

Sophomore Assessment
February 2007
Case Questions
Wal-Mart: Economics and Legal Analysis

Economics Assignment

1) What type of market structure (monopoly, oligopoly, monopolistic competition or perfect competition) best describes the market in which Wal-Mart competes? What is the most effective way for Wal-Mart to compete in such an environment? How does Wal-Mart differentiate itself in terms of its pricing to compete in this market structure?

2) The minimum wage has been fiercely debated since it was established in 1938 as part of the Fair Labor Standards Act under Franklin D. Roosevelt. The president of Wal-Mart, the country's largest private employer, endorses an increase in the minimum wage, saying that workers who are earning the minimum can't afford to shop at his stores.¹

What are the arguments for and against raising the federal minimum wage? What are the major economic implications of increasing the federal minimum wage? Which groups would be most affected by an increase in the minimum wage?

3) Throughout U.S. history there has been one dominant company that, for a specific time period, essentially sets a benchmark living wage for the American worker. "Today that company is Wal-Mart, but its pay is so low, it can't be considered a living wage." (Nelson Lichtenstein)² Do you agree or disagree with the notion that there is one company that sets the living wage? Do you think that Wal-Mart's pay represents a living wage? Please provide support for your response.

Legal Assignment

Over the past few years, Wal-Mart has been plagued by a number of high-profile legal battles. This assignment focuses on a recent gender discrimination suit. The suit, *Dukes v. Wal-Mart*, filed in 2001 by six female workers, alleged that Wal-Mart systematically paid women less than men with similar qualifications and frequently overlooked women for promotions. The suit was certified by the trial court as a class action, a device that permits one or more persons to sue or be sued as representatives of a large group of people interested in the matter at issue, on December 30, 2004. The class action group consisted of 51,273 current and former hourly associates at Massachusetts Wal-Mart stores and Sam's Clubs.

¹ John M. Broder, "Multiple Minimums." *Annual Editions*, 34th ed.

² Andy Serwer, "Bruised in Bentonville." *Annual Editions*, 34th ed.

Most recently, on November 7, 2006, a Superior Court decertified the class. This means that the plaintiffs cannot be represented as a group in the suit. Based on this recent decision, it is likely that many of the plaintiffs who were part of the class action will file individual suits alleging the same or similar claims of gender discrimination against Wal-Mart.

Read *Something Old, Something New, Something Borrowed, Something Blue and a Silver Sixpence for Her Shoe: Dukes v. Wal-Mart & Sex Discrimination Class Actions* as an introduction to the Wal-Mart case and laws associated with gender discrimination.

1) What are the major reasons the judge decided to decertify the class? Why would Wal-Mart want the class decertified? What were the risks faced by Wal-Mart (and other corporations) if the suit moved forward as a class action?

2) You are an attorney and have been asked to represent one of the women who was a member of the original class action suit against Wal-Mart. Your client, Jane Smith, is alleging that she is paid 15% less than her male coworkers in the same position. In addition, Jane maintains that she has been overlooked for a promotion for the past two years. What are the major legal arguments you will make for your client? What type of relief will you seek for your client?

3) “It can hardly be doubted that, in part because of the high visibility of the sex characteristic, women still face pervasive, although at times more subtle, discrimination in our educational institutions, in the job market and, perhaps most conspicuously, in the political arena. The status of women has progressed since the Supreme Court made this statement in 1973, but sex discrimination continues to be a systemic problem in the workplace today.”³

In your opinion, will this case spark a change in the employment policies and practices of Wal-Mart and other major corporations? Please be specific and provide support for your response.

³ Winnie Chau, “Something Old, Something New, Something Borrowed, Something Blue and a Silver Sixpence for Her Shoe: Dukes v. Wal-Mart & Sex Discrimination Class Actions,” *Cardozo Journal of Law & Gender*, Summer 2006.