

WOMEN BE WARY OF WAL-MART

FACTS about Wal-Mart and Women:

- Discrimination: Wal-Mart Facing Historic Class Action Law Suit
- Health: Wal-Mart Limits Care for Female Employees
- Reproductive Rights: Wal-Mart Limits Availability For Employees and Consumers
- Family: Wal-Mart is Not Family-Friendly

DISCRIMINATION: WAL-MART IS THE SUBJECT OF THE LARGEST CLASS ACTION LAWSUIT IN HISTORY

“I saw myself as trainable, but I saw myself not getting the training. ...I would go home after work, and sometimes I would be wounded, sometimes I would be angry. I would read the Scriptures, I would encourage myself—I didn’t want to come in so full of anger and bitterness and go off on my supervisor and lose my job.” --Betty Dukes, one of the six original plaintiffs in the pending Wal-Mart sexual discrimination class action lawsuit. [Christianity Today, 4/22/05]

Judge Granted 1.6 Million Former and Current Wal-Mart Employees Class Action Status in Gender Discrimination Suit. In June 2004, U.S. District Court Judge Martin Jenkins granted class action status to 1.6 million current and former female Wal-Mart employees in the *Dukes v. Wal-Mart Stores, Inc.* case. The gender discrimination lawsuit alleges that Wal-Mart failed to systematically pay women less and offered women fewer opportunities for promotion. The original case was filed by six employees in 2001 and is the largest workplace-bias lawsuit in United States history. [New York Times, 6/23/05]

- **Judge Martin J. Jenkins Ruled The Women In The Case “Present Largely Uncontested Descriptive Statistics” That The Discrimination Was Systemic.** In his ruling allowing the class action status Judge Jenkins said, “...plaintiffs present largely uncontested descriptive statistics which show that women working at Wal-Mart stores are paid less than men in every region, that pay disparities exist in most job categories, that the salary gap widens over time, that women take longer to enter management positions, and that the higher one looks in the organization the lower the percentage of women.” [Wal-Mart Class Press Release, 6/22/04, <http://www.walmartclass.com>]
- **Judge Calls Wal-Mart Discrimination Case “Historic In Nature.”** The New York Times reported, “While not ruling on the merits of the lawsuit, the judge, Martin J. Jenkins of the United States District Court in San Francisco, wrote that the case was ‘historic in nature, dwarfing other employment discrimination cases that came before it.’ ... The case, *Betty Dukes v. Wal-Mart Stores*, the judge wrote, should be certified as a nationwide class action because the plaintiffs have shown that there are significant common legal and factual issues concerning Wal-Mart’s suspected discriminatory



practices, including gender stereotyping and a culture of corporate uniformity.” [New York Times, 9/23/04]

Wal-Mart Has Challenged Class Action Status of Female Employees. Wal-Mart has appealed the class action status of its female employees in the Duke v. Wal-Mart gender discrimination suit. In August 2005, a three-person panel from the 9th U.S. Circuit Court of Appeals heard Wal-Mart’s argument that the case should be dropped. A ruling is pending, but the appeals process means a final determination could take “months or even years.” [Arkansas Democrat-Gazette, 8/6/05]

- **Wal-Mart Argued For Store-By-Store Analysis, Effectively Shrinking The Data Pool Into Insignificance.** Wal-Mart pushed for data to be tallied at the store level, where managers make decisions about pay. The plaintiffs argue that compensation policies are spelled out in materials distributed to managers companywide, and those managers don’t have sufficient latitude in making pay decisions. “Wal-Mart’s trying to make the study size so small that you can’t learn anything from the data,” said Todd Schneider, a San Francisco lawyer who represents employees in discrimination class-action cases. “If the pool size is small enough, you can’t tell what is going on.” [Arkansas Democrat-Gazette, 8/15/04]

Evidence In Wal-Mart Discrimination Case Showed Wal-Mart Refusing to Pay and Promote Female Employees the Same as Men. In 2003, as part of the case gender discrimination against Wal-Mart, Dr. Richard Drogin, Professor Emeritus from California State University, conducted a study on the wages of female employees at Wal-Mart. Among his key findings:

- Women hourly workers earned up to 37 cents less per hour than their male counterparts.
- Female managers earn nearly \$5,000 less than male managers in yearly salary.
- Women comprise 72 percent of Wal-Mart’s total workforce, but only 33 percent of its managers.
- Women comprise 92 percent of Wal-Mart’s cashiers, but only 14 percent of Wal-Mart Store Managers. [Wal-Mart Class, Plaintiff’s Expert Dr. Richard Drogin’s Statistical Report, <http://www.walmartclass.com/staticdata/reports/r2.pdf>; New York Times, 12/30/04]

In Their Own Words: Wal-Mart’s Female Employees Tell Their Stories in Depositions.

