

# House Bill 3149

Sponsored by COMMITTEE ON BUSINESS AND LABOR (at the request of AFSCME)

## 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 definition of "employment relations" for purposes of collective bargaining to include safety issues and staffing levels that have significant impact on on-the-job safety of employees.  
Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to collective bargaining over matters concerning on-the-job safety; creating new provisions;  
3 amending ORS 243.650; and declaring an emergency.

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

5 **SECTION 1.** ORS 243.650, as amended by section 5, chapter 541, Oregon Laws 2021, is amended  
6 to read:

7 243.650. As used in ORS 243.650 to 243.809, unless the context requires otherwise:

8 (1) "Appropriate bargaining unit" means the unit designated by the Employment Relations Board  
9 or voluntarily recognized by the public employer to be appropriate for collective bargaining. How-  
10 ever, an appropriate bargaining unit may not include both academically licensed and unlicensed or  
11 nonacademically licensed school employees. Academically licensed units may include but are not  
12 limited to teachers, nurses, counselors, therapists, psychologists, child development specialists and  
13 similar positions. This limitation does not apply to any bargaining unit certified or recognized prior  
14 to 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 organization is the ex-  
17 clusive representative for all of the employees in the appropriate bargaining unit.

18 (4) "Collective bargaining" means the performance of the mutual obligation of a public employer  
19 and the representative of its employees to meet at reasonable times and confer in good faith with  
20 respect to employment relations for the purpose of negotiations concerning mandatory subjects of  
21 bargaining, to meet and confer in good faith in accordance with law with respect to any dispute  
22 concerning the interpretation or application of a collective bargaining agreement, and to execute  
23 written contracts incorporating agreements that have been reached on behalf of the public employer  
24 and the employees in the bargaining unit covered by such negotiations. The obligation to meet and  
25 negotiate does not compel either party to agree to a proposal or require the making of a concession.  
26 This subsection may not be construed to prohibit a public employer and a certified or recognized  
27 representative of its employees from discussing or executing written agreements regarding matters  
28 other than mandatory subjects of bargaining that are not prohibited by law as long as there is mu-  
29 tual agreement of the parties to discuss these matters, which are permissive subjects of bargaining.

30 (5) "Compulsory arbitration" means the procedure whereby parties involved in a labor dispute  
31 are required by law to submit their differences to a third party for a final and binding decision.

**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 (6) “Confidential employee” means one who assists and acts in a confidential capacity to a per-  
 2 son who formulates, determines and effectuates management policies in the area of collective bar-  
 3 gaining.

4 (7)(a) “Employment relations” includes, but is not limited to, matters concerning direct or indi-  
 5 rect monetary benefits, hours, vacations, sick leave, labor organization access to and communication  
 6 with represented employees, grievance procedures, **safety issues that have an impact on the**  
 7 **on-the-job safety of the employees or staffing levels that have a significant impact on the**  
 8 **on-the-job safety of the employees**, and other conditions of employment.

9 (b) “Employment relations” does not include subjects determined to be permissive, nonmanda-  
 10 tory subjects of bargaining by the Employment Relations Board prior to June 6, 1995.

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

14 (d) “Employment relations” does not include subjects that have an insubstantial or de minimis  
 15 effect on public employee wages, hours, and other terms and conditions of employment.

16 (e) For school district bargaining:

17 (A) “Employment relations” includes class size and caseload limits in schools that qualify for  
 18 assistance under Title I of the federal Elementary and Secondary Education Act of 1965.

19 (B) “Employment relations” excludes the school or educational calendar, standards of perform-  
 20 ance or criteria for evaluation of teachers, the school curriculum, reasonable dress, grooming and  
 21 at-work personal conduct requirements respecting smoking, gum chewing and similar matters of  
 22 personal conduct, the standards and procedures for student discipline, the time between student  
 23 classes, the selection, agendas and decisions of 21st Century Schools Councils established under ORS  
 24 329.704, requirements for expressing milk under ORS 653.077, and any other subject proposed that  
 25 is permissive under paragraphs (b), (c) and (d) of this subsection.

