

# Wal-Mart Wage and Hour Settlement

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"The exposure is gigantic, but maybe the worst part is the bad publicity. Every time one of these proceeds to trial and they (Wal-Mart) lose, it's not helpful to their reputation."<sup>1</sup>

*-Carl Tobias, professor at the University of Richmond specializing in civil litigation.*

"This is part of their overall strategy to get their labor house in order, and compared to what unionization might cost them, I think they probably realized it was a small price to pay."<sup>2</sup>

*-Paul Secunda, associate professor at the Marquette School of Law, suggesting Wal-Mart wanted to settle 63 pending wage/hour lawsuits not just to avoid potentially more costly defeats in the courtroom, but to resolve issues that might be used to argue for passage of the Employee Free Choice Act.*

On December 23, 2008, Wal-Mart announced that it settled 63 wage and hour class action lawsuits that have been pending against the company for several years. That number represents approximately 86% of the 73 wage/hour and overtime class actions currently pending against the company. What these cases have revealed through evidence and employee testimony is a "corporate culture" and systematic approach geared towards cutting labor costs, by dictating managers hire below the "preferred" staffing levels and rewarding managers for keeping labor costs down.

Lawsuit documents have cited various methods used by managers to hold down labor costs, including: forcing employees to work off the clock; requiring workers to skip lunch and rest breaks; and manipulating time and wage records. An internal audit performed by Wal-Mart in July 2000 indicated these types of violations were and have been a massive problem companywide for years. Wal-Mart executives knew the company was engaged in illegal activity, and they hid the evidence in an attempt to avoid liability.

## WHAT WE KNOW ABOUT THE WAL-MART SETTLEMENT

Facts about the current settlement:<sup>3</sup>

- All parties involved in the 35 *federal* Wal-Mart wage and hour employment practices lawsuits have agreed to stay all proceedings pending court approval of a final settlement reached among the parties.
- On December 14, 2008, plaintiffs' lead counsel and lead counsel for defendant Wal-Mart executed a binding and confidential term sheet agreeing to settle 35 federal cases as part of a multi-district litigation proceeding, subject to approval by Wal-Mart's Board of Directors.
- The settlement was then approved by Wal-Mart's Board of Directors, which is now drafting the final settlement documents.
- The terms of the settlement are also subject to approval by the various trial courts presiding over the remaining actions, and the total payment will depend on the amount of claims submitted by class members.
- Under the settlement agreements, Wal-Mart will pay between \$352 million and \$640 million.
- Also as part of the settlement agreements Wal-Mart has agreed to continue to use various electronic systems designed to maintain compliance with its wage and hour policies and applicable law.



## REACTION TO THE WAL-MART SETTLEMENT

### **Paul M. Secunda, associate professor, Marquette University School of Law:**<sup>4</sup>

Secunda has suggested that Wal-Mart sought settlement of these lawsuits in order to resolve issues that might be used to argue for passage of the Employee Free Choice Act, legislation fiercely opposed by Wal-Mart because of its potential to make it easier for employees to unionize. According to Secunda, "This is part of their overall strategy to get their labor house in order, and compared to what unionization might cost them, I think they probably realized it was a small price to pay."

### **Eli Portnoy, Los Angeles based brand strategist:**<sup>5</sup>

"They do appear to take advantage of these employees as they can and they backtrack and pay up settlements. You hear more and more cases of Wal-Mart being less employee-friendly and more Big Brother, more controlling and more money-focused. I don't think anybody thinks Wal-Mart is still the same kind of company it used to be."

### **Nelson Lichtenstein, labor relations expert, University of California, Santa Barbara:**<sup>6</sup>

Lichtenstein suggested that a "lax regulatory environment and a business-friendly federal labor board have conspired to encourage Wal-Mart and others to bend or break the law. According to Lichtenstein, "I'd be most interested to know when the negotiations really got serious – before or after November 4<sup>th</sup>. I think they're reading the tea leaves, and they know there's a new era of labor law enforcement coming."

### **Michael Mishak, columnist, Las Vegas Sun:**<sup>7</sup>

"Consider the environment: Sen. Barack Obama took Wal-Mart to task during the presidential campaign for its low wages and scant benefits and was elected in November with considerable organizing help from unions. His pick for labor secretary, Democrat Rep. Hilda Solis of California, has vowed to strengthen unions and enforce garden-variety labor law, such as the wage-and-hour rules at the heart of the Wal-Mart class-action suit. And, if Democrats stick together, Congress is just a few votes shy of passing a law that would make it easier for unions to organize."

