

# EMPLOYMENT

## FACT SHEET

### **32 Cents Short: Wal-Mart v. Dukes and the Extreme Wage Gap in Sales and Related Occupations**

June 2012

*Women working in the retail sector face a large wage gap and significant obstacles to challenging pay discrimination, including the Supreme Court's decision in Wal-Mart Stores, Inc. v. Dukes.*

#### **Women Workers Are Important to the Retail Sector**

Women made up roughly half (49.3 percent) of the more than 14.6 million workers employed in the retail sector in 2011.<sup>1</sup> Several sectors within the retail trade industry had a majority of female workers, including drug stores, book stores, and discount and department stores.<sup>2</sup> Women made up 43.7 percent of full-time workers in sales and related occupations in 2011.<sup>3</sup>

#### **The Retail Sector Is Important to Women Workers**

In 2011, one in nine women workers was employed in the retail sector.<sup>4</sup> While these women work in various occupations within the retail sector, cashiers and retail salespersons accounted for many of the jobs women held in this sector. These jobs were listed as two of the top ten most common occupations for women in 2011, accounting for nearly four million women's jobs in 2011.<sup>5</sup>

#### **Women in Retail Are Being Shortchanged**

Women working full time in sales and related occupations are paid far less than their male counterparts.

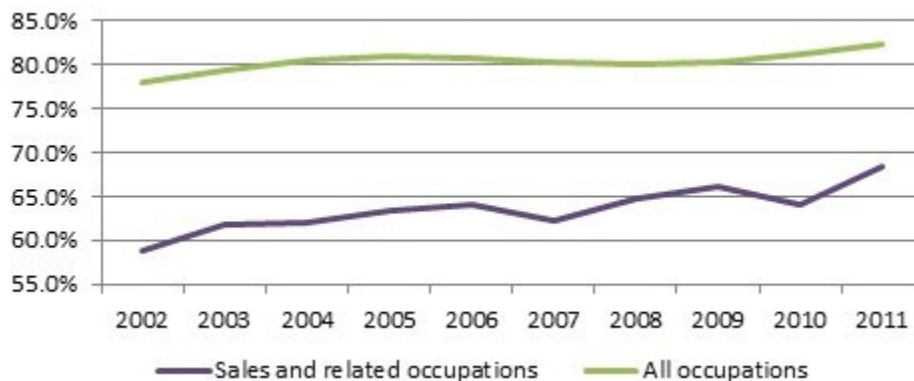
- Wages in sales and related occupations are low overall, and much lower for women than for men. Full-time workers in sales and related occupations were paid median weekly wages of \$670. In comparison, women working full time in sales and related occupations were paid median weekly wages of \$549, while men were paid \$804.<sup>6</sup> In 2011, full-time female workers in sales and related occupations were paid about two-thirds – or 68.3 percent – of their male counterparts' median weekly wages. This nearly 32 cent gap in wages is much higher than the overall wage gap between men and women.<sup>7</sup>

- The last time women overall suffered a larger gap than that of workers in sales and related occupations was in 1985, when full-time women workers in all sectors were paid just 68.2 percent of what their male counterparts were paid.<sup>8</sup> In other words, women in sales and related occupations are 26 years behind female workers overall in terms of the wage gap.<sup>9</sup>

- This extreme gap in wages has been longstanding for sales and related occupations. According to median weekly wages data, in the last decade, the gender wage gap for full-time sales and related workers ranged between a high of 41 cents in 2002 to a low of 32 cents in 2011.<sup>10</sup>



## Women's Median Weekly Wages as a Percentage of Men's, 2002-2011



Source: Bureau of Labor Statistics, Current Population Survey.  
Full-time workers only.

[www.nwlc.org](http://www.nwlc.org)



### Discrimination Plays a Role in the Extreme Wage Gap in Retail Occupations

The concentration of women in low-wage jobs and industries is often cited as one of the significant factors contributing to the wage gap between men and women.<sup>11</sup> Though wages for both men and women in sales and related occupations are low overall, men still far out-earn their female counterparts. For example, in a study of 435 non-managerial front-line workers in national retail chains with stores in New York City, women were paid a median hourly wage of \$9.00 per hour, as compared \$10.13 per hour for men.<sup>12</sup> A recent study of the wage gap across the workforce overall found that over 40 percent of that gap is unexplained by factors like education, work experience, and type of work.<sup>13</sup> The substantial gap between male and female workers' wages in sales and related occupations provides cause for concern regarding the role of discrimination in the wage gap for these workers.

### The Real Risk of Job Loss Makes It Harder for Women Retail Workers to Challenge Pay Discrimination

Many women experiencing discrimination remain silent because of legitimate fears their employer will retaliate against them if they speak up. Women retail workers may be particularly fearful about putting their jobs at risk in light of their continued job losses, even during the recovery from the Great Recession. Between June

2009, the beginning of the recovery, and May 2012, the retail sector has gained 228,300 net jobs.<sup>14</sup> But despite this growth, women actually lost 119,700 net retail jobs during the recovery while men added 348,000.<sup>15</sup>

### Wal-Mart v. Dukes: A Setback for Women in Retail

Given the extreme 32 percent wage gap in sales and related occupations, ensuring protection against company-wide pay discrimination is crucial for retail workers. In *Wal-Mart v. Dukes*, the Supreme Court, in a narrow 5-4 decision, made it more difficult for these and other workers to bring class actions to remedy company-wide pay discrimination.<sup>16</sup> Unfortunately, the evidence put forward by plaintiffs in that case illustrates the broad scale pay discrimination some women retail workers face and the need for company-wide solutions.

