

# D R A F T

## SUMMARY

Imposes limitations on arbitrators' decisions concerning alleged misconduct by public employees.

Establishes Commission on Statewide Public Employee Standards of Conduct and Discipline to adopt uniform standards of conduct for public employees and disciplinary standards by which public employers and arbitrators shall make determinations regarding imposition of disciplinary action against public employees. Requires commission to report to Joint Committee on Legislative Administration, by July 1, 2021, and annually thereafter, on details of adopted uniform standards and progress by public employers in applying standards.

Removes discipline guide or discipline matrix as mandatory subject of bargaining. Requires public employers and arbitrators to comply with uniform standards established by commission when making decisions regarding public employee disciplinary matters. Restricts arbitrator discretion to impose disciplinary action that is different than disciplinary action imposed by public employer if employer's action was made in accordance with uniform standards adopted by commission. Becomes operative July 1, 2021.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to standards concerning public employee conduct; creating new  
3 provisions; amending ORS 243.650 and 243.706; and declaring an emer-  
4 gency.

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

6 **SECTION 1. Sections 2 and 3 of this 2021 Act are added to and made**  
7 **a part of ORS 243.650 to 243.806.**

8 **SECTION 2. For purposes of an arbitration proceeding under ORS**  
9 **243.706 concerning alleged misconduct by a public employee, when a**  
10 **public employer has determined that a public employee engaged in**

1 **misconduct, an arbitrator may not make a determination regarding**  
2 **the misconduct that differs from the public employer's determination**  
3 **if evidence exists on the record that would permit a reasonable person**  
4 **to conclude that the public employee engaged in misconduct.**

5 **SECTION 3. For matters concerning alleged misconduct by a public**  
6 **employee, a public employer and an arbitrator who serves in an arbi-**  
7 **tration proceeding described under ORS 243.706 (3) shall make deter-**  
8 **minations regarding the alleged misconduct and impose disciplinary**  
9 **action in response to such determinations in accordance with the**  
10 **uniform standards adopted by the Commission on Statewide Public**  
11 **Employee Standards of Conduct and Discipline under section 4 of this**  
12 **2021 Act.**

13 **SECTION 4. (1) The Commission on Statewide Public Employee**  
14 **Standards of Conduct and Discipline is established. The commission**  
15 **consists of 11 members as follows:**

16 **(a) The Director of the Department of Public Safety Standards and**  
17 **Training.**

18 **(b) The Attorney General.**

19 **(c) The chairperson of the Employment Relations Board.**

20 **(d) Eight members jointly appointed by the Director of the Depart-**  
21 **ment of Public Safety Standards and Training, the Attorney General**  
22 **and the chairperson of the Employment Relations Board, consistent**  
23 **with the following:**

24 **(A) Members shall be appointed to ensure that there is broad rep-**  
25 **resentation on the commission of individuals and organizations that**  
26 **will be impacted by the standards adopted by the commission, includ-**  
27 **ing but not limited to law enforcement agencies, labor organizations,**  
28 **organizations that advocate on behalf of the cities and counties in this**  
29 **state and community-based organizations that represent the interests**  
30 **of historically marginalized communities.**

31 **(B) Not more than three members shall be law enforcement offi-**

1 **cers. Members who are law enforcement officers may not be of the**  
2 **same law enforcement rank.**

3 **(2) The purpose of the commission is to adopt rules, in accordance**  
4 **with ORS chapter 183, that prescribe:**

5 **(a) Uniform standards of conduct, including guidelines and proce-**  
6 **dures, to which public employees shall adhere; and**

7 **(b) Uniform disciplinary standards and procedures by which a public**  
8 **employer and an arbitrator who serves in an arbitration proceeding**  
9 **described under ORS 243.706 (3) shall make determinations regarding**  
10 **alleged misconduct by a public employee and shall impose disciplinary**  
11 **action in response to such determinations.**

12 **(3) At a minimum, the uniform standards adopted under subsection**  
13 **(2) of this section must address standards of conduct and discipline**  
14 **regarding:**

15 **(a) Use of force;**

16 **(b) Sexual harassment;**

17 **(c) Sexual assault as defined in ORS 243.317;**

18 **(d) Assault as defined in ORS 163.115;**

19 **(e) Conduct that is motivated by or based on a real or perceived**  
20 **factor of an individual's race, ethnicity, national origin, sex, gender**  
21 **identity, sexual orientation, religion or homelessness;**

22 **(f) Professionalism; and**

23 **(g) The use of drugs or alcohol during work hours.**

24 **(4) The commission shall review the standards adopted under sub-**  
25 **section (2) of this section at least once every two years.**

