

criteria, they may not then invalidate the test results, thus upsetting an employee's legitimate expectation not to be judged on the basis of race. Doing so, absent a strong basis in evidence of an impermissible disparate impact, amounts to the sort of racial preference that Congress has disclaimed, and is antithetical to the notion of a workplace where individuals are guaranteed equal opportunity regardless of race. If an employer cannot score (or rescore) a test based on the candidates' race, then it follows that it may not take the greater step of discarding the test altogether to achieve a more desirable racial distribution of promotion-eligible candidates—absent a strong basis in evidence that the test was deficient and that discarding the results is necessary to avoid violating the disparate impact provision.

*Contributed by Linsey C. Willis.

CRITICAL THINKING APPLICATION 5-B

Hi, I'm in Bangalore (but I Can't Say So)

In a *New York Times* article entitled "Hi, I'm in Bangalore (but I Can't Say So)," Mark Landler describes the training for customer service center workers in India.¹ "Hi, my name is Susan Sanders, and I'm from Chicago," said C. R. Suman, who is actually from India and is sitting in Bangalore as she talks with an American caller regarding a service offered by a U.S. telecommunications company. Part of Ms. Suman's training at Customer Asset, the Indian call center, is to "fake it" as an American. She not only receives considerable dialect training so callers think they are speaking with a midwesterner, she also is given instructions to lie to the caller about where she is from and where she is at the time of the call. "Susan's" parents are Bob and Ann, she has a brother Mark, and she attended the University of Illinois. Ms. Suman's training included an episode of *Friends* in which she was supposed to learn the "in" phrases. Defenders of this practice maintain that customers are troubled if they find out that the company representative with whom they are dealing is over 8,000 miles away. Ms. Suman earns about \$3,600 per year for full-time work with Customer Asset.

Complaints about customer service from Indian call centers are quite common. Many companies have relocated to the Philippines in response to complaints from customers who said they could not understand CSRs from India. There are now about 400,000 agents in the Philippines versus 350,000 in India. However, this strategy isn't necessarily satisfactory either. Some U.S. companies are returning to the states. For example, in 2011, US Airways hired 400 agents in the U.S. after complaints about outsourced agents.²

Assignment

1. What do you see as the major advantages and disadvantages of contracting with an overseas customer call center? Is there recent empirical evidence that provides comparisons of the options

- versus using U.S. workers? Provide the URL(s) for this evidence.
2. What do you see as the advantages and disadvantages of allowing this outsourced organization to lie to your customers about who they are and where they are?
3. Is it unethical to contract with such an organization? Explain your answer.
4. What if Customer Asset presented data showing that American callers are more satisfied with the call service they receive from the "fake" Americans than from call center associates who admit they are Indians sitting in India?
5. Would you be more accepting of this practice if data showed that customers feel more secure about transactions if they feel they are interacting with an American?
6. Do a Net search to determine what the current wages are for customer service representatives working in the United States, India and the Philippines.

¹Landler, M. (2001, March 21). Hi, I'm in Bangalore (but I can't say so). *New York Times*. Retrieved from <http://NYTimes.qpass.com/qpass-archives/>

²Bajaj, V. (2011, November 25). A new capital of call centers. *New York Times* online (<http://www.nytimes.com/2011/11/26/business/philippines-overtakes-india-as-hub-of-call-centers.html>)

CRITICAL THINKING APPLICATION 5-C

Is Wal-Mart Guilty of Gender Discrimination?

Wal-Mart is the largest private employer in the United States and the world's largest retailer. Through its Wal-Mart and Sam's Club divisions, it operates over 3,000 stores across the country in every state of the United States. There are so many Wal-Mart locations in the United States that, according to Wal-Mart, the average store is within 30 miles of the next Wal-Mart store. In the United States, Wal-Mart employs nearly 1 million "associates," Wal-Mart's term for its hourly employees. In its last fiscal year, it had sales exceeding \$200 billion. Wal-Mart claims that it has 100 million customers each week. Betty Dukes filed a sex discrimination claim against Wal-Mart. Dukes claimed that after 6 years of hard work and excellent performance reviews, she was denied the training Wal-Mart required to enable her to advance to a higher, salaried position. The lawsuit, *Dukes vs. Wal-Mart Stores, Inc.*, was eventually expanded to represent 1.5 million women, comprising both current and former employees.