26 *[(f) For employee bargaining involving employees covered by ORS 243.736 and employees of the*  
 27 *Department of Corrections who have direct contact with adults in custody, “employment relations” in-*  
 28 *cludes safety issues that have an impact on the on-the-job safety of the employees or staffing levels that*  
 29 *have a significant impact on the on-the-job safety of the employees.]*

30 *[(g)]* (f) For all other employee bargaining except school district bargaining *[and except as pro-*  
 31 *vided in paragraph (f) of this subsection]*, “employment relations” excludes *[staffing levels and safety*  
 32 *issues (except those staffing levels and safety issues that have a direct and substantial effect on the*  
 33 *on-the-job safety of public employees),]* scheduling of services provided to the public, determination  
 34 of the minimum qualifications necessary for any position, criteria for evaluation or performance  
 35 appraisal, assignment of duties, workload when the effect on duties is insubstantial, reasonable  
 36 dress, grooming, and at-work personal conduct requirements respecting smoking, gum chewing, and  
 37 similar matters of personal conduct at work, and any other subject proposed that is permissive un-  
 38 der paragraphs (b), (c) and (d) of this subsection.

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

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

45 (10) “Fair-share agreement” means an agreement between the public employer and the recog-

1 nized or certified bargaining representative of public employees whereby employees who are not  
 2 members of the employee organization are required to make an in-lieu-of-dues payment to an em-  
 3 ployee organization except as provided in ORS 243.666. Upon the filing with the board of a petition  
 4 by 30 percent or more of the employees in an appropriate bargaining unit covered by such union  
 5 security agreement declaring they desire that the agreement be rescinded, the board shall take a  
 6 secret ballot of the employees in the unit and certify the results thereof to the recognized or certi-  
 7 fied bargaining representative and to the public employer. Unless a majority of the votes cast in an  
 8 election favor the union security agreement, the board shall certify deauthorization of the agree-  
 9 ment. A petition for deauthorization of a union security agreement must be filed not more than 90  
 10 calendar days after the collective bargaining agreement is executed. Only one such election may be  
 11 conducted in any appropriate bargaining unit during the term of a collective bargaining agreement  
 12 between a public employer and the recognized or certified bargaining representative.

13 (11) "Final offer" means the proposed contract language and cost summary submitted to the  
 14 mediator within seven days of the declaration of impasse.

15 (12) "Labor dispute" means any controversy concerning employment relations or concerning the  
 16 association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to  
 17 arrange terms or conditions of employment relations, regardless of whether the disputants stand in  
 18 the proximate relation of employer and employee.

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

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

23 (15) "Legislative body" means the Legislative Assembly, the city council, the county commission  
 24 and any other board or commission empowered to levy taxes.

25 (16) "Managerial employee" means an employee of the State of Oregon or a public university  
 26 listed in ORS 352.002 who possesses authority to formulate and carry out management decisions or  
 27 who represents management's interest by taking or effectively recommending discretionary actions  
 28 that control or implement employer policy, and who has discretion in the performance of these  
 29 management responsibilities beyond the routine discharge of duties. A "managerial employee" need  
 30 not act in a supervisory capacity in relation to other employees. Notwithstanding this subsection,  
 31 "managerial employee" does not include faculty members at a community college, college or uni-  
 32 versity.

33 (17) "Mediation" means assistance by an impartial third party in reconciling a labor dispute  
 34 between the public employer and the exclusive representative regarding employment relations.

35 (18) "Payment-in-lieu-of-dues" means an assessment to defray the cost for services by the exclu-  
 36 sive representative in negotiations and contract administration of all persons in an appropriate  
 37 bargaining unit who are not members of the organization serving as exclusive representative of the  
 38 employees. The payment must be equivalent to regular union dues and assessments, if any, or must  
 39 be an amount agreed upon by the public employer and the exclusive representative of the employees.

40 (19) "Public employee" means an employee of a public employer but does not include elected  
 41 officials, persons appointed to serve on boards or commissions, incarcerated persons working under  
 42 Article I, section 41, of the Oregon Constitution, or persons who are confidential employees, super-  
 43 visory employees or managerial employees.

44 (20) "Public employer" means the State of Oregon, and the following political subdivisions:  
 45 Cities, counties, community colleges, school districts, special districts, mass transit districts, metro-

1 politan service districts, public service corporations or municipal corporations and public and  
 2 quasi-public corporations.

3 (21) “Public employer representative” includes any individual or individuals specifically desig-  
 4 nated by the public employer to act in its interests in all matters dealing with employee represen-  
 5 tation, collective bargaining and related issues.

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

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

21 (b) “Supervisory employee” includes a faculty member of a public university listed in ORS  
 22 352.002 or the Oregon Health and Science University who:

23 (A) Is employed as a president, vice president, provost, vice provost, dean, associate dean, as-  
 24 sistant dean, head or equivalent position; or

25 (B) Is employed in an administrative position without a reasonable expectation of teaching, re-  
 26 search or other scholarly accomplishments.

