

DAVIS WRIGHT TREMAINE LLP

# Oregon's Pay Equity Law

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.

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# Oregon's Pay Equity Law

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

The Pay Equity Law imposes highly specific rules 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 with a long list of factors to determine if the work requires "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" 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. Each factor is defined in state regulations. 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. Businesses should consult legal counsel in advance when structuring pay decisions, before assuming that their merit system, experience requirements, or other factors will be sufficient.

Employers should also note that "**compensation**" is defined more broadly than hourly rate or salary. It includes, as examples, bonuses (including hiring bonuses), commissions, benefits, fringe benefits, equity-based compensation.

Here are 5 of the steps many employers take:

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. **Consider job duties and compensation decisions:** Updating job descriptions to accurately reflect the qualifications, skills, and duties required for the position. (Remember that a court or state agency may determine that two people with different job titles are performing comparable work, and may determine that two people with the same job title are actually be performing non-comparable work.) Also, if compensation is tied to performance, structuring the performance evaluation process to be compliant. Employers are ensuring those involved in determining compensation are trained and understand what is allowed.

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 may still be held 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 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.



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