

Wisconsin Supreme Court Adopts Significant Changes to State Class Action Statute

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On December 21st, the Wisconsin Supreme Court entered an order adopting proposed amendments to Wisconsin's class action procedures in state court actions, which are "intended to align [the state rule] with the federal class action rule, Fed. R. Civ. P. 23." See In re proposed amendments to Wisconsin Statutes s.s. 803.08 and 426.110, Pet. No. 17-03 (entered Dec. 21, 2017), [available here](#). The order completes an administrative rules process involving public hearing and comment that took place over the course of 2017. The Wisconsin Supreme Court's vote to adopt the proposed amendments was unanimous.

The order replaces Wisconsin's current, one-sentence class action statute, Wis. Stat. 803.08—itsself a holdover from the nineteenth-century Field Code. The new class action rule will not be effective until July 1, 2018, although, under the terms of the Wisconsin Supreme Court's order, there will be a presumption that the new rule also applies to cases pending as of the effective date, absent a finding of unfeasibility or injustice. Given the brevity of Wisconsin's current class action statute, demonstrating the unfeasibility or injustice of applying the new rule to a pending class action case may be difficult.

Wisconsin's replication of federal Rule 23 brings with it the now-familiar terminology and procedures used in federal class action cases. Proposed classes in Wisconsin state court actions will now need to satisfy the Rule 23(a) requirements of numerosity, commonality, typicality, and adequacy, and also fall under one of the types of classes described in Rule 23(b) (*i.e.*, those that avoid a risk of inconsistent verdicts, those seeking common injunctive relief, or those where common questions predominate and a class action is superior to other methods of adjudication). In light of the fact that Wisconsin is expressly modelling its amended class action statute on federal Rule 23, Wisconsin courts will likely rely on federal precedent as persuasive authority regarding common class action issues such as ascertainability, predominance, and superiority. The new Wisconsin rule also carries with it the procedural mechanics for class notice, court approval of class settlements, and attorney fee awards, which have all been used in federal class actions for years.

In related news, a bill was introduced in the Wisconsin State Assembly on December 19, 2017, which proposed further changes to Wisconsin's class action statute. See 2017 Assembly Bill 773 (introduced Dec. 19, 2017), [available here](#).

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