of a uniform employment practice that would provide the commonality needed for a class action; it is a policy against having uniform employment practices.” The plaintiffs had not identified a “common mode of exercising discretion that pervades the entire company.”

The Court also concluded that the plaintiffs’ claims for monetary relief (e.g., backpay) were not properly certified because they were not incidental to the claim for injunctive and declaratory relief. The Court also rejected the attempt to prove liability and damages on class-wide basis by statistical extrapolation, finding that it deprived Wal-Mart of its right to assert defenses to individual claims. Four Justices dissented on the part of the ruling regarding commonality. All Justices joined in the ruling regarding the claims for monetary relief. The ruling is likely to limit the filing of mega-class actions in the future, particularly against large companies with decentralized job practices.

(Margaret J. Lockhart, OSBA Certified Specialist in Labor and Employment Law;
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Employee Terminated for Failure to Obtain Required License or Certification is Not Eligible for Unemployment Compensation

On June 22, 2011, the Ohio Supreme Court ruled that when an employee is notified at the time of hiring that obtaining or maintaining a professional license or certification is condition of employment, and the employee agrees and is given a reasonable opportunity to obtain the license or certification, the employee’s failure to comply constitutes just cause for termination, rendering the employee ineligible for unemployment benefits. *Williams v. Ohio Dept. of Job & Family Servs.*, 2011-Ohio-2897.

(Unemployment continued on page 4)



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