



Arrest Record and Employment Discrimination in City of Madison

What is an arrest record?

Madison General Ordinance 39.03, the Equal Opportunities Ordinance defines arrest record as including, but not limited to, “information indicating that a person has been questioned, apprehended, taken into custody or detention, held for investigation, arrested, charged with, indicted or tried for any felony, misdemeanor or other offense pursuant to any law enforcement or military authority.” (MGO 39.03(2)(c))

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 arrested?

Yes, employers can ask about information regarding your arrest record. However an employer cannot use the information to deny you employment unless you are “subject to a **pending criminal charge and the circumstances of the charge substantially relate to the circumstances of the particular job.**” (MGO 39.03(8)(i)3a)

Employers asking information about the applicant’s arrest record may be inviting unnecessary complaints of discrimination. It is advisable to limit the application questioning to “pending charges.”

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

There is no limit on how far back the employer can go. However, if the employer asks you about your arrest record, it is important that you provide accurate and complete information. You can file a complaint of discrimination if you believe that the questions asked were discriminatory or that the information you provided was used to deny you employment.

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 pending charges; request a copy of any court documents; interview other individuals with direct knowledge of the facts and circumstances of the pending charges. Generally, **it is not sufficient for an employer to rely 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 pending charges 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 arrested?

No; an employer may not terminate your employment only because of the fact that you were arrested. However, your employment may be terminated if the “**pending criminal charge and the circumstances of the charge substantially relate to the circumstances of the particular job.**” (MGO 39.03(8)(i)3a)

The ordinance does not provide protection if you missed workdays because of an arrest, as long as the employer is consistent in the application of its absenteeism policy.

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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 arrest record discrimination has occurred?

When investigating allegations of arrest record discrimination, the EOD will look at the whole record: the questions asked; the information provided; the substantial relationship of the pending charges 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 arrest 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. (MGO 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; non religion; 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; homelessness; 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**; unemployment**.

*applies to housing only

**applies to employment only

How do I file an arrest 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

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.

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City of Madison
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210 Martin Luther King, Jr. Blvd., Rm. 523
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