

Frequently Asked Questions about Class and Collective Actions

Amy Ficklin DeBrot
The DeBrot Law Firm LLC
amy@debrotalaw.com

Q: What is a class action lawsuit?

A: A class action lawsuit is one in which a group of people with the same or similar issues or injuries caused by the same product or action sue the defendant as a group, as opposed to each bringing individual cases. If they win, they divide up the class recovery fund in some manner, often according to the amount each person lost.

Q: What is a collective action lawsuit?

A: A collective action lawsuit is one filed by one or more people, which a court determines other similarly situated people should have the opportunity to join. A notice is sent to those the court determines are eligible to join the case and they are given a period of time to “opt in” to the case. The court deals with claims of all who join the case collectively, in the same case, much like they are in a class action.

Q: Can any lawsuit be a class action?

A: No. People seek justice in class action lawsuits when their injuries or damages have been caused by the same defective product or harmful policy, such as a dangerous pharmaceutical drug or an overtime pay policy. An attorney may want to file the case as a class action if numerous people were injured in the same way by the same product or action. Generally, the case must have enough class members to form a class, who all raise the same predominate issues, thus making class action treatment an efficient way to handle the dispute.

Q: Why not just bring a regular lawsuit?

A: Class actions are a more efficient use of lawyer and court resources. They bring together and dispose of hundreds or thousands of claims at one time that would otherwise be impractical to litigate individually. The issues in the case are decided with regard to an entire group of people who suffered similar injuries, instead of just one person. If the class wins, the total recovery is divided among the plaintiffs in the class.

Q: What should I do if I receive notice, as a potential class member, of a class action?

A: You should read the notice carefully in order to make an informed decision about the proper course of action. The notice should adequately explain to you

what the defendant allegedly did that caused you and others injury or damage. It should also explain your rights and the consequences if you opt into the class or decide to opt out. All notices name the attorney or attorneys responsible for filing the class action case and representing the class. If you have questions after you have received and reviewed the notice, you should contact your own attorney or the attorney named in the notice.

Q: How do I know whether to "opt out" of the case?

A: Opting out of an existing lawsuit is usually the best course of action if your loss was great, your case is especially strong, you have a particular interest in having control over the course of a lawsuit and you are financially and emotionally prepared to pursue a lawsuit on your own. You should also consider opting out if it sounds, from the description in the notice, like your experience or damage is quite different from those of the rest of the class. If you have any doubts about what to do, you should seek advice from a class action lawyer.

Q: Does my attorney stay in touch with me if I am in a class action?

A: The named plaintiff, or class representative, stays most involved with the attorneys in the class action as the case progresses. Other class members are not typically involved on such a regular basis. The attorney for the class will inform you, usually by mail, of any significant developments or events in the course of the litigation. Of course, you may contact the counsel for the class if you have any questions about the case and its status.

Q: If several law firms have filed lawsuits regarding the same thing, should I join all the lawsuits?

A: No. When more than one class action has been filed over the same issues or injuries against the same defendant, they will usually be consolidated. You are not allowed to sue more than once, or join more than one class, regarding the same issue or injury against the defendant.

Q: Will I get more money if I join the class action?

A: In class actions won by the plaintiff class, all injured plaintiffs receive compensation of some kind. The common fund is usually distributed to the class members in proportion to the amount each member lost. This is not the case if the defendant is financially unable to pay each individual the full amount necessary to cover his or her losses. In individual lawsuits, the potential for recovery may be higher, but absent a class action, payment by the defendant is on a first-come, first-served basis and there is no guarantee that there will be a payment at all.