



DIVISION OF  
CORPORATION FINANCE

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

April 8, 2019

Kristopher A. Isham  
Walmart Inc.  
kristopher.isham@walmartlegal.com

Re: Walmart Inc.  
Incoming letter dated February 1, 2019

Dear Mr. Isham:

This letter is in response to your correspondence dated February 1, 2019 concerning the shareholder proposal (the "Proposal") submitted to Walmart Inc. (the "Company") by Mary Pat Tift (the "Proponent") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. We also have received correspondence from the Proponent dated March 7, 2019. Copies of all of the correspondence on which this response is based will be made available on our website at <http://www.sec.gov/divisions/corpfin/cf-noaction/14a-8.shtml>. For your reference, a brief discussion of the Division's informal procedures regarding shareholder proposals is also available at the same website address.

Sincerely,

M. Hughes Bates  
Special Counsel

Enclosure

cc: Mary Pat Tift  
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April 8, 2019

**Response of the Office of Chief Counsel**  
**Division of Corporation Finance**

Re: Walmart Inc.  
Incoming letter dated February 1, 2019

The Proposal requests that the board prepare a report to evaluate the risk of discrimination that may result from the Company's policies and practices for hourly workers taking absences from work for personal or family illness.

There appears to be some basis for your view that the Company may exclude the Proposal under rule 14a-8(i)(7), as relating to the Company's ordinary business operations. In this regard, we note that the Proposal relates generally to the Company's management of its workforce, and does not focus on an issue that transcends ordinary business matters. Accordingly, we will not recommend enforcement action to the Commission if the Company omits the Proposal from its proxy materials in reliance on rule 14a-8(i)(7).

Sincerely,

Michael Killoy  
Attorney-Adviser

**DIVISION OF CORPORATION FINANCE**  
**INFORMAL PROCEDURES REGARDING SHAREHOLDER PROPOSALS**

The Division of Corporation Finance believes that its responsibility with respect to matters arising under Rule 14a-8 [17 CFR 240.14a-8], as with other matters under the proxy rules, is to aid those who must comply with the rule by offering informal advice and suggestions and to determine, initially, whether or not it may be appropriate in a particular matter to recommend enforcement action to the Commission. In connection with a shareholder proposal under Rule 14a-8, the Division's staff considers the information furnished to it by the company in support of its intention to exclude the proposal from the company's proxy materials, as well as any information furnished by the proponent or the proponent's representative.

Although Rule 14a-8(k) does not require any communications from shareholders to the Commission's staff, the staff will always consider information concerning alleged violations of the statutes and rules administered by the Commission, including arguments as to whether or not activities proposed to be taken would violate the statute or rule involved. The receipt by the staff of such information, however, should not be construed as changing the staff's informal procedures and proxy review into a formal or adversarial procedure.

It is important to note that the staff's no-action responses to Rule 14a-8(j) submissions reflect only informal views. The determinations reached in these no-action letters do not and cannot adjudicate the merits of a company's position with respect to the proposal. Only a court such as a U.S. District Court can decide whether a company is obligated to include shareholder proposals in its proxy materials. Accordingly, a discretionary determination not to recommend or take Commission enforcement action does not preclude a proponent, or any shareholder of a company, from pursuing any rights he or she may have against the company in court, should the company's management omit the proposal from the company's proxy materials.

March 7, 2018

Via e-mail at [shareholderproposals@sec.gov](mailto:shareholderproposals@sec.gov)

Securities and Exchange Commission  
Office of the Chief Counsel  
Division of Corporation Finance  
100 F Street, NE  
Washington, DC 20549

Re: Request by Wal-Mart Stores, Inc. to omit shareholder proposal submitted by Mary Pat Tift

Ladies and Gentlemen,

Pursuant to Rule 14a-8 under the Securities Exchange Act of 1934, I submitted a shareholder proposal (the "Proposal") to Wal-Mart Stores Inc. Inc. ("Wal-Mart" or the "Company"). The Proposal asks Wal-Mart to evaluate the risk of discrimination that may result from Wal-Mart's policies and practices for hourly workers taking absences from work for personal or family illness.

In a letter to the Division dated February 1, 2019 (the "No-Action Request"), Wal-Mart stated that it intends to omit the Proposal from its proxy materials to be distributed to shareholders in connection with the Company's 2019 annual meeting of shareholders. Wal-Mart argues that it is entitled to exclude the Proposal in reliance on Rule 14a-8(i)(7), on the ground that the Proposal deals with Wal-Mart's ordinary business operations. As discussed more fully below, Wal-Mart has not met its burden of proving its entitlement to exclude the Proposal on ordinary business grounds, and I respectfully request that Wal-Mart's request for relief be denied.

### **The Proposal**

The Proposal states:

RESOLVED: Shareholders of Walmart Inc. ("Walmart") request that the Board of Directors evaluate the risk of discrimination that may result from Walmart's policies and practices for hourly workers taking absences from work for personal or family illness. The report shall be prepared at reasonable cost, omit proprietary information, omit information regarding claims against Walmart of which the company has notice, and be made available on Walmart's website.

## Ordinary Business

Rule 14a-8(i)(7) permits a company to omit a proposal that “deals with a matter relating to the company’s ordinary business operations.” Wal-Mart argues that the Proposal is excludable because it relates to (a) the Company’s management of its workforce, or (b) general employee compensation and benefits, without implicating a significant policy issue.

### *Proposals Addressing Workforce Management or General Employee Compensation and Benefits are Not Excludable If They Implicate a Significant Policy Issue*

Wal-Mart claims that “the Staff has specifically concurred that proposals addressing a company’s policies concerning its employees are ordinary business matters and, thus, such proposals are excludable under Rule 14a-8(i)(7).”<sup>1</sup> That sweeping generalization is contradicted by both the Commission’s 1998 release and numerous Staff determinations.

The Commission’s 1998 release<sup>2</sup> (the “1998 Release”) makes clear that a proposal is not excludable on ordinary business grounds simply because it addresses an employment-related subject. In the 1998 Release, the Commission reversed the Division’s approach to employment-related proposals, which had imposed a blanket rule allowing exclusion. The Commission explained that it was returning to a case-by-case analysis of employment-related proposals because:

the relative importance of certain social issues relating to employment matters has reemerged as a consistent topic of widespread public debate. In addition, as a result of the extensive policy discussions that the [Division’s] position engendered, and through the rulemaking notice and comment process, we have gained a better understanding of the depth of interest among shareholders in having an opportunity to express their views to company management on employment-related proposals that raise sufficiently significant social policy issues.

Applying that case-by-case approach, the Staff has declined to allow exclusion of many kinds of employment-related proposals. Most relevant to the Proposal, proposals addressing employment discrimination and related matters have consistently been deemed to transcend ordinary business.<sup>3</sup> Elements of general

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<sup>1</sup> No-Action Request, at 4.

<sup>2</sup> Exchange Act Release No. 40018 (May 28, 1998).

<sup>3</sup> See, e.g., R.R. Donnelly & Sons Co. (Jan. 6, 1999) (pay equity); Circuit City Stores, Inc. (Apr. 6, 1999) (EEO-1 data); OGE Energy, Inc. (Feb. 24, 2004) (sexual orientation discrimination); The TJX Companies (Apr. 1, 1999) (MacBride equal employment principles for Northern Ireland).

employee compensation—that paid below the senior executive level—have been found to implicate a significant policy issue.<sup>4</sup>

As well, proposals addressing employee benefits can address a significant policy issue. In *International Business Machines Co.*,<sup>5</sup> the proposal asked for a report on the company’s conversion from a traditional defined benefit pension plan to a cash-balance plan. The company argued that the proposal dealt with ordinary business operations, specifically employee benefits, and the proponent argued that such conversions raised a significant policy issue. The Staff declined to grant relief, stating:

In view of the widespread public debate concerning the conversion from traditional defined benefit pension plans to cash-balance plans and the increasing recognition that this issue raises significant social and corporate policy issues, it is our view that proposal relating to the conversion from traditional defined benefit pension plans to cash-balance plans cannot be considered matters relating to a registrant’s ordinary business operations.

