



### **Cote v. Wal-Mart Stores, Inc.: Frequently Asked Questions**

**What is this case about?** This case is about employment discrimination by Walmart against its employees who are married to someone of the same sex. Prior to January 1, 2014, Walmart denied those employees the opportunity to enroll their lawful, same-sex spouses in Walmart's health insurance plans, depriving those employees of a benefit that Walmart provided to all other similarly situated employees.

**What are the facts of the case?** Jacqueline (Jackie) Cote, an associate in the Swansea, MA Walmart store, has been married to Diana (Dee) Smithson since 2004. Starting in 2008, Jackie attempted to enroll Dee in her employer-provided health plan as an eligible spouse, but was repeatedly rejected by Walmart due to Walmart's national policy that same-sex spouses of employees were not eligible to receive health insurance benefits. Dee has been battling ovarian cancer since 2012. Due to Walmart's discrimination that left Dee without any health insurance, the couple racked up more than \$150,000 of medical debt as Dee treated her cancer.

**Why a class action?** Walmart is the largest private employer in the country, with stores and employees in every state. Hundreds to thousands of current and former Walmart employees with same-sex spouses are likely to have been subjected to Walmart's policy of discriminating against employees who had same-sex spouses. Jackie, the lead plaintiff, felt that it was extremely important to help all Walmart workers who were denied spousal health care benefits because they were married to a person of the same sex. And both GLAD and the Washington Lawyers' Committee for Civil Rights and Urban Affairs (WLC) agree that it is important to help all of the people who were harmed by Walmart's discrimination.

**Have you identified other members of the class?** Through the normal procedures available in class actions in federal court, we will identify all of the people who are class members and were harmed by Walmart's policy of discrimination. The class that we will ask the Court to certify includes all current and former employees of Walmart in the United States who prior to January 1, 2014 had legal marriages to a person of the same sex, who would have been eligible to receive spousal health insurance benefits but for Walmart's discrimination, and who did not receive spousal health insurance benefits from Walmart.

Anyone who believes that he or she is a member of the class should contact GLAD ([awright@glad.org](mailto:awright@glad.org)) or the WLC ([Peter\\_RomerFriedman@washlaw.org](mailto:Peter_RomerFriedman@washlaw.org)).

**What is the remedy you seek?** We are seeking a declaration that Walmart violated Title VII of the federal Civil Rights Act, the federal Equal Pay Act, and the Massachusetts Fair Employment Practices Law, and that Walmart is required, as a matter of law, to provide spousal health insurance benefits to employees who are married to someone of the same sex. We would like the court to permanently enjoin Walmart from denying such coverage going forward. And finally, we seek damages for the benefits that Walmart employees lost, including the out-of-pocket medical expenses their spouses

incurred due to a lack of health insurance coverage, damages for the emotional or non-economic harm that class members suffered, and punitive damages.

**WalMart changed their policy; why are you still suing?** Although Walmart changed its policy on January 1, 2014 so that same-sex spouses would receive health benefits in the future, Walmart has done nothing to compensate the many same-sex couples who were denied health benefits for many years before the policy was changed. This action seeks compensation for the Walmart employees who were treated unequally and lost out on valuable health insurance benefits.

Furthermore, benefits provided as a matter of grace, not right, are not secure. Walmart's policy change was voluntary, and we seek a court order to ensure that the change is permanent. When the EEOC investigated Walmart's discrimination, Walmart told the EEOC that it believed that it had no legal obligation to provide spousal health insurance benefits to employees who have spouses of the same sex.

Finally, we want to send a message to companies big and small that it is illegal to deny benefits to the same-sex spouses of their employees if they provide the same benefits to employees with opposite-sex spouses. This type of sex discrimination violates federal and state law throughout the country.

**Why are you suing Walmart under Title VII of the Civil Rights Act's provision that bans sex discrimination?** Title VII prohibits employers from engaging in sex discrimination. Walmart's discriminatory national policy, pattern, and practice of denying spousal benefits to same-sex spouses of eligible Walmart employees constitutes sex discrimination. If Jackie were a man, she would have received spousal health insurance for Dee; or if Jackie's spouse were a man, she would have received spousal health insurance benefits. This is a very simple classification based on sex that violates federal law.

Title VII also bans employers from relying on sex-based stereotypes when employers make decisions or establish their policies. In this case, Walmart's policy relied on a sex-based stereotype that a woman should be married to a man (not a woman), and that a man should be married to a woman (not a man).

Currently, Title VII does not explicitly prohibit employment discrimination based on sexual orientation or gender identity. However, we, the EEOC, and some federal judges believe that Title VII's ban on sex discrimination protects LGBTQ workers from discrimination in many situations. Until there are explicit protections under Title VII prohibiting discrimination based on sexual orientation and gender identity, LGBTQ people can and should pursue Title VII sex discrimination claims to vindicate their rights.

**Does this case only cover people who worked in states where same-sex marriage was performed or recognized before June 27, 2015?** No. A judgment in this case would cover people who worked in all 50 states and the District of Columbia, as long as they had a legal marriage prior to January 1, 2014. Title VII is a federal law that bans sex discrimination nationwide, and in this case it barred Walmart from discriminating against same-sex couples who worked in all 50 states and the District of Columbia.

For example, if a worker got married in Vermont (a state that allowed same-sex couples to get married prior to January 1, 2014) but she worked in a Walmart store in Ohio (a state that did not recognize such marriages before January 1, 2014), she would be part of the case and should be eligible to receive relief if we prevail. She would have the same right to recover as someone like Jackie who was married and worked in Massachusetts, a state that allowed same-sex couples to get married prior to January 1, 2014.