

# KFC Breaks Class Action

## OPT OUT NOTICE

## FREQUENTLY ASKED QUESTIONS

### 1. What is a class action

A class action is a type of legal proceeding in which one or more persons (called the lead applicant or lead applicants) brings a claim on behalf of a wider group of people who have been affected in a similar way, or by the same conduct. The people in this wider group are called group members.

The person who commences the proceeding, the lead applicant, does not have to get permission from the group members before commencing the proceeding.

### 2. What is the class action about?

The class action alleges that current and former employees of KFC and its franchise operators:

- (a) Were entitled to receive 10-minute breaks on shifts of four hours or more; but
- (b) Did not receive those breaks

The class action claims that these employees should receive money compensation and penalties for each occasion on which they were entitled to a break but did not receive one, as well as compensation for the loss of amenity as a result of not receiving these breaks.

## PROCEEDINGS

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### 3. What cases are there?

There were previously two class action proceedings:

1. Singh & Ors v Kentucky Fried Chicken Ltd & Ors (VID887/2023) (**Singh class action**)
2. Westgarth & Ors v Kentucky Fried Chicken Pty Ltd & Ors (VID1016/2023) (**Westgarth class action**).

Those two cases have now been joined, and can be referred to as Singh & Ors v Kentucky Fried Chicken Ltd & Ors (VID887/2023), the 'consolidated class action' or the 'KFC Breaks Class Action'.

### 4. Who is running the class action?

The solicitors who are acting on behalf of the applicants and group members in the class action are Gordon Legal and Shine Lawyers.

Those lawyers are acting together on the class action.

### 5. Who is covered?

You **are likely** a group member in the class action if you:

- (c) Are a current or former employee who has worked in a KFC restaurant either owned by KFC or by a franchisee; and
- (d) worked a shift four hours or more in duration between 25 October 2017 and 22 December 2023; and
- (e) you were not provided with a 10 minute break.

You are **not** a group member if you **always** received 10 minute breaks when you worked shifts of four hours or more in duration.

## **COSTS**

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### **6. Will I have to pay anything?**

You will not be asked to pay any upfront contribution to the class action.

If you remain in the class action and it succeeds, the lead applicants will ask the Court to make an order that all group members give up a share of their compensation and penalties to help pay for the costs of running the case.

This money will be taken from your share of the compensation and penalties. You will not be asked to pay from your own pocket.

### **7. If the class action is successful, how much will go to legal fees?**

It is not possible to work out in advance how much of your compensation and penalties will be deducted for legal fees

However, the Court must approve any amounts that are deducted as being fair and reasonable in the circumstances.

### **8. Is the class action funded?**

Yes, the class action is being partly funded by a union called the Shop, Distributive and Allied Employees Association, or SDA. If the class action is successful, then the SDA is likely to seek an order that it be reimbursed for the costs incurred in funding the class action from the compensation payable to group members.

## **OPT-OUT PROCESS**

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### **9. How can I be a group member if I didn't ask anyone to lodge a claim for me?**

The lead applicants (the class representatives) do not need permission to start the class action on behalf of all the group members. But the Court rules for class actions require that the group members be given an opportunity to get out of the class action. This is a process called 'opting out' and we explain it below.

### **10. If I am not a group member in the class actions, what do I need to do?**

If you are not a group member in the class action, you don't need to do anything.

### **11. I'm a group member, what do I need to do?**

If you are a group member, you can either

- (a) **Do nothing**, in which case you continue to be a group member in the class action; or
- (b) **'Opt out'** of the class action, which means you will cease to be a group member but retain your right to bring your own claim subject to any relevant time limitations.

If you do not opt out, you can also register. See question 19 below for information on how to register.

### **12. What are the consequences of opting out the class action?**

If you opt out of the class action, you will cease to be a group member.

This means that you will not be entitled to any compensation if the class action succeeds. It also means that if the class action fails, you are not bound by the Court's decision.

### **13. What are the consequences of not opting out?**

If you do not opt out (that is, you do nothing), you will remain part of the class action.

If the class action succeeds, whether by judgment or settlement, you may be entitled to compensation and penalties.

If you are awarded compensation and penalties, the Court will decide how much will be deducted for legal fees and to pay to the SDA. This will occur before you receive the money.

It will ultimately be up to the Court to approve how much will be paid out of the compensation fund.

The Court makes that decision based on its assessment of what is fair and reasonable in all the circumstances.

If the class action fails, you will be bound by that outcome. This means that you will not get any compensation, and you will not be able to join a different proceeding, or to run your own proceeding, in relation to the same allegations.