In 2001, a group of women who worked at Wal-Mart stores brought a lawsuit against the mega-retailer, challenging alleged discrimination in pay and promotion. The women presented statistical analyses of Wal-Mart's own payroll and other data that showed that women employed in Wal-Mart stores were paid less than male employees in comparable positions, received far fewer promotions to management positions than men, and had to wait longer to be promoted than their male counterparts. They also presented evidence that Wal-Mart managers justified paying women less than men based on outmoded beliefs about women's roles.<sup>17</sup>

For example, some male managers expressed the view that men need to be paid more because they have families to support.<sup>18</sup>

Ten years later, the case made its way to the Supreme Court, but Justice Scalia's majority opinion<sup>19</sup> held that the women employees did not have enough in common to proceed as a class in their challenge to Wal-Mart's pay and promotion practices. The decision dealt a blow to employees, by calling into question their right to come together as a group to challenge company-wide discriminatory employment practices implemented by many individual supervisors. The ability to come together as a group to challenge discrimination is especially important for women retail workers, both because proceeding as a group helps shield individuals from the real threat of employer

retaliation and because women retail workers' typically low wages will often make it impossible to retain legal counsel to individually challenge discrimination.

## The Equal Employment Opportunity Restoration Act Would Restore Important Protections for Women Retail Workers

In these tough economic times, women retail workers cannot afford to be paid less simply because they are women. The Equal Employment Opportunity Restoration Act will restore employees' ability to come together to challenge company-wide pay discrimination, and thus help prevent that discrimination from occurring in the first place.

- 1 U.S. Dep't of Labor, Bureau of Labor Statistics, Current Employment Statistics Survey, available at <http://data.bls.gov/pdq/querytool.jsp?survey=ce> (last visited June 6, 2012). Figure is the annual average.
- 2 U.S. Dep't of Labor, "Women in the Labor Force: A Databook," December 2011, Table 14, at 43-49, available at <http://www.bls.gov/cps/wlf-databook2011.htm>.
- 3 NWLC calculations from U.S. Dep't of Labor, Bureau of Labor Statistics, Labor Force Statistics from the Current Population Survey, "Table 2: Median usual weekly earnings of full-time wage and salary workers by selected characteristics, quarterly averages, not seasonally adjusted," and "Table 4: Median usual weekly earnings of full-time wage and salary workers by occupation and sex, quarterly averages, not seasonally adjusted," available at <http://www.bls.gov/cps/cpswkctabs.htm> (last visited Apr. 6, 2012). "Wages" in this fact sheet refers to all earnings.
- 4 Bureau of Labor Statistics, Current Employment Statistics Survey, *supra* note 1.
- 5 NWLC calculations from U.S. Dep't of Labor, Bureau of Labor Statistics, Current Population Survey, 2011 Annual Averages (2012), Table 11: Employed persons by detailed occupation, sex, race, and Hispanic or Latino ethnicity, available at <http://www.bls.gov/cps/cpsaat11.htm>. There were approximately 2,324,000 women working as cashiers and 1,651,000 women working as retail salespersons in 2011.
- 6 Bureau of Labor Statistics, Labor Force Statistics from the Current Population Survey, *supra* note 3, tbl. 4. Based on 2011 annual averages of quarterly median usual weekly earnings data.
- 7 Bureau of Labor Statistics, Labor Force Statistics from the Current Population Survey, *supra* note 3, tbl. 2. In 2011, women wage and salary workers working full time had median usual weekly earnings of \$684 compared to \$832 for men (82.2 percent). This 82 cent figure is not directly comparable to the statistic that women working full time, year round are paid only 77 cents for every dollar paid to their male counterparts for several reasons. First, these figures look at different groups of workers – for example, only the 82 cent figure includes workers who do not work year round and only the 77 cent figure includes self-employed workers. Second, they use different earnings measurements – the 82 cent figure uses weekly, rather than annual, earnings. Lastly, they are for two different years – the 82 cent figure is for 2011 and the 77 cent figure is for 2010.
- 8 Bureau of Labor Statistics, Labor Force Statistics from the Current Population Survey, *supra* note 3, tbl. 2. Based on 2011 annual averages of quarterly median usual weekly earnings data. Median usual weekly earnings are in current dollars.
- 9 Bureau of Labor Statistics, Labor Force Statistics from the Current Population Survey, *supra* note 3, tbls. 2 and 4.
- 10 Bureau of Labor Statistics, Labor Force Statistics from the Current Population Survey, *supra* note 3, tbl. 4.
- 11 Francine D. Blau & Lawrence M. Kahn, "The Gender Pay Gap: Have Women Gone as Far as They Can?" *Academy of Management Perspectives* 21 (1): 7-23 (2007), available at <http://connection.ebscohost.com/c/articles/24286161/gender-pay-gap-have-women-gone-as-far-as-they-can>.
- 12 Retail Action Project, "New Study Shows Gender Gap in Pay, Benefits and Promotions for Women in Retail" (Dec. 21, 2011) available at <http://retailactionproject.org/2011/12/new-study-shows-gender-gap-in-pay-benefits-promotions-for-women-in-retail/>; see also [http://retailactionproject.org/wp-content/uploads/2012/01/FINAL\\_RAP.pdf](http://retailactionproject.org/wp-content/uploads/2012/01/FINAL_RAP.pdf).
- 13 Kahn, *supra* note 11.
- 14 U.S. Dep't of Labor, *supra* note 1. Data are subject to revision by the Bureau of Labor Statistics.
- 15 *Ibid.*
- 16 *Wal-Mart Stores, Inc. v. Dukes*, \_\_\_ U.S. \_\_\_, 131 S. Ct. 2541 (2011).
- 17 *Dukes*, 603 F.3d at 600; *Dukes*, 222 F.R.D. at 166.
- 18 *Dukes*, 222 F.R.D. at 166.
- 19 Chief Justice Roberts and Justices Kennedy, Thomas and Alito joined the majority.