

Senate Bill 437

Sponsored by Senator FREDERICK (Pre-session filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Modifies provisions relating to arbitration award that orders reinstatement of public employee or otherwise relieves public employee of responsibility for misconduct.

A BILL FOR AN ACT

1
2 Relating to arbitration awards; amending ORS 243.706.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1.** ORS 243.706 is amended to read:

5 243.706. (1) A public employer may enter into a written agreement with the exclusive represen-
6 tative of an appropriate bargaining unit setting forth a grievance procedure culminating in binding
7 arbitration or any other dispute resolution process agreed to by the parties. As a condition of
8 enforceability, any arbitration award that orders the reinstatement of a public employee or other-
9 wise relieves the public employee of responsibility for misconduct [*shall*] **must** comply with public
10 policy requirements as clearly defined in statutes, **local ordinances** or judicial decisions including
11 but not limited to policies respecting sexual harassment or sexual misconduct, unjustified [*and*
12 *egregious*] use of physical or deadly force and [*serious*] criminal misconduct, related to work. In ad-
13 dition, with respect to claims that a grievant should be reinstated or otherwise relieved of respon-
14 sibility for misconduct based upon the public employer's alleged previous differential treatment of
15 employees for the same or similar conduct, the arbitration award must conform to the following
16 principles:

17 (a) Some misconduct is so egregious that no employee can reasonably rely on past treatment for
18 similar offenses as a justification or defense to discharge or other discipline.

19 (b) Public managers have a right to change disciplinary policies at any time, notwithstanding
20 prior practices, if such managers give reasonable advance notice to affected employees and the
21 change does not otherwise violate a collective bargaining agreement.

22 (2) In addition to subsection (1) of this section, a public employer may enter into a written
23 agreement with the exclusive representative of its employees providing that a labor dispute over
24 conditions and terms of a contract may be resolved through binding arbitration.

25 (3) In an arbitration proceeding under this section, the arbitrators, or a majority of the
26 arbitrators, may:

27 (a) Issue subpoenas on their own motion or at the request of a party to the proceeding to:

28 (A) Compel the attendance of a witness properly served by either party; and

29 (B) Require from either party the production of books, papers and documents the arbitrators find
30 are relevant to the proceeding;

31 (b) Administer oaths or affirmations to witnesses; and

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 (c) Adjourn a hearing from day to day, or for a longer time, and from place to place.

2 (4) The arbitrators shall promptly provide a copy of a subpoena issued under this section to each
3 party to the arbitration proceeding.

4 (5) The arbitrators issuing a subpoena under this section may rule on objections to the issuance
5 of the subpoena.

6 (6) If a person fails to comply with a subpoena issued under this section or if a witness refuses
7 to testify on a matter on which the witness may be lawfully questioned, the party who requested the
8 subpoena or seeks the testimony may apply to the arbitrators for an order authorizing the party to
9 apply to the circuit court of any county to enforce the subpoena or compel the testimony. On the
10 application of the attorney of record for the party or on the application of the arbitrators, or a
11 majority of the arbitrators, the court may require the person or witness to show cause why the
12 person or witness should not be punished for contempt of court to the same extent and purpose as
13 if the proceedings were pending before the court.

14 (7) Witnesses appearing pursuant to subpoena, other than parties or officers or employees of the
15 public employer, shall receive fees and mileage as prescribed by law for witnesses in ORS 44.415 (2).

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