



the work and family legal center

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## Testimony before the Committee on Civil Rights, the Committee on Civil Service and Labor, and the Committee on Women's Issues

February 17, 2011

Submitted by Dina Bakst and Phoebe Taubman,  
A Better Balance: The Work and Family Legal Center

Good morning, my name is Dina Bakst and I am co-President and co-founder of A Better Balance: The Work and Family Legal Center. ABB is a New York-based legal advocacy organization dedicated to helping families balance the conflicting demands of work and family. Our mission is to promote equality and expand choices for men and women at all income levels so they may care for their families without risking their economic security.

I want to start by thanking the Committee on Civil Rights, the Committee on Civil Service and Labor, and the Committee on Women's Issues for convening this hearing to consider the impact a Wal-Mart store would have on the residents of New York City. I will be speaking about Wal-Mart as an employer and in particular about how its practices discriminate against women workers and endanger their economic security.

Although a Wal-Mart store may create new jobs, the quality of those jobs, especially for women, is poor. Retail jobs are notoriously low-paid and

workers at Wal-Mart earn about one quarter less than other retail workers.<sup>i</sup> The wage gap between men and women is highest in retail among all industries,<sup>ii</sup> and Wal-Mart appears to be a key offender. In Wal-Mart Stores, Inc. v. Dukes,<sup>iii</sup> a class action of 1.6 million former and current employees, the plaintiffs allege that Wal-Mart paid them less than their male colleagues in similar jobs, despite the fact that the women had higher performance ratings and/or more seniority.<sup>iv</sup> In 2001, when the case was filed, women hourly workers earned about \$1100 less than their male counterparts, and the gender pay gap among management employees was \$14,500.<sup>v</sup>

In addition to measured pay discrepancies within the company, many of the jobs Wal-Mart offers are low-paid because they suffer from a part-time penalty. Part-time workers are often paid less per hour than full-time workers doing the same or similar work. The wage penalty for part-time work is most severe in the sales sector, with part-time employees earning less than 60% of the wage an equivalent full-time employee earns per hour.<sup>vi</sup> Part-time workers also suffer a benefit penalty. For example, part-time workers are nearly three times less likely to have access to employer-provided paid sick days.<sup>vii</sup> In addition, while 86% of full-time private industry workers have access to employer-provided medical insurance, only 24% of part-time workers can say the same.<sup>viii</sup> At Wal-Mart, part-time employees must wait one year before becoming eligible for health benefits, while full-time workers can be covered after 6 months.<sup>ix</sup> Considering that two-thirds of part-time workers nationwide are women, we can expect women to fill the majority of the part-time sales positions at a Wal-Mart in New York City. These women,

who are often working to support their families, will have to contend with the economic instability that accompanies their second-class status as part-time workers.

Discrimination against women as mothers also appears to be a problem at Wal-mart. Assumptions that women will prioritize (or should prioritize) their families over their work are prohibited gender discrimination under Title VII of the Civil Rights Act of 1964. Yet such illegal maternal bias appears to have held back numerous women at Wal-Mart from reaching management positions.<sup>x</sup> Female employees at the company are routinely told that if they want to go into management they must be willing to move themselves and their families on 48 hours notice.<sup>xi</sup> This requirement has led managers to avoid considering women for promotion and often deterred women from seeking it.<sup>xii</sup> Although the policy was temporarily suspended after Sam Walton recognized that relocation could be a barrier to women's advancement, Wal-Mart still imposes this prerequisite on candidates for promotion.<sup>xiii</sup> Another example of maternal bias cited by the Wal-Mart v. Dukes plaintiffs involved a single mother who ascended to Store Manager but was later demoted, despite years of exceptional performance, after her new District Manager told her she should be home raising her daughter.<sup>xiv</sup> This kind of stereotyping of women as caregivers who are not management material violates the law and harms working women and their families.

Nearly 4 in 10 mothers are now primary breadwinners, and far more provide critical, if not primary, income for their families.<sup>xv</sup> These women are not well-served by low-wage retail jobs where they are paid less than their male counterparts and prevented from

achieving promotion because of their sex. Still, if Wal-Mart does open a store in New York City, city government can help to ensure that the women it employs are treated fairly by passing legislation to require baseline rules for employers.

First, New York City should update and strengthen enforcement of existing civil rights laws to address the pervasive sex discrimination that exists in this city and state.