By contrast, all of the determinations Wal-Mart cites on pages 4-7 of the No-Action Request involved aspects of workforce management, policies concerning employees, general employee compensation and benefits that were not found to involve a significant policy issue. Those determinations do not apply here.

### *Paid Sick Leave is a Significant Policy Issue*

To determine whether a topic qualifies as a significant social policy issue, the Division analyzes whether it is a “consistent topic of widespread public debate.”<sup>6</sup> As discussed above, employment discrimination is considered a significant policy issue transcending ordinary business. Paid sick leave also has been a topic of substantial media attention, as well as national, state and local legislative and ballot initiatives, supporting a conclusion that it is also a significant policy issue.

The economic and public health consequences of workers going without paid sick leave are profound. According to the National Partnership for Women & Families (“NPWF”), illness can be devastating without paid sick leave:

Workers without paid sick days jeopardize either their health or their families’ financial stability when they or a loved one gets sick – and lower wage workers are most vulnerable. Nearly one-quarter of U.S. adults (23 percent) report they have lost a job or have been threatened with job loss for

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<sup>4</sup> See, e.g., *General DataComm* (Dec. 9, 1998) (repricing of stock options has generated “widespread public debate,” precluding exclusion on ordinary business grounds).

<sup>5</sup> *International Business Machines Co.* (Jan. 6, 2000).

<sup>6</sup> See, e.g., *Duke Energy Corp.* (Mar. 1, 2002); *AT&T Inc.* (Feb. 2, 2011).

taking time off work due to illness or to care for a sick child or relative. . . . For a typical family without paid sick days, on average, 3.3 days of pay lost due to illness are equivalent to the family's entire monthly health care budget, and 2.7 days are equivalent to its entire monthly grocery budget.<sup>7</sup>

Paid sick leave can also improve public health. The NPWF asserts that “[w]orkers without paid sick days are more likely to report going to work with a contagious illness like the flu – and risk infecting others.”<sup>8</sup> Among restaurant workers, paid sick leave is rare--almost 90 percent lack it--and two-thirds of restaurant workers say they have cooked, prepared and served food while ill.<sup>9</sup> Nearly half of food workers in a CDC survey who reported working at least one shift while experiencing gastrointestinal symptoms in the previous year indicated that they were influenced to come to work by the fact that they wouldn't otherwise be paid.<sup>10</sup> Experts have opined that the lack of paid sick days contributes to the spread of contagious illnesses like swine flu (H1N1).<sup>11</sup>

The secondary effects of paid sick leave are also important. A health impact assessment of California's paid sick leave law found that a significant proportion of workers with poorer health status or chronic conditions such as hypertension, diabetes and asthma had no paid sick days, which may impede their ability to obtain primary care, leading to more costly preventable hospitalizations.<sup>12</sup> That assessment concluded that paid sick leave benefits “increase productivity by reducing worker absenteeism, reduce costs of employee turnover and increase employers' ability to recruit and retain employees.”<sup>13</sup>

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<sup>7</sup> National Partnership for Women & Families, “Fact Sheet: The Healthy Families Act,” at 2 (Oct. 2018) (<http://www.nationalpartnership.org/our-work/resources/workplace/paid-sick-days/the-healthy-families-act-fact-sheet.pdf>)

<sup>8</sup> National Partnership for Women & Families, “Fact Sheet: The Healthy Families Act,” at 2 (Oct. 2018) (<http://www.nationalpartnership.org/our-work/resources/workplace/paid-sick-days/the-healthy-families-act-fact-sheet.pdf>)

<sup>9</sup> Zoe Ziliak Michel, “The Business Benefits of Paid Sick Time,” at 1 (Mar. 2017) (<https://www.clasp.org/sites/default/files/public/resources-and-publications/publication-1/Business-Case-for-HFA-3.pdf>).

<sup>10</sup> Zoe Ziliak Michel, “The Business Benefits of Paid Sick Time,” at 1 (Mar. 2017) (<https://www.clasp.org/sites/default/files/public/resources-and-publications/publication-1/Business-Case-for-HFA-3.pdf>).

<sup>11</sup> Steven Greenhouse, “Lack of Paid Sick Days May Worsen Flu Pandemic,” *The New York Times*, Nov. 2, 2009 (<https://www.nytimes.com/2009/11/03/business/03sick.html>).

<sup>12</sup> Health Impact Partners, “A Health Impact Assessment of the California Healthy Families, Healthy Workplaces Act of 2008,” at 27 (July 30, 2008) (<https://www.pewtrusts.org/-/media/assets/2008/07/30/healthyworkplacesactfullreport2008.pdf>).

<sup>13</sup> Health Impact Partners, “A Health Impact Assessment of the California Healthy Families, Healthy Workplaces Act of 2008,” at 78-79 (July 30, 2008) (<https://www.pewtrusts.org/-/media/assets/2008/07/30/healthyworkplacesactfullreport2008.pdf>).

Citing these benefits, the Obama administration prioritized paid sick leave. President Obama first issued an Executive Order in 2015, extending paid sick leave to workers on federal contracts.<sup>14</sup> He highlighted the issue in his 2016 State of the Union address, stating, “Equal pay for equal work, paid leave and raising the minimum wage. All of these things still matter to working families, they are the right thing to do, and I won't stop until they get done.”<sup>15</sup> In a 2016 video, the President referred to paid sick leave as a “must-have.”<sup>16</sup>

In 2016, the Department of Labor adopted rules requiring companies contracting with the federal government to give employees working under those contracts up to seven days of paid leave.<sup>17</sup> Discussing those rules, President Obama explained, “Coming to work sick is bad for employees, co-workers, and customers alike.”<sup>18</sup> Labor Secretary Thomas Perez stated that he would be “thrilled” if the rule prompted federal contractors to provide paid sick leave to all their employees.<sup>19</sup>

President Obama also urged Congress to “pass a law guaranteeing most workers in America the chance to earn seven days of paid sick leave each year.”<sup>20</sup> The Healthy Families Act (“HFA”) was introduced by Rep. Rosa DeLauro and Sen. Patty Murray in 2017.<sup>21</sup> The HFA would require employers with 15 or more employees to allow each employee to “permit each employee to earn at least 1 hour of paid sick time for every 30 hours worked.”<sup>22</sup> Under the HFA, sick time may be used for an employee’s own medical needs, those of certain family members, or certain activities related to domestic violence, stalking or sexual assault.<sup>23</sup>

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<sup>14</sup> Benjamin Siegel, “Obama to Give 300,000 Workers Paid Sick Leave With New Executive Order,” ABC News, Sept. 7, 2015 (<https://abcnews.go.com/Politics/obama-give-300000-workers-paid-sick-leave-executive/story?id=33575248>).

<sup>15</sup> Kate Rogers, “How Important is Paid Sick Leave? Listen to Obama,” CNBC, Jan. 13, 2016 (<https://www.cnbc.com/2016/01/13/how-important-is-paid-sick-leave-listen-to-obama.html>).

