

## Supreme Court tosses Wal-Mart discrimination suit

By **EMILY ROACH**

*Palm Beach Post Staff Writer*

Wal-Mart no longer faces a massive lawsuit from passed-over female workers because the U.S. Supreme Court ruled Monday that the lawsuit couldn't lump together 1.5 million women and claim their situations were the same.

The giant retailer prevailed in the largest sex discrimination lawsuit before it reached trial - and the ruling makes it more difficult to mount class-action suits against other large corporations .

Three women who worked for Wal-Mart in Palm Beach County and the Treasure Coast had joined the lawsuit, claiming they were dissuaded from applying for promotions or passed over and were paid less than male counterparts who had similar or less experience.

Gretchen Adams, who was transferred to a Greenacres store after filing complaints in Las Vegas about years of lower pay than male counterparts and being passed over for promotions, said a district manager called her a "worthless broad" because of her complaints. She quit six months after the class-action lawsuit was filed, saying she had discovered pay discrepancies over her career were not "flukes."

However, in a 5-4 majority opinion written by Justice Antonin Scalia, the court said the women who sued had not proven a companywide policy of discrimination in pay and promotion. Justice Ruth Bader Ginsburg and the court's three other liberal justices, including its two other women, said there was more than enough to unite the claims.

All of the justices agreed that the lawsuit as filed did not allow the women as a class to sue for back pay.

Some employment and civil rights attorneys said it was a break for big businesses, allowing discriminatory workplaces to continue unchecked simply because they had no overt policies of discrimination. **However, West Palm Beach employment lawyer Sally Still, usually on the side of employers in legal battles, said discrimination cases will continue, including against large corporations.**

"The rights are still there. Women still have the opportunity to bring their cases forward. It just needs to be a more succinct group," she said. "I just don't really see it as a blow for women's issues so much as a reflection of the unwieldy natures of such a huge class action."

Fort Lauderdale lawyer William Amlong, who represents workers and won a sexual harassment case before the Supreme Court against the city of Boca Raton when he represented two female lifeguards, said the ruling doesn't change the discrimination happening at Wal-Mart.

"If you had a company that was really devoted to diversity and the promotion of women, you would not have a standardless criteria for selecting people to promote,"

Amlong said. "If you want to promote women, then you need to have objective criteria they can meet."

But most workplace discrimination is fought on a case-by-case basis, he said, and there is a large group of lawyers and workers willing to continue. Fighting as groups allows workers to surmount the cost burdens of fighting large corporations, he said.

The justices did not rule on the plaintiffs' core claims that they were victims of discrimination.

"The court's ruling erects substantially higher barriers for working women and men to vindicate rights to be free from employment discrimination. The ruling does not, however, address whether Wal-Mart committed sex discrimination against its women employees," Jonathan Soohoo of Turner Strategies said in a statement released for the coalition of lawyers in the case.

Part of the lawsuit's argument was that while Wal-Mart didn't have a stated corporate policy of discrimination, by delegating employment decisions to local managers, it allowed discrimination to happen across the company.

With 2.1 million workers in more than 8,000 stores worldwide, Wal-Mart could have faced billions of dollars in damages if it had to answer claims by the huge group of women.

Now, the small group of employees who brought the case may pursue their claims on their own, with much less money at stake and less pressure on Wal-Mart to settle. Two of the named plaintiffs, Christine Kwapnoski and Betty Dukes, vowed to continue their fight despite disappointment about the ruling.

"We still are determined to go forward to present our case in court. We believe we will prevail there," said Dukes, a greeter in Pittsburg, Calif.

"All I have to say is when I go back to work tomorrow, I'm going to let them know we are still fighting," said Kwapnoski, an assistant manager at a Sam's Club in Concord, Calif. Both women spoke on a conference call with reporters.

Though Wal-Mart won the class-action battle, it should be prepared for more complaints, **said Still, the West Palm employment lawyer.**

"I think Wal-Mart is still susceptible to having its policies challenged," she said. "I don't think that's going to change just because they're going to have to reformulate the class."

*The Associated Press contributed to this story.*