## NOTABLE JUDGMENTS/SETTLEMENTS AGAINST WAL-MART

According to Wal-Mart's most recent quarterly report, the company has already been forced to pay hundreds of millions of dollars because of past judgments and settlements.<sup>8</sup>

**Borja/Turjillo v. Wal-Mart:** filed in Las Animas County District Court.<sup>9</sup>

State: Colorado  
Settlement: \$50 million

**Braun v. Wal-Mart:** filed September 2001 in Dakota County 1<sup>st</sup> Judicial Court.<sup>10</sup>

State: Minnesota  
Settlement: \$54 million

**Braun/Hummel v. Wal-Mart:** filed March 2002 (Braun) and August 2004 (Hummel) in Philadelphia County Court of Common Pleas.<sup>11</sup>

State: Pennsylvania  
Judgment: \$188 million

**Savaglio v. Wal-Mart:** filed February 2001 in Alameda County Superior Court.<sup>12</sup>

State: California  
Judgment: \$198 million

**United States Department of Labor:** In 2007, Wal-Mart agreed to pay more than \$33 million in back wages to thousands of employees. Wal-Mart turned itself in to the U.S. Labor Department after determining it had paid too little overtime over a five year period.<sup>13</sup>



## LIST OF CASES INVOLVED IN SETTLEMENT

1. Adcox v. Wal-Mart Stores, Inc., et al., Case No. 04-00633, United States District Court for the Southern District of Texas, filed 11/09/04
2. Armijo v. Wal-Mart Stores, Inc., et al., Case No. 00-01540, 1st Judicial District Court for the State of New Mexico, filed 09/18/00
3. Bailey v. Wal-Mart Stores, Inc., Case No. 00-01398, Marion County Superior Court for the State of Indiana, filed 08/17/00
4. Barnett v. Wal-Mart Stores, Inc., Case No. 01-2-24553-8, King County Superior Court for the State of Washington, filed 09/10/01
5. Basco v. Wal-Mart Stores, Inc., Case No. 00-03184, United States District Court for the District of Louisiana, filed 09/05/00
6. Bayardo v. Wal-Mart Stores, Inc., et al., Case No. 07-00349, United States District Court for the District of Nevada, filed 03/19/07
7. Brogan, Pam, et al. v. Wal-Mart Stores, Inc., et al., Case No. 07-00214, United States District Court for the Southern District of West Virginia, filed 04/03/07
8. Brogan, Tammy, et al. v. Wal-Mart Stores, Inc., et al., Case No. 05-C-0047, Strafford County Superior Court for the State of New Hampshire, filed 02/17/05
9. Brown, Lisa v. Wal-Mart Stores, Inc., Case No. 05-L-85, 14th Judicial Circuit Court for the State of Illinois, filed 06/20/01
10. Brown, Shanaia v. Wal-Mart Stores, Inc., et al., Case No. 07-010417, United States District Court for the Eastern District of New York, filed 04/05/07
11. Campbell v. Wal-Mart Stores, Inc., et al., Case No. 06-01172, United States District Court for the District of Nevada, filed 09/20/06
12. Carter v. Wal-Mart Stores, Inc., et al., Case No. 02-CP-15-626, Court of Common Pleas for the State of South Carolina, filed 07/31/02
13. Cole v. Wal-Mart Stores, Inc., et al., Case No. 06-00003, United States District Court for the District of Montana, filed 01/13/06
14. Connatser v. Wal-Mart Stores, Inc., et al., Case No. 07-02239, United States District Court for the Western District of Tennessee, filed 04/04/07
15. Curless v. Wal-Mart Stores, Inc., et al., Case No. 05-00277, United States District Court for the District of Wyoming, filed 10/26/05
16. Deas v. Wal-Mart Stores, Inc., et al., Case No. 06-00052, United States District Court for the Eastern District of Virginia, filed 04/03/06
17. Evans v. Wal-Mart Stores, Inc., et al., Case No. 07-00074, United States District Court for the District of South Carolina, filed 01/09/07