<sup>16</sup> See <https://www.chicagotribune.com/news/91633738-132.html>

<sup>17</sup> Daniel Wiessner, “Obama Administration Rolls Out Rules on Paid Sick Leave, Pay Data,” Reuters, Sept. 29, 2016 (<https://www.reuters.com/article/us-usa-labor-pay/obama-administration-rolls-out-rules-on-paid-sick-leave-pay-data-idUSKCN11Z26M>)

<sup>18</sup> Jordan Weissmann, “The President Would Like You to Take a Sick Day,” Slate, Sept. 29, 2016 (<https://slate.com/business/2016/09/an-interview-with-president-barack-obama-about-extending-paid-sick-leave.html>).

<sup>19</sup> Noam Scheiber, “U.S. Will Require its Contractors to Provide Paid Sick Leave,” The New York Times, Sept. 29, 2016 (<https://www.nytimes.com/2016/09/30/business/economy/paid-sick-leave-government-contractors.html>).

<sup>20</sup> Reena Flores, “Obama Urges Congress to Act on Paid Sick Leave,” CBS News, Oct. 1, 2016 (<https://www.cbsnews.com/news/obama-urges-congress-to-act-on-paid-sick-leave/>).

<sup>21</sup> H.R.1516 (<https://www.congress.gov/bill/115th-congress/house-bill/1516/related-bills>), S.636 (<https://www.congress.gov/bill/115th-congress/senate-bill/636>). Similar bills had been introduced earlier. (Steven Greenhouse, “Lack of Paid Sick Days May Worsen Flu Pandemic,” The New York Times, Nov. 2, 2009 (<https://www.nytimes.com/2009/11/03/business/03sick.html>)).

<sup>22</sup> <https://www.congress.gov/bill/115th-congress/house-bill/1516>

<sup>23</sup> <https://www.congress.gov/bill/115th-congress/house-bill/1516>

The National Paid Sick Days Coalition formed to promote national legislation providing paid sick leave. That coalition is made up of hundreds of organizations, including women’s and children’s organizations, labor groups, religious organizations and think tanks.<sup>24</sup> The HFA has been the coalition’s primary national focus.<sup>25</sup>

Another federal legislative initiative has also been proposed. The FAMILY Act would establish an Office of Paid Family and Medical Leave within the Social Security Administration to administer a family and medical leave insurance benefit funded by a federal Family Leave and Medical Insurance Trust Fund. The benefit would be payable to workers who are dealing with their own medical needs or those of relatives.<sup>26</sup> In the Senate, the FAMILY Act was introduced by Sen. (and now-Presidential candidate) Kirsten Gillibrand in 2017<sup>27</sup> and co-sponsored by fellow Presidential aspirants Sens. Elizabeth Warren, Bernie Sanders, Amy Klobuchar, Kamala Harris and Cory Booker.<sup>28</sup> The House version of the bill was introduced by Rep. Rosa DeLauro and had 160 co-sponsors.<sup>29</sup>

The past five years has seen a profusion of states and localities adopting paid sick leave; one law firm characterized them as “sweeping the country.”<sup>30</sup> Prior to 2014, Connecticut was the only state with a law requiring private sector employers to provide paid sick leave.

- Paid sick leave was adopted in two states in 2014, in one via statute (California) and the other through a ballot initiative (Massachusetts),<sup>31</sup> as well as in San Diego and Oakland, California.<sup>32</sup>
- New York City’s Earned Sick Time Act took effect in 2014.<sup>33</sup>
- Six localities—Tacoma, Washington, Philadelphia, Montgomery County, Maryland, Pittsburgh, and New Brunswick, NJ--adopted paid sick leave in 2015.<sup>34</sup>

<sup>24</sup> See <http://www.paidicksdays.org/about-us/about-coalition.html>

<sup>25</sup> See <http://www.paidicksdays.org/campaigns/>

<sup>26</sup> <https://www.congress.gov/bill/115th-congress/senate-bill/337/text>

<sup>27</sup> S.337 (<https://www.congress.gov/bill/115th-congress/senate-bill/337>)

<sup>28</sup> <https://www.congress.gov/bill/115th-congress/senate-bill/337/cosponsors>

<sup>29</sup> H.R.947 (<https://www.congress.gov/bill/115th-congress/house-bill/947/cosponsors>)

<sup>30</sup> See <https://www.foley.com/paid-sick-leave-laws-are-sweeping-the-country-are-you-in-compliance-01-29-2018/>.

<sup>31</sup> See <http://www.ncsl.org/research/labor-and-employment/paid-sick-leave.aspx>

<sup>32</sup> See <http://www.nationalpartnership.org/our-work/resources/workplace/paid-sick-days/paid-sick-days-statutes.pdf>, at p. 12.

<sup>33</sup> See <https://www.zerotothree.org/resources/893-new-york-city-council-passes-paid-sick-leave-legislation>

<sup>34</sup> See <http://www.nationalpartnership.org/our-work/resources/workplace/paid-sick-days/paid-sick-days-statutes.pdf>, at p. 12.

- The Oregon and Vermont legislatures enacted paid sick leave in 2015 and 2016, respectively, and voters in Arizona and Washington approved paid sick leave ballot initiatives in 2016.
- Santa Monica, California, Minneapolis, Los Angeles, Chicago and Cook County, Illinois adopted paid sick leave in 2016.<sup>35</sup>
- In 2017, the Rhode Island legislature passed legislation, followed by the Maryland legislature in 2018 (including a veto override).
- New Jersey, Austin, Texas, Duluth, Minnesota, and Westchester County, New York enacted paid sick leave in 2018.<sup>36</sup>

The significant policy issue of paid sick leave has a sufficient nexus to Wal-Mart, as Wal-Mart has been publicly criticized for its policies. A 2017 article in The New York Times reported on the results of a survey of Wal-Mart workers by A Better Balance, a policy group that advocates for family-friendly workplace policies, including paid sick leave.<sup>37</sup> The survey found that Wal-Mart “routinely refuses to accept doctors’ notes, penalizes workers who need to take care of a sick family member and otherwise punishes employees for lawful absences.”<sup>38</sup> The article focused on a Wal-Mart employee who suffered a miscarriage but whose managers would not excuse her missed shifts, forcing her to return to work early.<sup>39</sup> The survey was widely covered in other media.<sup>40</sup> Even before the Better Balance survey, Wal-

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<sup>35</sup> See <http://www.nationalpartnership.org/our-work/resources/workplace/paid-sick-days/paid-sick-days-statutes.pdf>, at p. 12; Alexia Elejalde-Ruiz, “Cook County Approves Paid Sick Leave Law, Bringing Suburbs in Line With City,” Chicago Tribune, Mar. 6, 2019 (<https://www.chicagotribune.com/business/ct-cook-county-paid-sick-leave-1006-biz-20161005-story.html>).

<sup>36</sup> See <http://www.ncsl.org/research/labor-and-employment/paid-sick-leave.aspx>; <http://www.nationalpartnership.org/our-work/resources/workplace/paid-sick-days/paid-sick-days-statutes.pdf>, at p. 12.

<sup>37</sup> See <https://www.abetterbalance.org/>

<sup>38</sup> Rachel Abrams, “Walmart is Accused of Punishing Workers for Sick Days,” The New York Times, June 1, 2017 (<https://www.nytimes.com/2017/06/01/business/walmart-workers-sick-days.html>).

<sup>39</sup> Rachel Abrams, “Walmart is Accused of Punishing Workers for Sick Days,” The New York Times, June 1, 2017 (<https://www.nytimes.com/2017/06/01/business/walmart-workers-sick-days.html>).

