

TOP OF THE NEWS

Wal-Mart Sex Discrimination

A Ninth Circuit Court of Appeals panel has affirmed the historic and unprecedented class certification of a sex discrimination claim against Wal-Mart involving more than 1.5 million class members. *Dukes, et al. v. Wal-Mart Stores, Inc.*

Wal-Mart Stores Inc., based in Arkansas, the biggest U.S. private employer, lost a bid to prevent current and former female workers from proceeding as a group with sex bias claims in the largest employment lawsuit in U.S. history.

A federal appeals court in San Francisco upheld a lower court ruling granting class-action status to a lawsuit accusing Wal-Mart of paying women less than men and giving them fewer promotions. That ruling expanded the suit, originally filed by six women, to include all women who worked at Wal-Mart stores from December 1998 to the present, excluding upper management and pharmacy workers.

“Expert opinions, factual evidence, statistical evidence and anecdotal evidence present significant proof of a corporate policy of discrimination,” the appeals court said.

The court’s 2-1 decision is a blow to Wal-Mart, which is facing more than 200 federal lawsuits by employees. While the workers still have to prove their claims at a trial, the ruling provides leverage for a settlement. The workers

are seeking billions of dollars in back pay and punitive damages, court-ordered changes in Wal-Mart’s practices and independent monitoring of company practices.

Wal-Mart has said there is no pay disparity between men and women at most of its stores and it should be allowed to rebut workers’ claims of discrimination individually. Pay and promotion decisions are made locally by store managers, so the experience of workers at one store would differ from those at another, its lawyers said.

Wal-Mart can ask for a larger appeals court panel to rehear the case and can appeal the ruling to the U.S. Supreme Court.

“The case is not over,” said law professor Carl Tobias of the University of Richmond in Virginia. The appeals court may agree to have a larger panel hear the case because of the 2-1 split, he said.

SUPREME COURT OUTLOOK

If the decision is upheld, the Supreme Court may agree to hear Wal-Mart’s appeal because of the importance of the lawsuit, Tobias said in an interview. “The Supreme Court has passed up other similar cases, but there seems to be a lot at stake in this case,” he said. [PE]

Monthly Feedback Form Enclosed!

President's Report

~Dave Miller~

Other States Are Losing Companies To California

Claims that California is losing employment because its businesses are choosing to expand in other states – rather than staying put – are inaccurate, according to a study released Thursday by the Public Policy Institute of California (PPIC).

Previous PPIC research found state employment has not suffered from business relocation. The new study shows that companies shifting jobs to other states is not hurting California.

California’s share of employment in California-headquartered firms dipped during the economic boom years of the 1990s, from a high of 73 percent in 1996 to a low of 67 percent in 2000, but rebounded to 70 percent in 2004.

In other words, California firms expanded their operations outside the state the most during robust boom years.



“Because these were periods of such strong economic growth and expansion in California, it seems implausible that firms were moving operations because of the business environment,” says PPIC research fellow Jed Kolko, who co-authored the study with PPIC senior fellow David Neumark.

“There are other possible drivers to consider such as the growing tendency of all companies to diversify their business locations,” he says.

While some California firms have moved operations to other places in the nation, the effect is more than offset by companies based in other states moving operations and jobs into California – especially recently.

The overall result of business operations moving in and out is that California’s share of national employment has remained roughly constant – and even risen between 2000 and 2004, when concerns about the business climate were raised most strongly.

“Overall, the two-way dynamic more than cancels out employment losses,” says Mr. Kolko. [PE]

Your most unhappy customers are your greatest source of learning. — Bill Gates

Anti-fraternization Policy Unlawful

Employers may stop their workers from fraternizing if it's for fun but not if it's to discuss working conditions, a U.S. appeals court ruled Friday.

A three-judge panel found that an anti-fraternization policy of the security-services firm Guardsmark intruded into federal labor law that gives workers the right to organize and to "engage in other concerted activities."

At issue was the meaning of "fraternize" — which can refer to mingling fraternally or romantically — and which definition fit in the context of the company's rule that employees must not "fraternize on duty or off duty, date or become overly friendly with the client's employees or with co-employees."

After looking up "fraternize" in at least half a dozen dictionaries, the judges declared that "every one of these dictionaries lists fraternal association as the primary definition; social and intimate associations are secondary."

As a result, the court overruled the National Labor Relations Board, the U.S. agency charged with interpreting labor law. The NLRB upheld Guardsmark's policy in June 2005, saying workers would reasonably read it as applying to "personal entanglements" and not to their legal rights.

Craig Becker, an attorney with the Service Employees International Union whose Oakland local brought the action on behalf of its 350 to 400 San Francisco Bay Area members at Guardsmark, hailed the ruling.