Specifically, the city should pass a new law prohibiting employers from limiting the ability of workers to share salary information or retaliating against them in any way for doing so. If a woman does not know how much her male colleagues earn, it is difficult to know she is a victim of pay discrimination. According to new survey data from the Institute for Women's Policy Research, 61 percent of private sector employees are either discouraged or prohibited from discussing wage and salary information.<sup>xvi</sup> Guaranteeing workers the right to share wage and salary information without penalty would greatly improve wage transparency and allow workers to detect instances of wage discrimination sooner.

New York City should also vigorously combat employer discrimination against caregivers, who are often low-income mothers. Discrimination that prevents caregivers from staying at their jobs or advancing at work is a significant threat to family economic security. Unfortunately, our city's anti-discrimination laws fail to sufficiently protect workers from family responsibilities discrimination. New York City should follow the lead of Alaska and the District of Columbia and consider a local law explicitly banning this form of discrimination.

Second, New York City should pass a law guaranteeing workers a minimum number of paid sick days. Low-income workers, especially women in retail, lack access to paid sick days. Ensuring that no worker is fired for taking a day off to care for herself or a sick child would significantly help workers, especially mothers, stay at work and advance on the job. In addition, overwhelming data shows that providing paid sick days would save employers money by reducing turnover and increasing loyalty and productivity.

Finally, New York should establish a task force on family economic security, to study how low-quality part-time jobs, inflexible and unpredictable work hours and discrimination threaten the financial stability of New York families. We recommend that the taskforce start with a focus on the retail industry, where these problems are most severe.

Thank you again for your consideration and we look forward to working with you to make sure that high-quality jobs are available for working families in our city.

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<sup>i</sup> Heather Boushey, *Wal-Mart: Always Low Prices Means Always Low Wages*, Center for Economic and Policy Research, Testimony at Cleveland State University, Sept. 19, 2005.

<sup>ii</sup> *Wal-Mart Case Has Broad Implications for Women Employees' Ability to Challenge Job Discrimination*, National Women's Law Center, January 20, 2011.

<sup>iii</sup> 131 S.Ct. 795 (2010).

<sup>iv</sup> *Dukes v. Wal-Mart Stores, Inc.*, 603 F.3d 571, 577 (9th Cir. 2010).

<sup>v</sup> *Dukes v. Wal-Mart Stores, Inc.*, Plaintiffs' Motion for Class Certification (Apr. 28, 2003) available at <http://walmartclass.com/staticdata/walmartclass/brief2.html>.

<sup>vi</sup> Elizabeth Lower-Basch, *Part-Time Work in Recession and Recovery*, Center for Law and Social Policy, 2010 National Reemployment Summit (Dec. 14-15, 2010).

<sup>vii</sup> *Id.*

<sup>viii</sup> *Id.*

<sup>ix</sup> *Health Benefits at Walmart U.S.*, Wal-Mart 2009 Global Sustainability Report, available at [http://walmartstores.com/sites/sustainabilityreport/2009/s\\_ao\\_healthBenefits.html](http://walmartstores.com/sites/sustainabilityreport/2009/s_ao_healthBenefits.html).

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<sup>x</sup> The plaintiffs contend that they received fewer promotions to in-store management than did their male co-workers, and had to wait longer for the promotions they did receive. *Dukes*, 603, F.3d at 577.

<sup>xi</sup> *Wal-Mart and the Glass Ceiling: Investigating and Proving Gender Discrimination*, slide 8, February 2004, available at <http://walmartclass.com/staticdata/walmartclass/walmart.ppt>.

<sup>xii</sup> *Dukes*, Plaintiffs' Motion for Class Certification.

<sup>xiii</sup> *Wal-Mart and the Glass Ceiling*, slide 14.

<sup>xiv</sup> *Id.* at slide 8.

<sup>xv</sup> Heather Boushey, *The New Breadwinners*, in *The Shriver Report: A Woman's Nation Changes Everything* 30, 33 (Heather Boushey & Ann O'Leary eds., 2009), [http://www.americanprogress.org/issues/2009/10/pdf/awn/a\\_womans\\_nation.pdf](http://www.americanprogress.org/issues/2009/10/pdf/awn/a_womans_nation.pdf).

<sup>xvi</sup> Institute for Women's Policy Research, *Pay Secrecy & Paycheck Fairness: New Data Shows Pay Transparency needed* (Nov. 16, 2010) available at [www.iwpr/press-room/press-releases/pay-secrecy](http://www.iwpr/press-room/press-releases/pay-secrecy).