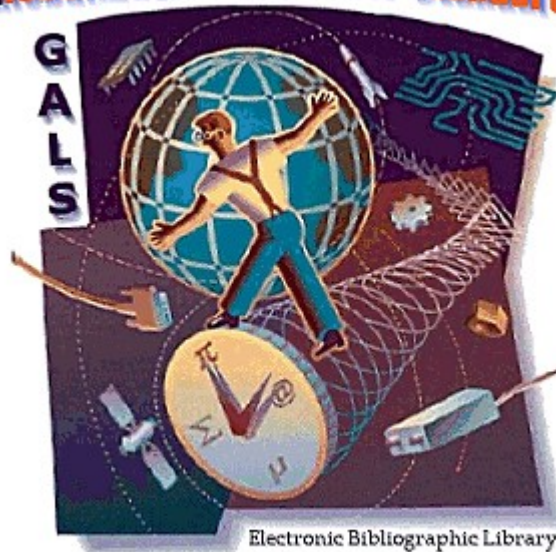


Globalization and Labor Standards



GALS Newsletter

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Short Takes

**Brief updates on labor law developments
In different parts of the world**

Dukes v. Wal-Mart Gender Discrimination Class Action Update

The gigantic retail store, Wal-Mart, faces a gigantic discrimination lawsuit in the United States. Last July, the Ninth Circuit Federal Court of Appeals decided that a lawsuit alleging that Wal-

Mart had discriminated against 1.5 million current and former female employees could proceed as a class action. Wal-Mart has been accused of systematically failing to promote qualified female employees to managerial positions, and paying women less than men who perform the same jobs.

In a class action lawsuit, a small group of “named plaintiffs” bring a lawsuit on behalf of a larger group of similarly situated individuals. In the Dukes case, six named plaintiffs are supported by declarations from over 100 female employees, who allege a pattern of gender discrimination affecting 1.5 million current and former female employees. The court decided that the class representatives’ claims are typical of claims by other similarly situated female employees. The court also decided that the plaintiffs properly alleged a common policy by Wal-Mart, affecting all class members. In the decision, *Dukes v. Wal-Mart*, 603 F.3d 571 (9th Cir. 2010), the court did not decide whether or not Wal-Mart was guilty of discrimination, but it did permit the case to proceed as a class action – and this decision has important implications for the Wal-Mart employees and for class action employment lawsuits more widely. If the Wal-Mart is ultimately found liable, the damages could be in excess of one billion dollars.

Class action lawsuits have become increasingly common in employment cases in the U.S. in recent years. They have been used to hold employers liable minimum wage violations, failure to provide rest breaks, discrimination claims, and other violations of worker protective statutes.

The prevalence of class actions is in part due to the fact that they are seen as an alternative to traditional union organizing, which has stalled under management pressure and unfriendly labor laws. Also, plaintiffs and their attorneys often prefer class actions to individual lawsuits, because damages in individual lawsuits would be too small to justify the time and expense of litigation. Furthermore, in discrimination class actions, unlike in individual discrimination actions, plaintiffs can prove discrimination by showing statistical patterns of discrimination rather having to prove subjective discriminatory intent of individual managers.

The Dukes decision, which Wal-Mart has appealed to the U.S. Supreme Court, addressed several novel legal issues that will affect class actions other employment-related cases. To proceed as a class action, a case has to have common issues of law and fact. In the Dukes case, the court held that decentralized and subjective hiring and promotions is compatible with the “commonality” component necessary for class certification. In other words, the fact that thousands of store managers made the hiring decisions on their own does not preclude the existence of a common policy. In fact, the decision to delegate authority to store managers can itself be a common policy that permits discrimination.

In addition, the court noted that class actions with millions of plaintiffs are possible, because “mere size does not render a case unmanageable.”

The court remanded several important issues to the lower court. First, the court noted the possibility that class certification was not appropriate on the issue of punitive damages. It also raised some questions about whether the class should have included employees who were not employed on the day the case was filed.

Since the decision, criticism of Wal-Mart has escalated. An internal Wal-Mart report from 1995 was leaked to the press. The report found that Wal-Mart had a shortage of female managers and that women earned significantly less than men employed in the same positions, and it predicted gender discrimination lawsuits. Critics use that as evidence that Wal-Mart knew of the gender disparity but did not take measures to remedy the situation. Wal-Mart has also been found liable in several multi-million dollar cases involving allegations of requiring employees to forego rest breaks and work overtime hours without compensation.

