

Mass. high court orders certification of Wal-Mart meal breaks class action

Sheri Qualters / Staff reporter
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BOSTON — The Supreme Judicial Court of Massachusetts ordered a lower court to certify a class action against Wal-Mart Stores Inc. in an employment case involving claims about meal breaks and the alleged nonpayment of wages.

In the Sept. 23 order, Chief Justice Margaret H. Marshall remanded the case back to Superior Court for an order certifying the class. Marshall also ruled that the lower court judge "abused his discretion" by granting Wal-Mart's motion to exclude the plaintiffs' expert's testimony and by decertifying the class.

The case involves a putative class of about 67,500 current and former Wal-Mart hourly workers who worked at 47 Wal-Mart stores in Massachusetts.

Marshall noted that the "dearth of specific references to Massachusetts" in Wal-Mart's national, corporatewide labor policies and practices "is not fatal to class certification."

Marshall also wrote that Wal-Mart's business records, and the plaintiffs' expert's testimony about the records is admissible at this stage even though Wal-Mart may "challenge the veracity of its own records at trial."

"Wal-Mart's business records at issue in this case satisfy all of the requirements to be afforded the usual presumption of reliability," Marshall wrote. "Both the timekeeper records and the point-of-sale register records were "made in good faith in the regular course of business" before this action began."

Marshall also said that the judge "erred" in granting partial summary judgment to Wal-Mart on several claims, including breach of the implied covenant of good faith and fair dealing; unjust enrichment; promissory estoppel; and conversion. *Salvas v. Wal-Mart Stores Inc.*, No. SJC-10108 (Mass.)

Other claims included breach of implied contract for failing to provide or compensate the plaintiffs for their earned rest breaks and the breach of implied contract claim. The plaintiffs also asked for treble damages for failure

to pay overtime, failure to pay minimum wage and failure to compensate for off-the-clock work.

The plaintiffs' lawyer, Robert Bonsignore of Bonsignore & Brewer in Medford, Mass., was traveling and could not be reached for comment.

Wal-Mart spokeswoman Daphne Moore said the company is reviewing the order, but that the "majority of courts" have denied class status to such cases because the experiences of each individual are unique.

"It is our policy to pay every associate for every hour worked and to provide rest and meal breaks," Moore said. "Any manager who violates that policy is subject to discipline up to and including termination."

Shannon Liss-Riordan, a partner at Boston's Pyle, Rome, Lichten, Ehrenberg & Liss-Riordan, was one of three lawyers who represented a dozen of the 17 amici in the case, including the Massachusetts Employment Lawyers Association.

Liss-Riordan said the decision "reaffirms the validity and importance of class actions in Massachusetts."

Under the class action rule, the trial court is not supposed to make decisions on the merits of the case when considering class certification or decide on any factual disputes, she said.

"A class action mechanism serves a very important purpose to allow cases to go forward when violations would not be redressed on an individual basis," Liss-Riordan said. "Companies should not be allowed to get away with massive violations knowing they cannot be held liable on a class basis."