26 **(5) The meetings of the commission shall be open to the public in**  
27 **accordance with state law. Records of the commission shall be open**  
28 **and available to the public in accordance with state law.**

29 **(6) The commission shall establish and implement an open hearing**  
30 **process for public input and deliberation before the commission adopts**  
31 **rules that establish the standards described under subsection (2) of**

1 **this section, including:**

2 **(a) Public notice;**

3 **(b) Public outreach to solicit broad public participation; and**

4 **(c) Public hearings to receive public comment.**

5 **(7) A majority of the members of the commission constitutes a**  
6 **quorum for the transaction of business.**

7 **(8) Official action by the commission requires the approval of a**  
8 **majority of the commission.**

9 **(9) The term of a member appointed under subsection (1)(d) of this**  
10 **section shall be two years. If there is a vacancy on the commission for**  
11 **any reason, the Director of the Department of Public Safety Standards**  
12 **and Training, the Attorney General and the chairperson of the Em-**  
13 **ployment Relations Board shall jointly appoint a person to the unex-**  
14 **pired term.**

15 **(10) The members of the commission shall elect one person from the**  
16 **Department of Public Safety Standards and Training, one person from**  
17 **the Department of Justice and one person from the Employment Re-**  
18 **lations Board from among the members of the commission to serve**  
19 **as cochairpersons of the commission who shall preside over meetings**  
20 **and execute the duties determined by the commission to be necessary.**

21 **(11) The commission may adopt rules necessary for the operation**  
22 **of the commission.**

23 **(12) A member of the commission is entitled to compensation and**  
24 **expenses as provided in ORS 292.495.**

25 **(13) The commission shall prepare and submit a report, in the**  
26 **manner provided by ORS 192.245, to the Joint Committee on Legisla-**  
27 **tive Administration by July 1 of each year. The report must include:**

28 **(a) Information regarding each public employer's progress toward**  
29 **implementing and applying the uniform standards adopted under sub-**  
30 **section (2) of this section; and**

31 **(b) The commission's recommendations on updates to the stan-**

1 **dards, as the commission considers necessary.**

2 **(14) As used in this section, “public employee” and “public**  
3 **employer” have the meanings given those terms in ORS 243.650.**

4 **SECTION 4a. (1) The Commission on Statewide Public Employee**  
5 **Standards of Conduct and Discipline shall first adopt and publish rules**  
6 **to establish the uniform standards as described in section 4 (2) of this**  
7 **2021 Act by July 1, 2021.**

8 **(2) Notwithstanding section 4 (13) of this 2021 Act, the initial report**  
9 **submitted by the commission by July 1, 2021, must describe the de-**  
10 **velopment and adoption of the uniform standards adopted under sec-**  
11 **tion 4 (2) of this 2021 Act, including the methodology used to apprise**  
12 **each public employer in this state of the standards.**

13 **SECTION 5. ORS 243.650, as amended by section 2, chapter 18, Oregon**  
14 **Laws 2020 (first special session) (Enrolled Senate Bill 1604), is amended to**  
15 **read:**

16 **243.650. As used in ORS 243.650 to 243.806, unless the context requires**  
17 **otherwise:**

18 **(1) “Appropriate bargaining unit” means the unit designated by the Em-**  
19 **ployment Relations Board or voluntarily recognized by the public employer**  
20 **to be appropriate for collective bargaining. However, an appropriate bar-**  
21 **gaining unit may not include both academically licensed and unlicensed or**  
22 **nonacademically licensed school employees. Academically licensed units may**  
23 **include but are not limited to teachers, nurses, counselors, therapists, psy-**  
24 **chologists, child development specialists and similar positions. This limita-**  
25 **tion does not apply to any bargaining unit certified or recognized prior to**  
26 **June 6, 1995, or to any school district with fewer than 50 employees.**

27 **(2) “Board” means the Employment Relations Board.**

28 **(3) “Certification” means official recognition by the board that a labor**  
29 **organization is the exclusive representative for all of the employees in the**  
30 **appropriate bargaining unit.**

31 **(4) “Collective bargaining” means the performance of the mutual obli-**

1 gation of a public employer and the representative of its employees to meet  
2 at reasonable times and confer in good faith with respect to employment re-  
3 lations for the purpose of negotiations concerning mandatory subjects of  
4 bargaining, to meet and confer in good faith in accordance with law with  
5 respect to any dispute concerning the interpretation or application of a col-  
6 lective bargaining agreement, and to execute written contracts incorporating  
7 agreements that have been reached on behalf of the public employer and the  
8 employees in the bargaining unit covered by such negotiations. The obli-  
9 gation to meet and negotiate does not compel either party to agree to a  
10 proposal or require the making of a concession. This subsection may not be  
11 construed to prohibit a public employer and a certified or recognized repre-  
12 sentative of its employees from discussing or executing written agreements  
13 regarding matters other than mandatory subjects of bargaining that are not  
14 prohibited by law as long as there is mutual agreement of the parties to  
15 discuss these matters, which are permissive subjects of bargaining.

