

The High Cost of Low Prices: Gender Discrimination at Wal\*Mart

Over the past 100 years, the Women's Equal Rights Movement has made great strides. Women today can vote, choose any career they want, and attain the highest levels of education. Even with these great advances in equal rights, women still experience a significant discrimination in the workplace that denies them equal opportunities.

This paper will focus on the ongoing, widespread discriminatory practices of retail giant Wal-Mart. Through a review of the available literature on Wal-Mart and its discrimination practices, a detailed look at the *Dukes v. Wal-Mart* court filings, as well Wal-Mart policies and documents, I intend to show that there is a culture of discrimination that pervades the entire company and violates Title VII of the Civil Rights Act of 1964; which prohibits discrimination in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment, on the basis of race, color, religion, sex or national origin.

Wal-Mart is the world's largest retailer and America's single largest private employer; the company is also one of the nation's biggest perpetrators of gender discrimination. "As America's largest company, Wal-Mart has a duty to treat all employees and suppliers with respect. However this is generally not the case. Wal-Mart is currently facing the largest workplace-bias lawsuit in U.S. history for widespread discrimination against women" (Walmartwatch.com). An internal Wal-Mart document entitled, "Minority/Gender Pay Analysis" dated July 21, 2000, specifically states, "Generally, average salaries for females and minority males are below the overall average pay for most jobs. Average pay increases for minority males

and all females are generally below overall average income ratio across most jobs" (Bloomberg, 2005). Table 1 compares the average total earnings of female and male employees. The chart shows the vast discrepancy in the salaries of women compared to men in the same jobs.

**Table 1**  
**Gender-Based Pay Disparities at Wal-Mart – 2001**

<b>Position</b>	<b>Female Salaries</b>	<b>Male Salaries</b>	<b>% Women</b>	<b>Pay Gap</b>
Store Manager	89,300	105,700	14	16,400
Assistant Manager	37,300	39,800	36	2,500
Management Trainee	22,400	23,200	41	800
Department Head	21,700	23,500	78	1,800
Sales Associate	15,100	16,500	68	1,400
Cashier	13,800	14,500	93	700

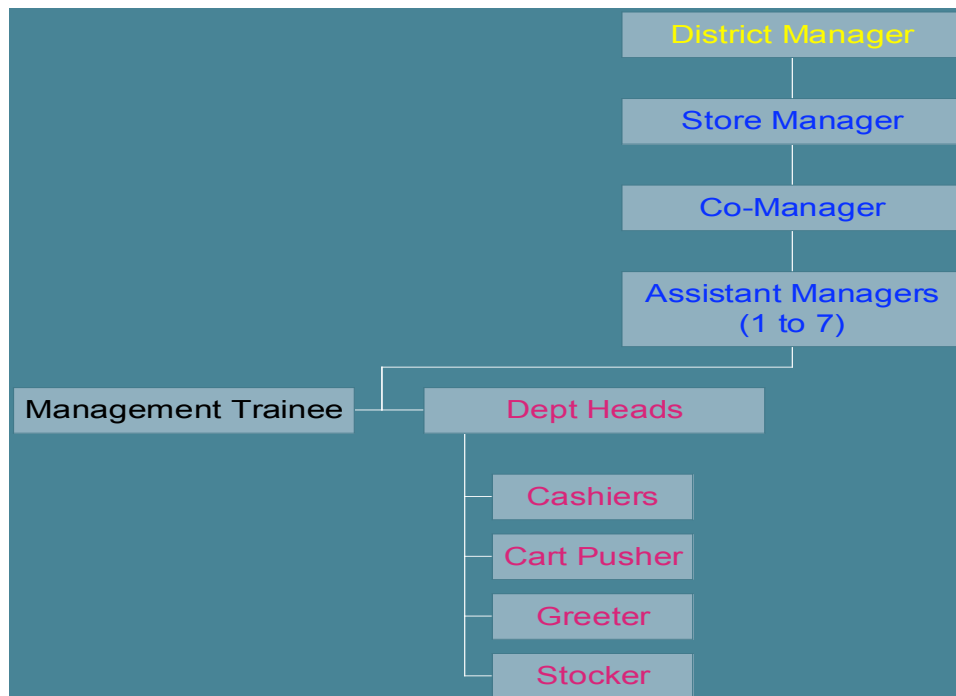
Data: Drogin (2003)

