



REC-IMO-004	Recreational and Educational Camps
Revision: 1.0	Background Check Findings & the Wisconsin Fair Employment Act (WFEA)
Approved: 09/08/2023	Wis. Admin. Code: 78

TO: All DATCP Retail Food Staff and Agents

FROM: Bureau Director, Bureau of Food and Recreational Businesses

SUBJECT: Interpretation Regarding Background Check Findings & the Wisconsin Fair Employment Act (WFEA)

1.0 Purpose

The purpose of this document is to provide an interpretation regarding the camp background check threshold policy based on an individual’s conviction record findings in alignment with the WFEA.

2.0 Scope

This interpretive memo applies to Division of Food and Recreational Safety (DFRS) inspection staff and agents.

3.0 Definitions

- 3.1 “Camp staff” is defined in rule, ATCP 78.03(13).
- 3.2 “In loco parentis” means a legal term for the principle of being in place of the parent. It applies when the camp has supervisory responsibility for campers. *Source: American Camp Association Accreditation Process Guide 2019 Edition.*

4.0 Interpretation

- 4.1 The Department received an inquiry to interpret how ATCP 78.26 (1) (c) coincides with the Wisconsin Fair Employment Act (WFEA). As noted in the WFEA, the existence of a conviction would not be an automatic exclusion from employment.
- 4.2 While the WFEA declares the employment of all properly qualified individuals regardless of arrest and conviction record, [s. 111.335, Stats.](#), also contains arrest or conviction record exemptions and special cases for educational agencies, such as school districts and residential care centers for youth and children.

- 4.2.1 Pursuant to [s. 111.335\(3\)\(a\)1., Stats.](#), it is not employment discrimination because of conviction record to refuse to employ an individual if the individual has been convicted of any offense the circumstances of which substantially relate to the circumstances of the particular job. A conviction is substantially related to a job when there is some overlap between the circumstances of the job and the circumstances of the offense.
- 4.2.2 Pursuant to [s. 111.335\(3\)\(e\), Stats.](#), it is not employment discrimination because of conviction record for an educational agency to refuse to employ an individual who has been convicted of a felony and who has not been pardoned for that felony.
- 4.2.3 Camps are expected to develop their own thresholds to address conviction findings codified in ATCP 78.26 (1) (c) (1.) (a.-d.) revealed on an individual’s background check, to promote a safe environment for campers. Given that camps take on supervisory responsibility for minors “in loco parentis” ranging from days to weeks at a time depending on session length, ATCP 78.26 (1)(c) recreational and educational camp background check threshold policy now aligns with safeguards in place at educational agencies.

4.3 The length of volunteering or work does not impact the need for this screening.

4.4 Offenses including those defined as “serious crime” in *s. 48.685(1) (c)* and “violent crime against a child” in *s. 111.335 (1m) (d), Stats.*, are crimes substantially related to recreational and educational camp settings, as there is overlap between the circumstances of the job and the circumstances of the offense. Notwithstanding 111.322, it is not considered employment discrimination to consider a crime substantially related to the recreational and educational camp setting. This table provides a baseline of specific offenses that each camp is to set their own thresholds to prevent employment or volunteer selection within youth serving organizations:

ATCP 78.26 (1)(c) (1.)	State Statute
(a.) A record of a violent crime against a person or animal.	A violation of ss. 940.19 (3) , 1999 stats., 940.01 , 940.02 , 940.03 , 940.05 , 940.12 , 940.19 (2) , (4) , (5) , or (6) , 940.198 (2) , 940.22 (2) or (3) , 940.225 (1) , (2) , or (3) , 940.285 (2) , 940.29 , 940.295 , 942.09 (2) or domestic abuse offenses.
(b) Crimes against nature where children were affected	948.02 (1) or (2) , 948.025 , 948.03 (2) or (5) (a) 1. , 2. , 3. , or 4. , 948.05 .

(c) Any crime involving a child as the victim	948.051 , 948.055 , 948.06 , 948.07 , 948.08 , 948.081 , 948.085 , 948.11 (2) (a) or (am) , 948.13 , 948.21 , 948.215 , 948.30 , 948.53 , or a violation of s. 940.302 (2) if s. 940.302 (2) (a) 1. b. applies.
(d) Possession or facilitation of child pornography	948.12 .

4.5 What about an incoming rental group’s leaders serving at camp? Keep in mind the written agreement pursuant to ATCP 78.16 (1) (c) (9.) between the camp and rental group must clearly identify the responsibility of the camp and the rental group, including confirmation that background checks have been done on all staff pursuant to s. ATCP 78.26 (1). When this task is delegated to the rental group by the the agreement, one option to comply includes a check box to confirm the rental group organization has performed background checks on their volunteers or staff to serve in camp operations. Many churches and school districts already require volunteers to conduct a background check before they can help with kids. The camp would not need to duplicate when it was already done by the incoming organization.

5.0 Contacts

DFRS Recreational Technical Specialists: datcpdfsrec@wisconsin.gov.

6.0 References

6.1 ATCP 78

Document History

The most recent changes to this controlled document are listed at the top of the table:

Revision	Author	Change Description	Approval Date
1.0	James Kaplanek Stephanie Sticka	New Document	09/08/2023

7.0 Approval

Workflow History

The workflow recorded these events.

Date Occurred	Event Type	User ID	Description	Outcome
9/8/2023 2:09 PM	Workflow Initiated	Northwood, Andrea M	Approval was started. Participants: Ingham, Steven C.; Sprecker, Troy S	
9/8/2023 2:09 PM	Task Created	Northwood, Andrea M	Task created for Ingham, Steven C.. Due by: 9/12/2023 12:00:00 AM	
9/8/2023 2:09 PM	Task Created	Northwood, Andrea M	Task created for Sprecker, Troy S. Due by: 9/12/2023 12:00:00 AM	
9/8/2023 3:29 PM	Task Completed	Sprecker, Troy S	Task assigned to Sprecker, Troy S was approved by Sprecker, Troy S. Comments:	Approved by Sprecker, Troy S
9/8/2023 4:34 PM	Task Completed	Ingham, Steven C.	Task assigned to Ingham, Steven C. was approved by Ingham, Steven C.. Comments: The interpretation seems to directly contradict the rule as written. I infer from the title that the interpretation is made to prevent violation of the ADA. Marked it up wit	Approved by Ingham, Steven C.
9/8/2023 4:34 PM	Workflow Completed	Northwood, Andrea M	Approval was completed.	Approval on IMO Rec Ed Camp Staff Medications ADA has successfully completed. All participants have completed their tasks.