

WAL★MARTWATCH

AN INSIDE LOOK AT THE LARGEST CORPORATION ON EARTH **IN DEPTH**

SPRING 2007

GENDER DISCRIMINATION AT WAL-MART

COURT APPROVES 1.6-MILLION-WOMEN-STRONG CLASS ACTION CASE

ON 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.

This decision has been expected for many months. Wal-Mart had hoped the court would rule the plaintiffs must sue individually. Now, barring something remarkable, Wal-Mart will face the largest class action lawsuit in the history of the United States. If prosecuted and found liable, Wal-Mart could face damages upwards of \$10 billion, nearly a full year's worth of profit. *Continued on p 3*



Marc Mirdock

A female cashier at a Wal-Mart in Honolulu, HI.

ABOUT US:

WAL-MART WATCH is a nationwide public education campaign to challenge the world's largest retailer to become a better employer, neighbor and corporate citizen. We bridge the gap between ordinary citizens and community organizations concerned about Wal-Mart's unchecked growth and negative impact on our society. We challenge Wal-Mart to embrace its moral responsibility as the nation's biggest and most important corporation.

BETTY v. GOLIATH

A CLOSER LOOK AT THE *DUKES v. WAL-MART* CASE

Dukes v. Wal-Mart is the largest workplace discrimination class-action lawsuit in United States history and as such, it is extremely complex. Read more about the litigation and court proceedings in our full report, *Betty v. Goliath*, which is available for download on our website.

Click on:
http://walmartwatch.com/blog/archives/betty_v_goliath/

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A Letter from David Nassar, Executive Director of Wal-Mart Watch

Welcome to our first issue of Wal-Mart Watch In Depth.

Thanks to you and others who care about the impact of Wal-Mart on America and Americans, the subject of Wal-Mart has moved to the center of the public debate.

For too long Wal-Mart has evaded criticism of its employment policies by spending millions on soft-toned television and print ads featuring happy "associates" robotically mouthing hollow-sounding statistics about their jobs. The American public is no longer as willing to swallow these lies as they once were. In fact, the McKinsey report [a private report commissioned by Wal-Mart and leaked to Wal-Mart Watch in 2004] cited that between 2-8% of Americans no longer shop at Wal-Mart because of what they have learned about the company's practices.

With the Ninth Circuit Court of Appeals' certification of *Dukes v. Wal-Mart*, the largest discrimination class action lawsuit in history, it is now more likely that the millions of women represented in the case will see justice served. The core issues of the case — pay, promotion, and corporate culture — show that diversity in the workplace are still an issue at Wal-Mart.

We are working on lasting change within Wal-Mart and with your help and support, we can make Wal-Mart better.



David Nassar
Executive Director

KNOW YOUR FACTS ABOUT WAL-MART and GENDER DISCRIMINATION

- Women comprise 92% of Wal-Mart's cashiers, but only 14% of Wal-Mart's store managers.
- Female hourly workers earned up to 37 cents less per hour than their male counterparts.
- "Overall, women earned about \$5,200 less than men, on the average, in 2001. Within the hourly workforce, women earned about \$1,100 less than men, and about \$14,500 less among management employees, in 2001."

All information from *The Impact Fund*, <http://www.walmartclass.com>; *New York Times*, 12/30/04.





Marc Murdock

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“Plaintiff’s expert opinions, factual evidence, statistical evidence and anecdotal evidence present significant proof of a corporate policy of discrimination and support plaintiff’s contention that female employees nationwide were subjected to a common pattern and practice of discrimination,” the court wrote in a 2-1 decision.²

The suit alleges systematic discrimination despite the warnings of an internal diversity task force in 1998, which cautioned the retailer that it was falling short when it came to promoting women.

Sadly, Wal-Mart has already said that they will appeal. This could tie the process up for months and could eventually land the case in the Supreme Court. Meanwhile, justice for millions of women will be postponed.

Perhaps the only thing more disturbing than the statistics cited in the *Dukes* case is discrimination against women seems to be pervasive at Wal-Mart. In their dogged pursuit of ever-lower prices, Wal-Mart exacts a high price from its largest constituency: women.

