



Court Rules Size Matters In Class Claim Against Goldman Sachs

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A federal judge in New York recently held that last year's seminal Supreme Court class action case, [Wal-Mart Stores Inc. v. Dukes](#), does not preclude a class action against Goldman Sachs alleging gender bias.

The plaintiffs have alleged that Goldman's pay and promotion policies had a disparate impact on women, while Goldman argued that that plaintiffs, like those in *Dukes*, were basing their arguments on subjective decision-making policies, meaning their class claims should suffer the same fate as those in *Dukes* because the claims lacked the commonality required by the federal rules.

Although the court asserted that Goldman's motion to strike was premature, the Southern District of New York went on to find that *Dukes* was substantively distinguishable. First, unlike the wholly subjective nature of the decisions made in *Dukes*, the court found here that Goldman did have "specific, companywide employment practices" that provided the necessary common questions of fact or law, including what the court referred to as the company's "360 degree review program," employee ranking system, and "tap on the shoulder" system of promotion.

Second, the court distinguished the *Dukes* case by class size and scale. In *Dukes*, the proposed class numbered in the millions, and plaintiffs "held a multitude of different jobs, at different levels of Wal-Mart's hierarchy, for variable lengths of time, in 3,400 stores, sprinkled across 50 states, with a kaleidoscope of supervisors (male and female), subject to a variety of regional policies that all differed." Here, however, the plaintiffs were not challenging millions of employment decisions. Instead, "Plaintiffs all worked at – and the allegations all center around – Goldman's New York office." As the court declared, "These factual distinctions are critical."

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On the other hand, the court did reluctantly agree with Goldman that *Dukes* foreclosed the possibility of injunctive relief in this case under Fed. R. Civ. P. 23(b)(2), because plaintiffs, as ex-employees, lacked standing to bring such a claim. The court found that the Supreme Court in *Dukes* had barred this avenue of relief even though the plaintiffs were seeking reinstatement to their former positions.

This case is significant in that it underscores the fact that *Dukes*, while providing powerful arguments for employers, did not sound the death knell for class actions in the employment arena. Plaintiffs' attorneys and courts will look for facts, policies, and circumstances to distinguish potential classes and remove them from the *Dukes* rubric.