Ed Young, an attorney for New York-based Guardsmark, said the company was reviewing its options. [PE]

DRIVING MAY INCREASE RISK OF SKIN CANCER

Construction workers, landscapers and other workers who spend significant time outdoors aren't the only ones who need to worry about sun exposure. People who spend a lot of time on the road — whether work-related or otherwise — may be at greater risk of getting skin cancer as well.

A new study conducted at the Saint Louis University School of Medicine examined the incidence of left-sided skin cancers in patients along with their driving trends. The initial findings showed a correlation between time spent driving and a higher incidence of left-sided skin cancers, especially on sun-exposed areas in men.

Commuting with the driver-side window open and having a light skin complexion also increased the risk of left-sided skin cancer.

MEN HIT HARDEST, STUDY FINDS

The study also found a significant number of skin cancer cases were the result of cumulative sun exposure rather than the more common type of melanoma that occurs from intense, intermittent sun exposure.

There are protective measures to take. Wearing sunscreen (SPF 15 or higher) and protective clothing while driving, and tinted windows and UV filters may help reduce the risks. [PE]

AB 1825 SHPT Quarterly Seminar Sexual Harassment Prevention Training

The Visalia Chamber of Commerce and Pacific Employers, will jointly host the state mandated Supervisors' Sexual Harassment Prevention Training Seminar & Workshop with full breakfast on **April 18th, 8:00am—10:30am**, at the Lamp Litter Inn in Visalia.

Call the Visalia Chamber - 734-5876
for reservations.

\$25 for Pacific Employers and Chamber members
Certificate – Forms – Guides – Full Breakfast

Carpel Tunnel Link Questioned

Computer programmers, office workers, college students and Internet addicts everywhere may be able to breathe a sigh of relief: There is better evidence that genetics, rather than hand use, is the cause of carpal tunnel syndrome (CTS).

A new study presented at the 74th annual meeting of the American Academy of Orthopaedic Surgeons in San Diego indicates that the causal link between CTS and repetitive use of the hands is much weaker than has been assumed.

"The idea that CTS is related specifically to typing or overuse of the hands in general is pervasive in modern society," says David Ring, senior author of the study. Mr. Ring is an assistant professor of orthopaedic surgery and a hand and upper extremity surgeon at Massachusetts General Hospital in Boston.

"It is commonly accepted as true, but according to the scientific evidence, the link between hand use and carpal tunnel syndrome is overstated and may be inaccurate," he says. "In contrast, there is strong evidence for an inherent, genetic risk for CTS. CTS sufferers are most likely innocent bystanders and should not be blamed for their illness."

Patients with CTS experience hand numbness, and eventually develop weakness and atrophy of some of the small hand muscles that control the thumb.

Carpal tunnel syndrome remains poorly understood, says the Academy. Pressure in the carpal tunnel (a tunnel formed by the small wrist [carpal] bones and the transverse carpal ligament) is involved in the pathophysiology, and release of the pressure by dividing the transverse carpal ligament stops the process. The cause of the increased pressure, however, remains unknown in the vast majority of patients. [PE]

Monthly Feedback Form Enclosed!



Human Resources Question with Candice Weaver

THE MONTH'S BEST QUESTION

Big Change For NLRB?

Q: "With the Democrat majority in the US Congress, is the mood more 'pro-union?'"

A: Yes, and the deceptively named "Employee Free Choice Act" (EFCA), is a sample new legislation that has a chance of becoming law under the new congress. The EFCA, introduced into the U.S. House of Representatives on February 5, 2007, would amend the National Labor Relations Act (NLRA) to change dramatically the world of both union organizing and bargaining over first time labor agreements. The proposed law, which also will soon be introduced into the U.S. Senate, would constitute the most significant change to the NLRA in its over 70-year history.

The EFCA, in general terms, would make five substantial changes to the NLRA. The key provisions of the law are:

1. A union can be certified as the representative of a unit of employees through either an election or through a majority of employees signing union authorization cards. The law requires the NLRB to develop model card authorization language and to establish procedures for establishing a card check process.
2. If a union is certified and if the employer and the union cannot reach agreement on a first contract after 90 days, either party can request assistance from the Federal Mediation and Conciliation Service. If such assistance does not result in a contract within 30 days, the matter can be referred to binding arbitration. The results of the arbitration will be binding on the parties for two years.
3. Civil penalties of up to \$20,000 per violation will be established against employers found to have willfully or repeatedly violated employees' rights in either a campaign or in relation to a first contract.
4. If an employer unlawfully discriminates against an employee in a campaign or in relation to a first contract, any back pay that results will be trebled.
5. The EFCA expands the circumstances in which the NLRB should seek injunctive relief against an employer, including in circumstances where there is simply "reason to believe" that the employer has discharged, threatened to discharge, or engaged in conduct that significantly interferes with employee rights during an organizing campaign or a first contract situation.

