



***HR Heads-up***

## ***City of Madison Eases Conviction Record Discrimination Law***

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State and local laws in Wisconsin restrict employers' consideration of arrest and conviction records and generally require the application of a substantial relationship test to determine whether the offense is grounds for denying or terminating the employment of an individual. While state and local laws overlap, a key difference has historically been that employers located in the City of Madison or that have employees who work within the city's jurisdiction cannot consider an employee or applicant's conviction if it has been at least three years since the employee or applicant was "placed on probation, paroled, released from incarceration, or paid a fine, for a felony, misdemeanor, or other offense..."

This 3-year lookback period was a rigid rule and applied regardless of whether there was a substantial relationship between the offense and the job in question. This rule meant that even if an applicant was released from incarceration 3 years and one day ago after committing a violent crime, the employer could not consider that conviction at all if the employer is located within the City of Madison, no matter the circumstances of the specific position for which the employee applied. If the employer was outside of Madison, it would be subject to the Wisconsin Fair Employment Act (WFEA) which would allow the employer to consider the offense in relation to the circumstances of the particular job.

On December 5, 2024, the City of Madison's Common Council voted to eliminate that 3-year lookback restriction which brings the Madison General Ordinance ("MGO") closer (but likely not totally) in alignment with state law and means that employers in the City of Madison have more flexibility in what convictions and offenses they can consider in denying employment to an applicant or for terminating an existing employee. This change to the MGO is effective immediately.

The MGO was also amended to specifically state that the following criteria, among other potential criteria, are relevant in determining whether an offense is substantially related to the particular job in question:

- the seriousness of the offense;
- the passage of time since the employee or applicant was placed on probation, paroled, released from incarceration, or paid a fine, for a felony, misdemeanor, or other offense;
- the age of the employee or applicant at the time the offense occurred; and
- the character of the employee or applicant.

While these criteria are similar to the criteria used in the substantial relationship test under the WFEA, there are some differences. For example, the Wisconsin Supreme Court has suggested that it is appropriate for employers to also consider whether there was a pattern of behavior shown by the offense and the level of opportunity for the employee to re-offend in the workplace. Under state law, it is also appropriate for employers to look at the character traits of the employee or applicant that are revealed by the elements of the offense. (A detailed discussion of this issue can be found [here](#).) However, while the Madison General Ordinance states that the “character of the employee or applicant” can be considered, this language might be interpreted differently than state law. Future decisions of the Madison Equal Employment Commission will have to clarify the scope of the revised MGO.

This is a nuanced area of law and each inquiry is always fact-specific. An added layer of complication is that the MGO is *still* not the exact same as state law regarding arrest and conviction record discrimination. Therefore, we encourage employers to reach out to a member of the [Boardman Clark Labor & Employment Law Practice Group](#) with questions about the substantial relationship test under the MGO or the WFEA.

Disclaimer: This information is not intended to be legal advice. Rather, it seeks to make recipients aware of certain legal developments that affect human resource issues. Recipients who want legal advice concerning a particular matter should consult with an attorney who is given a full understanding of the relevant facts pertaining to the particular matter.

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