

**HOT TOPICS:
WHAT EMPLOYERS NEED TO
KNOW IN 2012**

Kevin J. Hamilton
Jeffrey A. Hollingsworth

NLRB's Poster Requirement Postponed



Employee Rights Under the National Labor Relations Act

The National Labor Relations Act (NLRA) guarantees the right of employees to organize and bargain collectively with their employers, and to engage in other protected concerted activity or to refrain from engaging in any of the above activity. Employees covered by the NLRA* are protected from certain types of employer and union misconduct. This Notice gives you general information about your rights, and about the obligations of employers and unions under the NLRA. Contact the National Labor Relations Board (NLRB), the Federal agency that investigates and resolves complaints under the NLRA, using the contact information supplied below, if you have any questions about specific rights that may apply in your particular workplace.

Under the NLRA, you have the right to:

- Organize a union to negotiate with your employer concerning your wages, hours, and other terms and conditions of employment.
- Form, join or assist a union.
- Bargain collectively through representatives of employees' own choosing for a contract with your employer setting your wages, benefits, hours, and other working conditions.
- Discuss your wages and benefits and other terms and conditions of employment or union organizing with your co-workers or a union.
- Take action with one or more co-workers to improve your working conditions by, among other means, raising work-related complaints directly with your employer or with a government agency, and seeking help from a union.
- Strike and picket, depending on the purpose or means of the strike or the picketing.
- Choose not to do any of these activities, including joining or remaining a member of a union.

Under the NLRA, it is illegal for your employer to:

- Prohibit you from talking about or soliciting for a union during non-work time, such as before or after work or during break times; or from distributing union literature during non-work time, in non-work areas, such as parking lots or break rooms.

Under the NLRA, it is illegal for a union or for the union that represents you in bargaining with your employer to:

- Threaten or coerce you in order to gain your support for the union.

NLRB'S "AMBUSH" ELECTION RULE STRUCK DOWN



NLRB Chimes in on Employer Social Media Policies

- Discouraging "Friending" Co-Workers
- Discussing an Employer Online
- Banning Comments Regarding Legal Matters
- Prohibition of Wage and Hour Dissatisfaction



EEOC: Criminal Background Checks Must Be Job-Related

Employee of the Month

January



February



March



April



May



June



Seattle Sick and Safe Leave Passed by Seattle City Council

86%

Percentage of Americans Who Support Paid Sick Leave

MAY 21, 2012

The French Rejection 26

God of Cricket 40

TIME

ARE YOU **MOM ENOUGH?**

Why attachment parenting drives some mothers to extremes—and how Dr. Bill Sears became their guru

BY KATE PICKERT



Jamie Lynne Grumet, 26, and her 3-year-old son

www.time.com

Seattle Bans Breastfeeding Discrimination

Employers Banned From Workers' Social Media Accounts



Already Banned

Maryland

Pending Legislation

Washington
California
Illinois
Michigan
Minnesota
Missouri
New York
South Carolina



California Bill-Signing Frenzy for Employment-Related Legislation

- Limits on Lawful Use of Consumer Credit Reports
- Protection for Gender Identity & Expression
- Willful Misclassification of Employees as Contractors Penalized
- Healthcare Discrimination for Domestic Partners Outlawed
- Written Wage Information Required at the Time of Hire



SAN FRANCISCO MINIMUM WAGE / PAID SICK LEAVE

San Francisco Minimum Wage
 Effective January 1, 2017
\$10.24 per hour

San Francisco Paid Sick Leave

San Francisco Health Care Security Ordinance (HCSO)

AVISO OFICIAL 2017
 Licencia por Inhabilidad Remunerada de San Francisco

EQUIFAX

Equifax Credit Report™ Sample

Credit Summary

Account	Balance	Payment Status	Account Type	Reporting Agency	Reporting Date
Bank of America	\$1,000.00	Current	Bank Card	Equifax	1/1/2017
Chase	\$500.00	Current	Bank Card	Equifax	1/1/2017
Wells Fargo	\$200.00	Current	Bank Card	Equifax	1/1/2017
Capital One	\$100.00	Current	Bank Card	Equifax	1/1/2017
Total	\$1,800.00	Current	Bank Card	Equifax	1/1/2017

Debt by Account Type

Debt to Credit Ratio by Account Type

Account Age

Length of Credit History

Recent Inquiries - Requests for your Credit History



WAL-MART STORES, INC. v. DUKES ET AL.