The plaintiffs charge Wal-Mart with discriminating against women in promotions, pay, and job assignments in violation of Title VII of the 1964 Civil Rights Act. In her book, *Selling Women Short: The Landmark Battle for Workers' Rights at Wal-Mart*, journalist Liza Featherstone reviews the lawsuit.¹ As described in Salon.com, Ms. Featherstone "paints a picture of Wal-Mart as a hypocritical, falsely pious, exceptionally greedy corporation that creates a massive sinkhole for working women."² Female employees from many stores across the United States

claim they were repeatedly passed over for promotions, made to endure sexist comments from male co-workers, and paid significantly lower salaries for doing the same amount of work (or more).

The plaintiffs made the following claims:

1. Through its Wal-Mart and Sam's Club divisions, it is the industry leader not only in size, but also in its failure to advance its female employees. There are two workforces at Wal-Mart. By far the largest workforce is female, which comprises over 72 percent of the hourly sales employees, yet only one-third of management positions. This workforce is predominantly assigned to the lowest-paying positions with the least chance of advancement. The other workforce is male. This workforce is the reverse image of the female workforce—it comprises less than 28 percent of the hourly sales workers, yet holds two-thirds of all store management positions and over 90 percent of the top store manager positions. This disparate distribution of the genders is the result of purposeful discrimination and of practices that serve no reasonable business purpose yet have a disproportionate impact on women.
2. The class-action lawsuit was brought by present and former Wal-Mart employees on behalf of themselves and all other similarly situated women who have been subjected to Wal-Mart's continuing policies and practices of gender discrimination. Plaintiffs, and the class they represent, charge that Wal-Mart discriminates against its female employees by advancing male employees more quickly than female employees; by denying female employees equal job assignments, promotions, training, and compensation; and by retaliating against those who oppose its unlawful practices.
3. Wal-Mart employs uniform employment and personnel policies throughout the United States. All of its stores are linked by state-of-the-art electronic and video communications, through which all stores regularly report payroll, labor, and other employment data. Regardless of division, there are uniform policies for employees, uniform "orientation" procedures, uniform salary, assignment, pay, training, and promotion policies. All stores are regularly audited for compliance with these uniform, companywide policies and procedures.
4. The vast majority of Wal-Mart store employees are hourly paid sales associates, who report to department heads. Each store has a number of assistant managers who have different functional responsibilities, one or more "co-managers," and a store manager. District and regional managers supervise the stores.
5. Few objective requirements or qualifications for specific store assignments, promotions, or raises exist. Salaries are supposed to conform to general company guidelines, but store management has substantial discretion in setting salary levels within salary ranges for each employee. Salaries are also adjusted based on performance reviews, which are largely based on subjective judgments of performance. Plaintiffs are informed and believe that Wal-Mart policy prohibits employees from exchanging information about their salary levels.
6. The hourly sales workforce at Wal-Mart is predominantly female, representing over 72 percent of all hourly employees. Yet, male and female employees are not evenly distributed among the departments in the store. In some departments and positions, such as furniture, garden, electronics, hardware, sporting goods, guns, produce, and stocking, males are disproportionately assigned. In other departments, such as front-end cashier, customer service, health and beauty aids, cosmetics, housewares, stationery, toys, layaway, fabrics, and clothes, women are disproportionately assigned. Plaintiffs are informed and believe that the male-dominated departments and jobs are better paid and offer greater opportunities for advancement than the female-dominated positions and departments.
7. Male employees are more likely than female employees to obtain "cross-training" in other departments or to receive training and support to enter into departments that would aid their advancement.
8. Plaintiffs are informed and believe that female employees are paid less than male employees who perform substantially similar work, with similar or lesser skills and experience. Plaintiffs are further informed and believe that segregated assignment patterns exacerbate such unequal pay, because men are more likely to be assigned to departments that pay better than departments to which women are assigned.
9. Although women comprise the substantial majority of all hourly employees, the source from which most managers are drawn, their representation in management is the polar opposite. Women hold only about one-third of the positions that Wal-Mart identifies as management. However, even this figure overstates the proportion of female managers in true management positions. Thus the "one-third" of management positions held by women includes traditionally "female" positions, such as assistant managers, whose primary responsibility is supervising cashiers, and the lowest level of managers. Plaintiffs are informed and believe that women comprise less than 10 percent of all store managers and approximately 4 percent of all district managers. There are few, if any, female regional managers. There is only one woman among the 20 executive officers of the company. Plaintiffs

are informed and believe that even when women are promoted, on average they are advanced later, and then more slowly, than similarly situated male employees.