Country-Specific Case Studies

White, Linda, "The United States in Comparative Perspective: Maternity and Parental Leave and Child Care Benefits Trends in Liberal Welfare States", *Yale Journal of Law and Feminism* v. 185 no1 (2009) p. 185-232

Abstract:

This article examines the policies of maternal and parental leave and early childhood education and care (ECEC) in liberal welfare states. The author begins by describing some parenting and childhood policy norms in liberal welfare states, as well as contrasting these with social democratic regimes and conservative welfare regimes. In liberal welfare states, policies are made under the presumption that the market will take care of the majority of social needs, and the state should only step in as a gap-filler. The author then compares maternal and parental leave and ECEC policies in five liberal welfare states: Australia, New Zealand, the United Kingdom, Canada and the United States. Each state's ability to both encourage maternal workforce participation and reconcile work/family life is then compared, based on various factors. Finally, the author notes that the differences between the five countries' maternal and parental leave and ECEC programs are not as stark as many believed, and in particular, the countries have shared a recent positive shift in valuing and reinvesting in these programs. However, due to the resistance on the part of business and industry, and perhaps due to a societal resistance to providing state support for childrearing among the poor, the U.S. remains an outlier in its lack of federally mandated paid parental leave.

Subjects: [Anti-Discrimination](#), [Country-Specific Case Studies](#), [Employment Law](#), [Health and Safety](#), [Women's Rights](#)

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Flexibilization

Wang, Jovita T, "Article 14 of China's New Labor Contract Law: Using Open-Term Contracts to Appropriately Balance Worker Protection and Employer Flexibility", *Pacific Rim Law & Policy Journal* v. 18 (April 2009)

Abstract:

This Comment begins by noting that China's rapid growth and transition to a market economy has resulted in growing inequality and widespread labor abuse. In response to domestic and

international pressure to address these issues, China enacted the 1994 Labor Law. As a result of continued labor abuses, the Chinese government enacted the Labor Contract Law (LCL) in 2008. This new law clarifies the requirements for a contractual employment relationship, stipulates penalties for violations for the law, and protects workers through encouragement of open-term contracts. Foreign companies and investors have expressed concern that Article 14 of the LCL, which limits employers' ability to use fixed-term employment contracts and encourages open-term contracts, will be unfairly enforced against foreign employers and will increase costs by limiting the business sector's ability to expand and contract. While these concerns are valid in light of the effect of similar labor laws in South Korea, the author explains that the Chinese law provides a clearer, more flexible set of standards than the South Korean laws. Further, enforcement of the new law has not unfairly targeted foreign employers; it has been primarily enforced against domestic employers. The author concludes that the law and its clarifying regulations filled much-needed gaps left by the 1994 labor law and, if enforced appropriately, will aid China's development.

Subjects: [Country-Specific Case Studies](#), [Employment Law](#), [Flexibilization](#), [Labor Mobility](#)

Workplace Discrimination

Judge, John, "International Employment Discrimination and Racketeering in the Global Economy", *Texas Bar Journal* v. 72 no3 (2009) p. 192-199

Abstract:

This article examines the legal implications of a particular business model favored by international carriers: affiliating with a foreign corporation (usually Mexican), who then hires truckers to do work for the carrier within the United States. In most cases, the net pay to the imported drivers is just above half of what the carrier would be paying U.S. drivers, making it a quite lucrative tool for carriers. However, the author notes several problems with such a model. First, it may involve violations of federal and Texas employment discrimination laws by paying lower wages based on national origin. Second, it may violate U.S. immigration laws by breaking the provisions of B-1 Visitor for Business visas. Third, the activity may constitute racketeering, providing for criminal penalties and civil damage awards. Finally, carriers who engage in such a model may be violating the tax law for failure to pay state and federal payroll taxes. Thus while it is tempting for a carrier corporation, such a business model should be rejected in order to avoid a plethora of potential liabilities.

Subjects: [Immigration](#), [Industry-Specific Case Studies](#), [Labor Mobility](#), [NAFTA/GATT](#), [Outsourcing](#), [Undocumented Workers](#), [Workplace Discrimination](#)

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Links to Related Projects

The International Labour Organization's (ILO) Informal Economy Resource Database:

<http://www.ilo.org/dyn/infoecon/iebrowse.home>

The Informal Economy Resource Database contains a myriad of ILO activities, research or tools directly or indirectly related to the informal economy and decent work. This source is a "living" and dynamic inventory of information on labour issues relating to the informal economy, such as access to finance, data and statistics, employment, gender equality, policy, rights, social protection and working conditions. It is a valuable tool for anyone undertaking research or working on labour issues and the informal economy.