In 2006, the median weekly earnings for fulltime workers over the age of 25 were \$797.00 for men compared to \$627.00 for women of the same category. The wage gap is even wider for Retail salespersons, men average \$1060.00 where women only \$810.00, a 66.2% discrepancy (U.S. Department of Labor). “Wal-Mart employs more than 1.9 million associates worldwide through more than 3,500 facilities in the United States and more than 1,290 units in Mexico, Puerto Rico, Canada, Argentina, Brazil, China, Korea, Germany and the United Kingdom” (Wal-Martfacts.com). More than 700,000 or 65% of all Wal\*Mart employees are

women which makes the company the largest private sector employer of women in the United States (Wal-Martfacts.com). Women work in disproportionately lower paying, hourly positions, about 65% of all hourly employees are women while only about 33% of management employees are women. In 2001, cashiers, the most common Wal-Mart position, earned an average of \$8.23 per hour, an annual average wage of \$13,861 for full-time employment (Wal-MartWatch.com). In the same year the poverty level for a family of three was \$14,630 (US Department of Health and Human Services).

When women are promoted into managerial positions they are disproportionately elevated only to hourly supervisory roles such as Customer Service Manager, which supervises cashiers, and not to higher managerial levels. Table 2 illustrates the gender difference between hourly and salaried managerial positions. CSM (customer service manager), Department Manager and Management Trainees are the main supervisory hourly positions. Chart 1 outlines the job hierarchy at Wal-Mart store locations.

**Chart 1**  
**Wal-Mart Store Job Hierarchy**



Source: Wal-Mart Facts (2007)

**Chart 2**  
**Percentage of Women in Managerial / Supervisory Positions at Wal-Mart  
2001**



Data: Drogin (2003)

*Dukes v. Wal-Mart* is the largest employment discrimination class action suit in American history. Filed in June 2001 in the United States District Court for the Northern District of California, the lawsuit charges “the Arkansas-based company of discriminating in pay and promotions against women who make up about two-thirds of its 1.3 million employees, one-third of its management employees and one-seventh of its store managers. The suit seeks damages for the women and court-supervised changes in Wal-Mart's practices” (Egelko, 2004). The Introduction document for the case states that:

Through its Wal-Mart and Sam's Club divisions, it is the industry leader not only in size, but also in its failure to advance its female employees. There are two workforces at Wal-Mart. By far the largest workforce is female, which comprises over 72% of the hourly sales employees, yet only one-third of management positions. This workforce is predominantly assigned to the lowest paying positions with the least chance of advancement. The other workforce is male. This workforce is the reverse image of the female workforce—it comprises less than 28% of the hourly sales workers, yet holds two-thirds of all store management positions and over 90% of the top Store Manager positions. This disparate distribution of the genders is the result of purposeful discrimination and of practices that serve no reasonable business purpose yet have a disproportionate impact on women. (United States District Court: Northern District Of California)

In June 2004, United States District Court Judge Martin Jenkins in San Francisco granted class-action status to 1.6 million current and former employees marking this case as the largest class-action suit in U.S history. A class action suit allows plaintiffs to represent a wider group of individuals who have similar circumstances. Over 100 current and former Wal-Mart female employees, from hourly workers to former district managers, provided sworn declarations in support of the class action motion. In the declarations the women who worked at Wal-Mart stores in 30 states detailed their personal experiences with Wal-Mart's discriminatory practices, including:

- A female assistant manager in Utah was told by her store manager that retail is "tough" and not "appropriate" for women;
- Another manager in Texas told a female employee that women have to be "bitches" to survive Wal-Mart management, while a Sam's Club manager in California told another woman that she should "doll-up" to get promoted;
- Managers have repeatedly told women employees that men "need to be paid more than women because they have families to support";
- A male manager in South Carolina told a female employee that "God made Adam first, so women would always be second to men";
- A female manager in Arizona was told she got paid less than a less qualified male because she "didn't have the right equipment."

