

Ban the Box Ordinance – Factsheet for Contractors

Madison General Ordinances 39.08

Q: What is “Ban the Box”?

Ban the Box policies remove questions about an applicant’s criminal and arrest record from job applications, and help ensure that an applicant’s criminal history is not considered until later in the hiring process. This policy is intended to address hiring disparities and barriers to employment faced by ex-offenders and people who have had police contacts but are qualified for the job. It has been shown that people of color are more likely to be excluded from a hiring process based on answering “yes” to a question about criminal or arrest history. The City of Madison has banned the box in its own hiring practices.

Q: Why is the City of Madison requiring its contractors to Ban the Box?

The City of Madison wants to ensure that equitable opportunities for qualified applicants are available to all. The City of Madison believes that access to family-supporting employment assists in reducing recidivism in the criminal justice system. The ordinance that applies to contractors is here: [Ban the Box Contractor Ordinance](#)

Q: Who must adopt a Ban the Box policy?

Contractors with a service contract over \$25,000 or a contract for City Financial Assistance over \$25,000; Public Works contractors; and prequalified public works subcontractors must adopt the Ban the Box policy *while the contract is in effect*. This applies to contracts (and renewals) signed January 1, 2016 or later.

Q: What is required?

- The company/organization will remove from all job application forms any questions, check boxes or other inquiries regarding whether the applicant has any criminal **or** civil arrests, charges or convictions.
- The company/organization will refrain from asking an applicant in any manner about their arrest or conviction record until after a conditional offer of employment is made to the applicant.
- The company/organization will not conduct a formal or informal background check, including using the Wisconsin Circuit Court Access Program (CCAP), until *after* making a conditional job offer.
- This applies to paid positions as well as unpaid internships, apprenticeships and trainee programs.
- Contractors must keep full and accurate hiring records for the City to inspect if there is a complaint.

Q: When can I conduct a criminal background check?

You can conduct a background check on the finalist *after* making a conditional job offer, before making the final offer to hire.

Q: What if the person has a criminal history relevant to the job?

If you ask about criminal history or run a background check after making a conditional offer, and something turns up, you can apply the appropriate balancing test to determine if their record is “substantially related” to the job, as allowed under current fair employment laws:

- [State of Wisconsin’s Fair Employment Law](#)
- City of Madison Equal Opportunity Ordinance ([MGO 39.03](#))
- See also the following brochures regarding discrimination in hiring:
[Arrest Record Discrimination Brochure](#)
[Conviction Record Discrimination Brochure](#)

According to the State of Wisconsin Department of Workforce Development “*An employer may not refuse to employ or discharge a person with a **conviction record** unless the circumstances of the conviction substantially relate to the circumstances of the job. If an inquiry about convictions is made, the employer should add a clarifier, “A conviction will not necessarily disqualify you from employment. It will be considered only as it may relate to the job you are seeking”. Anyone who evaluates conviction record information should be knowledgeable about how such data may be used.*”

Q: Some of my employees are in sensitive/high security positions, or a background check is required for their State license. How can I comply with both laws?

You can ask questions on the job application and conduct a background check sooner, if there is a legal requirement to do so, due to federal funding requirements or if the person is in a licensed trade or profession where the licensing authority authorizes the inquiry in question. You must demonstrate to the City that there is a legal requirement to exempt such positions from the policy.