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# EMPLOYMENT NEWS ALERT

## *JUNE NEWSFLASH*

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### CAN WALMART AND WOMEN WORK TOGETHER?

*A Class-Action Discrimination Lawsuit Against The Retail Behemoth Exposes A Huge Vulnerability  
For Companies Of All Sizes Nationwide*

The 9<sup>th</sup> Circuit Court of Appeals, sitting in San Francisco, ruled in late April that a sex discrimination lawsuit filed against Walmart in 2001 by 6 female former employees can move forward to trial as a class-action case. The lawsuit is the largest employment discrimination case in U.S. history, now involving more than 1 million women. In its 6-5 decision in *Dukes v. Walmart, Inc.*, the Court indicated that even though the size of the class action is large, mere size does not render a case unmanageable. What may look to the casual observer to be a mere procedural move to get the case going -- there has been nearly a decade of pretrial legal maneuvering by both parties -- masks a much more serious hazard for employers across the country.

The hazard is this -- the ruling leaves companies extremely vulnerable to potential class-action discrimination lawsuits based on nothing more than general and conclusory allegations, a handful of anecdotes, and statistical disparities that bear little relation to the alleged discriminatory decisions, as observed by Judge Sandra S. Ikuta in her dissent. This can be a huge threat, as the standards the federal Courts have imposed to ensure that class-action status has merit have been diminished by this ruling, exposing companies to millions of dollars in litigation expenses and potential damages. A review of the filings that have been posted on the Walmart class action website, [www.walmartclass.com](http://www.walmartclass.com), reveals that Walmart and its management are alleged to have engaged in systematic discrimination, such as lower pay, smaller raises, and limited advancement opportunities. Of course, Walmart's view is decidedly different. As the nation's largest private employer, with 1.4 million employees, it is hard to see how the Court could find that the complaints of just 6 women could translate into class-action status for all female employees across the board, including women who worked for Walmart as far back as 1998 but who left the company before the 2001 lawsuit was filed. The Court's ruling allows these women to remain part of the class. Therein lies the rub -- so to speak, for GCs and HR across the country -- regardless of the size of your company, how do you craft appropriate anti-discrimination policies which account for the reality of potential class action certification for former employees, some of whom have been gone from your company for a decade or more?

#### ***WHAT CAN YOUR COMPANY DO RIGHT NOW?***

***BE PROACTIVE, NOT REACTIVE!*** Once again, timely review and revision of your policies is a crucial step in any litigation avoidance framework. We have the expertise to help you review and implement the right policies to minimize your Company's exposure to this new threat. ***CALL US NOW!***

Brian E. Curtis, Esq.  
Stryker, Tams & Dill, LLP

(732) 277-8261

[becurtis@strykertams.com](mailto:becurtis@strykertams.com)

(973) 491-9500

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