16 (5) "Compulsory arbitration" means the procedure whereby parties in-  
17 volved in a labor dispute are required by law to submit their differences to  
18 a third party for a final and binding decision.

19 (6) "Confidential employee" means one who assists and acts in a confi-  
20 dential capacity to a person who formulates, determines and effectuates  
21 management policies in the area of collective bargaining.

22 (7)(a) "Employment relations" includes, but is not limited to, matters  
23 concerning direct or indirect monetary benefits, hours, vacations, sick leave,  
24 labor organization access to and communication with represented employees,  
25 grievance procedures and other conditions of employment.

26 (b) "Employment relations" does not include subjects determined to be  
27 permissive, nonmandatory subjects of bargaining by the Employment Re-  
28 lations Board prior to June 6, 1995.

29 (c) After June 6, 1995, "employment relations" does not include subjects  
30 that the Employment Relations Board determines to have a greater impact  
31 on management's prerogative than on employee wages, hours, or other terms

1 and conditions of employment.

2 (d) “Employment relations” does not include subjects that have an in-  
3 substantial or de minimis effect on public employee wages, hours, and other  
4 terms and conditions of employment.

5 (e) For school district bargaining, “employment relations” excludes class  
6 size, the school or educational calendar, standards of performance or criteria  
7 for evaluation of teachers, the school curriculum, reasonable dress, grooming  
8 and at-work personal conduct requirements respecting smoking, gum chewing  
9 and similar matters of personal conduct, the standards and procedures for  
10 student discipline, the time between student classes, the selection, agendas  
11 and decisions of 21st Century Schools Councils established under ORS  
12 329.704, requirements for expressing milk under ORS 653.077, and any other  
13 subject proposed that is permissive under paragraphs (b), (c) and (d) of this  
14 subsection.

15 (f) For employee bargaining involving employees covered by ORS 243.736  
16 and employees of the Department of Corrections who have direct contact  
17 with adults in custody, “employment relations” includes safety issues that  
18 have an impact on the on-the-job safety of the employees or staffing levels  
19 that have a significant impact on the on-the-job safety of the employees.

20 *[(g) For employee bargaining involving sworn law enforcement officers of*  
21 *a law enforcement agency, as those terms are defined in ORS 131.930, “em-*  
22 *ployment relations” includes the development of a discipline guide or discipline*  
23 *matrix as those terms are defined in ORS 243.706.]*

24 *[(h)]* (g) For all other employee bargaining except school district bar-  
25 gaining and except as provided in paragraph (f) of this subsection, “employ-  
26 ment relations” excludes staffing levels and safety issues (except those  
27 staffing levels and safety issues that have a direct and substantial effect on  
28 the on-the-job safety of public employees), scheduling of services provided to  
29 the public, determination of the minimum qualifications necessary for any  
30 position, criteria for evaluation or performance appraisal, assignment of du-  
31 ties, workload when the effect on duties is insubstantial, reasonable dress,

1 grooming, and at-work personal conduct requirements respecting smoking,  
2 gum chewing, and similar matters of personal conduct at work, and any  
3 other subject proposed that is permissive under paragraphs (b), (c) and (d)  
4 of this subsection.

5 (8) “Exclusive representative” means the labor organization that, as a  
6 result of certification by the board or recognition by the employer, has the  
7 right to be the collective bargaining agent of all employees in an appropriate  
8 bargaining unit.

9 (9) “Fact-finding” means identification of the major issues in a particular  
10 labor dispute by one or more impartial individuals who review the positions  
11 of the parties, resolve factual differences and make recommendations for  
12 settlement of the dispute.

13 (10) “Fair-share agreement” means an agreement between the public em-  
14 ployer and the recognized or certified bargaining representative of public  
15 employees whereby employees who are not members of the employee organ-  
16 ization are required to make an in-lieu-of-dues payment to an employee or-  
17 ganization except as provided in ORS 243.666. Upon the filing with the board  
18 of a petition by 30 percent or more of the employees in an appropriate bar-  
19 gaining unit covered by such union security agreement declaring they desire  
20 that the agreement be rescinded, the board shall take a secret ballot of the  
21 employees in the unit and certify the results thereof to the recognized or  
22 certified bargaining representative and to the public employer. Unless a  
23 majority of the votes cast in an election favor the union security agreement,  
24 the board shall certify deauthorization of the agreement. A petition for de-  
25 authorization of a union security agreement must be filed not more than 90  
26 calendar days after the collective bargaining agreement is executed. Only  
27 one such election may be conducted in any appropriate bargaining unit dur-  
28 ing the term of a collective bargaining agreement between a public employer  
29 and the recognized or certified bargaining representative.