- A female personnel manager in Florida was told by her manager that men were paid more than women because "men are here to make a career and women aren't. Retail is for housewives who just need to earn extra money." (United States District Court: Northern District Of California. No. C-01-2252 MJJ)

In making his ruling Judge Jenkins indicated that Wal-Mart had for the most part failed to dispute the plaintiffs' evidence that women were paid less than men in every region and in most job categories; that the salary gap widens over time even for employees hired into the same jobs; that women take longer to reach management positions; and that "the higher one looks in the organization, the lower the percentage of women" (Curry, 2004). Wal-Mart, which claims it hasn't engaged in gender discrimination, and "the inequalities between its male and female employees resulted from factors other than unlawful discrimination... that women were not interested in and/or not qualified for the higher paying jobs" (Curry, 2004), appealed the June 2004 decision.

On February 6, 2007, the Ninth Circuit Court of Appeals upheld the decision of the lower court and let the class-action status hold. The Ninth Circuit determined that the plaintiffs had shown "(1) sufficient evidence supporting the existence of company-wide policies and practices; (2) expert opinions supporting the existence of company-wide policies and practices; (3) expert statistical evidence of class-wide gender disparities attributable to discrimination; and (4) anecdotal evidence from class members around the country of discriminatory attitudes held or tolerated by management" (Case No. CV-01-02252-MJJ). History of the case is outlined in Appendix 1 (History and Allegations of the Dukes Litigation)

*Dukes v. Wal-Mart* is a landmark case that deserves close watching; it is precedent setting because of the sheer size of the case. Any discrimination suit has the potential to raise awareness of issues such as gender discrimination that can affect the company at every level. Consumers' and shareholders' attentions are focused on the case watching for whatever fallout may come.

“Similar to *Ingram v. The Coca-Cola Company*, *Dukes* is being monitored by some of the nation’s largest institutional investors. In 2000, Coca-Cola settled a racial discrimination class action for \$192.5 million after spending a year sending mixed messages regarding the significance of the suit. Analysts identified the bias suit as a prime reason for the \$100 billion decrease in Coca-Cola’s stock value between the years 1998 and 2000” (*Betty v. Goliath*, 2006).

According to NOW (National Organization for Women), Wal-Mart, “consistent with their pattern of discriminatory and anti-family actions... announced more policies that will hurt employees. The new policies cap wages in certain positions, allow the hiring of more part-time workers in lieu of full-time workers, and revise scheduling practices in a manner that could force some employees to be on-call 24 hours a day. The new wage and work rule policy is intended to weed out the higher-wage, full-time workers, replacing them with part-time employees with lower wages and no benefits” states NOW Executive Vice President Olga Vives (<http://www.now.org/nnt/winter-2007/wal-mart.html>). The capping of wages in some jobs as well as the round-the-clock availability requirement enacted by Wal-Mart will effectively force out employees who have family responsibilities that make the hours impossible, predominantly women. Additionally, long-time employees will be denied salary increases and forced into unreasonable working hours. A statement issued from its Bentonville, Arkansas, headquarters indicated “Wal-Mart is continuing to evaluate its pay practices and announced a new job classification and pay structure earlier this month for its hourly associates. The pay plan is designed to ensure internal equity and external competitiveness.”

Long before the *Dukes* case came to light, Wal-Mart was aware that it had an alarmingly small number of women in managerial roles. In 1996, the company undertook a study that revealed that it had a cultural problem that allowed "stereotypes to limit opportunities offered to

women" (Bloomberg, 2005). The study led Wal-Mart to set up a diversity task force to address the issues. Even after Wal-Mart attempted to make things right through the formation of this task force it "...set aside the study and an accompanying report and took no action to rectify the problems they identified. The report resurfaced only after *Dukes* was filed.

Wal-Mart has a long history of promoting from within; more than two-thirds of its managers started as hourly employees. Hourly jobs are posted within stores, however openings for the management training position that allows hourly employees to move up to salaried jobs were not posted internally. Since the *Duke's* case was filed, Wal-Mart implemented a job-posting system to notify employees of advancement opportunities. As a result, according to the *Dukes* plaintiffs, the company passed over women for promotion in favor of men pre-selected by the incumbent, almost exclusively male, upper-management team. Other policies, such as requiring relocation as a condition of promotion to management, also deter women from advancement in the company (Walmartwatch.com). By 1992, Sam Walton had begun to realize that the relocation requirement had erected a barrier to women. "Traditionally we've had this attitude that if you wanted to be a manager at Wal-Mart you basically had to be willing to move on a moment's notice"... "It really put good, smart women at a disadvantage in our company because at the time they weren't as free to pick up and move as many men were. Now I've seen the light on the opportunities we missed with women" (Walton, 1992).

