

# Class Action Employment Litigation: New Rules, New Obstacles, New Strategies

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## Class Action Fundamentals

- **Rule 23(a):** One or more members of a class may sue or be sued as representative parties on behalf of all members only if:
  - Numerosity: “class is so numerous that joinder of all members is impracticable.”
  - Commonality: “there are questions of law or fact common to the class.”
  - Typicality: “claims or defenses of the representative parties are typical of the claims or defenses of the class.”
  - Adequacy Of Representation: “representative parties will fairly and adequately protect the interests of the class.”

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## Class Action Fundamentals (cont'd)

### Rule 23(b): Types Of Rule 23 Class Actions

#### Rule 23(b)

- A class action may be maintained if Rule 23(a) is satisfied and if:
  - (b)(1): Risk of inconsistent/dispositive adjudications—*limited fund cases*;
  - (b)(2): Injunctive or declaratory relief—*injunction cases*;
  - (b)(3): Questions of law or fact predominate—*damages cases*.

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## The Certification Order

### Rule 23(c)(1)

#### Rule 23(c)(1). Certification Order

- (A) *Time to Issue*. At an early practicable time after a person sues or is sued as a class representative, the court must determine by order whether to certify the action as a class action.
- (B) *Defining the Class; Appointing Class Counsel*. An order that certifies a class action must define the class and the class claims, issues, or defenses, and must appoint class counsel under Rule 23(g).
- (C) *Altering or Amending the Order*. An order that grants or denies class certification may be altered or amended before final judgment.

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