Let’s start at the beginning: Nearly all of the products for sale in Wal-Mart stores are sourced from developing countries, where women make up the vast majority of factory workers. According to the International Labor Rights Fund, these products “are made by millions of predominantly young women in factories that pay poverty level wages, have forced overtime, routinely cheat workers on pay, continuously increase quotas without pay and create dangerous working environments.” Should a woman in one of these factories ever fall ill, get injured or become pregnant, she seriously risks her job.³

This is not unique to developing countries, however. Wal-Mart employees in the United States also face inadequate health coverage. Lawsuits filed by Wal-Mart employees across the country document the company firing employees while on sick and maternity leave. Wal-Mart’s health plan severely limits women’s access to prenatal care, and does not cover several routine prenatal procedures.⁴ Once a child is born, s/he will most likely join the long list of public healthcare wards: nearly 50% of Wal-Mart employees’ children are on Medicaid or are uninsured.⁵ *Continued on p 8*



IN RECENT NEWS

Top Stories on Wal-Mart and Gender Discrimination

FEBRUARY 6, 2007:
COURT APPROVES CLASS ACTION
SUIT AGAINST WAL-MART

Court Approves Class-Action Suit Against Wal-Mart [New York Times]

Wal-Mart's efforts to block the nation's largest sex discrimination lawsuit suffered a big setback yesterday when a federal appeals court in San Francisco ruled that the case should proceed as a class action. *2/6/2007*

Wal-Mart Loses Bid to Block Group Bias Suit [Washington Post]

The 2-to-1 ruling took no position on the case's merits, but agreed with the lower court ruling that the case *Dukes v. Wal-Mart*, originally filed by six women in 2001, could proceed as a class action against the retailer. *2/6/2007*

Wal-Mart Didn't Act on Internal Sex-Bias Alert, Documents Show [Bloomberg News]

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. *7/15/2005*

Wal-Mart's Gender Gap [Time Magazine]

Gretchen Adams has more than a few bones to pick with Wal-Mart, but she figures its treatment of women is a good place to start. *7/5/2005*

Wal-Mart Gives Women a Lesson: Size Does Matter [Bloomberg News]

That's one of the reasons Jenkins, who is overseeing complaints of sex discrimination at Wal-Mart, is letting some 1.6 million women form one, humongous group if they want to sue Wal-Mart for discrimination in pay or promotions. He rejected Wal-Mart's argument that, because personnel decisions are local and individualized, anyone complaining about them should sue individually. *6/25/2004*

Women say Wal-Mart execs knew of sex bias [USA Today]

Lawyers for women in a sex-discrimination class-action lawsuit against Wal-Mart Stores are laying the groundwork for showing that top executives at the retail giant knew that female employees were paid less and promoted less. *6/24/2004*

Suing Wal-Mart but Still Hoping to Move Up [New York Times]

The way Betty Dukes tells it, it is not for lack of trying that she has failed to move up at Wal-Mart Stores. Despite repeatedly asking her managers how she could advance, she says, the jobs she wanted were filled by men time and time again. *6/23/2004*

Wal-Mart Sex-Bias Suit Given Class-Action Status [New York Times]

A federal judge ruled yesterday that a lawsuit that accuses Wal-Mart Stores Inc. of discriminating against women can proceed as a class action covering about 1.6 million current and former employees, making it by far the largest workplace-bias lawsuit in United States history. *6/23/2004* ■



IT'S NOT JUST ABOUT THE BOTTOM LINE

The Plaintiffs of *Dukes v. Wal-Mart*

DUKES V. WAL-MART, which bears the name of lead plaintiff and current Wal-Mart employee Betty Dukes, was originally started by a woman named Stephanie Odle, 1,000 miles away from the California courtroom where it was certified. Odle was the catalyst for this whole process, and her actions motivated hundreds of other Wal-Mart employees to speak out. This is her story. Excerpted from *Selling Women Short*, by Liza Featherstone, with permission of the author.