<sup>40</sup> See, e.g., Christopher Brennan, “Walmart Accused of Denying Doctors’ Notes, Punishing Employees for Sick Days,” New York Daily News, June 2, 2017 (<https://www.nydailynews.com/news/national/walmart-accused-routinely-violating-law-medical-leave-article-1.3216047>); Jacob Rosenberg, “New Report Accuses Walmart of Violating Laws in Punishing Absences,” Arkansas Times, June 2, 2017 (<https://www.arktimes.com/ArkansasBlog/archives/2017/06/02/new-report-accuses-walmart-of-violating-laws-in-punishing-absences>); Rachel Gillett, “I Just Don’t Call Out Sick Anymore At All: New Report Says Walmart Punishes Employees For Taking Sick Days,” Business Insider, June 2, 2017 (<https://www.businessinsider.com/advocacy-group-report-walmart-punishes-employees-sick-days-2017-6>); River Donaghey, “Hundreds of Walmart Employees Say They’ve Been Punished for Taking Sick Days,” Vice, June 2, 2017 ([https://www.vice.com/en\\_us/article/43ydpq/hundreds-of-walmart-employees-say-theyve-been-punished-for-taking-sick-days-vgtrn](https://www.vice.com/en_us/article/43ydpq/hundreds-of-walmart-employees-say-theyve-been-punished-for-taking-sick-days-vgtrn)).

Mart's sick leave policy came in for scrutiny during the H1N1 pandemic.<sup>41</sup> As I noted in the Proposal, a survey of Wal-Mart employees by the Organization United for Respect and the Center for Popular Democracy found that 88% of respondents came to work when ill in the previous 12 months.

Wal-Mart's recent changes to its paid time off policy do not obviate the concerns raised by the Proposal. The policy allows Wal-Mart's associates to accrue "Protected PTO" that can be used for an unplanned absence from work.<sup>42</sup> However, the new policy does not affect the practice of refusing to accept doctors' notes documenting illness and disciplining employees for unplanned absences due to illness, which may discriminate against disabled employees. Given that women make up 55% of Wal-Mart's U.S. workforce,<sup>43</sup> any differences in practice involving pregnancy-related medical needs could also raise discrimination concerns.

In sum, a Proposal addressing management of a company's workforce or compensation and benefits is not automatically excludable on ordinary business grounds. Instead, under the Commission's 1998 Release, as evidenced by previous Staff determinations, the appropriate inquiry is whether the proposal addresses a significant policy issue. Here, the Proposal's subject—paid sick leave—has generated consistent widespread public debate, as shown by media coverage, legislative measures and ballot initiatives. Accordingly, exclusion pursuant to Rule 14a-7(i)(7) would be inappropriate. I respectfully request that Wal-Mart's request for relief be denied.

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<sup>41</sup> David Muir et al., "Walmart Defends Sick Leave Policy Despite H1N1 Fears," ABC News, Nov. 6, 2009 (<https://abcnews.go.com/GMA/OnCall/walmart-defends-sick-leave-policy-good-morning-america/story?id=9013693>).

<sup>42</sup> See <https://news.walmart.com/2019/02/01/walmart-introduces-increased-rewards-and-protected-pto-for-associates-nationwide>

<sup>43</sup> "2018 Culture, Diversity and Inclusion Report," at 8 ([https://corporate.walmart.com/media-library/document/2018-culture-diversity-inclusion-report/\\_proxyDocument?id=00000168-4df5-d71b-ad6b-4ffdbfa90001](https://corporate.walmart.com/media-library/document/2018-culture-diversity-inclusion-report/_proxyDocument?id=00000168-4df5-d71b-ad6b-4ffdbfa90001)).

I appreciate the opportunity to be of assistance in this matter. If you have any questions or need additional information, please contact me at 262-924-5218.

Sincerely,

A handwritten signature in black ink, appearing to read "Mary Pat Tiff". The signature is cursive and somewhat stylized, with a large initial "M" and "P".

Mary Pat Tiff

cc: Kristopher A. Isham  
Kristopher.Isham@walmartlegal.com

February 1, 2019

VIA E-MAIL to [shareholderproposals@sec.gov](mailto:shareholderproposals@sec.gov)

Office of Chief Counsel  
Division of Corporation Finance  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549

Re: *Walmart Inc.*  
*Shareholder Proposal of Mary Pat Tiff*  
*Securities Exchange Act of 1934—Rule 14a-8*

Ladies and Gentlemen:

This letter is to inform you that Walmart Inc. (the “Company”) intends to omit from its proxy statement and form of proxy for its 2019 Annual Meeting of Shareholders (collectively, the “2019 Proxy Materials”) a shareholder proposal (the “Proposal”) and statement in support (the “Supporting Statement”) thereof received from Mary Pat Tiff (the “Proponent”).

Pursuant to Rule 14a-8(j), we have:

- filed this letter with the Securities and Exchange Commission (the “Commission”) no later than eighty (80) calendar days before the Company intends to file its definitive 2019 Proxy Materials with the Commission; and
- concurrently sent a copy of this correspondence to the Proponent.

Rule 14a-8(k) and Staff Legal Bulletin No. 14D (Nov. 7, 2008) (“SLB 14D”) provide that shareholder proponents are required to send companies a copy of any correspondence that the proponents elect to submit to the Commission or the staff of the Division of Corporation Finance (the “Staff”). Accordingly, we are taking this opportunity to inform the Proponent that if the Proponent elects to submit additional correspondence to the Commission or the Staff with respect to this Proposal, a copy of that correspondence should be sent at the same time to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) and SLB 14D.

## THE PROPOSAL

The Proposal states:

**RESOLVED:** Shareholders of Walmart Inc. (“Walmart”) request that the Board of Directors evaluate the risk of discrimination that may result from Walmart’s policies and practices for hourly workers taking absences from work for personal or family illness. The report shall be prepared at reasonable cost, omit proprietary information, omit information regarding claims against Walmart of which the company has notice, and be made available on Walmart’s website.

A copy of the Proposal and the Supporting Statement, as well as related correspondence with the Proponent, is attached to this letter as Exhibit A.

## BASIS FOR EXCLUSION

We hereby respectfully request that the Staff concur in our view that the Proposal may be excluded from the 2019 Proxy Materials pursuant to Rule 14a-8(i)(7) because the Proposal deals with matters relating to the Company’s ordinary business operations.

## ANALYSIS

### **The Proposal May Be Excluded Pursuant To Rule 14a-8(i)(7) Because It Deals With Matters Related To The Company’s Ordinary Business Operations.**

Rule 14a-8(i)(7) permits a company to omit from its proxy materials a shareholder proposal that relates to the company’s “ordinary business” operations. According to the Commission’s release accompanying the 1998 amendments to Rule 14a-8, the term “ordinary business” “refers to matters that are not necessarily ‘ordinary’ in the common meaning of the word,” but instead the term “is rooted in the corporate law concept providing management with flexibility in directing certain core matters involving the company’s business and operations.” Exchange Act Release No. 40018 (May 21, 1998) (the “1998 Release”). In the 1998 Release, the Commission stated that the underlying policy of the ordinary business exclusion is “to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting,” and identified two central considerations that underlie this policy. As relevant here, one of these considerations was that “[c]ertain tasks are so fundamental to management’s ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight.”

The 1998 Release further distinguishes proposals pertaining to ordinary business matters from those involving “significant social policy issues.” *Id.* (citing Exchange Act Release No. 12999 (Nov. 22, 1976)). Note 4 of Staff Legal Bulletin 14E (Oct. 27, 2009) states that “[i]n

those cases in which a proposal's underlying subject matter transcends the day-to-day business matters of the company and raises policy issues so significant that it would be appropriate for a shareholder vote, the proposal generally will not be excludable under Rule 14a-8(i)(7) as long as a sufficient nexus exists between the nature of the proposal and the company." In this regard, when assessing proposals under Rule 14a-8(i)(7), the Staff considers the terms of the resolution and its supporting statement as a whole. *See* Staff Legal Bulletin No. 14C, part D.2 (June 28, 2005) ("In determining whether the focus of these proposals is a significant social policy issue, we consider both the proposal and the supporting statement as a whole").