- On a business trip, a female store manager along with several male executives, stopped at a strip club. “Although I had never been in a place like this and had no interest in being there, I had no choice but to stay because I did not have my own car.” [Dukes v. Wal-Mart Inc., Class Member Declarations, http://www.walmartclass.com/public_declarations.html, Los Angeles Times, 6/23/04]
- One woman reported in her deposition that she was told by the store manager, “Men are here to make a career and women aren’t. Retail is for housewives who just need to earn extra money.” [Dukes v. Wal-Mart Inc., Class Member Declarations, http://www.walmartclass.com/public_declarations.html]

Internal Documents Show Wal-Mart Executives Failed to Act on Gender Discrimination.

Bloomberg reported, “Wal-Mart Stores Inc. took no action on internal warnings seven years ago that it was falling short in promoting women, documents in a federal sex-discrimination lawsuit show. The world’s largest retailer didn’t carry out the 1998 recommendations of a diversity task force and disbanded the panel, according to company memos, reports and depositions filed in the case. Two years later, Wal-Mart had a reduced percentage of female managers.” [Bloomberg News, 7/15/05]



- **Expert Says Wal-Mart’s Chances of Losing Discrimination Suit Are “Very, Very High.”** “Wal-Mart’s chances of losing this at trial are very, very high,” says Washington employment attorney Richard Seymour, 63, who has represented workers in cases including a racial discrimination suit against textiles-maker J.P. Stevens & Co. that settled for \$20 million in 1995. “An employer that knows or should have known that its officials have abused their authority over personnel matters to discriminate against women has an immediate duty to end the discrimination.” [[Bloomberg News, 7/15/05](#)]

HEALTHCARE: WAL-MART PLAN LIMITS CARE FOR WOMEN EMPLOYEES

Pregnancy Benefits Under Wal-Mart’s Health Plan Are Limited. Wal-Mart’s current health insurance plan, the Associates Medical Plan (AMP) limits benefits for pregnant women. “The following limitations apply to pregnancy-related treatments: One routine ultrasound per pregnancy is allowed. Routine amniocentesis and alpha-fetoprotein are not covered by the Plan.” [Wal-Mart 2006 Associate Benefits Book, page 35]

Care for Newborn Baby Can Cost An Additional Deductible. Their newborn may be subject to the annual deductible for its care, which ranges from \$350 to \$1000. “Note: newborn charges may be considered the baby’s own, subject to the baby’s annual Deductible and Coinsurance Maximums” [Wal-Mart 2006 Associate Benefits Book, pages 32-35]

Wal-Mart Plans Switch to Health Savings Account Plan. HSAs are tax-exempt accounts that are used to pay for regular health care expenses, in lieu of traditional insurance. According to Wal-Mart’s 2006 OE [Open Enrollment] Magazine, the company will introduce Health Savings Accounts (HSAs) as an option for its employees beginning in January 2006. [Wal-Mart OE Magazine, January 2006, http://walmartwatch.com/img/documents/Wal-Mart_2006_Health_Plan_Changes.pdf]

- **Some Services Not Counted Towards HSA Deductible.** The summary says, “[Y]ou pay the full retail price of prescription drugs until your annual deductible is met.” [Wal-Mart OE Magazine, page 13, January 2006, http://walmartwatch.com/img/documents/Wal-Mart_2006_Health_Plan_Changes.pdf]

HSA’s are Not Family Friendly because of High Deductibles. According to an issue brief on Health Savings Accounts by the Employee Benefit Research Institute, “HSAs are likely to be more attractive to individuals than to families, particularly if some members of the family are significantly healthier than others. Under a high-deductible family plan, no one in the family can have a separate deductible lower than the minimum family deductible.” [EBRI Issue Brief, <http://www.ebri.org/pdf/briefspdf/0904ib1.pdf>]

- **Wal-Mart HSA Qualified Family Plans Have Deductibles of Up To \$6,000.** The Wal-Mart HSA Qualified Plans have family deductibles of up to \$6,000. According to the Wal-Mart plan, “the Family deductible must be met before claims are paid for any individual participant. [Wal-Mart OE Magazine, Page 13, January 2006, http://walmartwatch.com/img/documents/Wal-Mart_2006_Health_Plan_Changes.pdf]

REPRODUCTIVE RIGHTS: WAL-MART LIMITS AVAILABILITY FOR WOMEN

Birth Control and Plan B are NOT Covered. The Wal-Mart Associates’ Medical Plan, under the heading, “Charges Not Covered,” lists “Charges for birth control, such as, but not limited to,



contraceptive drugs, implants, and devices, other than for hormone replacement therapy or Depo-Provera for endometrial carcinoma.” [Wal-Mart 2005 Associate Guide, page 59, http://walmartwatch.com/img/documents/Wal-Mart_2006_Health_Plan_Changes.pdf]