One summer day in 1996, working as an assistant manager at the Riverside, California, Sam's Club, a routine moment of confusion dramatically changed Stephanie Odle's view of the company. An hourly worker handed her a piece of paper that someone had left in the receiving office. Odle glanced at it quickly, distracted with the day's many tasks. It was a W-2 form

belonging to a coworker, Mario Arenales, like her an assistant manager. Odle was about to put it somewhere safe so she could remember to give it back to him. But a few numbers caught her eye, and she stared at the tax form in disbelief. Arenales was making \$10,000 a year more than she was. She felt as if she'd been punched in the stomach.

Not only did she and Arenales do the same job, it was also his first year with Sam's Club. Odle had been there for more than five years. Arenales had come from AutoZone, a national care repair chain, and "he didn't

have any of our culture, any Big Box experience," says Odle, still indignant. "And I'd been with the company since 1991."

Odle complained about the disparity to the district director of operations, Phil Goodwin, who told her,

"Mario supports his wife and his two kids." Goodwin, who knew Odle was pregnant, and about to become, like many Wal-Mart workers, a single

Arenales was making \$10,000 a year more than she was. The district director of operations told her, "Mario supports his wife and his two kids."

mother, then humiliated Odle by requiring her to provide him with her personal household budget so he could decide whether or not she deserved to be paid as much as her coworker. Odle obliged Goodwin, itemizing her credit cards, rent, utilities, car and insurance payments, and projected childcare expenses. ("Then that's depressing," she recalled wryly, "when you find out you really don't make enough money.") "At the time," she says, explaining her acquiescence, "you have to remember that he presented this to me like, 'I am doing you a favor. Give this budget to me and I will work

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my hardest for you.' And I didn't think. I was like, 'Okay, great. Thanks!'"

After submitting to this mortifying ritual, Odle got a raise of \$40 a week, which didn't bring her salary even close to Mario Arenales'. "It was nothing," she says now. But her reaction at the time was a divided one: she really wanted to believe the company she loved was doing the right thing, yet the situation didn't seem fair. "One half of [my] mind, I'm like, 'Wow, these guys really helped me out,' and the other half I'm thinking, 'What?!'"

She demanded to know why the three men were allowed to take it and she was not. She never got a good answer.

Over the next three years, Odle was transferred four more times and endured numerous painfully sexist incidents. Working in Sherman, Texas, she and Stephanie Selinger, a fellow female general manager, conceived an idea that would save the store millions of dollars a year... Odle and Selinger recommended closing the tire shop half an hour earlier every day. The district manager dismissed the women's suggestion, telling them flatly that it was out of the question. A few months later, Odle's new area manager, a man, told her, "Starting next week, I want you to close the tire shop at eight." Odle was surprised, and explained that she and Selinger had made this suggestion just a few months earlier and had been firmly rejected. He shrugged, "Guess it's

a man thing. Close the tire shop at eight next week."

That October, Odle was denied the opportunity to take a skills assessment test, which determines an employee's strengths and weaknesses and provides crucial data for future promotion, yet three male colleagues were allowed to take it. When she told her supervisor she wanted to take the test, too, he told her he only had three copies. Odle recalls, "I was like, 'What? Make another copy!' I mean, isn't that the lamest excuse ever?" She demanded to know why the three men were allowed to take it and she was not. She never got a good answer.

Later that month Odle was training hourly workers on a new checkout procedure. In the course of the training exercise, they mistakenly introduced a \$13.47 cash register discrepancy. Odle immediately explained the discrepancy to the accounting department and the store manager, and they were untroubled by the incident. Two days later she was fired, supposedly over the missing \$13.47. Management's real reason for firing her, she charges, was retaliation for her complaints about discrimination and to make room, once again, for a man who wanted her job.

Odle filed a sex discrimination claim with the Equal Employment Opportunity Commission (EEOC) on October 22, 1999. She realized she had to set her young daughter a better example. "I had a little baby, and she's looking at me every day and I'm saying, 'Okay, you know what? She is not going to go through what I have gone through. I refuse. These people are going to change, and I am gonna make them change, and I don't care what I have to do.'" ■



WOMEN'S RIGHTS AT WAL-MART

By Nancy Keenan, President of NARAL Pro-Choice America.