30 (11) “Final offer” means the proposed contract language and cost sum-  
31 mary submitted to the mediator within seven days of the declaration of im-



1 passe.

2 (12) “Labor dispute” means any controversy concerning employment re-  
3 lations or concerning the association or representation of persons in negoti-  
4 ating, fixing, maintaining, changing, or seeking to arrange terms or  
5 conditions of employment relations, regardless of whether the disputants  
6 stand in the proximate relation of employer and employee.

7 (13) “Labor organization” means any organization that has as one of its  
8 purposes representing employees in their employment relations with public  
9 employers.

10 (14) “Last best offer package” means the offer exchanged by parties not  
11 less than 14 days prior to the date scheduled for an interest arbitration  
12 hearing.

13 (15) “Legislative body” means the Legislative Assembly, the city council,  
14 the county commission and any other board or commission empowered to  
15 levy taxes.

16 (16) “Managerial employee” means an employee of the State of Oregon  
17 or a public university listed in ORS 352.002 who possesses authority to for-  
18 mulate and carry out management decisions or who represents management’s  
19 interest by taking or effectively recommending discretionary actions that  
20 control or implement employer policy, and who has discretion in the per-  
21 formance of these management responsibilities beyond the routine discharge  
22 of duties. A “managerial employee” need not act in a supervisory capacity  
23 in relation to other employees. Notwithstanding this subsection, “manage-  
24 rial employee” does not include faculty members at a community college,  
25 college or university.

26 (17) “Mediation” means assistance by an impartial third party in recon-  
27 ciling a labor dispute between the public employer and the exclusive repre-  
28 sentative regarding employment relations.

29 (18) “Payment-in-lieu-of-dues” means an assessment to defray the cost for  
30 services by the exclusive representative in negotiations and contract admin-  
31 istration of all persons in an appropriate bargaining unit who are not mem-

1 bers of the organization serving as exclusive representative of the employees.  
2 The payment must be equivalent to regular union dues and assessments, if  
3 any, or must be an amount agreed upon by the public employer and the ex-  
4 clusive representative of the employees.

5 (19) "Public employee" means an employee of a public employer but does  
6 not include elected officials, persons appointed to serve on boards or com-  
7 missions, incarcerated persons working under Article I, section 41, of the  
8 Oregon Constitution, or persons who are confidential employees, supervisory  
9 employees or managerial employees.

10 (20) "Public employer" means the State of Oregon, and the following pol-  
11 itical subdivisions: Cities, counties, community colleges, school districts,  
12 special districts, mass transit districts, metropolitan service districts, public  
13 service corporations or municipal corporations and public and quasi-public  
14 corporations.

15 (21) "Public employer representative" includes any individual or individ-  
16 uals specifically designated by the public employer to act in its interests in  
17 all matters dealing with employee representation, collective bargaining and  
18 related issues.

19 (22) "Strike" means a public employee's refusal in concerted action with  
20 others to report for duty, or his or her willful absence from his or her posi-  
21 tion, or his or her stoppage of work, or his or her absence in whole or in  
22 part from the full, faithful or proper performance of his or her duties of  
23 employment, for the purpose of inducing, influencing or coercing a change  
24 in the conditions, compensation, rights, privileges or obligations of public  
25 employment; however, nothing shall limit or impair the right of any public  
26 employee to lawfully express or communicate a complaint or opinion on any  
27 matter related to the conditions of employment.

28 (23)(a) "Supervisory employee" means any individual having authority in  
29 the interest of the employer to hire, transfer, suspend, lay off, recall, pro-  
30 mote, discharge, assign, reward or discipline other employees, or responsibly  
31 to direct them, or to adjust their grievances, or effectively to recommend

1 such action, if in connection therewith, the exercise of the authority is not  
2 of a merely routine or clerical nature but requires the use of independent  
3 judgment. Failure to assert supervisory status in any Employment Relations  
4 Board proceeding or in negotiations for any collective bargaining agreement  
5 does not thereafter prevent assertion of supervisory status in any subsequent  
6 board proceeding or contract negotiation.

