

DAVIS WRIGHT TREMAINE LLP

Americans with Disabilities Act and Winery Tasting Rooms

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

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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.

Federal ADA Compliance in Winery Tasting Rooms

The ADA is a federal civil rights law that, in part, prohibits places of public accommodation, such as winery tasting rooms, from discriminating against people with disabilities. This means the facility must be accessible and safe. It also places restrictions against employment discrimination of disabled employees or applicants. Oregon has largely adopted the ADA, with some differences that are generally more stringent. Both federal and state laws define a person with a disability as an individual who has a physical or mental impairment that substantially limits one or more major life activity, has a record of such impairment, or is regarded as having such impairment. There are a number of aspects of the ADA that could apply to a winery tasting room. The table below contains a brief overview of common issues for operating your winery tasting room to ADA standards. However, to determine your facility's specific compliance requirements, an inspection should be conducted of your individual facility.

	Federal ADA	Oregon Disability Law
Architectural Barriers	ADA architectural standards for accessible design for public accommodations were set in 1991 and updated in 2010. Businesses have an affirmative duty to survey their places of public accommodation and make "readily achievable" changes.	
Existing Buildings	Owners of existing buildings "shall remove architectural barriers" including communication barriers that are structural in nature, "where such removal is readily achievable, i.e., easily accomplishable and able to be carried out without much difficulty or expense." 28 CFR 36.304(a). The "readily achievable standard" is measured by the financial abilities of the business owner, any parent or controlling companies, and whether or not the change would make the accommodation unprofitable or unusable. The "without much difficulty or expense" standard is a greater burden than may initially appear. Businesses that complied with the 1991 regulations need not comply with modified 2010 regulations, but must comply with new 2010 Standards for Accessible Design. Businesses that make alterations or engage in remodeling are required to comply with the regulations in effect at the time of the remodeling to the extent that the changes are structurally feasible, unless to do so would create an undue burden (very high standard). There are some exceptions for qualified historic buildings. See: https://www.eeoc.gov/eeoc/publications/fs-ada.cfm . Where removal of architectural barriers is not readily achievable, businesses must make reasonable accommodations for access for disabled guests. 1991 Americans with Disabilities Act Accessibility Guidelines	If you are an existing business, here is a quick guide to determine which aspects of the ADA apply to your facility.
New Construction/ Alterations	Businesses built or altered after September 2010 must meet the 2010 Standards for Accessible Design. In allocating costs of required work, where full compliance is not structurally feasible or would create an undue burden, the DOJ has determined the priority of alterations. <ul style="list-style-type: none"> Priority 1: Accessible approach and entrance Priority 2: Access to goods and services Priority 3: Access to restrooms Priority 4: Any other measures necessary Equivalent Facilitation. Departures from particular technical and scoping requirements by use of other designs/technologies are permitted where the alternative designs and technologies used will provide substantially equivalent or greater access to and usability of the facility, or where the changes are not structurally feasible or create an undue burden.	Oregon Structural Specialty Code 2014 full building specifications. Oregon's building code for 2010 ADA updates.