IN 2005, after reports of pharmacists refusing to fill birth-control prescriptions, Illinois Gov. Rod Blagojevich took executive action to protect women's access to contraception. This leadership resulted in a requirement that pharmacies post a sign informing consumers of their right to obtain legally prescribed medication. This was a major step forward for the women of Illinois—and sparked a movement that benefited women in other states.



Nancy Keenan is president of NARAL ProChoice America.

In Massachusetts, a brave trio of women filed suit against Wal-Mart for refusing to carry emergency contraception—this lawsuit, whose supporters included NARAL Pro-Choice Massachusetts, set off a nationwide campaign that ended with Wal-Mart bowing to public pressure and agreeing to stock PLAN B in all of its 3,400 stores – including the 161 stores in Illinois.

We didn't stop with these victories. NARAL Pro-Choice America recognized that corporate giants, like Wal-Mart, could easily ignore the new Illinois rule, so we teamed up with groups like Wal-Mart Watch, and individuals like you, to ensure that the women of Illinois have guaranteed access to birth control.

We mobilized our activists across Illinois to find out if their local Wal-Mart was posting the required signs. Activists saw their action could make a difference - their research will help the Illinois Department of Financial and Professional Regulation guarantee that all pharmacies across Illinois are in compliance.

As these events unfolded and public awareness increased, the Food and Drug Administration (FDA) finally ended three years of deliberate delay and followed its scientific and medical experts' guidance and approved Plan B® for over-the-counter sales for women 18 and over. This decision marked a victory over the political pressure the White House, Congress, and anti-choice groups had exerted on the FDA. Now, as the Illinois watchdog program continues and PLAN B's arrival on pharmacy shelves garners media attention, NARAL Pro-Choice America is launching a national effort, based on the Illinois model, that will empower *Continued on page 8*



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consumers to walk into any Wal-Mart or other pharmacy to ensure that this safe and effective form of back-up birth-control, is available — without harassment, intimidation, or delay. This new campaign is called “Plan B®: Where’s yours?” and has already collected more than 40,000 petitions that will encourage national pharmacy chains to adopt and enforce a written, public, corporate policy requiring all of their stores to stock Plan B®.

Women’s access to birth control, including the “morning-after” pill, is an ongoing battle that NARAL Pro-Choice America, Wal-Mart Watch, and so many others are dedicated to pursuing. If you’ve heard of any women being denied birth control, or know of a pharmacy refusing to dispense the prescription, please let us know, at <http://www.prochoiceamerica.org/choice-action-center/womens-stories/share-your-story.html>. ■

Our great thanks to Nancy Keenan, President of NARAL ProChoice America for contributing this piece.

GENDER DISCRIMINATION AT WAL-MART

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Poor health coverage for women is part of a larger culture of discrimination at Wal-Mart. Nearly all of the women filing suit in *Dukes v. Wal-Mart* describe an informal network among the male management that encouraged demeaning and discriminating behavior against women.

Despite the fact that the company violates the civil and human rights of so many women at every level of its operations, Wal-Mart’s largest customer group continues to be women. Gender discrimination can no longer be tolerated in American companies, and women across the country must take a stand against Wal-Mart’s discriminatory practices. Wal-Mart has a responsibility

to the American public to treat its workers fairly. Large corporations cannot be excused from fair treatment laws, and low prices do not justify worker abuse.

Wal-Mart is a leader in economic innovation, and should be leading the way in treating workers better and behaving as a corporation with a conscience. ■



Marc Murdock

Endnotes

1. *Dukes v. Wal-Mart, Class Member Declarations*, The Impact Fund, <http://www.walmartclass.com>
2. *Dukes v. Wal-Mart Stores, Inc.*, No. C01-02252 MJJ, United States Court Of Appeals For The Ninth Circuit]
2. “What Do Wal-Mart’s Low Prices Mean for Women Globally?” STITCH Issue Paper, International Labor Rights Fund. www.laborrights.org
3. *2007 Associate Benefits*. Wal-Mart Stores, Inc. p 47.
4. Susan Chambers Memo to the Wal-Mart Board of Directors, *New York Times*, 10/26/05. Available at walmartwatch.com/memo