7 (b) "Supervisory employee" includes a faculty member of a public univer-  
8 sity listed in ORS 352.002 or the Oregon Health and Science University who:

9 (A) Is employed as a president, vice president, provost, vice provost, dean,  
10 associate dean, assistant dean, head or equivalent position; or

11 (B) Is employed in an administrative position without a reasonable ex-  
12 pectation of teaching, research or other scholarly accomplishments.

13 (c) "Supervisory employee" does not include:

14 (A) A nurse, charge nurse or nurse holding a similar position if that po-  
15 sition has not traditionally been classified as supervisory;

16 (B) A firefighter prohibited from striking by ORS 243.736 who assigns,  
17 transfers or directs the work of other employees but does not have the au-  
18 thority to hire, discharge or impose economic discipline on those employees;

19 (C) A faculty member of a public university listed in ORS 352.002 or the  
20 Oregon Health and Science University who is not a faculty member described  
21 in paragraph (b) of this subsection; or

22 (D) An employee of the Oregon State Police who:

23 (i) Serves in a rank equivalent to or below the rank of sergeant;

24 (ii) Is prohibited from striking by ORS 243.736; and

25 (iii) Assigns, transfers or directs the work of other employees but does  
26 not hire, discharge or impose economic discipline on those employees.

27 (24) "Unfair labor practice" means the commission of an act designated  
28 an unfair labor practice in ORS 243.672.

29 (25) "Voluntary arbitration" means the procedure whereby parties in-  
30 volved in a labor dispute mutually agree to submit their differences to a  
31 third party for a final and binding decision.

1       **SECTION 6.** ORS 243.650, as amended by section 2, chapter 146, Oregon  
2 Laws 2019, and section 3, chapter 18, Oregon Laws 2020 (first special session)  
3 (Enrolled Senate Bill 1604), is amended to read:

4       243.650. As used in ORS 243.650 to 243.806, unless the context requires  
5 otherwise:

6       (1) “Appropriate bargaining unit” means the unit designated by the Em-  
7 ployment Relations Board or voluntarily recognized by the public employer  
8 to be appropriate for collective bargaining. However, an appropriate bar-  
9 gaining unit may not include both academically licensed and unlicensed or  
10 nonacademically licensed school employees. Academically licensed units may  
11 include but are not limited to teachers, nurses, counselors, therapists, psy-  
12 chologists, child development specialists and similar positions. This limita-  
13 tion does not apply to any bargaining unit certified or recognized prior to  
14 June 6, 1995, or to any school district with fewer than 50 employees.

15       (2) “Board” means the Employment Relations Board.

16       (3) “Certification” means official recognition by the board that a labor  
17 organization is the exclusive representative for all of the employees in the  
18 appropriate bargaining unit.

19       (4) “Collective bargaining” means the performance of the mutual obli-  
20 gation of a public employer and the representative of its employees to meet  
21 at reasonable times and confer in good faith with respect to employment re-  
22 lations for the purpose of negotiations concerning mandatory subjects of  
23 bargaining, to meet and confer in good faith in accordance with law with  
24 respect to any dispute concerning the interpretation or application of a col-  
25 lective bargaining agreement, and to execute written contracts incorporating  
26 agreements that have been reached on behalf of the public employer and the  
27 employees in the bargaining unit covered by such negotiations. The obli-  
28 gation to meet and negotiate does not compel either party to agree to a  
29 proposal or require the making of a concession. This subsection may not be  
30 construed to prohibit a public employer and a certified or recognized repre-  
31 sentative of its employees from discussing or executing written agreements

1 regarding matters other than mandatory subjects of bargaining that are not  
2 prohibited by law as long as there is mutual agreement of the parties to  
3 discuss these matters, which are permissive subjects of bargaining.

4 (5) “Compulsory arbitration” means the procedure whereby parties in-  
5 volved in a labor dispute are required by law to submit their differences to  
6 a third party for a final and binding decision.

7 (6) “Confidential employee” means one who assists and acts in a confi-  
8 dential capacity to a person who formulates, determines and effectuates  
9 management policies in the area of collective bargaining.

10 (7)(a) “Employment relations” includes, but is not limited to, matters  
11 concerning direct or indirect monetary benefits, hours, vacations, sick leave,  
12 labor organization access to and communication with represented employees,  
13 grievance procedures and other conditions of employment.

14 (b) “Employment relations” does not include subjects determined to be  
15 permissive, nonmandatory subjects of bargaining by the Employment Re-  
16 lations Board prior to June 6, 1995.

17 (c) After June 6, 1995, “employment relations” does not include subjects  
18 that the Employment Relations Board determines to have a greater impact  
19 on management’s prerogative than on employee wages, hours, or other terms  
20 and conditions of employment.