18. Faverty v. Wal-Mart Stores, Inc., Case No. 02-08-4704, Court of Common Pleas for the State of Ohio, filed 08/02/02
19. Gilles, et al. v. Wal-Mart Stores, Inc., et al., Case No. 06-00519, United States District Court for the District of Indiana, filed 03/31/06
20. Grey v. Wal-Mart Stores, Inc., et al., Case No. 06-02293, United States District Court for the District of Kansas, filed 07/14/06
21. Gross v. Wal-Mart Stores, Inc., et al., Case No. 04-01029, Commonwealth of Kentucky Circuit Court for the State of Kentucky, filed 09/24/04
22. Hale v. Wal-Mart Stores, Inc., Case No. 01-218710, Circuit Court of Jackson County, Missouri, filed 08/15/01
23. Hall, Nancy v. Wal-Mart Stores, Inc., et al., Case No. 05-01099, United States District Court for the District of Nevada, filed 08/12/05
24. Henderson v. Wal-Mart Stores, Inc., et al., Case No. 06-01569, United States District Court for the District of Nevada, filed 12/06/06
25. Hicks v. Wal-Mart Stores, Inc., et al., Case No. 07-00051, United States District Court for the Eastern District of Texas, filed 04/03/07
26. Holcomb v. Wal-Mart Stores, Inc., Case No. 00-0633G, State Court of Chatham County, Georgia, filed 03/28/00
27. Husidic v. Wal-Mart Stores, Inc., et al., Case No. 06-00441, United States District Court for the Southern District of Iowa, filed 09/14/06
28. Iliadis v. Wal-Mart Stores, Inc., et al., Case No. 549802, Middlesex County Superior Court for the State of New Jersey, filed 05/30/02
29. Jackson, Dora v. Wal-Mart Stores, Inc., et al., Case No. 05-00269, United States District Court for the District of Delaware, filed 04/04/05
30. Jackson, Reginald v. Wal-Mart Stores, Inc., et al., Case No. 05-00424, United States District Court for the District of Idaho, filed 02/03/06
31. Jackson, f/k/a Scott v. Wal-Mart Stores, Inc., Case No. 01-40751-5, Circuit Court of Saginaw County, Michigan, filed 09/26/01
32. King v. Wal-Mart Stores, Inc., et al., Case No. 07-01486, United States District Court for the Eastern District of Pennsylvania, filed 04/13/07
33. Kraemer v. Wal-Mart Stores, Inc., Case No. 06-00098, United States District Court for the District of North Dakota, filed 11/15/06
34. Kuhlman v. Wal-Mart Stores, Inc., et al., Case No. 01-08080, Circuit Court of Milwaukee County, Wisconsin, filed 08/30/01
35. Lerma v. Wal-Mart Stores, Inc., et al., Case No. 01-01395, District Court of Cleveland County, Oklahoma, filed 08/31/01
36. Lopez v. Wal-Mart Stores, Inc., et al., Case No. 00-12326, 23rd Judicial District Court for the State of Texas, filed 06/23/00



37. Luce v. Wal-Mart Stores, Inc., et al., Case No. 05-01019, United States District Court for the District of South Dakota, filed 05/11/05
38. Mathies, et al. v. Wal-Mart Stores, Inc., et al., Case No. 07-00483, United States District Court for the District of Oregon, filed 03/30/07
39. McFarlin v. Wal-Mart Stores, Inc., et al., Case No. 05-00094, United States District Court for the District of Alaska, filed 04/07/05
40. Montgomery v. Wal-Mart Stores, Inc., et al., Case No. 03-00537, United States District Court for the District of Mississippi, filed 12/30/02
41. Mussman v. Wal-Mart Stores, Inc., et al., Case No. 01-27486, District Court of Clinton County, Iowa, filed 06/05/01
42. Nagy v. Wal-Mart Stores, Inc., et al., Case No. 01-00854, Circuit Court of Boyd County, Kentucky, filed 08/29/01
43. Nolan, et al. v. Wal-Mart Stores, Inc., et al., Case No. 06-00777, United States District Court for the Northern District of Ohio, filed 04/04/06
44. Olinger v. Wal-Mart Stores, Inc., et al., Case No. 06-14055, United States District Court for the Eastern District of Michigan, filed 09/14/06
45. Parrish v. Wal-Mart Stores, Inc., et al., Case No. 05-00236, State Court of Chatham County, Georgia, filed 02/17/05
46. Pedro, et al. v. Wal-Mart Stores, Inc., et al., Case No. 07-10638, United States District Court for the District of Massachusetts, filed 04/04/07
47. Penn v. Wal-Mart Stores, Inc., et al., Case No. 06-06045, United States District Court for the Eastern District of Louisiana, filed 09/15/06
48. Phelps v. Wal-Mart Stores, Inc., et al., Case No. 07-00243, United States District Court for the Southern District of Illinois, filed 04/04/07
49. Pickett v. Wal-Mart Stores, Inc., et al., Case No. 03-05945, 13th Judicial District Court for the State of Tennessee, filed 10/22/03
50. Poha v. Wal-Mart Stores, Inc., et al., Case No. 05-00697, United States District Court for the District of Hawaii, filed 11/01/05
51. Pritchett v. Wal-Mart Stores, Inc., et al., Case No. CV-05-00967, Circuit Court of Jefferson County, Alabama, filed 02/17/05
52. Richardson, Sherry v. Wal-Mart Stores, Inc., et al., Case No. 07-00438, United States District Court for the District of Nevada, filed 04/04/07
53. Robinson v. Wal-Mart Stores, Inc., et al., Case No. 03-00104, United States District Court for the District of Mississippi, filed 03/05/07
54. Sarda v. Wal-Mart Stores, Inc., et al., Case No. 01-00326, Circuit Court of Washington County, Florida, filed 09/21/01
55. Smith, Adriane v. Wal-Mart Stores, Inc., et al., Case No. 07-00188, United States District Court for the Western District of Wisconsin, filed 04/02/07