(Slip Opinion)

OCTOBER TERM, 2010

1

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

WAL-MART STORES, INC. v. DUKES ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 10–277. Argued March 29, 2011—Decided June 20, 2011

Respondents, current or former employees of petitioner Wal-Mart, sought judgment against the company for injunctive and declaratory relief, punitive damages, and backpay, on behalf of themselves and a nationwide class of some 1.5 million female employees, because of Wal-Mart's alleged discrimination against women in violation of Title VII of the Civil Rights Act of 1964. They claim that local managers exercise their discretion over pay and promotions disproportionately in favor of men, which has an unlawful disparate impact on female employees; and that Wal-Mart's refusal to cabin its managers' authority amounts to disparate treatment. The District Court certified the class, finding that respondents satisfied Federal Rule of Civil Procedure 23(a), and Rule 23(b)(2)'s requirement of showing that "the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." The Ninth Circuit substantially affirmed, concluding, *inter alia*, that respondents met Rule 23(a)(2)'s commonality requirement and that their backpay claims could be certified as part of a (b)(2) class because those claims did not predominate over the declaratory and injunctive relief requests. It also ruled that the class action could be manageably tried without depriving Wal-Mart of its right to present its statutory defenses if the District Court selected a random set of claims for valuation and then extrapolated the validity and value of the untested claims from the sample set.

Held:

1. The certification of the plaintiff class was not consistent with Rule 23(a). Pp. 8–20.

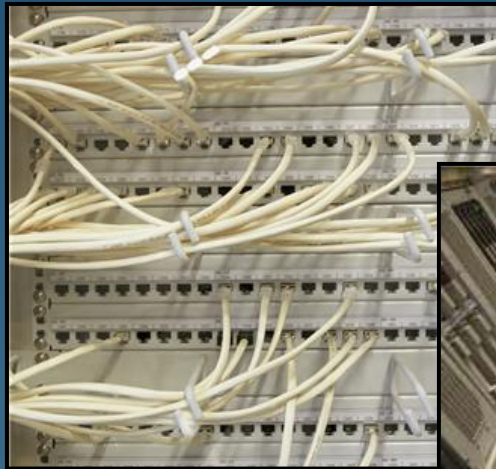
(a) Rule 23(a)(2) requires a party seeking class certification to

Wal-Mart v. Dukes

- Enormously significant
- Restricts formulaic or statistical analyses
- Significant impediment to employment class actions



9th Circuit to Employers: CFAA Does Not Apply to Employee Data Theft



Nielsen Gets Poor Ratings In Age Discrimination Case



- Understand the risks of deviating from established internal disciplinary procedures
- Consistent discipline between employees of all ages
- Follow and administer discipline in an impartial manner