21 (d) “Employment relations” does not include subjects that have an in-  
22 substantial or de minimis effect on public employee wages, hours, and other  
23 terms and conditions of employment.

24 (e) For school district bargaining, “employment relations” excludes class  
25 size, the school or educational calendar, standards of performance or criteria  
26 for evaluation of teachers, the school curriculum, reasonable dress, grooming  
27 and at-work personal conduct requirements respecting smoking, gum chewing  
28 and similar matters of personal conduct, the standards and procedures for  
29 student discipline, the time between student classes, the selection, agendas  
30 and decisions of 21st Century Schools Councils established under ORS  
31 329.704, requirements for expressing milk under ORS 653.077, and any other

1 subject proposed that is permissive under paragraphs (b), (c) and (d) of this  
2 subsection.

3 (f) For employee bargaining involving employees covered by ORS 243.736  
4 and employees of the Department of Corrections who have direct contact  
5 with adults in custody, “employment relations” includes safety issues that  
6 have an impact on the on-the-job safety of the employees or staffing levels  
7 that have a significant impact on the on-the-job safety of the employees.

8 *[(g) For employee bargaining involving sworn law enforcement officers of*  
9 *a law enforcement agency, as those terms are defined in ORS 131.930, “em-*  
10 *ployment relations” includes the development of a discipline guide or discipline*  
11 *matrix as those terms are defined in ORS 243.706.]*

12 *[(h)]* (g) For all other employee bargaining except school district bar-  
13 gaining and except as provided in paragraph (f) of this subsection, “employ-  
14 ment relations” excludes staffing levels and safety issues (except those  
15 staffing levels and safety issues that have a direct and substantial effect on  
16 the on-the-job safety of public employees), scheduling of services provided to  
17 the public, determination of the minimum qualifications necessary for any  
18 position, criteria for evaluation or performance appraisal, assignment of du-  
19 ties, workload when the effect on duties is insubstantial, reasonable dress,  
20 grooming, and at-work personal conduct requirements respecting smoking,  
21 gum chewing, and similar matters of personal conduct at work, and any  
22 other subject proposed that is permissive under paragraphs (b), (c) and (d)  
23 of this subsection.

24 (8) “Exclusive representative” means the labor organization that, as a  
25 result of certification by the board or recognition by the employer, has the  
26 right to be the collective bargaining agent of all employees in an appropriate  
27 bargaining unit.

28 (9) “Fact-finding” means identification of the major issues in a particular  
29 labor dispute by one or more impartial individuals who review the positions  
30 of the parties, resolve factual differences and make recommendations for  
31 settlement of the dispute.

1 (10) "Fair-share agreement" means an agreement between the public em-  
2 ployer and the recognized or certified bargaining representative of public  
3 employees whereby employees who are not members of the employee organ-  
4 ization are required to make an in-lieu-of-dues payment to an employee or-  
5 ganization except as provided in ORS 243.666. Upon the filing with the board  
6 of a petition by 30 percent or more of the employees in an appropriate bar-  
7 gaining unit covered by such union security agreement declaring they desire  
8 that the agreement be rescinded, the board shall take a secret ballot of the  
9 employees in the unit and certify the results thereof to the recognized or  
10 certified bargaining representative and to the public employer. Unless a  
11 majority of the votes cast in an election favor the union security agreement,  
12 the board shall certify deauthorization of the agreement. A petition for de-  
13 authorization of a union security agreement must be filed not more than 90  
14 calendar days after the collective bargaining agreement is executed. Only  
15 one such election may be conducted in any appropriate bargaining unit dur-  
16 ing the term of a collective bargaining agreement between a public employer  
17 and the recognized or certified bargaining representative.

18 (11) "Final offer" means the proposed contract language and cost sum-  
19 mary submitted to the mediator within seven days of the declaration of im-  
20 passe.

21 (12) "Labor dispute" means any controversy concerning employment re-  
22 lations or concerning the association or representation of persons in negoti-  
23 ating, fixing, maintaining, changing, or seeking to arrange terms or  
24 conditions of employment relations, regardless of whether the disputants  
25 stand in the proximate relation of employer and employee.

26 (13) "Labor organization" means any organization that has as one of its  
27 purposes representing employees in their employment relations with public  
28 employers.

29 (14) "Last best offer package" means the offer exchanged by parties not  
30 less than 14 days prior to the date scheduled for an interest arbitration  
31 hearing.

1 (15) “Legislative body” means the Legislative Assembly, the city council,  
2 the county commission and any other board or commission empowered to  
3 levy taxes.