#### **14. Is there a deadline to opt out?**

Yes, the deadline is 27 September 2024.

#### **15. Can I opt out later?**

No, not without express permission from the Court.

Once the opt out period ends, you will not be able to opt out of the class action unless you make a formal application to the Court seeking permission to do so. This means that, absent any such application to the Court, you will continue to be a group member, even if you decide later on that you don't want to be in the class action.

#### **16. Can I opt back in once I've opted out?**

No, not without express permission from the Court.

Once you have opted out, you cannot opt back in, without express permission from the Court.

#### **17. How do I opt-out?**

You can opt out by filling out a form ([accessible here](#)) and filing it with the Federal Court of Australia, or sending it to:

- Gordon Legal at [kfc@gordonlegal.com.au](mailto:kfc@gordonlegal.com.au); or
- Shine Lawyers at [kfcclassaction@shine.com.au](mailto:kfcclassaction@shine.com.au)

#### **18. Can I commence my own proceeding?**

Yes, but only if you opt out of the class action.

Before commencing your own proceeding, you will need to consider your prospects of success, the amount of your claim and the costs of running your own proceeding. Strict time limits apply.

If you decide to opt out of the class action and want to commence your own proceeding, you should urgently seek your own legal advice.

#### **19. How do I register my interest in the class action?**

You may register your interest in the class action with either Gordon Legal or Shine Lawyers at:

- Gordon Legal at <https://kfcclassaction.com.au> or
- Shine Lawyers at <https://www.shine.com.au/service/class-actions/kfc-breaks-classaction>

### **WHAT'S NEXT**

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#### **20. What is going to happen next?**

There is currently an application on foot for there to be a preliminary hearing of a number of questions regarding the interpretation of the relevant employment instruments (EBAs and the relevant Award).

If that application is refused, then the class action will proceed to an initial trial where the Court will determine all issues in dispute.

If the application is allowed the Court will determine the preliminary questions.

If you do not opt out you will be bound by the Court's determinations at either the initial trial, or on the preliminary questions.

#### **21. When is the case going to be heard?**

The Court has not fixed a date for an initial trial.

## **22. Trial or settlement?**

Before a trial, the Court may order the parties to go to a mediation to try to settle the claims. Most class actions settle at mediation.

If the parties agree on a settlement of the class action, the settlement can't take effect unless it is approved by the Court. When deciding whether to approve a proposed settlement of a class action, the Court's role is to protect the interests of the group members and make sure the settlement is in their interests, in all the circumstances.

## **23. How much compensation will I get?**

The Court is being asked by the applicants to order that group members be given

- (a) 10 minutes' worth of pay for each occasion on which you were entitled to a break but did not receive it; and
- (b) compensation for the loss of amenity associated with not receiving those breaks.

If a settlement or a Court judgment results in compensation being payable to the group members, the precise amount being claimed on your behalf may depend on your rate of pay at the time you were entitled to the breaks, and the number of breaks you did not receive.

However, it is for the Court to decide whether to order compensation and, if so, how to calculate the amount.

If you remain in the class action, the amount you receive will be reduced by your share of the legal costs and any amount to be paid to the SDA to reimburse them for the funding they provide.

## **24. Will the class action succeed?**

We are not able to give you advice on the likelihood of the class action succeeding.

## **25. Will the proceeding settle before the hearing?**

It is not possible to say whether or not the proceeding will settle.

However, if the class action settles, the Court must approve the terms of any settlement.

## **26. Should I opt out?**

This is for you to decide. In making your decision, you should weigh up each of the issues outlined in the opt out notice.

You can also obtain independent legal advice about your decision on whether or not to opt out.

## **FACTUAL ENQUIRIES**

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### **27. What is a franchise store?**

KFC grants licenses to other companies to run KFC stores. The people given a license are called franchisees. The stores that these franchisees run are franchise stores.

Franchise stores look like any other KFC store. They have the same look and the same menu. The difference is that they are run by the franchisee, and not by KFC.

### **28. How do I know if I was employed by KFC, or a franchisee?**

Your payslip will identify who paid your wages. This is the best place to start. If KFC was paying your wages, you were probably employed by KFC.

If a person or company other than KFC was paying your wages, you were probably employed by a franchisee.

### **29. I was allowed to drink water whenever I wanted to, and to take toilet breaks – does this mean I was given my breaks?**

This is an issue in the case.

The class action alleges that KFC and its franchisees were required to give you a paid period of ten continuous minutes in which you were free of any obligation to perform work.

The class action claims that this paid 10-minute period was in addition to any time you might have been given to go to the toilet or get a drink.