the Union

Date	Networks	Rating	Household Share	# of Households	# of Viewers	President
1/27/2010	ABC, CBS, FOX, NBC, TEL, UNI, CNN, BET, CNBC, FOXNC, MSNBC	29.8	45	34,182,725	48,009,595	Obama
2/24/2009*	ABC, CBS, FOX, NBC, CNBC, CNN, FOXNC, MSNBC, TELEMUNDO, UNIVISION	32.5	49	37,185,000	52,373,000	Obama
1/28/2008	ABC, CBS, FOX, NBC, CNN, FOXNC, MSNBC, TELEMUNDO*, UNIVISION	24.7	38	27,702,000	37,515,000	G.W. Bush
1/23/2007	ABC, CBS, FOX**, NBC, CNN, FOXNC, MSNBC, TELEMUNDO**, UNIVISION **	29.6	45	32,968,000	45,466,000	G.W. Bush
1/31/2006**	ABC, CBS, FOX, NBC, CNN, FOXNC, MSNBC	26.9	41	29,578,000	41,699,000	G.W. Bush
2/2/2005**	ABC, CBS, FOX, NBC, CNN, FOXNC, MSNBC	25.2	40	27,699,000	38,382,000	G.W. Bush
1/20/2004	ABC, CBS, FOX, NBC, CNN, CNBC, FOXNC, MSNBC	28.0	42	30,286,000	43,411,000	G.W. Bush
1/28/2003	ABC, CBS, FOX, NBC, CNN, CNBC, FOXNC, MSNBC	38.8	56	41,447,000	62,061,000	G.W. Bush
1/29/2002	ABC, CBS, FOX, NBC, CNN, CNBC, FOXNC, MSNBC	33.6	49	35,547,000	51,773,000	G.W. Bush
2/27/2001*	ABC, CBS, FOX, NBC, CNN, FOXNC, MSNBC	27.6	42	28,201,000	39,793,000	G.W. Bush
1/27/2000	ABC, CBS, FOX, NBC, CNN, FOXNC, MSNBC	22.4	35	22,536,000	31,478,000	Clinton
1/19/1999	ABC, CBS, FOX, NBC, CNN, FOXNC, MSNBC	31.0	48	30,700,000	43,500,000	Clinton
1/27/1998	ABC, CBS, FOX, NBC, CNN, CNBC, FOXNC, MSNBC	37.2	56	36,513,000	53,077,000	Clinton
2/4/1997	ABC, CBS, FOX, NBC, CNN	28.4	N/A	27,600,000	41,100,000	Clinton
1/23/1996	ABC, CBS, FOX, NBC, CNN	29.6	N/A	28,400,000	40,900,000	Clinton
1/24/1995	ABC, CBS, NBC, CNN	29.5	N/A	28,100,000	42,200,000	Clinton
1/25/1994	ABC, CBS, NBC, CNN	32.9	N/A	31,000,000	45,800,000	Clinton
2/17/1993*	ABC, CBS, NBC, CNN	44.3	N/A	41,200,000	66,900,000	Clinton

Source: The Nielsen Company

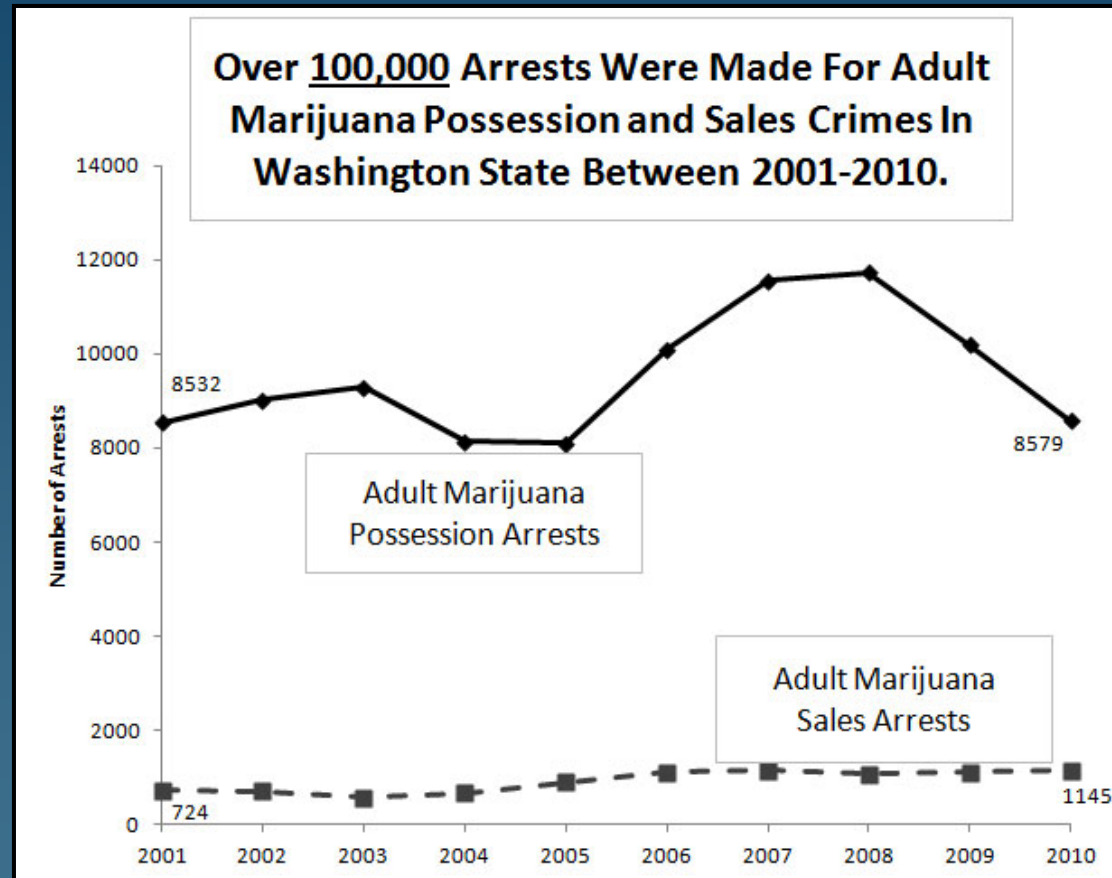
* Note: 2/17/93, 2/27/01 and 2/24/09 officially the "Address to the Joint Sessions of Congress"

