

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
LONDON DIVISION

U.S. EQUAL EMPLOYMENT	)	
OPPORTUNITY COMMISSION,	)	
	)	
Plaintiff,	)	Civil Action No.
	)	
	)	
v.	)	
	)	<u>Complaint</u>
WALMART, INC.	)	
	)	
	)	
Defendant.	)	
_____	)	

NATURE OF THE ACTION

This is an action under Title VII of the Civil Rights Act of 1964, as amended (“Title VII”), to correct unlawful employment practices on the basis of sex (female) and to provide appropriate relief to Alice Collett, Angela Lambert and a class of female grocery orderfiller applicants. As alleged with greater particularity below, Plaintiff Equal Employment Opportunity Commission (“EEOC”) alleges that since at least 2010, Defendant Walmart, Inc. (“Walmart” or “Defendant”), has subjected Alice Collett, Angela Lambert and a nationwide class of aggrieved female grocery orderfiller applicants to a physical ability test that has a disparate impact on female applicants that results in them being denied employment opportunities because of their sex, female, in violation of Title VII.

JURISDICTION AND VENUE

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451, 1331, 1337, 1343, and 1345. This action is authorized and instituted pursuant to Section 706(f)(1) and (3) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-5(f)(1) and (3) (“Title VII”).

2. The employment practices alleged to be unlawful were and are being committed within the jurisdiction of the United States Court for the Eastern District of Kentucky, London Division.

PARTIES

3. Plaintiff Equal Employment Opportunity Commission is the agency of the United States of America charged with the administration, interpretation and enforcement of Title VII, and is expressly authorized to institute this action by Section 706(f)(1) and (3) of Title VII, 42 U.S.C. § 2000e-5(f)(1) and (3).

4. At all relevant times, Defendant Walmart, Inc. has continuously been and is now a Delaware corporation that operates numerous grocery distribution centers throughout the nation, including distribution center #6097, located in London, Kentucky. Walmart, Inc. has continuously been and is now doing business in the state of Kentucky and the city of London and has continuously had at least fifteen (15) employees.

5. At all relevant times, Defendant Walmart, Inc. has continuously been and is now an employer engaged in an industry affecting commerce within the

meaning of Sections 701(b), (g) and (h) of Title VII, 42 U.S.C. §§ 2000e(b)(g) and (h).

### ADMINISTRATIVE PROCEDURES

6. More than thirty (30) days prior to the institution of this lawsuit, Charging Parties Alice Collett and Angela Lambert filed charges of discrimination with the EEOC alleging that Walmart violated Title VII.

7. On May 14, 2018, the EEOC issued to Walmart Letters of Determination finding reasonable cause to believe that Walmart violated Title VII by subjecting Alice Collett, Angela Lambert, and a class of women nationwide to sex discrimination based upon its use of a PAT that has a disparate impact on female grocery orderfiller applicants that results in them being denied employment opportunities because of their sex, female.

8. The Letters of Determination invited Walmart to join with the EEOC in informal methods of conciliation to endeavor to eliminate the discriminatory practices and provide appropriate relief.

9. The EEOC engaged in communications with Walmart to provide it with the opportunity to remedy the discriminatory practices described in the Letters of Determination.

10. The EEOC was unable to secure from Walmart a conciliation agreement acceptable to the EEOC.

11. On November 19, 2018, the EEOC issued to Walmart a Notice of Failure of Conciliation advising Walmart that the EEOC was unable to secure from Walmart a conciliation agreement acceptable to the EEOC.

12. All conditions precedent to the institution of this lawsuit have been fulfilled.

### **STATEMENT OF CLAIMS**

13. Since at least 2010, Walmart has engaged in unlawful employment practices at its grocery distribution centers nationwide through implementation of a physical abilities test (“PAT”) that is in violation of Sections 703(a)(1) and 703(a)(2) of Title VII, 42 U.S.C. §§ 2000e-2(a)(1) & (a)(2).

14. Since at least 2010, Walmart has used a selection procedure that requires grocery orderfiller applicants to achieve a competitive score on the PAT.

15. A score of 792.8 or higher on the PAT is deemed competitive.

16. Applicants who fail to achieve a competitive score on the PAT cannot be hired as a grocery orderfiller and are prohibited from reapplying for a grocery orderfiller position for six months.

17. In or around August 2010, Angela Lambert took the PAT and received a non-competitive score.

18. In or around September 2010, Alice Collett took the PAT and received a non-competitive score.

19. The PAT has a disparate impact on female grocery orderfiller applicants.

20. The PAT is not job-related for the position in question and consistent with business necessity.

21. Because of the employment practices complained of in paragraphs 13-20 above, Walmart refused to hire Alice Collett, Angela Lambert, and a nationwide class of female grocery orderfiller applicants because of their sex, female.

22. The effect of the employment practices complained of in paragraphs 13-20 above, has been to deprive Alice Collett, Angela Lambert, and a nationwide class of female grocery orderfiller applicants, equal employment opportunities and otherwise adversely affect their status as applicants because their sex, female.

#### PRAYER FOR RELIEF

Wherefore, the EEOC respectfully requests that this Court:

A. Grant a permanent injunction prohibiting Defendant and its subsidiaries, officers, agents, servants, employees, successors, and assigns, and all persons in active concert or participation with them, from administering its current PAT as a requirement to be hired/selected into the position of grocery orderfiller.

B. Grant a permanent injunction prohibiting Defendant and its subsidiaries, officers, agents, servants, employees, successors, and assigns, and all persons in active concert or participation with them, from implementing any employment practices, such as employment tests, that have a disparate impact on female applicants because of sex and that are not job-related for the position in question and consistent with business necessity, or for which there are alternative employment practices that cause less impact.

C. Order Defendant to institute and carry out training, policies, practices, and programs that provide equal employment opportunities based on sex, and that ensure that its operations are free from employment practices, such as employment tests, that cause an unlawful disparate impact on female job applicants because of sex.

D. Order Defendant to make whole Alice Collett, Angela Lambert, and all individuals in the nationwide class of female grocery orderfiller applicants, by providing appropriate backpay with prejudgment interest, in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of their unlawful employment practices.

E. Grant such further relief as the Court deems necessary and proper in the public interest.

F. Award the EEOC its costs of this action.

Respectfully submitted,

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