A shareholder proposal being framed in the form of a request for a report does not change the nature of the proposal. The Commission has stated that a proposal requesting the dissemination of a report may be excludable under Rule 14a-8(i)(7) if the subject matter of the report is within the ordinary business of the issuer. *See* Exchange Act Release No. 20091 (Aug. 16, 1983). In addition, the Staff has indicated that "[where] the subject matter of the additional disclosure sought in a particular proposal involves a matter of ordinary business . . . it may be excluded under [R]ule 14a-8(i)(7)." *Johnson Controls, Inc.* (avail. Oct. 26, 1999). Likewise, a proposal's request for a review of certain risks also does not preclude exclusion if the underlying subject matter of the proposal is ordinary business. The Staff indicated in Legal Bulletin No. 14E (Oct. 27, 2009) that in evaluating shareholder proposals that request a risk assessment:

rather than focusing on whether a proposal and supporting statement relate to the company engaging in an evaluation of risk, we will instead focus on the subject matter to which the risk pertains or that gives rise to the risk. . . . [S]imilar to the way in which we analyze proposals asking for the preparation of a report, the formation of a committee or the inclusion of disclosure in a Commission-prescribed document—where we look to the underlying subject matter of the report, committee or disclosure to determine whether the proposal relates to ordinary business—we will consider whether the underlying subject matter of the risk evaluation involves a matter of ordinary business to the company.

As discussed below, the Proposal relates to the Company's ordinary business operations and does not focus on a significant policy issue. Therefore, consistent with the standards set forth in the 1998 Release, the Proposal is excludable under Rule 14a-8(i)(7).

*A. The Proposal Is Excludable Because It Relates To The Company's Management Of Its Workforce.*

The Commission and Staff have long held that a shareholder proposal may be excluded under Rule 14a-8(i)(7) if it, like the Proposal, relates to a company's management of its workforce, including its relationship with employees. The Commission recognized in the 1998 Release that "management of the workforce" is "fundamental to management's ability to run a company on a day-to-day basis." Consistent with the 1998 Release, the Staff has

recognized that proposals pertaining to the management of a company's workforce are excludable under Rule 14a-8(i)(7). For example, in *Bank of America Corp.* (avail. Feb. 14, 2012), the Staff concurred with the exclusion of a proposal requesting that a company policy be amended to include "protection to engage in free speech outside the job context, and to participate freely in the political process without fear of discrimination or other repercussions on the job" because the proposal related to the company's policies concerning its employees. See also *Donaldson Company, Inc.* (avail. Sept. 13, 2006) (concurring with the exclusion of a proposal requesting the establishment of "appropriate ethical standards related to employee relations"); *Wal-Mart Stores, Inc.* (avail. Mar. 16, 2006) (concurring with the exclusion of a proposal requesting an amendment to a Company policy barring intimidation of Company employees exercising their right to freedom of association); *Intel Corp.* (avail. Mar. 18, 1999) (concurring with the exclusion of a proposal requesting an employee bill of rights); *Merck & Co., Inc.* (avail. Jan. 23, 1997) (concurring with the exclusion of a proposal requesting the adoption of a policy "to encourage employees to express their ideas on all matters of concern affecting the company"); *W.R. Grace & Co.* (avail. Feb. 29, 1996) (concurring with the exclusion of a proposal requesting that the company implement a "high-performance" workplace based on policies of workplace democracy and worker participation); *McDonald's Corp.* (avail. Mar. 19, 1990) (concurring with the exclusion of a proposal regarding various company policies, including affirmative action and equal employment opportunity policies under the predecessor to Rule 14a-8(i)(7)).

Further, the Staff has specifically concurred that proposals addressing a company's policies concerning its employees are ordinary business matters and, thus, such proposals are excludable under Rule 14a-8(i)(7). For example, in *Deere & Co.* (avail. Nov. 14, 2014, *recon. denied* Jan. 5, 2015), the Staff concurred with the exclusion of a proposal requesting that the company adopt an employee code of conduct that included an anti-discrimination policy "that protects employees' human right to engage in the political process, civic activities and public policy of his or her country without retaliation." In its response the Staff explained that the proposal related to the company's "policies concerning its employees" and thus implicated the company's ordinary business operations. Similarly, in *The Walt Disney Co.* (avail. Nov. 24, 2014, *recon. denied* Jan. 5, 2015), the Staff permitted exclusion of a proposal requesting that the company "consider the possibility of adopting anti-discrimination principles that protect employees' human right[s]" relating to engaging in political and civic expression. The company argued that the adoption of anti-discrimination principles involved "decisions with respect to, and modifications of the way the company manages its workforce and employee relations" that were "multi-faceted, complex and based on a range of factors beyond the knowledge and expertise of the shareholders." In allowing exclusion, the Staff again affirmed that "policies concerning [the companies'] employees" relate to companies' ordinary business operations covered by Rule 14a-8(i)(7) and are thus excludable on that basis. See also *The Home Depot, Inc.* (avail. Feb. 23, 2017) (concurring with the exclusion of a proposal requesting a company report detailing the known and potential risks and costs to the company caused by public pressure campaigns); *Bristol-Myers Squibb Co.* (avail. Jan. 7, 2015) (concurring with the exclusion of a proposal suggesting the adoption of employee anti-discrimination principles related to engaging in

political and civic expression, stating that the proposal related to the company's "policies concerning [the company's] employees"); *Yum! Brands, Inc.* (avail. Jan. 7, 2015) (same).

Similarly, the Proposal directly addresses the Company's management of its approximately 2.2 million employees ("associates") by requesting that the Board of Directors prepare a report "evaluat[ing] the risk of discrimination that may result from Walmart's policies and practices for hourly workers taking absences from work for personal or family illness." In seeking information regarding the Company's policies and practices concerning associates' absences from work due to illness, the Proposal directly relates to the "decisions with respect to . . . the way the company manages its workforce and [associate] relations," just like the proposal in *The Walt Disney Co.* The Company's policies and practices with respect to these associates regarding absences from work involve workforce management considerations that are, like with the proposal in *The Walt Disney Co.*, "multi-faceted, complex and based on a range of factors beyond the knowledge and expertise of the shareholders." Likewise, as in *Deere*, despite the Proposal's reference to "risk of discrimination," the Proposal primarily relates to the Company's policies concerning its associates. Furthermore, the Proposal also is analogous to the proposals in *Bank of America* and *Wal-Mart Stores* in that it focuses on the Company's associate relationships through its associate policies and practices. Policies and practices relating to associates' absences from work due to illness are significant elements that contribute to the Company's ordinary business of managing its workforce and the Company's relationship with its associates.

The Proposal's request for a report on these ordinary business matters does not change the conclusion that the Proposal may be excluded pursuant to Rule 14a-8(i)(7). As previously discussed, the Commission has stated that a proposal requesting the dissemination of a report may be excludable under Rule 14a-8(i)(7) if the subject matter of the report is within the ordinary business of the issuer. *See* 1983 Release. Here, the underlying subject matter of Proposal relates to the Company's management of its workforce, including policies and practices regarding absences from work related to illness. Thus, the Proposal's request for a report implicating the Company's strategies in how to manage its relationship with its associates specifically related to these sick leave policies and practices is thus analogous to the shareholder proposals cited in the precedent above. The Proposal therefore is excludable under Rule 14a-8(i)(7) as relating to the management of the Company's workforce.