**Telemundo's coverage was tape delayed, all other networks carried live.

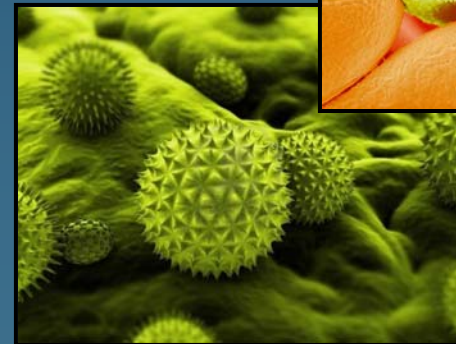
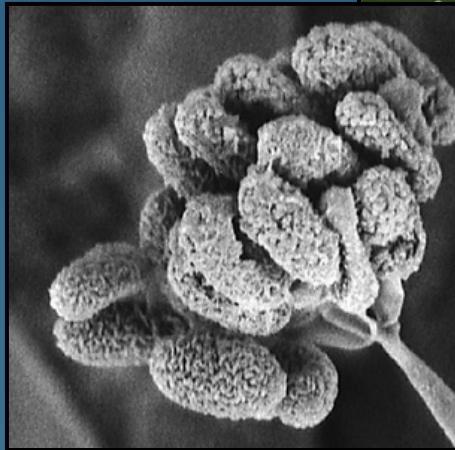
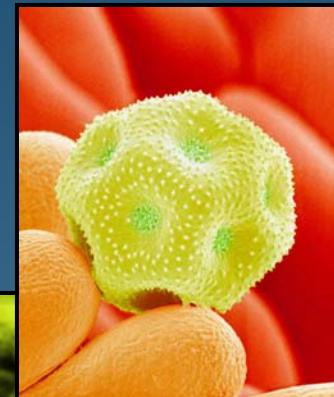
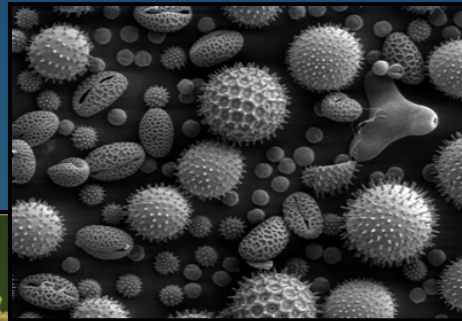
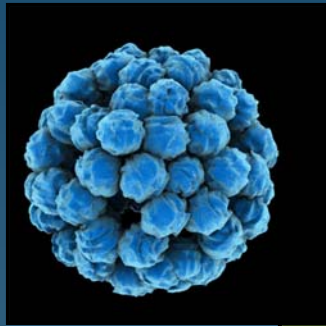
** Note: 1/23/07 The coverage of these networks goes beyond a common end time & includes the State Of The Union Address & commentary. This does not include the Democratic Response.