BOOK REVIEW

Nickel and Dimed: On [Not] Getting By in America

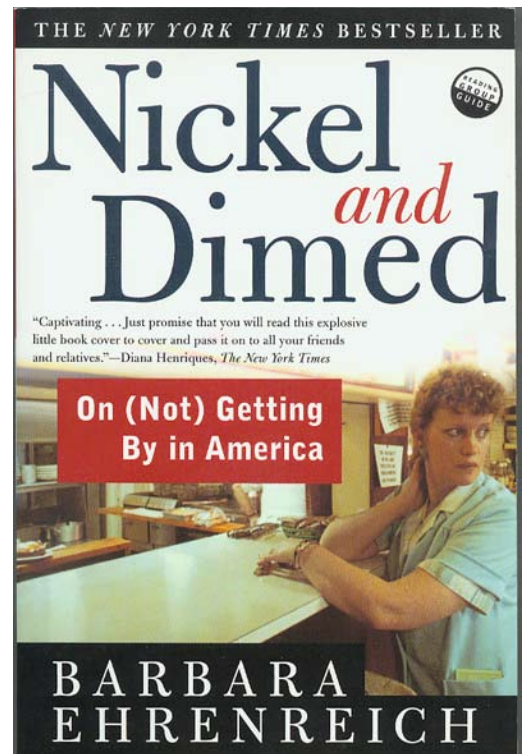
By Barbara Ehrenreich. Metropolitan Books, New York, NY. 2001

Barbara Ehrenreich's *Nickel and Dimed* is a wake-up call. America has forgotten about the working poor. Since the end of "welfare as we know it," the media have avoided the story of the many Americans who piece together two and three part-time jobs, working for six or seven dollars per hour in the restaurants and chain stores that dot our highways.

In a remarkable piece of investigative reporting, Ehrenreich went undercover with the working poor in Florida, Maine and Minnesota. In her book we learn that the fresh-faced Wal-Mart employee who unloads our carts may well be sleeping in a car. America's service economy may be all dressed up, but it has no place to go at night.

Finding housing was the greatest challenge for the author, who spent three months in the highest-paying unskilled work she could find, which included waiting tables, cleaning hotels and homes and working at Wal-Mart. Living in cabins and a trailer park while constantly searching for that mythical affordable efficiency apartment, she also ended up overspending at the ubiquitous weekly motels that provide housing for so many of the working poor.

Ehrenreich is known for her sharp, humorous critique of American capitalism and middle-class life. The child of a father who climbed out of the mines of Butte, Montana, "to the suburbs of the Northeast, ascending from boilermakers to martinis before booze beat out ambition," Ehrenreich is a professional journalist and lecturer, with a Ph.D. under her belt. She is the perfect translator between worlds. ■



WHAT YOU CAN DO

The 9th Circuit Court of Appeals upheld the status of *Dukes v. Wal-Mart*, the largest class-action lawsuit in U.S. history. Public fallout over news of Wal-Mart's systematic discrimination against women will affect how the company deals with the verdict.

Spread the word about the *Dukes v. Wal-Mart* case. Visit our website for more info:
<http://action.walmartwatch.com/page/invite/dukesvwalmart/>



Wal-Mart and Gender Discrimination

Q. How could 1.6 million women be included in the suit? Isn't that too broad? How can they prove discrimination occurred in every case?

A. The class was certified by San Francisco Judge Martin M. Jenkins in 2004. In his decision, Judge Jenkins explains that many plaintiffs' testimonies were very similar to one another, despite the fact that the plaintiffs worked in different stores and in different states. Because of this, Judge Jenkins deemed it safe to assume discriminatory policies were part of a broad Wal-Mart culture and occurred throughout the corporation. Explicitly stating to managers that discrimination and harassment will not be tolerated would help eliminate both these widespread problems.

Q. Wal-Mart is one of the largest corporations in the world. How can such a large company be expected to oversee the behavior of every employee it hires?