10. The workforce profile of Wal-Mart does not reflect the industry or the profile of its largest competitors. In fact, although it is the largest discount retailer in the country, it lags far behind its competitors in the promotion of women. Thus while Wal-Mart's store management is only about one-third female, among its 20 top competitors, women comprise over 56 percent of management, even though the proportion of hourly workers who are female at these companies is comparable to Wal-Mart. These differences are consistently found around the country. Moreover, these differences are longstanding. In fact, female representation among managers at Wal-Mart is at a substantially lower level today than the level of representation among Wal-Mart's competitors in 1975.
11. This pattern of unequal assignments, pay, training, and advancement opportunities is not the result of random or nondiscriminatory factors. Rather, it is the result of an ongoing and continuous pattern and practice of intentional sex discrimination in assignments, pay, training and promotions, and reliance on policies and practices that have an adverse impact on female employees that cannot be justified by business necessity and for which alternative policies and practices with less discriminatory impact could be utilized that equally serve any asserted justification. These policies and practices include, without limitation:
 - a. Failure to consistently post job and promotional openings to ensure that all employees have notice of and an opportunity to seek advancement or more desirable assignments and training.
 - b. Reliance upon unweighted, arbitrary, and subjective criteria utilized by a nearly all-male managerial workforce in making assignments, training, pay, performance review, and promotional decisions. Even where Wal-Mart policy states objective requirements, these requirements are often applied in an inconsistent manner and ignored at the discretion of management.
 - c. Because of the "excessive subjectivity" described in 11b, there is a reliance on gender stereotypes in making employment decisions such as assignments, promotions, pay, and training.
 - d. Pre-selection and "grooming" of male employees for advancement, favorable assignments, and training.
 - e. Maintenance of largely sex-segregated job categories and departments.
 - f. Deterrence and discouragement of female employees from seeking advancement, training, and favorable assignments and pay.

- g. Paying female employees lower compensation than similarly situated men.
- h. Assigning women to lower paying positions, and positions with lesser advancement potential than those given to men, and advancing women more slowly than similarly situated male employees.
- i. Providing less training and support to female employees and managers than that given to male employees and managers.
- j. Harassing female employees interested in advancement and subjecting them to a hostile work environment.
- k. Requiring, as a condition of promotion to management jobs, that employees be willing to relocate, often to significantly distant stores, and applying this policy to require frequent and substantial relocations of its managers without any reasonable business justification. Plaintiffs are further informed and believe that the relocation policy is applied disparately between male and female employees to the disadvantage of female employees.
- l. Retaliating against female employees who have complained either internally or externally about Wal-Mart's treatment of its female employees. Wal-Mart maintains a companywide, toll-free telephone number, which it encourages employees to use if they have a problem or complaint in their store or with store management. Plaintiffs are informed and believe that Wal-Mart retaliates against women who use this number to report discrimination, sexual harassment, or other unfair working conditions.

Assignment

Based on the evidence presented, is Wal-Mart guilty of gender discrimination as alleged? Try to take a definitive position and then justify that position with specific arguments and evidence presented here. If you are unsure, what specific information do you need to be able to render a verdict in this case? Setting aside the alleged illegalities, what HR practices discussed in Chapter 5 could Wal-Mart improve to make its HR more effective, to increase the diversity of its supervisory and management staff, and (perhaps) to lower the likelihood of Title VII lawsuits in the future?

¹Featherstone, L. (2004). *Selling women short: The landmark battle for workers' rights at Wal-Mart*. New York: Basic Books.

²Pikul, C. (2004, November 22). *Women vs. Wal-Mart*. Retrieved from Salon.com.

CRITICAL THINKING APPLICATION 6-A

What Privacy Do We Have in the Workplace?¹

Currently debated privacy issues have included drug testing, medical information kept on employees and family members, credit history, and certain questions on personality tests.