According to International Labour Organization documents that lay out the company policies with its vendors "Wal-Mart recognizes that cultural differences exist... however, we believe that all terms and conditions of employment should be based on an individual's ability to do the job, not on the basis of personal characteristics or beliefs. Wal-Mart expects its Vendor Partners to have a social and political commitment to basic principles of human rights and to not

discriminate against their employees in hiring practices or any other terms or conditions of work, on the basis of race, color, national origin, gender, religion, disability, sexual orientation or political opinion” (Walmartfacts.com). While Wal-Mart continues to state on its own company maintained website, walmartfacts.com, that it believes in “a diverse and multi-cultural workforce—at all levels” there remains a huge disparity in the fact that on the fifteen member Board of Directors there are only three women, and of the twenty-four Senior officers only four positions are held by women.

*Dukes* is the culmination of a long history of individual sex-discrimination suits, including sexual harassment and pregnancy discrimination, against Wal-Mart, going back at least to 1981. Courts have often ruled for the plaintiffs in these cases; in several sexual-harassment suits juries have awarded employees millions of dollars in punitive damages. Wal-Mart recently settled an EEOC sexual-harassment suit on behalf of a group of Wal-Mart employees in Mobile, Alabama, and several women unconnected to *Dukes* have also filed gender discrimination suits.

Some of the lawsuits against Wal-Mart reflect common grievances cited by working women, inequities hardly unique to Wal-Mart, but that women's advocates rightly find particularly outrageous in the world's largest corporation. For example, a suit filed in Georgia by Lisa Smith Mauldin, a Wal-Mart customer service manager and 22-year-old divorced mother of two, charges the company with sex discrimination because its health plan does not cover prescription contraceptives while it does cover other prescription drugs. Mauldin works thirty-two hours a week and makes \$12.14 an hour, so the \$30 monthly cost of the Pill is a significant burden for her. In September Mauldin's suit was certified as a class action, demanding reimbursement for all female Wal-Mart employees who have been paying for birth control out of pocket since March 2001, and demanding that Wal-Mart's insurance cover FDA-approved

prescription contraceptives in the future. The complaint alleges that the Company's Health Plan violates Title VII's prohibition against gender discrimination in that the Health Plan's Reproductive Systems provision does not provide coverage for prescription contraceptives.

Additionally, "The Company is a defendant in a lawsuit that was filed on August 24, 2001, in the United States District Court for the Eastern District of Kentucky. *EEOC (Janice Smith) v. Wal-Mart Stores, Inc.* is an action brought by the EEOC on behalf of Janice Smith and all other females who made application or transfer requests at the London, Kentucky, distribution center from 1995 to the present, and who were not hired or transferred into the warehouse positions for which they applied. The class seeks back pay for those females not selected for hire or transfer during the relevant time period. The class also seeks injunctive and prospective affirmative relief. The complaint alleges that the Company based hiring decisions on gender in violation of Title VII of the 1964 Civil Rights Act as amended. The EEOC can maintain this action as a class without certification. The Company cannot estimate the possible loss or range of loss which may arise from this litigation" (Wal-Mart 2006 Annual Report).

Finally, an associate who worked as a pharmacist for the company for 10 years and was fired and escorted from the property for allegedly violating company policy and failing to secure the pharmacy, recently sued Wal-Mart. Cynthia Haddad had lodged complaints with the company because she was acting as pharmacy manager, but the company refused to pay her the same amount that they pay males in the same job capacity. She had also filed complaints about controlled drugs disappearing from the pharmacy. In April of 2004, despite her record of positive employee reviews, Haddad was abruptly fired. Wal-Mart claims the reason for her termination was that she had violated company policy and failed to properly secure the pharmacy. Wal-Mart lost this case and was ordered to pay the plaintiff damages.

Bloomberg points out that while Wal-Mart has a long way to go to neutralize its gender discrimination practices, it has:

...changed pay and promotion policies. The company is promoting women at the same rate they apply for positions, says Porter, the

diversity chief, and the company began posting management-trainee openings in stores in January 2003.

