

Oregon's Pay Equity Law

A Legal Resource Provided by Davis Wright Tremaine LLP
and the Oregon Winegrowers Association

Christie Totten

PARTNER

Portland

christietotten@dwt.com

503.778.5298

2025

Davis Wright Tremaine LLP is a full service law firm providing services to the wine industry in the areas of mergers and acquisitions and other business transactions, land use and real estate, alcohol regulatory and licensing, intellectual property, employment, and litigation.

DWT.COM



Legal Update: Oregon's Pay Equity Law

Oregon's Pay Equity Law went into effect in 2019 and applies to all wineries, tasting rooms and vineyards with Oregon employees, regardless of company size.

The Pay Equity Law expands equal pay protections beyond gender, and makes it an unlawful employment practice (1) to pay different compensation to any employee of a protected class for "work of comparable character" to others, unless a specific exception exists; (2) to discriminate on the basis of a protected class in compensation; (3) to ask about or screen job applicants based on current or past compensation; or (4) to determine compensation for a position based on current or past compensation of a prospective employee.

The protected classes include gender, race, color, religion, sexual orientation, national origin, marital status, veteran status, disability or age.

It is now unlawful in Oregon to pay employees differently for work of a comparable character (defined as work requiring "substantially similar knowledge, skill, effort, responsibility, and working conditions in the performance of work, regardless of job description or job title"). The exception is if a "bona fide factor" can explain the disparity. Those "bona fide factors" are listed in the law and include: a qualifying seniority system, merit system, a system that measures earnings by quantity or quality of production, workplace locations, travel (if necessary and regular for the employee), education, training, and experience or any combination thereof. For example, in the tasting room, a male employee cannot be paid a higher hourly rate than a female employee simply because he negotiated a better starting salary several years ago—and vice versa. On the other hand, it may be lawful to pay a vineyard worker more than others performing comparable work on the basis that she has more years of training and experience. But not every business reason qualifies as a "bona fide factor" so each case will need to be analyzed to determine if the compensation difference is legally justified. Likewise, after-the-fact reasoning may not satisfy the bona fide factor test, and businesses should consult legal counsel before assuming that their merit system, experience requirements, or other factors are sufficient.

Compensation is more than hourly rate or salary. It includes wages, salary, bonuses (including hiring bonuses), benefits, fringe benefits, and equity-based compensation.

Here are 5 of the steps many employers are taking:

1. **Poster:** Posting a required notice in every worksite. BOLI provides a template that meets the required notice provisions. Download it [here](#) in English and [here](#) in Spanish.
2. **Update hiring practices:** Reviewing and updating job applications, postings, and questionnaires to remove any question asking for current or past compensation, including salary and benefits. This includes places like online postings for harvest interns. Training interviewers to not ask about current or past compensation during the job application process and if an applicant volunteers that information, to disregard it. (However, there are exceptions for current employees moving into a new job role.)
3. **Avoid certain compensation differentials:** Updating job descriptions to accurately reflect the qualifications, skills, and duties required for the position. Remember that two people with different job titles may be legally deemed to be performing comparable work, and two people with the same job title may actually be performing non-comparable work. If compensation is tied to performance, modifying performance review procedures to create a compliant process. Employers are providing training to those involved in determining compensation.
4. **Conduct an attorney-client privileged equal-pay analysis of your pay practices:** Having a valid equal pay analysis can be used as a defense to compensatory and punitive damages in a lawsuit filed by a current or former employee, although employers are still liable for other amounts upon a violation including back wages, penalties and attorney fees. Although large or complex workplaces may need outside experts to perform statistical analysis, employers in the Oregon wine industry are generally well-suited to perform an individualized analysis with the help of their attorney. Employers who involve an attorney at the beginning may be able to keep the process protected by attorney-client privilege.
5. **Analyze and fix compensation differentials:** If compensation differentials exist, working with legal counsel to determine if one or more "bona fide factor(s)" listed in Oregon's law would explain the compensation differential. If not, the issue may be addressed by raising the affected employee's compensation to a level comparable to those performing "work of comparable character." Employers may not, however, reduce the compensation of any employee in order to equalize pay—that is unlawful.



Oregon
Winegrowers
ASSOCIATION EST 1981



Davis Wright
Tremaine LLP

THIS IS A HIGH LEVEL SUMMARY AND NOT LEGAL ADVICE. Please contact us for an electronic version with live links.

Contact Christie Totten at christietotten@dwt.com or 503.778.5298