

Oregon Workplace Fairness Act

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

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Oregon Workplace Fairness Act

A sweeping Oregon law affects every wine industry employer with at least one Oregon employee. The Oregon Workplace Fairness Act (OWFA) requires:

- (1) Updating a **mandatory written anti-discrimination policy** containing certain language;
- (2) Training management to **distribute the policy** as required; and
- (3) **Avoiding certain employment, severance, separation, and settlement agreements** that unlawfully violate tough legal requirements.

Noncompliance with some of these provisions constitutes an unlawful employment practice and can trigger a civil action for compensatory damages, attorney fees, and punitive damages.

The OWFA was widely viewed as a #MeToo law aimed at limiting confidentiality agreements covering sexual assault, harassment, and discrimination, but the scope of the law is much broader. The law impacts many protected classes beyond sex-based harassment, and imposes affirmative duties on employers and employees. The 2019 law was further amended effective 2023.

Written Anti-Discrimination Policy Requirements

All employers need an OWFA-compliant written policy in place and distributed. The policy must cover multiple topics including detailing a report process, listing designated and alternate individuals for receiving complaints, specifying a five-year statute of limitations, stating the prohibition against requiring a nondisclosure or nondisparagement agreement including relevant definitions, stating that employees may voluntarily request those agreements with 7 days to revoke after signature, and advising employers and employees to document certain conduct. The Oregon Bureau of Labor and Industries (BOLI) has a model policy on its website, or employers may work with their human resources or legal counsel to tailor the requirements to their own policies.

The OWFA also requires distribution of the policy, which must be (1) made available to employees within the workplace, (2) provided to each employee at time of hire, (3) provided, in certain circumstances, to persons with whom the employer seeks to enter a release agreement that contains certain confidentiality, nondisparagement, or no rehire provisions (*see below*), and (4) provided to any employee at the time the employee "discloses information regarding prohibited discrimination or harassment," by any individual designated to receive complaints.

Employment, Severance, Separation, and Settlement Agreements

The OWFA has caused employers to reexamine and revamp agreements they have used for years. Recycling old agreements can now be an unlawful employment action for which an employer may be sued. The situations are nuanced and employers should not use “form” agreements without fully understanding the law.

For applicants, current and former employees, the OWFA prohibits agreements containing a non-disclosure, non-disparagement, or any other provision with the purpose or effect of preventing the employee from disclosing or discussing conduct that constitutes discrimination based on multiple protected classes, including sexual assault. All employment agreements, including confidentiality agreements, should be reviewed to eliminate specific or broad language with the purpose or effect of making such information subject to nondisclosure. Employers should seek legal counsel to understand their rights and obligations.

For severance and settlement agreements with employees who have claimed discrimination based on many protected classes, there are now strict prohibitions against certain provisions. It is unlawful to enter into such agreements if they contain:

- (1) A nondisclosure, nondisparagement, or other provision prohibiting an employee from disclosing or discussing conduct or factual information about discrimination, harassment, or sexual assault prohibited by certain state statutes (***nondisclosure/nondisparagement/confidentiality***);
- (2) A provision preventing disclosure of the fact or amount of settlement; and/or
- (3) A provision prohibiting the employee from seeking reemployment as a term or condition of the agreement (***no rehire***).

The agreement is still allowed if the employee voluntarily requests an agreement containing these terms and is allowed seven days to revoke after signing. However, it is unlawful for an employer to make an offer conditional upon the employee requesting specific terms. There are nuanced exceptions for certain employees and circumstances.

Employers should contact their experienced Oregon legal counsel before negotiating and entering into any such agreements.



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