4 (16) “Managerial employee” means an employee of the State of Oregon  
5 or a public university listed in ORS 352.002 who possesses authority to for-  
6 mulate and carry out management decisions or who represents management’s  
7 interest by taking or effectively recommending discretionary actions that  
8 control or implement employer policy, and who has discretion in the per-  
9 formance of these management responsibilities beyond the routine discharge  
10 of duties. A “managerial employee” need not act in a supervisory capacity  
11 in relation to other employees. Notwithstanding this subsection, “manage-  
12 rial employee” does not include faculty members at a community college,  
13 college or university.

14 (17) “Mediation” means assistance by an impartial third party in recon-  
15 ciling a labor dispute between the public employer and the exclusive repre-  
16 sentative regarding employment relations.

17 (18) “Payment-in-lieu-of-dues” means an assessment to defray the cost for  
18 services by the exclusive representative in negotiations and contract admin-  
19 istration of all persons in an appropriate bargaining unit who are not mem-  
20 bers of the organization serving as exclusive representative of the employees.  
21 The payment must be equivalent to regular union dues and assessments, if  
22 any, or must be an amount agreed upon by the public employer and the ex-  
23 clusive representative of the employees.

24 (19) “Public employee” means an employee of a public employer but does  
25 not include elected officials, persons appointed to serve on boards or com-  
26 missions, incarcerated persons working under Article I, section 41, of the  
27 Oregon Constitution, or persons who are confidential employees, supervisory  
28 employees or managerial employees.

29 (20) “Public employer” means the State of Oregon, and the following pol-  
30 itical subdivisions: Cities, counties, community colleges, school districts,  
31 special districts, mass transit districts, metropolitan service districts, public



1 service corporations or municipal corporations and public and quasi-public  
2 corporations.

3 (21) "Public employer representative" includes any individual or individ-  
4 uals specifically designated by the public employer to act in its interests in  
5 all matters dealing with employee representation, collective bargaining and  
6 related issues.

7 (22) "Strike" means a public employee's refusal in concerted action with  
8 others to report for duty, or his or her willful absence from his or her posi-  
9 tion, or his or her stoppage of work, or his or her absence in whole or in  
10 part from the full, faithful or proper performance of his or her duties of  
11 employment, for the purpose of inducing, influencing or coercing a change  
12 in the conditions, compensation, rights, privileges or obligations of public  
13 employment; however, nothing shall limit or impair the right of any public  
14 employee to lawfully express or communicate a complaint or opinion on any  
15 matter related to the conditions of employment.

16 (23)(a) "Supervisory employee" means any individual having authority in  
17 the interest of the employer to hire, transfer, suspend, lay off, recall, pro-  
18 mote, discharge, assign, reward or discipline other employees, or responsibly  
19 to direct them, or to adjust their grievances, or effectively to recommend  
20 such action, if in connection therewith, the exercise of the authority is not  
21 of a merely routine or clerical nature but requires the use of independent  
22 judgment. Failure to assert supervisory status in any Employment Relations  
23 Board proceeding or in negotiations for any collective bargaining agreement  
24 does not thereafter prevent assertion of supervisory status in any subsequent  
25 board proceeding or contract negotiation.

26 (b) "Supervisory employee" includes a faculty member of a public univer-  
27 sity listed in ORS 352.002 or the Oregon Health and Science University who:

28 (A) Is employed as a president, vice president, provost, vice provost, dean,  
29 associate dean, assistant dean, head or equivalent position; or

30 (B) Is employed in an administrative position without a reasonable ex-  
31 pectation of teaching, research or other scholarly accomplishments.

1 (c) “Supervisory employee” does not include:

2 (A) A nurse, charge nurse or nurse holding a similar position if that po-  
3 sition has not traditionally been classified as supervisory;

4 (B) A firefighter prohibited from striking by ORS 243.736 who assigns,  
5 transfers or directs the work of other employees but does not have the au-  
6 thority to hire, discharge or impose economic discipline on those employees;  
7 or

8 (C) A faculty member of a public university listed in ORS 352.002 or the  
9 Oregon Health and Science University who is not a faculty member described  
10 in paragraph (b) of this subsection.

11 (24) “Unfair labor practice” means the commission of an act designated  
12 an unfair labor practice in ORS 243.672.

13 (25) “Voluntary arbitration” means the procedure whereby parties in-  
14 volved in a labor dispute mutually agree to submit their differences to a  
15 third party for a final and binding decision.

