

WISCONSIN

The LRC in Wisconsin Determines That Criminal Convictions Deeply Upsetting may NOT be Substantially Related to the Job

When it comes to the consideration of applicants, employers in Wisconsin are finding themselves in a difficult spot. The Wisconsin Fair Employment Act prohibits discrimination against applicants who have a criminal/conviction record that does not relate to the job. What this means for employers is, they can face a claim if they take measures that are too strict or not strict enough. Either face a claim for negligence in the hiring process or for discriminating someone with a conviction record.

The Wisconsin Labor and Industry Review Commission (LIRC) made a recent decision that explains how an applicant may have been convicted of severe crimes, but these crimes may have nothing to do with performing the essential functions of the job they are applying for. “Whether a crime is an upsetting one may have nothing to do with whether it is substantially related to a particular job” *Palmer v. Cree, Inc. (December 3, 2018)*.

An employer in Wisconsin of a manufacturing company that manufactures and sells lighting products is the employer in question. The company was hiring for a sales and design position that Derrek Palmer applied for. He went through two interviews that seemed to him as promising. The company at that point conducted a criminal background check that revealed in 2012 Palmer had been convicted of felony strangulation and suffocation, fourth degree misdemeanor battery and misdemeanor damage to property. What did not show up, but Palmer did discuss, was a conviction of battery in 2001. He had disclosed that they were in connection to a domestic situation.

The company reviewed the background reports, they used a matrix in which disqualified him from the position. He was notified he would not be considered any further. Palmer then filed a complaint that his rights under the Wisconsin Fair Employment Act’s had been violated due to his conviction.

The administrative law judge, after the hearing found in favor of the company. The ALJ had determined that this position required working one on one with customers and most of their customers were female thus being “problematic.” The concern was that if Palmer built a relationship with a coworker that did not turn out well then it could cause past behaviors from his convictions to arise.

The LIRC reversed the ALJ and on the appeal determined that for a substantial relationship between the conviction and the job to exist, there must be the tendency of a convicted criminal to reoffend in the new job. The commission held that the job that Palmer sought were not considerably related to the convictions. They also found that a job that would require Palmer to be unsupervised with customers in their homes would not lead to repeating past conduct that led to his convictions. Furthermore, just merely working with females did not present a substantial relationship, the commission found there was nothing regarding the job to cause Palmer to reoffend.

Wisconsin employers can be reminded from this decision that even the most severe crimes may not be weighed as considerably related to a job. Employers may want to proceed with careful consideration when dealing with potentially risky decisions. Individually assessing circumstances surrounding the nature of the job, the crime and all other facts that may be relevant.