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

28 (A) A nurse, charge nurse or nurse holding a similar position if that position has not tradi-  
 29 tionally been classified as supervisory;

30 (B) A firefighter prohibited from striking by ORS 243.736 who assigns, transfers or directs the  
 31 work of other employees but does not have the authority to hire, discharge or impose economic  
 32 discipline on those employees;

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

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

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

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

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

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

42 (25) “Voluntary arbitration” means the procedure whereby parties involved in a labor dispute  
 43 mutually agree to submit their differences to a third party for a final and binding decision.

44 **SECTION 2.** ORS 243.650, as amended by section 2, chapter 146, Oregon Laws 2019, section 3,  
 45 chapter 18, Oregon Laws 2020 (first special session), section 2, chapter 490, Oregon Laws 2021, and

1 section 6, chapter 541, Oregon Laws 2021, is amended to read:

2 243.650. As used in ORS 243.650 to 243.809, unless the context requires otherwise:

3 (1) “Appropriate bargaining unit” means the unit designated by the Employment Relations Board  
 4 or voluntarily recognized by the public employer to be appropriate for collective bargaining. How-  
 5 ever, an appropriate bargaining unit may not include both academically licensed and unlicensed or  
 6 nonacademically licensed school employees. Academically licensed units may include but are not  
 7 limited to teachers, nurses, counselors, therapists, psychologists, child development specialists and  
 8 similar positions. This limitation does not apply to any bargaining unit certified or recognized prior  
 9 to June 6, 1995, or to any school district with fewer than 50 employees.

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

11 (3) “Certification” means official recognition by the board that a labor organization is the ex-  
 12 clusive representative for all of the employees in the appropriate bargaining unit.

13 (4) “Collective bargaining” means the performance of the mutual obligation of a public employer  
 14 and the representative of its employees to meet at reasonable times and confer in good faith with  
 15 respect to employment relations for the purpose of negotiations concerning mandatory subjects of  
 16 bargaining, to meet and confer in good faith in accordance with law with respect to any dispute  
 17 concerning the interpretation or application of a collective bargaining agreement, and to execute  
 18 written contracts incorporating agreements that have been reached on behalf of the public employer  
 19 and the employees in the bargaining unit covered by such negotiations. The obligation to meet and  
 20 negotiate does not compel either party to agree to a proposal or require the making of a concession.  
 21 This subsection may not be construed to prohibit a public employer and a certified or recognized  
 22 representative of its employees from discussing or executing written agreements regarding matters  
 23 other than mandatory subjects of bargaining that are not prohibited by law as long as there is mu-  
 24 tual agreement of the parties to discuss these matters, which are permissive subjects of bargaining.

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

27 (6) “Confidential employee” means one who assists and acts in a confidential capacity to a per-  
 28 son who formulates, determines and effectuates management policies in the area of collective bar-  
 29 gaining.

30 (7)(a) “Employment relations” includes, but is not limited to, matters concerning direct or indi-  
 31 rect monetary benefits, hours, vacations, sick leave, labor organization access to and communication  
 32 with represented employees, grievance procedures, **safety issues that have an impact on the**  
 33 **on-the-job safety of the employees or staffing levels that have a significant impact on the**  
 34 **on-the-job safety of the employees**, and other conditions of employment.

35 (b) “Employment relations” does not include subjects determined to be permissive, nonmanda-  
 36 tory subjects of bargaining by the Employment Relations Board prior to June 6, 1995.

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

40 (d) “Employment relations” does not include subjects that have an insubstantial or de minimis  
 41 effect on public employee wages, hours, and other terms and conditions of employment.

42 (e) For school district bargaining:

43 (A) “Employment relations” includes class size and caseload limits in schools that qualify for  
 44 assistance under Title I of the federal Elementary and Secondary Education Act of 1965.

45 (B) “Employment relations” excludes the school or educational calendar, standards of perform-

1 ance or criteria for evaluation of teachers, the school curriculum, reasonable dress, grooming and  
2 at-work personal conduct requirements respecting smoking, gum chewing and similar matters of  
3 personal conduct, the standards and procedures for student discipline, the time between student  
4 classes, the selection, agendas and decisions of 21st Century Schools Councils established under ORS  
5 329.704, requirements for expressing milk under ORS 653.077, and any other subject proposed that  
6 is permissive under paragraphs (b), (c) and (d) of this subsection.

7 *[(f) For employee bargaining involving employees covered by ORS 243.736 and employees of the*  
8 *Department of Corrections who have direct contact with adults in custody, "employment relations" in-*  
9 *cludes safety issues that have an impact on the on-the-job safety of the employees or staffing levels that*  
10 *have a significant impact on the on-the-job safety of the employees.]*

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

20 (8) "Exclusive representative" means the labor organization that, as a result of certification by  
21 the board or recognition by the employer, has the right to be the collective bargaining agent of all  
22 employees in an appropriate bargaining unit.