^^Only includes English-language networks

Court Upholds Employer's One-Strike Drug Use Policy



When Reasonable Accommodation Goes Bad: *Frisino v. Seattle School District*



BRINKER RESTAURANT CORPORATION

1 Wayne A. Hughes, Esq., SBN 48038
Tracee Lorens, Esq., SBN 150138
2 LORENS AND ASSOCIATES, APLC
1202 Kettner Blvd., Suite 4100
3 San Diego, CA 92101
Telephone: (619) 239-1233
4 Facsimile: (619) 239-1178

5 Timothy D. Cohelan, Esq., SBN 60827
Isam C. Khoury, Esq., SBN 58759
6 Michael D. Singer, Esq., SBN 115301
COHELAN & KHOURY
7 605 C Street, Suite 200
San Diego, CA 92101-5305
8 TEL: (619) 595-3001
FAX: (619) 595-3000

9 William Turley, Esq., SBN
10 THE TURLEY LAW FIRM, APLC
1551 Fourth Avenue, Suite 710
11 San Diego, CA 92101-3155
Telephone: (619) 234-2833
12 Facsimile: (619) 234-4048
Attorneys for Plaintiff

13 ADAM HOHNBAUM, on behalf of
14 himself and all others similarly situated,
and on behalf of the general public

15 SUPERIOR COURT OF CALIFORNIA
16 COUNTY OF SAN DIEGO

17 ADAM HOHNBAUM, on behalf of himself and)
18 all others similarly situated, and on behalf of the)
19 general public,

Case No. GIC 834348

20 Plaintiffs,

CLASS ACTION COMPLAINT FOR
DAMAGES, INJUNCTIVE AND
DECLARATORY RELIEF AND
RESTITUTION

21 v.

1) Failure to Provide Rest Periods (Lab. Code,
§ 226.7; IWC Wage Order Nos. 5-1998, 5-
2000(12); Cal. Code Regs., Title 8, § 11050)

23 BRINKER RESTAURANT CORPORATION,
24 a Delaware Corporation; and DOES 1 through
500, Inclusive

2) Failure to Provide Meal Periods (Lab. Code,
§§ 226.7, 512; IWC Wage Order Nos. 5-1998,
5-2000(11); Cal. Code Regs., Title 8, § 11050)

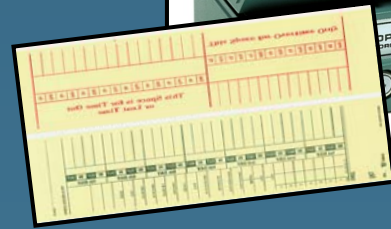
25 Defendants.

3) Knowing and Intentional Failure to Comply
With Itemized Employee Wage Statement
Provisions (Lab. Code, §§ 226, 1174, 1175)

4) Violation of Unfair Competition Law (Bus.
& Prof. Code, § 17200 et seq.)

27 DEMAND FOR JURY TRIAL
28

CLASS ACTION COMPLAINT



Brinker

- Question: Are California employers required to make certain that all employees take a meal break or merely ensure that meal periods are made available?
- Answer: Employers need merely ensure that meal periods be made available.



California Court Limits Class Arbitration in Employment Pacts

ARBITRATION AGREEMENT

This Arbitration Agreement (the "Agreement") is made on _____, 20__ (the "Effective Date") by and between by and between _____, a _____ [corporation] [limited liability company] [etc.] (the "Claimant"), and _____, a _____ [corporation] [limited liability company] [etc.] (the "Respondent") (each a "Party" and collectively the "Parties").

RECITALS

WHEREAS, the Claimant has a claim against the Respondent arising out of a dispute over:

_____ (the "Dispute"); and

WHEREAS, the Parties have determined that they refer to and finally resolve the Dispute through arbitration under the applicable rules (the "Rules") of the [American Arbitration Association ("AAA")][the CPR Institute for Dispute Resolution] rather than in court; and

WHEREAS, this Agreement is intended to serve as the Parties' submission of the Dispute to arbitration and sets forth the terms through which the arbitration will be conducted.

NOW **THEREFORE**, in consideration of the premises and the mutual representations contained herein, the Parties hereby agree as follows:

WARRANTY TO ARBITRATION.

The Parties agree that each shall forgo litigation of the Dispute and that the Dispute will be finally resolved by binding arbitration expeditiously conducted before the Arbitrator as described below under the provisions set forth in this Agreement (the "Rules"). The Parties further agree that they will abide by and perform any ruling, award issued by the Arbitrator, and that any court having jurisdiction may not interfere with the award.

PROCEDURE FOR ARBITRATION.

In the arbitration process, the aggrieved Party must file a written claim with the Arbitrator. Claims can be filed at the office of _____ [or online at _____]. Service of the claim on the responding Party shall be made in accordance with the Rules.

ARBITRATOR. Select only one option.

Employment Contract

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