

Be Cautious When Using Conviction Records to Make Employment-Related Decisions for Wisconsin Employees

Labor & Employment Law Update

By Peter Hansen on January 5, 2021

A Wisconsin state court recently issued a helpful reminder to employers operating in Wisconsin – and employers with employees working outside of their home state: always check local and state conviction records laws before using them in making any employment-related decision.

In *Cree, Inc. v. LIRC*, the employer rescinded a job offer to Derrick Palmer after discovering that he had multiple convictions for “domestic incidents,” including “2012 convictions for strangulation/suffocation, fourth-degree sexual assault, battery, and criminal damage to property related to a domestic incident with a live-in girlfriend.” If hired, Palmer would have been an Applications Specialist working “with more than 1100 employees, including about 500 women.” Seems reasonable to rescind the offer, right? Well, no – not in Wisconsin, which prohibits discrimination on the basis of a conviction record, *unless* the employee or applicant has “been convicted of any felony, misdemeanor or other offense the circumstances of which substantially relate to the circumstances of the particular job.”

The court held that although Palmer’s criminal record demonstrated a tendency and inclination “to be physically abusive toward women in a live-in boyfriend/ girlfriend relationship,” it did not substantially relate to the Applications Specialist job that Palmer applied for – which would not require “performing his services in private homes or other isolated settings” or otherwise “meeting one-on-one with clients in private settings.” As a result, the employer unlawfully discriminated against Palmer when it rescinded the job offer because of his prior convictions.

To summarize, all employers must check state and local laws before making any employment-related decision on the basis of a conviction record. Many states prohibit conviction record discrimination in addition to Wisconsin, including California, Hawaii, New York, and Pennsylvania. Local laws could also prohibit conviction record discrimination, or even provide additional protection. For example, sticking with Wisconsin, the City of Madison prohibits employers from

considering conviction records that “substantially relate to the circumstances of the particular job” if more than three years have passed since the employee was placed on probation, paroled, released from incarceration, or paid a fine relating to the conviction.

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