

Class Action Certification Requirements

Class action lawsuits aggregate the claims of numerous individuals or entities into a single proceeding in which named class representatives litigate on behalf of absent class members. Under Rule 23 of the Federal Rules of Civil Procedure, before a party may bring a lawsuit as a class action in federal court, the court must first determine that the lawsuit satisfies all four prerequisites in Rule 23(a) and falls into at least one of the categories of class actions permitted under Rule 23(b).

Rule 23(a)

ALL FOUR
Prerequisites Must Be Met



NUMEROSITY

Rule 23(a)(1)

- The proposed class must be so large that it would be “impracticable” for all the class members to be joined in a single proceeding.
- There is not a strict numerical cutoff, but courts have observed that a class of more than 40 members generally satisfies the numerosity requirement.



COMMONALITY

Rule 23(a)(2)

- There must be “questions of law or fact common to the class.”
- Commonality requires that the class members have suffered the same injury and that there is at least one common question central to the claims.



TYPICALITY

Rule 23(a)(3)

- The “claims or defenses of the representative parties” must be “typical of the claims or defenses of the class.”
- This helps ensure that the class representatives’ interests are aligned with the whole class by requiring sufficient similarity between the legal and factual bases of their claims.



ADEQUACY OF REPRESENTATION

Rule 23(a)(4)

- The named plaintiff(s) must show that “the representative parties will fairly and adequately protect the interests of the class.”
- This rule focuses on potential conflicts of interest between the representative parties and the other class members, as well as on class counsel’s competency and potential conflicts of interest.

Rule 23(b)

Must Fall Into
AT LEAST ONE
of These Categories

INCOMPATIBLE STANDARDS/LIMITED FUND

Rule 23(b)(1)



This is the *least common* type of class action.

Rule 23(b)(1)(A): Permits class actions when separate lawsuits would risk “inconsistent or varying adjudications” that impose “incompatible standards of conduct for the party opposing the class.”

- ▶ *This encompasses situations when a legal requirement or practical necessity requires the party opposing the class to treat all class members alike, such that separate lawsuits could result in conflicting court orders governing the party’s conduct toward class members.*

Rule 23(b)(1)(B): Permits class actions when separate lawsuits, “as a practical matter, would be dispositive of the interests” of absent class members or “substantially impair or impede their ability to protect their interests.”

- ▶ *An example is a lawsuit in which many plaintiffs claim entitlement to proceeds from a limited fund that is not sufficient to cover all their claims.*

INJUNCTIVE OR DECLARATORY RELIEF

Rule 23(b)(2)

Permits class actions when “the party opposing the class has acted or refused to act on grounds that apply generally to the class” and a single injunction or declaratory judgment* would provide relief to all members of the class.

- ▶ *An example is a civil rights lawsuit seeking a court order to stop a defendant from engaging in class-based discrimination.*

MONEY DAMAGES

Rule 23(b)(3)



This is the *most common* type of class action.

Permits class actions when “questions of law or fact common to class members predominate over any questions affecting only individual members” and when proceeding as a class action “is superior to other available methods for fairly and efficiently adjudicating the controversy.”

- ▶ *This category is used primarily in lawsuits seeking money damages. Unlike class actions under Rules 23(b)(1) and (2), class actions under Rule 23(b)(3) require notice of class certification to absent class members, and class members have the right to affirmatively opt out of the class action.*

Implicit Requirements



Apart from the explicit requirements for class certification, courts also generally require that the class be defined clearly and by reference to objective criteria. Some courts also require plaintiffs to establish an administratively feasible method to identify class members in class actions brought under Rule 23(b)(3).

*An injunction is a court order commanding a party to act or refrain from acting. A declaratory judgment is a legal remedy that establishes a party’s rights or duties without awarding injunctive relief or money damages.

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