



DUKES REVISITED: A MUCH NEEDED WIN FOR EMPLOYERS

by: Laura K. Sitar, Esq.

In Fall 2010 we highlighted the certification of what appeared to be the largest employment class action in United States history, Dukes v. Wal-Mart Stores. The Dukes case, which was first brought by California employee, Betty Dukes, alleged female employees at Wal-Mart were routinely subjected to sex discrimination in pay, job assignments and promotions. The certified class included more than 1.5 million current and former female Wal-Mart employees in more than 3,400 stores across the United States. Well, the Supreme Court granted review shortly after our newsletter was published and on June 20, 2011 issued its long awaited opinion reversing the Ninth Circuit and denying certification. The decision was a win for employers all around!

The essence of the claim made by the Wal-Mart employees, as summarized by the Court, was that Wal-Mart "operated under a general policy of discrimination." The Court found the claim insufficient to support class certification stating that "other than the bare existence of delegated discretion, respondents have identified no 'specific [discriminatory] employment practice'-much less one that ties all their 1.5 million claims together."¹ The Court further reasoned the lawsuit lacked the "glue" which would hold its claims together and without which it would be impossible to believe that examination of the class members' claims for relief would produce a common answer to the crucial question "*why was I disfavored?*"

While class actions will remain part of the legal landscape, the Supreme Court's decision will undoubtedly have a deterrent effect. The decision requires trial courts to more rigorously examine class action complaints to determine whether a claim should proceed as a class action. Trial courts will be required to look beyond general and conclusory allegations, a handful of anecdotes, and irrelevant statistical analysis (all present in the Dukes case) to determine if standards for certification can actually be met.

About the Author:

A shareholder at Wroten & Associates, Laura Sitar defends medical malpractice, employment, and elder abuse cases. She litigates cases on behalf of doctors, dentists and long-term care facilities involving all types of employment actions including sexual harassment, wrongful termination, retaliation and wage and hour claims. She also provides employment related risk management services to help clients avoid litigation.

Ms. Sitar became an attorney after a 15-year career in corporate management where she directed the human resource function of a 2000 employee, \$100 million region. Since commencing a second career in law 10 years ago, she was a senior associate with a prestigious healthcare defense firm before joining Wroten & Associates, where she is a shareholder.

Ms. Sitar graduated cum laude from Tufts University, in Boston Massachusetts in 1979. She attended Western State University, College of Law, where she graduated summa cum laude and valedictorian of her class in 1998. While at Western State she clerked for Justice William Rylaarsdam on the California Court of Appeals and successfully argued a sexual harassment and retaliation claim before the Ninth Circuit Court of Appeals. She was a recipient of the 1998 Fellowship of the American Board of Trial Advocates. Ms. Sitar has been a member of the California State Bar since 1998 and is admitted to practice in the U.S. District Court for the Central District of California.

¹ *Wal-Mart Stores, Inc. v. Dukes*, No. 10-277, U.S. Supreme Court (June 20, 2011).