

Wal-Mart Tries to Decertify Class Action

by IRMA R. SOLARES

Wal-Mart has challenged a June 22 decision of the federal district court in San Francisco which certified a class of approximately 1.6 million past and present female employees alleging sex discrimination. Lawyers for the company describe the case as an “**elephantine**” action and have urged the 9th Circuit to decertify the class. Wal-Mart argues that certification was improper because **individual fact questions** are at issue regarding the recruiting and promotion (or not) of each of the class members. In arguing against **commonality**, Wal-Mart points out that each of its stores is run autonomously and that separate decisions were made at the store level, by a multitude of managers, for each of the class members.



Elephants on parade

Not surprisingly, **other big warehouse retailers** have also been recent targets of sex and race discrimination claims. Class action claims virtually identical to those asserted against Wal-Mart were filed against **Costco** in San Francisco district court on August 17, 2004. And **Home Depot** agreed to pay \$5.5 million to settle sex and race discrimination and retaliation claims brought by the EEOC on behalf of the company’s Colorado employees.

Wachovia Settles Discrimination Charges

Wachovia Corp. has agreed to settle charges brought by the Department of Labor alleging that the company engaged in **discrimination against female employees**.



Wachovia will pay up

The charges, originally filed on behalf of more than 2,000 former and current employees against Wachovia’s predecessor First Union Corp., contend that Wachovia engaged in **compensation discrimination** for six years. Wachovia will pay \$5.5 million in back pay and interest and has agreed to extensive self-monitoring measures to ensure lawful compensation practices for the next three years.

New DOL Wage & Hour Regulations Affect Insurance Adjusters & Financial Service Employees

by IRMA R. SOLARES

Section 13(a)(1) of the Fair Labor Standards Act provides an **exemption** from federal minimum wage and overtime requirements for bona fide executive, administrative, professional and outside sales employees. To qualify for exemption, employees must meet tests regarding **job duties** and be paid not less than \$455 per week—or \$23,660 per year.

For **insurance claims adjusters or financial services industry employees** to qualify for the exemption, all of the following tests must be met, under regulations that took effect on August 23, 2004:

- The employee must be compensated on a salary or fee basis;
- The employee’s primary duty must be the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer’s customers; **and**
- The employee’s duty must include the exercise of discretion

and independent judgment with respect to matters of significance.

Whether or not they work for an insurance company, **insurance claims adjusters** generally meet the **duties requirements** for the administrative exemption if their duties include such activities as: interviewing insureds, witnesses and physicians; inspecting property damage; reviewing factual information to prepare damage estimates; evaluating and making recommendations regarding coverage of claims; determining liability and total value of a claim; negotiating settlements; and making recommendations regarding litigation. The status does not, however, rely on the job title alone. There must be a case-by-case assessment to determine whether the employee’s duties meet the requirements for exemption.

Employees in the financial services industry generally meet the duties requirements for the admin-



The importance of being categorized

istrative exemption if their duties include work such as: collecting and analyzing information regarding the customer’s income, assets, investments or debts; determining which financial products best meet the customer’s needs and financial circumstances; advising the customer regarding the advantages and disadvantages of different financial products; and marketing, servicing or promoting the employer’s financial products. An employee whose primary duty is **selling** financial products does **not** qualify for the exemption.

Companies may wish to carefully review these criteria to ensure that their employees are properly categorized for FLSA purposes.