The average female Wal-Mart manager earned \$14,500 less than her male counterparts in 2001. [The Impact Fund, <http://www.walmart-class.com>; *New York Times*, 12/30/04]

A. Large companies are not exempt from fair employee treatment laws. In fact, it is the large companies who should set the standard in employee treatment so that smaller companies can follow their example and remain competitive. Wal-Mart is a company world-renowned for its far-reaching oversight: every aspect of the company is closely monitored, from product production to store temperature. Wal-Mart headquarters has control over so many aspects of their stores, surely it can oversee something as important as fair employee treatment.

Q. I know Wal-Mart employs a lot of women. Doesn't this show that they're committed to equal opportunity hiring?

A. It is true that most of Wal-Mart's workforce is female – almost 70%, in fact. However, the vast majority of female employees are in the lowest-paid positions at the company. 92% of cashiers are women, but only a slim 14% of store managers are. As the Dukes case has shown, women are also often harassed or mistreated, including being fired for maternity leave or staying home to care for sick children.

Q. If they win, how much money will the plaintiffs get?

A. Stephanie Odle could have sued Wal-Mart privately and won more money, more quickly. Instead she chose to initiate a class-action suit – a much more time-consuming and less lucrative option. The plaintiffs in the case are only asking for lost pay and punitive damages – not compensatory damages which are what most large payouts are. So each plaintiff would only be awarded money that would have come to her had the discrimination never occurred. The plaintiffs continue to focus on seeking justice, not personal profit. ■



WAL-MART IN THE NEWS NOVEMBER 2006 - JANUARY 2007

Wal-Mart's new voter-drive initiative could backfire [The Hill]

After shunning politics for years, Wal-Mart, the nation's largest private employer, recently launched a voter registration and education campaign targeted at its 1.3 million employees. *11/7/2007*

Wal-Mart to Enter India in Venture [Wall Street Journal]

After years of looking for a way into India's fast-growing but highly protected retail market, Wal-Mart Stores Inc. is trying a backdoor approach. . . *11/28/2006*

S.D. council bans supercenter-size stores [San Diego Union-Tribune]

San Diego yesterday joined a growing list of cities nationwide to place restrictions on large retail developments. *11/29/2006*

Wal-Mart Trips As It Changes A Bit Too Fast [New York Times]

Today, the retailer is expected to announce, based on its own estimates, that sales for November fell for the first time in a decade. *11/30/2006*

Wal-Mart Fires Marketing Star and Ad Agency She Chose [New York Times]

Julie Roehm is out of a top job at Wal-Mart amid allegations, which she denies, that she accepted gifts from ad agencies, maintained a personal relationship with a subordinate and showed favoritism toward potential vendors. *12/8/2006*

The unending woes of Lee Scott [Fortune]

[Lee] Scott has been forced to spend a considerable amount of time fighting persistent attacks by two union-funded anti-Wal-Mart groups Wal-Mart Watch and Wake-Up Wal-Mart who complain about employee pay and benefits. *1/9/2007*

Many Workers At Wal-Mart Don't Use Its Health Plans [Washington Post]

About 90 percent of Wal-Mart employees have health-care coverage, but 43 percent do not get it from the mammoth retailer... *1/11/2007*

Wal-Mart accused of 'organic fraud' [CNMoney.com]

A policy research group is accusing Wal-Mart of "organic fraud," the latest controversy to arise as the world's largest retailer pushes into the organic food industry. *1/18/2007*

Wal-Mart Agrees to Pay \$33 Million in Back Wages [Bloomberg News]

Wal-Mart Stores Inc., the largest U.S. private employer, will pay \$33 million in back wages plus interest under an agreement with the Labor Department. *1/26/2007*

House lawmakers offer bill to ban Wal-Mart bank [Reuters]

The U.S. House Financial Services Committee on Monday introduced a bill that would ban Wal-Mart and other commercial companies from owning a type of bank known as an industrial loan company (ILC). *1/29/2007* ■





WAL★MART**WATCH**

1730 M St. NW. Washington, DC. 20036 <http://walmartwatch.com>

Wal-Mart Watch is a nationwide public education campaign to challenge the world's largest retailer to become a better employer, neighbor and corporate citizen. We bridge the gap between ordinary citizens and community organizations concerned about Wal-Mart's unchecked growth and negative impact on our society. We challenge Wal-Mart to embrace its moral responsibility as the nation's biggest and most important corporation.