56. Stafford v. Wal-Mart Stores, Inc., et al., Case No. 05-00535, United States District Court for the District of Nebraska, filed 12/08/05
57. Whitacre v. Wal-Mart Stores, Inc., et al., Case No. 07-00445, United States District Court for the District of Nevada, filed 06/15/07
58. Willey v. Wal-Mart Stores, Inc., et al., Case No. 01-03688, District Court of Wyandotte County, Kansas, filed 09/21/01
59. Williams, Norma Jean v. Wal-Mart Stores, Inc., et al., Case No. 06-00061, United States District Court for the District of Utah, filed 01/20/06
60. Williams, Travis v. Wal-Mart Stores, Inc., et al., Case No. 06-00142, United States District Court for the Western District of North Carolina, filed 03/23/06
61. Winters v. Wal-Mart Stores, Inc., et al., Case No. 02-00199, Circuit Court of Holmes County, Mississippi, filed 05/28/02
62. Woods v. Wal-Mart Stores, Inc., et al., Case No. 06-00006, United States District Court for the District of Maine, filed 01/12/06
63. Works v. Wal-Mart Stores, Inc., et al., Case No. 05-0187-2, Circuit Court of Miller County, Arkansas, filed 05/18/05

## End Notes

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- <sup>1</sup> Margaret Cronin Fisk and Sophia Pearson. "Wal-Mart shortchanged Minnesota workers, lawyer says." *Bloomberg News*. September 25, 2007.
- <sup>2</sup> Dan Slater. "The Wal-Mart Labor Settlement: A Preemptive Strike against Unionization?" *The Wall Street Journal Law Blog*. December 24, 2008.
- <sup>3</sup> In Re: Wal-Mart Wage and Hour Employment Practices Litigation. Stipulation Regarding Stay of Proceedings. MDL No. 1735, in the United States District Court for the District of Nevada. Filed January 2, 2009. See also: Wal-Mart Press Release (via MarketWatch). "Wal-Mart and Plaintiffs' Counsel Announce Settlement of Most Wage and Hour Class Action Lawsuits Against the Company." December 23, 2008. Online at: <http://walmartstores.com/FactsNews/NewsRoom/8867.aspx>.
- <sup>4</sup> Dan Slater. "The Wal-Mart Labor Settlement: A Preemptive Strike against Unionization?" *The Wall Street Journal Law Blog*. December 24, 2008.
- <sup>5</sup> Andrea Chang. "Wal-Mart settles suits by workers." *Los Angeles Times*. December 24, 2008.
- <sup>6</sup> Michael Mishak. "Wal-Mart sensing a new political day?" *Las Vegas Sun*. December 31, 2008.
- <sup>7</sup> Michael Mishak. "Wal-Mart sensing a new political day?" *Las Vegas Sun*. December 31, 2008.
- <sup>8</sup> Wal-Mart Stores, Inc., 10-Q for October 31, 2008. Online at: <http://www.secinfo.com/d14D5a.t7KGx.htm#1stPage>. Last accessed January 7, 2009.
- <sup>9</sup> Molly Selvin and Abigail Goldman. "Wal-Mart workers win suit." *Los Angeles Times*. December 23, 2005.
- <sup>10</sup> Associated Press. "Wal-Mart to pay \$54.25M to settle Minnesota lawsuit." *Associated Press via MSN Money*. December 9, 2008.
- <sup>11</sup> Sophia Pearson and Margaret Cronin Fisk. "Wal-Mart loses Pennsylvania suit over missed breaks." *Bloomberg*. October 12, 2006.
- <sup>12</sup> Kimberly Morrison. "Like Clock Work." *Northwest Arkansas Morning News*. June 21, 2008.
- <sup>13</sup> Dan Margolies. "Wal-Mart agrees to settle wage lawsuits." *Kansas City Star*. December 24, 2008.