*B. The Proposal Is Excludable Because It Relates To General Employee Compensation and Benefits.*

The Staff consistently has concurred with the exclusion of shareholder proposals under Rule 14a-8(i)(7) when the proposal relates to general employee compensation rather than compensation of senior executive officers and directors. Staff Legal Bulletin No. 14A (July 12, 2002)<sup>1</sup> ("SLB 14A"). The Staff echoed this guidance in Staff Legal Bulletin No. 14J

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<sup>1</sup> In SLB 14A, the Staff stated that "[s]ince 1992, we have applied a bright-line analysis to proposals concerning equity or cash compensation: We agree with the view of companies that they may exclude proposals that relate to general employee compensation matters in reliance on Rule 14a-8(i)(7) . . ." On

(Oct. 23, 2018), explaining that “proposals that relate to general employee compensation and benefits are excludable under Rule 14a-8(i)(7).” For example, in *Ford Motor Co.* (avail. Jan. 9, 2008), the proposal requested that the company stop awarding all stock options. The proposal did not limit the applicability of this ban on stock option awards to senior executive officers and directors, but instead applied the ban generally to all company employees. Accordingly, the Staff concurred that the company could “exclude the proposal under [R]ule 14a-8(i)(7), as relating to Ford’s ordinary business operations (i.e., general compensation matters).” See, e.g., *Amazon.com, Inc.* (avail. Mar. 1, 2017) (concurring with the exclusion of a proposal requesting adoption and publication of principles for minimum wage reform, noting that “the proposal relates to general compensation matters, and does not otherwise transcend day-to-day business matters” despite the proponent’s assertion that minimum wage was a significant policy issue); *CVS Health Corp.* (avail. Mar. 1, 2017) (same); *The Home Depot, Inc. (Trillium Asset Management, LLC)* (avail. Mar. 1, 2017) (same); *The TJX Companies, Inc.* (avail. Mar. 1, 2017) (same); *Yum! Brands, Inc.* (avail. Feb. 24, 2015) (concurring with the exclusion of a proposal requesting a report on the company’s executive compensation policies, where the proposal suggested that the report include a comparison of senior executive compensation and “our store employees’ median wage”); *ENGlobal Corp.* (avail. Mar. 28, 2012) (concurring with the exclusion of a proposal that sought to amend the company’s equity incentive plan, noting that “the proposal relates to compensation that may be paid to employees generally and is not limited to compensation that may be paid to senior executive officers and directors”); *International Business Machines Corp. (Boulain)* (avail. Jan. 22, 2009) (concurring with the exclusion of a proposal requesting that no employee above a certain management level receive a salary raise in any year in which at least two-thirds of all company employees did not receive a three percent salary raise); *Amazon.com, Inc.* (avail. Mar. 7, 2005) (concurring with the exclusion of a proposal requesting that the board adopt a new policy on equity compensation and cancel an existing equity compensation plan that potentially affected the general company workforce).

Similarly, the Staff has concurred with the exclusion of shareholder proposals addressing general employee benefits. In *Exelon Corp.* (avail. Feb. 21, 2007), the proposal requested the implementation of rules and regulations that would forbid the company’s executives from establishing incentive bonuses requiring the reduction of retiree benefits in order to meet such incentive bonuses. The Staff concurred with the exclusion noting that the proposal “relat[es] to [the company’s] ordinary business operations (i.e., general employee benefits).” See also *ConocoPhillips* (avail. Feb. 2, 2005) (concurring with the exclusion of a proposal to eliminate pension plan offsets as ordinary business operations relating to employee benefits); *International Business Machines Corp. (Jaracz)* (avail. Jan. 2, 2001) (concurring with the exclusion of a proposal requesting cost of living allowances to the company’s retiree pensions as ordinary business operations relating to employee benefits).

Here, analogous to the line of precedent discussed above, the Proposal addresses the general compensation of the Company’s associates, as well as the general employee benefits

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the other hand, the Staff stated that it did “not agree with the view of companies that they may exclude proposals that concern only senior executive and director compensation in reliance on [R]ule 14a-8(i)(7).”

available to the Company's associates. The Proposal addresses a number of systems or attendance policies that companies may utilize with respect to sick leave and employee absences when it discusses the Company's "policies and practices for hourly workers taking absences from work," "paid sick leave," and "time off to care for ill family members." The Company's policies concerning paid sick leave for its associates, including what compensation is allocated to its associates for absences, are part of Company management's determinations with respect to the overall associate benefits and compensation packages. As highlighted above, the Company has approximately 2.2 million associates worldwide. Determinations regarding the types of benefits and the amounts of compensation—including with regards to paid sick leave—for the numerous associates across the Company's large, complex, and international organization is a fundamental responsibility of the Company's management. Such determinations are not practical to subject to shareholder oversight because shareholders are not in a position to determine the appropriateness of associates' wages and benefits in the context of the local, regional, national, and international labor markets; the circumstances of the Company's various businesses; the roles that various Company associates perform; and associates' overall compensation packages. For example, the Company recently announced that it revised its existing paid-time-off ("PTO") policy that rewards associates for work attendance and customer service while also providing associates with added flexibility for unexpected life events in the form of "Protected PTO."<sup>2</sup> After considering feedback from its associates, managing locations with Protected PTO and running other tests, the Company determined that, in addition to its current PTO policy, including the component of Protected PTO to its U.S. associates on a nationwide scale as part of the Company's overall associate compensation plan provided the best balance for both the Company's customers and associates. Because the Company's approach to sick leave and employee absences relates to the Company's associate compensation decisions, the Proposal's request addresses matters relating to the day-to-day operation of the Company's business, which shareholders are not in a position to effectively vote upon. Accordingly, consistent with the foregoing precedent, the Proposal may be properly excluded under Rule 14a-8(i)(7) because it addresses matters relating to general employee compensation and benefits.

*C. The Proposal Does Not Focus On A Significant Policy Issue.*

In the 1998 Release, the Commission stated that proposals relating to ordinary business matters but focusing on sufficiently significant policy issues generally would not be excludable because the proposals would "transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote." However, the Staff has consistently permitted exclusion of proposals under Rule 14a-8(i)(7) where the proposals focused on ordinary business matters, even though such proposals may assert some connection to a potential significant policy issue, because they do not transcend ordinary business decisions. For example, *Deere & Co.* (avail. Nov. 14, 2014, *recon. denied* Jan. 5, 2015), the Staff concurred with the exclusion of a proposal requesting that the company

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<sup>2</sup> <https://news.walmart.com/2019/02/01/walmart-introduces-increased-rewards-and-protected-pto-for-associates-nationwide>

adopt an employee code of conduct that included an anti-discrimination policy “that protects employees’ human right to engage in the political process, civic activities and public policy of his or her country without retaliation.” In its response the Staff explained that the proposal related to the company’s “policies concerning its employees” and thus implicated the company’s ordinary business operations. *See also, The Home Depot, Inc.* (avail. Feb. 13, 2018) (concurring with the exclusion of a proposal relating to the company’s contributions to particular organizations, a matter of ordinary business, even though the proponent had tried to present the proposal as relating to human rights policies); *Johnson & Johnson* (avail. Jan. 31, 2018) (same); *Amazon.com, Inc.* (avail. Mar. 11, 2016) (concurring with the exclusion of a proposal requesting that Amazon issue a report addressing animal cruelty in the supply chain because the proposal related to “the products and services offered for sale by the company”); *Papa John’s International, Inc.* (avail. Feb. 13, 2015) (concurring with the exclusion of a proposal requesting the company to include more vegan offerings in its restaurants, despite the proponent’s assertion that the proposal would promote animal welfare); *Dominion Resources, Inc.* (avail. Feb. 19, 2014) (concurring with the exclusion of a proposal relating to use of alternative energy because, while touching on a significant policy issue, it related to the company’s choice of technologies for use in its operations).

