

What is conviction record?

Madison General Ordinance 39.03, the Equal Opportunities Ordinance defines conviction record as including, “but is not limited to, information indicating that a person has been convicted of a felony, misdemeanor or other offense, placed on probation, fined, imprisoned or paroled pursuant to any law enforcement or military authority.” (MGO 39.03(2)(f))

Who is covered by the Ordinance?

Any person, employer, employment agency or labor organizations. (MGO 39.03(8))

Can a prospective employer ask me if I have ever been convicted?

Yes, employers can ask about information regarding your conviction record. However an employer cannot use the information to deny you employment unless **the circumstances of the offense “substantially relate to the circumstances of the particular job.”** (MGO 39.03(8)(i)3b))

How far back can the employer ask me for information about my conviction record?

There is no limit on how far back the employer can go. However, the employer **may not** consider the information if **(3) years** have passed since you were placed on probation, paroled, released from incarceration, or paid a fine, for a felony, misdemeanor, or other offense, **the circumstances of which substantially relate to the circumstances of the particular job or licensed activity.** (MGO 39.03(8)(i)3b))

What does “substantially relate to the circumstances of the particular job” mean?

The ordinance makes no specific crimes substantially related to employment as a matter of law. The ordinance requires an analysis of the circumstances leading to an arrest or conviction and an analysis of the circumstances of the specific job (Rogers vs. New Horizons, MEOC Case #19982232, establishes the criteria applied by the Equal Opportunities Division (EOD)).

How is the substantial relationship of the charges established?

In order to establish a “substantial relationship” the employer may interview you about the facts and circumstances of your conviction; request a copy of any court documents; interview other individuals with direct knowledge of the facts and circumstances of the conviction. **Generally, it is not sufficient for an employer to rely only on information obtained from a credit company, a background check company or the Wisconsin Circuit Court Access website.**

For example, generally an employer may not deny you employment or discharge you because you have a conviction for driving under the influence (dui) of alcohol if your job does not involve operating a motor vehicle.

In this regard, the City of Madison Ordinance is more stringent than the state of Wisconsin. (Wis. Statute 111.335)

Can I be discharged because I was convicted?

An employer may not suspend or terminate your employment only because of the fact that you were convicted. However, your employment may be terminated if the **circumstances of the offense “substantially relate to the circumstances of the particular job or licensed activity.”** (MGO 39.03(8)(i)3b))

You may be discharged or denied employment if the conviction would:

- Prevent you from being bonded under a standard fidelity bond or equivalent and this is a requirement of the job.
- Make you ineligible for licensing under state, federal or local law where licensing is a requirement for the position.

What are the time limits for filing an employment discrimination complaint?

An employment discrimination complaint must be filed with the EOD within 300 days of the discriminatory act. (MGO 39.03(10)(c)1))

What types of evidence will the EOD look at to determine whether conviction record discrimination has occurred?

When investigating allegations of conviction record discrimination, the EOD will look at the whole record: the questions asked; the information provided; the substantial relationship of the offense and the circumstances of the particular job and how the employer established the substantial relationship. The EOD will also look at whether or not the employer has another reason(s) for not hiring or for terminating the employee.

If I file a discrimination complaint, what types of relief are available?

If it is determined that you have been discriminated against on the basis of conviction record, you may be entitled to a remedy that will place you in the position you would have been in if the discrimination had never occurred. You may be entitled to such things as economic and non-economic damages including damages for emotional injuries and front and back pay. You may also be entitled to attorney’s fees. (39.03.(10)(c)2b))

Can the employer retaliate against me for complaining with the EOD?

It is unlawful for an employer or other covered entity to retaliate against someone who opposes any discriminatory practices under Madison's Equal Opportunities Ordinance, or because he or she has made a complaint, testified or assisted in any proceeding under Madison's Ordinance (MGO 39.03(9)). Individuals who believe that they have been retaliated against should contact the EOD immediately.

What laws does the EOD enforce?

The EOD has jurisdiction only in the City of Madison and enforces the MGO 39.03, the Equal Opportunities Ordinance. The Equal Opportunities Ordinance prohibits discrimination based on sex; age; race; color; religion; arrest record; conviction record; marital status; being a student; national origin or ancestry; physical appearance; handicap/disability; sexual orientation; political beliefs; source of income; retaliation; less than honorable discharge from the military; refusal to disclose social security number; familial status; domestic partners; gender identity; genetic identity; citizenship status; victim of domestic abuse, sexual assault, or stalking*; credit history**.

*applies to housing only

**applies to employment only

How do I file a conviction discrimination complaint?

You may file at the Madison Equal Opportunities Division (EOD) office, located at:
210 Martin Luther King, Jr. Blvd., Room 523
Madison, WI 53703-3346

You may also contact us at (608) 266-4910 or you may visit our website at www.cityofmadison.com/dcr.

Who can advocate for me?

The EOD is an enforcement agency and does not advocate on your behalf or provide legal advice. Before a complaint is filed, we will provide technical assistance and answer questions. Once a complaint is filed, we will investigate the complaint.

A list of attorneys is available on our website at www.cityofmadison.com/dcr or it may be mailed to you upon request.

Conviction Record and Employment Discrimination in the City of Madison

City of Madison Department of Civil Rights

DCR

Equal Opportunities Division

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Lucía Nuñez, Director
210 Martin Luther King, Jr. Blvd., Rm. 523
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If you need an accommodation in order to access this service or need materials in Braille, large print or an alternate format, please contact our office.