

The Equal Employment Opportunity Restoration Act

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In 2000, a female greeter at a California Wal-Mart store named Betty Dukes had her pay cut and was unfairly demoted. Soon after, she learned that female Wal-Mart employees throughout the country had suffered similar injustices. Ten years later, the United States Supreme Court ruled that the women of Wal-Mart could not band together to challenge workplace discrimination.

The *Wal-Mart v. Dukes* decision dealt a devastating blow not only to more than a million women who faced discrimination at Wal-Mart, but also to workers throughout the country who seek fair pay and equal opportunity for advancement. **The Equal Employment Opportunity Restoration Act would restore the right of workers to combat systemic discrimination, reverse the damage done by the Supreme Court and promote effective enforcement of the nation's civil rights laws.**

Wal-Mart Limits Workers' Right to Combat Discrimination

In *Wal-Mart v. Dukes*, the Supreme Court set a dangerous precedent that makes it harder for workers to challenge discrimination. Well-documented evidence demonstrated that women at Wal-Mart were paid and promoted less, despite higher performance reviews and greater seniority than men. Female employees were repeatedly told they did not merit the same pay as men because of their gender. Yet, despite this evidence, the Court ruled that the women could not proceed as a group to challenge the company's discriminatory practices.

The *Wal-Mart* decision makes it difficult for groups of employees to seek justice and enforce their civil rights because it:

- ▶ Finds that the size of the class of women was too big to join their common claims;
- ▶ Imposes a new, stringent standard for showing that the claims of employees are sufficiently similar to each other;
- ▶ Makes it more difficult for employees to challenge discrimination in subjective personnel decisions;
- ▶ Allows companies to hide behind written nondiscrimination policies, despite evidence of pervasive discrimination in practice; and
- ▶ Improperly limits the discretion of courts to allow the use of economic or statistical evidence to calculate the appropriate relief to be awarded to a group.

Restoring Workers' Civil Rights Protections

Laws such as Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Rehabilitation Act of 1973, Section 1981 of the Civil Rights Act of 1866 and the Genetic Information Nondiscrimination Act provide critical protections from workplace discrimination due to race, sex, national origin, color, religion, disability or genetic information. The Equal Employment Opportunity Restoration Act would restore rights under these laws so that:

- ▶ Regardless of the size of a corporation or class, workers are once again able to band together to fight unlawful discrimination and uphold their rights;
- ▶ Workers can join together to challenge subjective employment practices when unlawful bias systematically taints personnel decisions left to managers' discretion;
- ▶ Employers' written nondiscrimination policies are only considered in cases where those policies are consistently and effectively implemented; and
- ▶ Courts can exercise discretion in setting the appropriate monetary relief due to victims of discrimination, which is critical to workers obtaining the remedies guaranteed by civil rights laws.

Helping to End Workplace Discrimination

The effectiveness of important laws like the Civil Rights Act of 1964 and the Americans with Disabilities Act depends on their enforcement. Without the ability to join together to challenge workplace discrimination, individual workers may not be able to effectively assert their rights. That is because individual workers are often more vulnerable to employer retaliation, less likely to find a lawyer, without necessary financial resources, and less likely to be able to collect evidence about patterns of discrimination and systemic discriminatory practices.

Employment Discrimination is on the Rise

According to the Equal Employment Opportunity Commission (EEOC), discrimination claims have risen by 24 percent over the last decade. In 2011, the EEOC received an unprecedented level of nearly 100,000 charges of discrimination. Over the past decade, charges of sex discrimination jumped by 14 percent, and pregnancy discrimination charges were up 35 percent. During that same time period, charges of race discrimination rose 22 percent, and disability discrimination charges jumped by an astounding 56 percent.

Workers Need Tools to Battle Discrimination

It should not be so difficult for workers who suffer discrimination to have their day in court. Congress must reverse the damage done by the *Wal-Mart* decision, which set back the rights of the nation's workers. The Equal Employment Opportunity Restoration Act would restore those lost rights and workers' ability to join together to challenge workplace discrimination.

The National Partnership for Women & Families is a nonprofit, nonpartisan advocacy group dedicated to promoting fairness in the workplace, access to quality health care and policies that help women and men meet the dual demands of work and family. More information is available at www.NationalPartnership.org.

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