The Staff has not recognized sick leave as a significant policy issue, and the Proposal’s reference to the purported “risk of discrimination that may result from [the Company]’s policies and practices” does not change this analysis. As discussed above, the Proposal’s principal focus centers around management of the Company’s workforce and related policies, a matter of ordinary business. The mere inclusion of the phrase “discrimination” should not automatically disqualify a proposal from exclusion under Rule 14a-8(i)(7). For instance, in *Johnson & Johnson* (avail. Feb. 23, 2017), a proposal requested a report “detailing the known and potential risks and costs to the company caused by pressure campaigns to oppose religious freedom laws (or efforts), public accommodation laws (or efforts), freedom of conscience laws (or efforts) and campaigns against candidates from Title IX exempt institutions, detailing the known and potential risks and costs to the company caused by these pressure campaigns supporting *discrimination* against religious individuals and those with deeply held beliefs” (emphasis added). The Staff concurred that the proposal could be excluded as relating to the company’s ordinary business, notwithstanding the fact that the proposal addressed human rights and discrimination, where the company argued that the proposal related to management of the company’s workforce and public relations. Similarly, in *Bristol-Myers Squibb Co.* (avail. Jan. 7, 2015), the Staff concurred with the exclusion of a proposal requesting the adoption of “anti-discrimination principles that protect employees’ human right to engage . . . in legal activities relating to the political process, civic activities and public policy,” noting that the proposal related to the company’s “policies concerning its employees.” *See also Yum! Brands, Inc.* (avail. Jan. 7, 2015, *recon. denied* Feb. 26, 2015) (same). The Staff consistently has granted no-action relief in other similar contexts where the proposal touched on potential significant policy issues but centered around ordinary business matters. *See, e.g., Comcast Corp.* (avail. Mar. 10, 2015) (concurring with the exclusion of a proposal entitled “Human Rights Review” as “relat[ing] to [the company’s] policies concerning its employees” despite repeated references to human

rights); *Hewlett-Packard Co.* (avail. Jan. 15, 2015) (concurring with the exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company prepare a report on sales of products and services to the military, police and intelligence agencies of foreign countries, noting that “the proposal relates to the products and services offered for sale by the company and does not focus on a significant policy issue”).

Moreover, the Proposal is distinguishable from the proposal at issue in *Amazon.com, Inc.* (avail. Mar. 14, 2017). In *Amazon.com*, the proposal requested “a report on the use of criminal background checks in hiring and employment decisions for the [c]ompany’s employees, independent contractors, and subcontracted workers,” and the proposal specifically called for an evaluation of “the risk of racial discrimination that may result from the use of criminal background checks in hiring and employment decisions.” In addition, the supporting statement discussed at length “[t]he disparate impact[s] that [the company’s] practices may have on people of color”—like race, a federally protected class—and explaining that “the criminal justice system disproportionately affects minorities” and highlighting potential violations of the Civil Rights Act of 1964 and Equal Employment Opportunity Commission guidelines resulting from the company’s practices. In denying no-action relief, the Staff noted that in its view, “the proposal transcends ordinary business matters.” However, unlike with the proposal in *Amazon.com*, the Proposal’s use of the term “discrimination” does not reference any of the federally protected classes of persons (race, color, religion or creed, national origin or ancestry, sex, age, physical or mental disability, veteran status, genetic information, or citizenship). In this regard, the Proposal, unlike the proposal in *Amazon.com*, focuses primarily on the concerns relating to workers with illnesses and the Company’s sick leave policy (including relevant workforce management and general employee compensation considerations) rather than discrimination against any federally protected classes of persons. While the Supporting Statement briefly mentions “disability-related absences,” it notably makes numerous references to worker illnesses and related absences and leave, further reiterating the Proposal’s primary focus on matters related to the Company’s ordinary business matters of management of its workforce and general employee compensation. Moreover, as discussed above, passing references to “discrimination” in the Proposal should not automatically render the Proposal as transcending ordinary business matters. Thus, the Proposal differs from the proposal in *Amazon.com* because the Proposal does not address a significant policy issue relating to discrimination against any federally protected classes.

Therefore, like the precedents cited above, the Proposal does not focus on a significant policy issue; rather, the subject matter of the Proposal directly relates to the Company’s ordinary business operations and policies concerning the management of its workforce. Accordingly, and consistent with the precedents cited above, the Company believes that the Proposal may be excluded from its 2019 Proxy Materials.

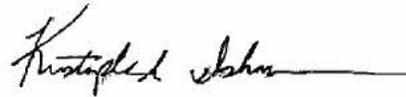
## CONCLUSION

Based upon the foregoing analysis, we respectfully request that the Staff concur that it will take no action if the Company excludes the Proposal from its 2019 Proxy Materials.

Office of Chief Counsel  
Division of Corporation Finance  
February 1, 2019  
Page 10

We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject. Please provide any correspondence regarding this matter to me at [Kristopher.Isham@walmartlegal.com](mailto:Kristopher.Isham@walmartlegal.com). If we can be of any further assistance in this matter, please do not hesitate to call me at (479) 204-8684, or Elizabeth A. Ising of Gibson, Dunn & Crutcher LLP at (202) 955-8287.

Sincerely,

A handwritten signature in black ink, appearing to read "Kristopher A. Isham", followed by a horizontal line extending to the right.

Kristopher A. Isham  
Senior Associate Counsel  
Walmart Inc.

cc: Elizabeth A. Ising, Gibson, Dunn & Crutcher LLP  
Mary Pat Tiff

**EXHIBIT A**

December 18, 2018

Gordon Y. Allison  
Vice President & General Counsel  
Corporate Division  
Wal-Mart Stores, Inc.  
702 Southwest 8th St.  
Bentonville, AR 72716-0215

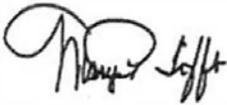
Dear Mr. Allison:

I hereby submit the enclosed shareholder proposal ("Proposal") for inclusion in Wal-Mart Stores, Inc.'s ("Company") proxy statement to be circulated to Company shareholders in conjunction with the next annual meeting of shareholders. The Proposal is submitted under Rule 14(a)-8 (Proposals of Security Holders) of the U.S. Securities and Exchange Commission's proxy regulations.

I am the beneficial owner of approximately 572 of shares of the Company's common stock, which been held continuously for more than a year prior to this date of submission. I intend to hold the shares through the date of the Company's next annual meeting of shareholders. The record holder of the stock will provide the appropriate verification of the Fund's beneficial ownership by separate letter. Either the undersigned or a designated representative will present the Proposal for consideration at the annual meeting of shareholders.

If you have any questions or wish to discuss the Proposal, please contact me \*\*\* or at \*\*\*. Copies of correspondence or a request for a "no-action" letter should be forwarded to \*\*\*.

Sincerely,



Mary Pat Tiff  
Walmart Shareholder

Encl: Shareholder Resolution

**RESOLVED:** Shareholders of Walmart Inc. (“Walmart”) request that the Board of Directors evaluate the risk of discrimination that may result from Walmart’s policies and practices for hourly workers taking absences from work for personal or family illness. The report shall be prepared at reasonable cost, omit proprietary information, omit information regarding claims against Walmart of which the company has notice, and be made available on Walmart’s website.