	Federal ADA	Oregon Disability Law
Parking	<p>Accessible parking spaces must be provided for cars and vans if it is readily achievable to do so. The 2010 ADA standards require that 1 in every 25 spaces be accessible, and 1 in 6 accessible spaces be van-accessible. If your lot is small, at least one space must be van-accessible. Parking spaces should be identified by compliant signs that include the International Symbol of Accessibility. Access aisles must be marked to discourage parking in them. See sec. 208 of 2010 ADA Standards for Accessible Design.</p> <p>Federal ADA requirements when restriping (altering) parking lots.</p>	<p>Oregon Department of Transportation accessible parking guide (ORS 447.233):</p> <p>http://www.oregon.gov/odot/hwy/traffic-roadway/docs/pdf/standards_for_accessible_parking_places.pdf</p>
Path of Travel	<p>If alterations are made to an area containing a primary function (e.g., tasting room), an accessible "path of travel" is required, including a continuous route connecting the altered area to an entrance, parking, phones, restrooms, and drinking fountains that, where provided, serve the altered area. Since this may involve modifications outside the intended alteration, compliance is required to the extent it is not "disproportionate" to the cost of alterations to the primary function area. "Disproportionality" is defined in the DOJ rule (section 36.403) as costing more than 20 percent of the cost of the alteration to the primary function area. 28 CFR 35.151.</p>	
Restrooms	<p>Restrooms must comply with ADA standards, including the removal of barriers to access of restrooms at the facility to the extent readily achievable for unaltered facilities and to the extent structurally feasible for remodeled spaces, unless to do so would create an undue hardship. Changes include installing grab bars, widening stalls and entrances, lowering hand dryers and soap dispensers, and covering exposed hot-water pipes under sinks. ADA Bathrooms.</p>	
Doors	<p>The ADA guidelines also include rules for doors. For example, when doors are open 90 degrees, they are required to have at least a 32-inch width opening and a pull-side clearance of 18 inches. The maximum threshold height is generally ½ inch without a ramp. Thresholds above ¼ inch must be beveled with a slope no greater than 1:2. For other specific guidance for doors, see Ch. 4 Section 404:</p> <p>http://www.ada.gov/regs2010/2010ADASTandards/2010ADASTandards.htm#pgfld-1006675</p>	<p>There are limits on force required to open doors (Generally 8.5 lbs. force exterior doors, 5 lbs. force interior).</p> <p>Oregon ADA Doors.</p>
Ramps	<p>There are ADA guidelines for ramps, slopes, and landings. In general, ramps shall have a running slope no steeper than 1:12, cross slope of 1:48, and minimum clear width of 36 inches. An exception is that in existing buildings and facilities, ramps may have running slopes steeper than 1:12 where such slopes are necessary due to space limitations and it is not readily achievable to provide a fully compliant ramp. See section 405 of 2010 ADA standards for more details.</p>	
Service Dogs	<p>The ADA requires businesses to accommodate service animals. Under ADA regulations, the definition of a service animal is limited to a dog or miniature horse that is individually trained to assist an individual with a disability. The task(s) performed by the dog must be directly related to the person's disability. Businesses may ask if a dog or miniature horse is a service animal and what services the animal performs, but most businesses do not ask the latter question to avoid any appearance of inquiring about the nature of the individual's disability, which is prohibited. ADA Service Animals.</p>	<p>Oregon adopted new standards relating to assistance animals in 2013: ORS 659A.143.</p>

	Federal ADA	Oregon Disability Law
Communication Aids	The ADA requires businesses to provide auxiliary aids or services to communicate effectively with customers with vision, hearing, and speech disabilities. (§36.104, §36.303). Auxiliary aids include providing assistive listening devices, accepting TTY phone calls, having staff read menu and/or wine descriptions, and exchanging written notes with deaf customers. During tours, businesses may be required to provide American Sign Language interpreters, upon reasonable request, for at least some tours. The ADA also requires businesses to change policies and practices to accommodate persons with disabilities unless to do so would fundamentally change the nature of the services provided or create an undue hardship to ensure an equivalent experience.	
Employment	Title I of the ADA and ORS 659A apply to disability in the context of employment. Employers of 15 or more employees must comply with the ADA, including prohibitions on discrimination in hiring/promotion/firing qualified disabled employees who can perform the essential job functions, either with or without reasonable accommodation. To accommodate disabled employees, employers must enter into an interactive process and make reasonable accommodations for current employees who are or who become disabled (examples could include job restructuring, part-time, modified work, etc.). ADA employment laws are enforced by the Equal Employment Opportunity Commission (EEOC). ADA Title I 42 U.S.C. 12101 to 12117	Oregon employers of six or more employees must comply with Oregon disability and accommodation provisions, except that employers of all sizes are prohibited from discriminating against an individual because he or she applied for disability benefits or invoked disability-related rights. Oregon's Bureau of Labor and Industries (BOLI) offers a quick guide.
Laws	ADA Regulations 29 CFR 1630.	Employment ORS 659A.103 <i>et. Seq.</i>



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