International Labour Organization's (ILO) Conditions of Work and Employment Laws

<http://www.ilo.org/travdatabase>

The Program maintains a Database of Conditions of Work and Employment Laws, which provides information on laws from around the world. The database covers measures on minimum wages, working hours and holidays, and maternity protection and provides information on around 130 countries from all regions.

Asian Law Center: <http://www.law.unimelb.edu.au/alc/bibliography/browse.asp?s=45>

The Asian Law Centre, an initiative of the University of Melbourne Law School, devoted to the development of understanding of Asian law, offers an extensive bibliography of Asian labor law articles and reports.

Centre for Employment and Labour Relations Law: <http://www.law.unimelb.edu.au/celr/>

Centre for Employment and Labour Relations Law is a research and teaching center devoted to the development of an understanding of labor law at the University of Melbourne. The Center's website describes the activities of the Center and contains links to several databases that are of interest to labor law scholars and practitioners. For example, the Center's Work Relations Law Project contains extensive information about Australian labor law that can be accessed directly at <http://www.austlii.edu.au/au/special/industrial/>.

ETUI Labourline: <http://www.labourline.org/Etui>

ETUI Labourline is a database of European labor information resources covering European, international and comparative aspects of industrial relations and health and safety issues, developed by the Documentation Centres of the European Trade Union Institute and the European Trade Union Institute for Health and Safety (Brussels). The consolidated bibliographic database contains more than 20,000 references to documents focusing on industrial relations, and more than 15,000 references to documents on health and safety issues.

Globalization Bulletin: <http://www.rci.rutgers.edu/~dbensman/bulletin.html>

The Globalization Bulletin is a weekly e-newsletter providing linked access to the latest articles, research, and web resources on a range of global labor issues—ranging from union organizing and labor markets to immigrations and trade agreements. The Bulletin is produced by the Globalization Task Force of the New Jersey Division of the United Nations Association-USA and the Department of Labor Studies and Employment Relations School of Management and Labor Relations, Rutgers University. To subscribe, email David Bensman at dbensman@smlr.rutgers.edu.

International Social Security and Workers Compensation Journal:

<http://www.business.curtin.edu.au/business/research/journals/international-journal-of-social-security-and-workers-compensation>

The International Social Security and Workers Compensation Journal is an on-line journal that focuses on international scholarship in the areas of social security, workers compensation, and occupational health, and disability support. It is published by the School of Business Law, Curtin Institute of Technology in Perth Australia. The IJSSWC contains inter-disciplinary articles in fields such as law, occupational medicine, health economics, and disability studies.

Labor and Global Change Database: <http://www.ilir.umich.edu/lagn/>

The Labor and Global Change Database provides bibliographies, citation information and (where available) web links to the full text of research exploring connections between labor and globalization. The database aims to provide researchers with an easy means to make the results of their work widely available to other scholars and the interested public. The database is run by and continually updated by the Labor and Global Change Program of the University of Michigan.

LabourWeb: <http://www.lex.unict.it/eurolabor/en/>

The Labour Web is a comprehensive documentation center for information about European labor law, social law, industrial relations and the welfare state. It contains up-to-date versions of European Union law, directives, pending directives, EU news, press releases, economic statistics and decisions of the European Court of Justice. It also contains a Working Papers series and subject matter reports (dossiers) on issues concerning European integration. The site also provides links to other websites that contain working papers, statistical reports, and other information about social, economic and industrial relations affairs in the European context. It is run by the Massimo D'Antona Centre for the Study of European Labour Law, at the Faculty of Law of the University of Catania.

The Marco Biagi Centre for International and Comparative Studies:

<http://www.csmb.unimo.it>

The Marco Biagi Centre for International and Comparative Studies at the University of Modena and Reggio Emilia, Italy, functions as policy resource center on comparative labor issues. Besides publishing books and law journals, the Center provides a clearinghouse of international law journals, including the International Journal of Comparative Labour Law and Industrial Relations (<http://www.csmb.unimo.it/journal.html>). Currently only in Italian, the Center's

website will soon offer an English version.

Trade Unions and Labor Relations Database: <http://www.polwiss.fu-berlin.de/tu/english/>

The database, produced by the Institute of Labor Relations of the Otto-Suhr-Institute of the Freie University of Berlin, contains almost 7,000 citations of books, articles, working papers, brochures, proceedings etc. The bulk of the citations address aspects of labor relations in Germany, but there is a substantial body of literature in the database covering the EU and Eastern Europe.

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