**WHEREAS:**

Paid sick leave is a fundamental component of economic security and stability for workers in the U.S. However, only 46 percent of private sector service workers receive paid sick leave from their employers, in contrast to 93 percent of management, business, and financial workers.<sup>1</sup>

Paid sick leave for all working people enjoys growing support, as legislation has passed in 44 jurisdictions.<sup>2</sup> However, there is growing debate over countermeasures, such as the WorkFlex in the 21st Century Act, that would give employers authority to dictate when and how an employee can take leave.<sup>3</sup> Such measures, combined with “no-fault” attendance policies, which use a points system to track and penalize workers for any days missed, can allow employers to circumvent protections for employees.<sup>4</sup>

Large employers like Walmart are at the center of this national policy discussion. Walmart has a particularly concerning approach to sick leave. Eighty-eight percent of Walmart workers who participated in a survey by the Organization United for Respect and the Center for Popular Democracy reported that in the past 12 months they attended work when they were ill.<sup>5</sup>

Some of Walmart’s practices appear to appear to create the risk of discrimination. In a highly publicized New York Times story, numerous associates who needed help for personal or family medical issues claimed they were penalized for their leave requests.<sup>6</sup> A 2017 study by A Better Balance found that Walmart’s policies and practices, including giving disciplinary “points” for serious medical and disability-related absences, penalizing workers who need time off to care for ill family members, and refusing to consider doctors’ notes, are consistent and widespread throughout the country.<sup>7</sup>

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<sup>1</sup>

<https://www.bls.gov/opub/ted/2017/93-percent-of-managers-and-46-percent-of-service-workers-had-paid-sick-leave-benefits-in-march-2017.htm>

<sup>2</sup> <http://familyvaluesatwork.org/blog/hands-off-our-paid-sick-days>

<sup>3</sup> Ibid

<sup>4</sup> <https://money.cnn.com/2018/05/16/pf/no-fault-attendance-policy/index.html>

<https://www.aclu.org/blog/womens-rights/pregnancy-and-parenting-discrimination/no-fault-attendance-policies-penalize>

<sup>5</sup>

[http://populardemocracy.org/sites/default/files/201806112\\_OUR%20Walmart%20Full%20Report%20-%20Web.pdf](http://populardemocracy.org/sites/default/files/201806112_OUR%20Walmart%20Full%20Report%20-%20Web.pdf)

<sup>6</sup> <https://www.nytimes.com/2017/06/01/business/walmart-workers-sick-days.html>

<sup>7</sup> <https://www.abetterbalance.org/pointingout/>

Eighty-five percent of respondents to a 2017 Pew Research Center survey believe workers should have paid sick leave to deal with their own illness.<sup>8</sup> Sixty-seven percent support paid leave to help care for a family member with a serious illness.<sup>9</sup>

Paid sick leave policies promote a better work, life and medical balance. High turnover is a major concern for retail businesses.<sup>10</sup> To stabilize its workforce, Walmart needs to ensure the well being of all of its workers for the long-term well being of the company.

Walmart should support robust practices that allow workers to be present for their own families, especially for any emergencies. As more states pass paid sick leave policies, Walmart has the opportunity to proactively institute company-wide changes that can positively impact all employees.

Investors seek clarity on how Walmart plans to address the risk of discrimination.

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<sup>8</sup>

<http://www.pewsocialtrends.org/2017/03/23/americans-widely-support-paid-family-and-medical-leave-but-differ-over-specific-policies/>

<http://www.nationalpartnership.org/our-work/resources/workplace/paid-leave/voters-views-on-paid-family-medical-leave-survey-findings-august-2018.pdf>

<sup>9</sup>

<http://www.pewsocialtrends.org/2017/03/23/americans-widely-support-paid-family-and-medical-leave-but-differ-over-specific-policies/>

<sup>10</sup> <https://www.retaildive.com/news/retailers-are-seeing-high-employee-turnover/542396/>

Retirement Services  
 1400 American Blvd  
 NJ2-140-03-50  
 Pennington, NJ 08534

December 18, 2018

Gordon Y. Allison,  
 Vice President and General Counsel,  
 Corporate Division Wal-Mart Stores, Inc.  
 702 Southwest 8th Street  
 Bentonville, Arkansas 72716-0215

*Via facsimile (479) 277-5991*

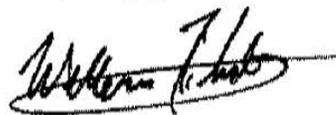
Re: Shareholder proposal for 2019 annual meeting

Dear Mr. Allison:

I am writing concerning a shareholder proposal sent to you by Mary Pat Tift. Ms. Tift is a participant in the Walmart 401(k) Plan. Ms. Tift beneficially owned 738.1396 shares of Walmart Stores, Inc. common stock, worth more than \$2,000, continuously for at least one year up to and including December 17, 2018, the date on which Ms. Tift submitted the Proposal. Merrill Lynch has acted as recordholder for the Walmart 401(k) Plan and is a DTC participant.

If you require any additional information, please let me know.

Very truly yours,



William Lederhos, Vice President  
 Bank of America Merrill Lynch

Cc: Mary Pat Tift

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Bank of America   
Merrill Lynch

Retirement Services  
1400 American Blvd  
NJ2-140-03-50  
Pennington, NJ 08534

December 19, 2018

Gordon Y. Allison,  
Vice President and General Counsel,  
Corporate Division Wal-Mart Stores, Inc.  
702 Southwest 8th Street  
Bentonville, Arkansas 72716-0215

*Via facsimile (479) 277-5991*

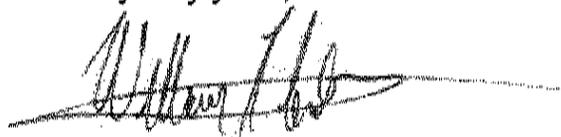
Re: Shareholder proposal for 2019 annual meeting

Dear Mr. Allison:

I am writing concerning a shareholder proposal sent to you by Mary Pat Tift. Ms. Tift is a participant in the Walmart 401(k) Plan. Ms. Tift beneficially owned 738,1396 shares of Walmart Stores, Inc. common stock, worth more than \$2,000, continuously for at least one year up to and including December 18, 2018, the date on which Ms. Tift submitted the Proposal. Merrill Lynch has acted as recordholder for the Walmart 401(k) Plan and is a DTC participant.

If you require any additional information, please let me know.

Very truly yours,



William Lederhos, Vice President  
Bank of America Merrill Lynch

Cc: Mary Pat Tift

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**From:** Kristopher Isham - Legal <Kristopher.Isham@walmartlegal.com>  
**Sent:** Friday, February 1, 2019 10:42 AM  
**To:** \*\*\*  
**Subject:** Shareholder Proposal - Walmart 2019 Proxy Statement

Good morning Ms. Tifft –

I'm writing in relation to the shareholder proposal regarding Walmart's approach to paid sick leave that you submitted for inclusion in the company's proxy statement for the 2019 annual meeting of shareholders.

I wanted to bring to your attention an announcement that Walmart made earlier today regarding the Company's new approach to its paid-time-off (PTO) policies and procedures. You can view the announcement on the Company's corporate website at <https://news.walmart.com/2019/02/01/walmart-introduces-increased-rewards-and-protected-pto-for-associates-nationwide>.

As mentioned in the announcement, the new approach allows U.S. hourly associates to accrue what is being called "Protected PTO," which may be used for unanticipated absences and does not count as an unapproved absence under the Company's time and attendance policies. Protected PTO may be accrued in addition to normal PTO, which associates can still use for planned absences.

We believe the announcement today directly substantially addresses the concerns raised in the shareholder proposal you submitted. Therefore, I was curious to know if you would be willing to withdraw the shareholder proposal from inclusion in the Walmart 2019 proxy statement.

Thank you again for your continued interest and investment in Walmart.

Thanks,  
**Kris Isham, Senior Associate Counsel - Corporate**  
Office: 479.204.8684; Fax (479) 277-5991  
Mobile: 479.586.0394  
kristopher.isham@walmartlegal.com

Walmart Inc.  
Legal Department – Corporate Division  
702 S.W. 8<sup>th</sup> Street  
Bentonville, AR 72716-0215  
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