16 **SECTION 7.** ORS 243.706, as amended by section 1, chapter 18, Oregon  
17 Laws 2020 (first special session) (Enrolled Senate Bill 1604), is amended to  
18 read:

19 243.706. (1) A public employer may enter into a written agreement with  
20 the exclusive representative of an appropriate bargaining unit setting forth  
21 a grievance procedure culminating in binding arbitration or any other dis-  
22 pute resolution process agreed to by the parties. As a condition of  
23 enforceability, any arbitration award that orders the reinstatement of a  
24 public employee or otherwise relieves the public employee of responsibility  
25 for misconduct shall comply with public policy requirements as clearly de-  
26 fined in statutes or judicial decisions including but not limited to policies  
27 respecting sexual harassment or sexual misconduct, unjustified and egregious  
28 use of physical or deadly force and serious criminal misconduct, related to  
29 work. In addition, with respect to claims that a grievant should be reinstated  
30 or otherwise relieved of responsibility for misconduct based upon the public  
31 employer’s alleged previous differential treatment of employees for the same

1 or similar conduct, the arbitration award must conform to the following  
2 principles:

3 (a) Some misconduct is so egregious that no employee can reasonably rely  
4 on past treatment for similar offenses as a justification or defense to dis-  
5 charge or other discipline.

6 (b) Public managers have a right to change disciplinary policies at any  
7 time, notwithstanding prior practices, if such managers give reasonable ad-  
8 vance notice to affected employees and the change does not otherwise violate  
9 a collective bargaining agreement.

10 (2) In addition to subsection (1) of this section, a public employer may  
11 enter into a written agreement with the exclusive representative of its em-  
12 ployees providing that a labor dispute over conditions and terms of a con-  
13 tract may be resolved through binding arbitration.

14 (3) Notwithstanding subsection (1) of this section, when an arbitration  
15 proceeding involves alleged misconduct by a [*sworn law enforcement officer*  
16 *of any law enforcement agency, as those terms are defined in ORS 131.930*]  
17 **public employee**, and the arbitrator makes a finding that misconduct has  
18 occurred consistent with the [*law enforcement agency's*] **public employer's**  
19 finding of misconduct, the arbitration award may not order any disciplinary  
20 action that differs from the disciplinary action imposed by the [*agency*]  
21 **public employer**, if the disciplinary action imposed by the [*agency*] **public**  
22 **employer was in accordance with the uniform standards adopted by**  
23 **the Commission on Statewide Public Employee Standards of Conduct**  
24 **and Discipline established under section 4 of this 2021 Act** [*is consistent*  
25 *with the provisions of a discipline guide or discipline matrix adopted by the*  
26 *agency as a result of collective bargaining and incorporated into the agency's*  
27 *disciplinary policies*].

28 (4) In an arbitration proceeding under this section, the arbitrators, or a  
29 majority of the arbitrators, may:

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

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

3 (B) Require from either party the production of books, papers and docu-  
4 ments the arbitrators find are relevant to the proceeding;

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

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

8 (5) The arbitrators shall promptly provide a copy of a subpoena issued  
9 under this section to each party to the arbitration proceeding.

10 (6) The arbitrators issuing a subpoena under this section may rule on  
11 objections to the issuance of the subpoena.

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

22 (8) Witnesses appearing pursuant to subpoena, other than parties or offi-  
23 cers or employees of the public employer, shall receive fees and mileage as  
24 prescribed by law for witnesses in ORS 44.415 (2).

25 [(9) *As used in this section:*]

26 [(a) *“Discipline guide” means a grid that is designed to provide parameters*  
27 *for the level of discipline to be imposed for an act of misconduct that is cate-*  
28 *gorized by the severity of the misconduct and that take into account the*  
29 *presumptive level of discipline for the misconduct and any aggravating or*  
30 *mitigating factors.*]

31 [(b) *“Discipline matrix” means a grid used to determine the level of disci-*

1 *pline to be imposed for an act of misconduct that is categorized by the severity*  
2 *of the misconduct, according to the intersection where the category of miscon-*  
3 *duct and the level of disciplinary action meet.]*

4 **SECTION 8. The amendments to ORS 243.650 and 243.706 by sections**  
5 **5 to 7 of this 2021 Act apply to collective bargaining agreements en-**  
6 **tered into or renewed on or after July 1, 2021.**

7 **SECTION 9. (1) Section 3 of this 2021 Act becomes operative on July**  
8 **1, 2021.**

9 **(2) The amendments to ORS 243.650 and 243.706 by sections 5 to 7**  
10 **of this 2021 Act become operative on July 1, 2021.**

11 **SECTION 10. This 2021 Act being necessary for the immediate**  
12 **preservation of the public peace, health and safety, an emergency is**  
13 **declared to exist, and this 2021 Act takes effect on its passage.**

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