- **The Cost for Birth Control for Wal-Mart’s Female Employees:** According to Planned Parenthood, a month’s supply of birth-control pills costs around \$35, which equals almost four hours’ wages for a full-time “average” worker at Wal-Mart, according to the company. [Planned Parenthood Federation of America, “Your Contraceptive Choices, <http://www.ppfa.org/pp2/portal/files/portal/medicalinfo/birthcontrol/pub-contraception-choices-4.xml>]; Wal-Mart Facts, <http://www.walmartfacts.com/newsdesk/wal-mart-fact-sheets.aspx#a136>;
- **Female Wal-Mart Associates Filed Lawsuit over Failure to Cover Contraceptive Care.** Wal-Mart is a defendant in a class-action suit in federal court in Atlanta brought by female employees seeking coverage for contraceptives. The suit was filed in October of 2001 and is still in litigation. [Minneapolis Star Tribune, 6/23/04]

Wal-Mart Is Actively Trying To Get The Case Decertified And Dismissed. Wal-Mart filed a Motion to Decertify the Class and To Dismiss on November 11, 2005. “Defendant believes that decertification and dismissal constitute the appropriate course of action going forward.” [U.S. District Court for the Northern District of Georgia, case 1:01-cv-02755 Document 131-1]

Wal-Mart Refused to Stock Emergency Contraceptives. For years Wal-Mart refused to stock emergency contraceptives, known as Plan B, in any of its pharmacies. “We do not carry emergency contraceptives,” said Wal-Mart spokeswoman Jacquie Young. “It’s based on business factors. We have to refer our customers to another pharmacy in the community that can help them in a timely manner.” [Dallas Morning News, 4/29/05]

Wal-Mart’s Large Market Share Had Ability To Cut Off Access to Emergency Contraception. In many communities, going elsewhere to get the prescription filled is not an option. In ten towns in Texas, for example, Wal-Mart is the only existing pharmacy. Plan B must be taken within 72 hours of unprotected intercourse to effectively prevent pregnancy. [Supermarket News, 5/9/05]

Wal-Mart Forced to Stock “Plan B” Contraception In Response to “Pressure” From States. In March 2006, Wal-Mart announced a change of its long-standing policy and agreed to stock emergency contraceptives. In its statement announcing the change Wal-Mart said, “Wal-Mart Stores, Inc. today confirmed that all of its pharmacies will begin carrying Plan B contraceptives, effective March 20 [2006]. The company is currently required to sell the product in Illinois and Massachusetts, and pressure to introduce similar mandates is building in Connecticut and New York. ‘We expect more states to require us to sell emergency contraceptives in the months ahead,’ said Ron Chomiuk, vice president of Pharmacy for Wal-Mart. ‘Because of this, and the fact that this is an FDA-approved product, we feel it is difficult to justify being the country’s only major pharmacy chain not selling it.’” [Reuters, 3/3/06; Wal-Mart Press Release, 3/03/06]

Wal-Mart Pharmacist Breaks Illinois Law, Wal-Mart “Probably Won’t Reveal” Disciplinary Action. Illinois law requires all pharmacies to carry and dispense emergency contraception. In Beardstown, IL, the sole pharmacist at a Wal-Mart refused to do so. “Wal-Mart expects our pharmacists to comply with all aspects of company policy and the law,” a Wal-Mart spokesperson said. “Those that



don't are subject to discipline, up to and including termination." The spokesperson indicated that the company would probably not reveal whether it will discipline the pharmacist or not. [*The State Journal-Register*, 2/3/06]

FAMILY LEAVE: IF YOU HAVE A FAMILY, LEAVE

Background on the Federal Family Medical Leave Act. Enacted in 1993, the Family Medical Leave Act stipulates that employers with fifty or more employees must allow eligible employees up to 12 weeks of unpaid leave to care for a newborn or newly adopted child, an ill family member, or themselves if they are suffering from a serious illness. At the end of the leave, the employee is entitled to return to work in either their own position, or a comparable position. [<http://www.dol.gov/esa/whd/fmla>]