The EFCA, if passed, will dramatically change both the legal landscape and the economic balance of power between labor and management on first labor contracts, as well as the effect of those contracts upon subsequent agreements. Unions are fully aware that they will be more successful in increasing their numbers through the card check process and that the mandatory arbitration process will protect them from failing to gain a first contract. That is why they see the EFCA as the most important legislation that has been before Congress in years. [PE]

EMPLOYMENT SEMINARS

The Small Business Development Center and Pacific Employers will host the series at the Tulare-Kings Builders Exchange on the corner of Lover's Lane and Tulare Avenue in Visalia, CA. RSVP to Pacific Employers at 733-4256 or the SBDC, at 625-3051 or fax your confirmation to 625-3053. The mid-morning seminars include refreshments and handouts.

2007 Topic Schedule

◆ **Equal Employment Fundamentals** - Harassment & Discrimination in the Workplace - The seven (7) requirements that must be met by all employers.

Thursday, March 15th, 2007, 10am - 11:30am

◆ **Safety Programs** - Understanding Cal/OSHA's Written Safety Program.

Thursday, April 19th, 2007, 10am - 11:30am

◆ **Family Leave** - Federal & California Family Medical Leave, California's Pregnancy Leave, Disability Leave, Sick Leave, Workers' Compensation, etc.; What are the Pitfalls & How do you handle them?

Thursday, May 17th, 2007, 10am - 11:30am

◆ **Wage & Hour and Exempt Status** - Overtime, wage considerations and exemptions.

Thursday, June 21st, 2007, 10am - 11:30am

◆ **Hiring & Maintaining "At-Will"** - From the thought to hire to putting to work, we discuss maintaining procedures that protect you from the "For-Cause" Trap!

Thursday, July 19th, 2007, 10am - 11:30am

◆ **Record Keeping** - Forms, Posters, Signs, Handouts, Fliers - Just what paperwork, posters, flyers and handouts does an Employer need?

Thursday, September 20th, 2007, 10am - 11:30am

◆ **Guest Speaker Seminar** - Annually we bring you a speaker for a timely discussion of labor relations, HR and safety issues of interest to the employer.

Thursday, October 18th, 2007, 10am - 11:30am

◆ **Discipline & Termination** - The steps to take before termination. Managing a progressive correction, punishment and termination program.

Thursday, November 15th, 2007, 10am - 11:30am

These morning seminars are free of charge and include refreshments and handouts.



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Wal-Mart Mea Culpa Saves Millions

Wal-Mart's mea culpa in a case involving overtime pay for thousands of workers cost it tens of millions of dollars, but may have saved the company millions more, according to legal experts.

This January, the giant retailer reached an agreement with the Department of Labor to pay \$33 million in back wages and interest to 86,680 employees who were not properly compensated for overtime under the Fair Labor Standards Act. The company reported itself to the federal agency two years ago when it found errors during an internal review.

The company admitted that it failed to include bonuses and other incentives when calculating regular pay, which is then used to determine overtime pay. It also set the regular rate on a biweekly rather than weekly basis and didn't give appropriate overtime payments to managers in training.

"We want our associates to know that the situation has been fixed, that overtime calculations now are being done correctly, and that we've added safeguards to our payroll processes to make sure these types of errors don't happen again," said Sue Oliver, senior vice president of the Wal-Mart people division. "We are committed to our associates and we apologize to them for this error."

Wal-Mart says that it went back five years, instead of the two years required by the law, to settle underpayments. The average amount that will be paid in back wages is \$386 per worker. Salaried nonexempt managers in training will get an average of \$843. Some workers will receive much higher payments.

The company also says that it found that 215,000 workers were overpaid but that it won't ask for the money back. [PE]

New Privacy-At-Work Ruling

A federal appeals court changed recently and said employees have a right of privacy in the contents of their workplace computers -- but employers who have an established policy of monitoring those computers retain the right to seize the files and turn them over to police.

This new ruling set a more employee-friendly precedent for future cases than the August 2006 decision, which found that workers had no constitutional privacy rights in computers that their companies owned. [PE]

FREE & UNLIMITED CONSULTATION?

Yes FREE! A benefit of Pacific Employers' Membership is Free, Unlimited, direct, phone consultation on labor, safety or personnel question on the Pacific Employers' Helpline at: (559) 733-4256 or Toll Free (800) 331-2592.

A Blow to Overregulation

If small businesses were to add a third certainty in life--beyond death and taxes--it would probably be federal regulations. There are currently 192,000 federal regulations on the books, and more than 500,000 guidance documents. The number of regulations has been increasing by approximately 4,000 annually. Total annual paperwork compliance time: 10 billion hours. Total annual price tag for compliance: \$1 trillion.

Given the enormous impact of regulations to the bottom lines of small businesses, one important blow to overregulation went relatively unnoticed, when recently, President Bush amended an Executive Order that will help tame our out-of-control regulatory system. [PE]