

Court to decide if one class-action suit is proper in massive Wal-Mart discrimination case

By Robert Barnes
Washington Post Staff Writer
Monday, December 6, 2010; 10:34 AM

The Supreme Court on Monday accepted what will likely become the highest-profile business case of the year, agreeing to decide whether 1.5 million female employees of Wal-Mart can pursue job discrimination claims in the largest employment class-action suit in the country's history.

The court accepted Wal-Mart's appeal of a decision by the U.S. Court of Appeals for the 9th Circuit in California that the suit could go forward.

The justices will not decide the merits of the claims first filed by six women in 2001. It will be looking at the question of whether a single suit is proper when alleging charges of pay discrimination and lack of promotions spread across thousands of stores in every region of the country.

But that decision could be as important as the veracity of the discrimination claims, and business groups and civil rights activists are squaring off over the implications of a case.

Business groups say certification of a class action puts enormous pressure on a company to settle regardless of whether the charges can be proved, because of the cost of the litigation and the potential award at stake. In the case of Wal-Mart, the nation's largest employer, the amount could be billions of dollars.

But civil rights groups say class-actions are the most effective way of making sure a business ends discriminatory practices and pays a price for its actions.

The case began in California in 2001, when lawyers filed suit on behalf of six current and former female employees led by Betty Dukes, a Wal-Mart greeter in Pittsburg, Calif.

They represent more than 1.5 million women who worked at Wal-Mart and Sam's Club stores since December 1998.

Lawyers for the women told the Supreme Court that a district judge granted the class-action suit after hearing expert evidence that showed both salaried and hourly female employees received lower pay and fewer promotional opportunities than men, and that Wal-Mart has uniform management and personnel policies across its thousands of stores.

Wal-Mart corporate executives "were aware of the adverse impact of Wal-Mart's policies on female employees, but failed to take steps to eliminate these discriminatory barriers," wrote Brad Seligman of the California-based Impact Fund, one of the lawyers representing the women.

He also told the justices that it would be premature for them to get involved in the case now, before eligibility for inclusion in the class has even been finally set.

But Wal-Mart lawyers said the unique size of the potential suit requires the involvement of the Supreme Court.

"The class certified by the district court was estimated to include over 1.5 million former and current female Wal-Mart employees who held different jobs in different stores in different states under the supervision of different managers," lawyer Theodore Boutros wrote in a brief to the court. "The class is larger than the active-duty personnel in the Army, Navy, Air Force, Marines, and Coast Guard - combined - making it the largest employment class action in history by several orders of magnitude."

He noted that Wal-Mart has a corporate policy against discrimination.

The district court's decision was upheld by a 6-5 vote of the appeals court. But a couple of judges wrote dissents sure to get the high court's attention, including one by Chief Judge Alex Kozinski.

He noted that the class included women who held completely different jobs in different regions of the country who were overseen by both male and female supervisors.

The female employees, he said, "have little in common but their sex and this lawsuit."

The case is Wal-Mart v. Dukes. It will be heard in the spring.