- **Garden City, Kansas** In 1999, A Wal-Mart employee was terminated while on sick leave. Wal-Mart agreed to pay \$14,000 to his beneficiaries as a death benefit at the conclusion of the investigation. [U.S. Department of Labor, via Freedom of Information Act]
- **Bedford, Pennsylvania** In December of 2003, Wal-Mart agreed to reinstate an employee and pay \$7,149.84 in back wages. In a letter dated ten days after the payment was to have been made, the Department of Labor sent a letter indicating that they had received no evidence of the payment. [U.S. Department of Labor, via Freedom of Information Act]
- **Bellingham, Massachusetts** In a 2000 conciliation, Wal-Mart agreed to pay \$600 in back wages to an employee after the Department of Labor found they were in violation of the law. [U.S. Department of Labor, via Freedom of Information Act]
- **Nitro, West Virginia** In response to a 2000 conciliation action on the part of the Department of Labor, Wal-Mart agreed to pay a settlement of \$8,500 to an employee in lieu of back wages and reinstatement after the employee was terminated. The documentation indicates that this employee had been previously let go and reinstated with back wages. [U.S. Department of Labor, via Freedom of Information Act]
- **Greenville, North Carolina** In July of 2002, Wal-Mart agreed to reinstate and pay \$459 to an employee in back wages after firing them almost a month before they were due to return to work while on medical leave. [U.S. Department of Labor, via Freedom of Information Act]
- **Stone Mountain, Georgia** Wal-Mart was found in violation of several regulations and initially ordered to pay \$4,791.67 when it placed a former full-time pharmacy technician on the night shift and reduced her hours to part-time after her return from maternity leave. Subsequently, she lost her life insurance. The investigation found that "The firm changed the essential functions of the complainant's job functions upon her return from medical leave by reducing the hours and the number of days that she worked, changing her from a full-time pharmacy technician to a part-time, and reduced her benefits (life insurance)." The technician had been told to go to other locations to get more hours, which she did. [U.S. Department of Labor, via Freedom of Information Act]

Wal-Mart Challenged Georgia Findings. In a letter to Wal-Mart's attorney from October 29, 2003, the Assistant District Director for the U.S. Department of Labor's Wage and Hour Division writes, "The firm was asked to provide payroll records showing the hours worked by Ms. ___ and schedules/timesheets of hours worked at each location during the investigative period. The firm



could not provide the requested information.” The Compliance Action Report shows the amount of the fine reduced by hand to zero. [U.S. Department of Labor, via Freedom of Information Act]

- **Chester, South Carolina** In February of 2001, Wal-Mart was ordered to pay \$7,696 to an employee who was fired without notice while on medical leave. The investigator noted in his report that “Wal-Mart Association, Inc. failed to maintain ___ health benefits during her leave.” [U.S. Department of Labor, via Freedom of Information Act]

Wal-Mart Calls South Carolina Incident “Isolated.” The investigator continues in his report, “Mrs. Echols stated this FMLA inquiry appeared to be an isolated case with the local store manager. She assured the employers future compliance...The employer was very untimely in providing all the required information. However, Wal-Mart legal representative Alisa Echols was extremely cooperative in resolving this FMLA inquiry.” [U.S. Department of Labor, via Freedom of Information Act]

Wal-Mart Fined For Failing to Reinstate Female Employee on Maternity Leave. On June 7, 2005, Wal-Mart was fined \$188,000 by the California Fair Employment and Housing Commission for refusing to reinstate a woman after she completed her maternity leave. The Commission found that Wal-Mart “willfully and consciously disregarded its obligations as a California employer” The woman had been working at Wal-Mart for six years without a blemish on her record when she requested a leave of absence owing to gestational diabetes. Her supervisor approved her leave request. When she was awarded lost wages and compensatory damages for emotional distress, levied an additional administrative fine against Wal-Mart, and ordered the company to distribute a policy in compliance with California pregnancy disability leave law to all managers in the state. [California Department of Fair Employment and Housing, case no. E 200203 M-0774-00-pe, C 03-04-026; Sacramento Bee, 6/14/05]

WAL-MART CORPORATE CULTURE LEAVES WOMEN IN THE STONE AGE

Wal-Mart Blocked Sales “Someday a Woman Will be President!” T-Shirt, said it was “Offensive.” Wal-Mart pulled off its shelves a T-shirt that read “Someday a woman will be president.” “*It was determined the T-shirt was offensive* to some people and so the decision was made to pull it from the sales floor,” Wal-Mart spokeswoman Jane Bockholt said. Ann Moliver Ruben, the 70-year-old psychologist who designed the shirt, said Sharon Higginbotham, a buyer for women’s clothes at Wal-Mart’s national office in Bentonville, Ark., told her the store would not carry the shirt nationwide because the message “goes against Wal-Mart’s family values.” The Associated Press reported, “Ms. Higginbotham did not immediately return messages. Ms. Bockholt wouldn’t discuss what the buyer told Ruben.” [Associated Press, 9/22/95]

