



# Arrest Record & Conviction Record Discrimination

City of Madison  
Department of Civil Rights  
Equal Opportunities Division

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# Equal Opportunities Division (EOD)

# Equal Opportunities Ordinance

- City of Madison Ordinance Section 39.03.
- Authorizes Equal Opportunities Division to investigate cases of discrimination which occurred in the City of Madison.
- Created in 1963.

# Equal Opportunities Mission

- Enable Individuals to live and work free of discrimination.
- Provide community education and technical assistance regarding equal opportunity rights.
- Investigate and assist in resolutions for discrimination complaints within the City of Madison.

# Equal Opportunities Division

- The EOD receives complaints in employment, housing, and public accommodations.
- The time limit for filing a complaint is **300 days** in all cases, except housing cases.
- In Housing cases, an individual has **one calendar year** (365 days) to file the complaint.



# Complaint Processing

# Who can file a complaint?

Three ways a complaint can be filed:

1. A person who feels they suffered discrimination,
2. A parent or guardian of someone who feels they suffered discrimination, or
3. An Equal Opportunities Commission Commissioner.

# Who can file a complaint?

- The person who files the complaint is called the Complainant.
- The employer, housing provider, or public accommodator responding to the complaint is called the Respondent.

# Who can file a complaint?

- The Complainant must allege that:
- She/he belongs to a protected class,
- She/he suffered an adverse action, and
- The adverse action was because of his/her membership in that protected class.

# What is a protected class?

A protected class refers to a group of people defined by federal, state and/or local laws who share common characteristics and are protected from discrimination and harassment.

# Protected Classes

- Age
- Arrest Record  
(Not Housing)
- Citizenship Status
- Color
- Conviction Record  
(Not Housing)
- Credit History  
(Employment Only)
- Disability/Handicap
- Domestic Partnership
- Family Status
- Gender Identity
- Genetic Identity  
(Employment and Housing Only)
- Less Than Honorable  
Discharge
- Marital Status

# Protected Classes

- National Origin
- Physical Appearance
- Political Beliefs
- Race
- Religion
- Retaliation
- Sex
- Sexual Orientation
- Social Security Number  
(Not Housing)
- Source of Income
- Student Status
- Victim of Domestic Abuse,  
Sexual Assault, or Stalking  
(Housing Only)

# What is an adverse action?

- An adverse action is a negative change in employment status, housing status and/or benefits or services received from a public accommodation.

# What is an adverse action?

- A Complainant must be able to point to facts to show the action is adverse.
- The action must be more than a small or temporary change.



# Arrest Record and Conviction Record Discrimination

# Note: Housing

- Arrest Record and Conviction Record protected classes are no longer covered in housing as of December 2011 with the passage of 2011 Wisconsin Act 108

# Substantial Relationship

- Details of the conviction have a strong relationship with the circumstances of the job.

# Substantial Relationship

- Employers should not rely solely on information from a credit check, background company or Wisconsin Circuit Court Access Website.

# Substantial Relationship

- Bus Driver
- Bank Teller

# Arrest Record

- Questioned
- Apprehended
- Held for investigation
- Taken into custody or detention
- Charged with, indicted, or tried for:
  - Misdemeanor
  - Felony
  - Other offense

# Arrest Record

If there is an arrest and no conviction:

- Substantial relationship must be applied
- The ordinance does not provide protection from workplace rule violations

# Conviction Record

- Placed on probation
- Fined
- Imprisoned
- Paroled

# Conviction Record

- There is no time limit on how far back an employer can ask about convictions.
- An employer may not consider information if 3 years have passed since you were convicted of a crime.
- Anything included within 3 years must have a substantial relationship test applied to it.

# Conviction Record

- Prevents you from meeting basic requirements of job.
  - Bonding
  - Licensing
    - WI Caregivers Law
      - Department of Health Services
      - 1 W. Wilson St.
      - Madison, WI 53703
      - 608-266-1865 TTY: 888-701-1251
      - <http://dhfs.wisconsin.gov/caregiver/StatutesINDEX.HTM>

# Best Practices:

## Applicants/Employees

- Make sure to list **all** convictions during the time period asked.
- Regularly check to make sure that all your information is correct.
- Take interview notes and document who you speak with, who you interview with, etc.
- Keep a copy of all denial documents.

# Deferred Prosecution Program

- Dane County District Attorney:  
Deferred Prosecution Unit  
City-County Building Room #212  
211 S. Carroll Street  
Madison, WI 53703  
608-284-6896

# Best Practices: Employers

- Review job application used and make sure it is not discriminatory towards individuals with arrest records and/or conviction records.
- Keep interview notes.
- Have a uniform process.
- Make every attempt to gather factual background information regarding arrest records and/or conviction records.

# Best Practices: Employers

- Engage in interactive process.
- Provide training to staff conducting interviews and background checks.
- Practice confidentiality as it relates to employee information.
- Make a conditional offer of employment before performing the background check.



# Thank you!

Please fill out evaluation forms.