Wal-Mart began a formal mentoring program in November 2003. The company ties executive bonuses to meeting diversity goals and mentoring women or racial-minority employees.

In June 2004, the company changed pay scales for hourly workers, limiting the discretion of managers. He wouldn't disclose the cost or number of employees who received raises under the new system. (Bloomberg, 2005)

Wal-Mart controversy goes beyond the courtroom. In May 2002, fifty-one members of the US Congress signed a letter calling on Wal-Mart to address gender discrimination and to disclose its wage data for Congressional review. The letter addressed to CEO Lee Scott followed a high profile campaign labeled 'Love Mom Not Wal-Mart' that coincided with mother's day and called for the disclosure so that Congress can "understand why Wal-Mart pays its women associates less than men". Over 20,000 people signed a pledge to boycott Wal-Mart's Mothers Day products until the company addresses the issues of gender discrimination. Congress' questions and those of women nationally remain unanswered and Wal-Mart continues to discriminate against the majority of its employees.

In the forty-two years since the creation of the EEOC, much progress has been made in the diminution of discrimination in the American labor market, yet gender discrimination continues to affect women adversely as low wages, poor benefits, and insecure jobs remain the foundation of Wal-Mart, the world's largest retailer. Until large international employers like Wal-Mart stop their practices of active discrimination, gender equality will remain stalled and the millions of working poor females, especially working poor mothers, affected cannot have equal footing in the economy and will continue to struggle against considerable odds forcing many to remain dependant – on men, their families, and the government.



## Appendix 1

### **History and Allegations of the Dukes Litigation**

Dukes is the culmination of an extensive history of sex-discrimination lawsuits against Wal-Mart dating back to 1981. These cases consist of sexual harassment suits and pregnancy discrimination cases, including *Mauldin v. Wal-Mart Stores, Inc.*, 2002 U.S. Dist. LEXIS 21024; 90 A.F.T.R.2d. (RIA) 6239 (N.D. Ga. 2002), *Mauldin v. Wal-Mart Stores, Inc.*, 2006 U.S. Dist. LEXIS 23091 (N.D. Ga. 2006)(denying motion to decertify the class and dismiss). Also see *EEOC (Janice Smith) v. Wal-Mart Stores, Inc.*

**MAY 1994** • Betty Dukes, currently employed at the Wal-Mart in Pittsburg, California, was hired as a part-time front-end cashier at the Pittsburg store in May 1994. Within one year of employment, Ms. Dukes had received an excellent 90-day review, promotion to full-time status, and a merit pay raise. She was promoted to Customer Service Manager in June 1997.

**SEPTEMBER 1997** • According to the complaint, discrimination against Ms. Dukes originated in September 1997, and two months later Ms. Dukes complained to her District Manager Chuck Salby. Following her internal complaint, Ms. Dukes experienced retaliation including: 1) discipline for procedures regularly used by male employees without being reprimanded; 2) not allowing her to train for a department manager position; 3) demotion to cashier and being falsely accused of violating company policy while performing a transaction that had been performed many times by Ms. Dukes and other employees in the past without incident; 4) a reduction in hours and hourly wage; 5) not being informed of at least four un-posted promotional opportunities (department and/or support manager positions) for which she would have been eligible but were each filled by males; and, 6) being discouraged from applying for future department manager positions.

**JUNE 2001** • Betty Dukes is one of seven plaintiffs named in the original complaint – Betty Dukes, Patricia Surgeson, Cleo Page, Christine Kwapnoski, Deborah Gunter, Karen Williamson and Edith Arana – each from different stores in California, and each with similar stories of being passed over for promotions, having management training withheld, and being paid less than males for doing comparable work.

**JUNE 2004** • Plaintiffs were certified as a class on June 21, 2004. The class of over 1.6 million includes all women employed or formerly employed at Wal-Mart since December 26, 1998. Wal-Mart has appealed to the U.S. Court of Appeals for the 9th Circuit. The court has heard oral arguments, and a decision is currently pending.  
(Betty v. Goliath, 2006, 5)

### **FEBRUARY 6, 2007**

The ninth circuit court of Appeals, ruled that Wal-Mart must face a class action lawsuit of 1.6 million female workers who are alleging that they were discriminated against in pay and promotions.

(Wal\*Mart Watch.com)

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