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

26 (10) "Fair-share agreement" means an agreement between the public employer and the recog-  
27 nized or certified bargaining representative of public employees whereby employees who are not  
28 members of the employee organization are required to make an in-lieu-of-dues payment to an em-  
29 ployee organization except as provided in ORS 243.666. Upon the filing with the board of a petition  
30 by 30 percent or more of the employees in an appropriate bargaining unit covered by such union  
31 security agreement declaring they desire that the agreement be rescinded, the board shall take a  
32 secret ballot of the employees in the unit and certify the results thereof to the recognized or certi-  
33 fied bargaining representative and to the public employer. Unless a majority of the votes cast in an  
34 election favor the union security agreement, the board shall certify deauthorization of the agree-  
35 ment. A petition for deauthorization of a union security agreement must be filed not more than 90  
36 calendar days after the collective bargaining agreement is executed. Only one such election may be  
37 conducted in any appropriate bargaining unit during the term of a collective bargaining agreement  
38 between a public employer and the recognized or certified bargaining representative.

39 (11) "Final offer" means the proposed contract language and cost summary submitted to the  
40 mediator within seven days of the declaration of impasse.

41 (12) "Labor dispute" means any controversy concerning employment relations or concerning the  
42 association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to  
43 arrange terms or conditions of employment relations, regardless of whether the disputants stand in  
44 the proximate relation of employer and employee.

45 (13) "Labor organization" means any organization that has as one of its purposes representing

1 employees in their employment relations with public employers.

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

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

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

14 (17) “Mediation” means assistance by an impartial third party in reconciling a labor dispute  
15 between the public employer and the exclusive representative regarding employment relations.

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

21 (19) “Public employee” means an employee of a public employer but does not include elected  
22 officials, persons appointed to serve on boards or commissions, incarcerated persons working under  
23 Article I, section 41, of the Oregon Constitution, or persons who are confidential employees, super-  
24 visory employees or managerial employees.

25 (20) “Public employer” means the State of Oregon, and the following political subdivisions:  
26 Cities, counties, community colleges, school districts, special districts, mass transit districts, metro-  
27 politan service districts, public service corporations or municipal corporations and public and  
28 quasi-public corporations.

29 (21) “Public employer representative” includes any individual or individuals specifically desig-  
30 nated by the public employer to act in its interests in all matters dealing with employee represen-  
31 tation, collective bargaining and related issues.

32 (22) “Strike” means a public employee’s refusal in concerted action with others to report for  
33 duty, or his or her willful absence from his or her position, or his or her stoppage of work, or his  
34 or her absence in whole or in part from the full, faithful or proper performance of his or her duties  
35 of employment, for the purpose of inducing, influencing or coercing a change in the conditions,  
36 compensation, rights, privileges or obligations of public employment; however, nothing shall limit  
37 or impair the right of any public employee to lawfully express or communicate a complaint or  
38 opinion on any matter related to the conditions of employment.

39 (23)(a) “Supervisory employee” means any individual having authority in the interest of the  
40 employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline  
41 other employees, or responsibly to direct them, or to adjust their grievances, or effectively to re-  
42 commend such action, if in connection therewith, the exercise of the authority is not of a merely  
43 routine or clerical nature but requires the use of independent judgment. Failure to assert supervi-  
44 sory status in any Employment Relations Board proceeding or in negotiations for any collective  
45 bargaining agreement does not thereafter prevent assertion of supervisory status in any subsequent

1 board proceeding or contract negotiation.

2 (b) "Supervisory employee" includes a faculty member of a public university listed in ORS  
3 352.002 or the Oregon Health and Science University who:

4 (A) Is employed as a president, vice president, provost, vice provost, dean, associate dean, as-  
5 sistant dean, head or equivalent position; or

6 (B) Is employed in an administrative position without a reasonable expectation of teaching, re-  
7 search or other scholarly accomplishments.

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

9 (A) A nurse, charge nurse or nurse holding a similar position if that position has not tradi-  
10 tionally been classified as supervisory;

11 (B) A firefighter prohibited from striking by ORS 243.736 who assigns, transfers or directs the  
12 work of other employees but does not have the authority to hire, discharge or impose economic  
13 discipline on those employees; or

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

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

18 (25) "Voluntary arbitration" means the procedure whereby parties involved in a labor dispute  
19 mutually agree to submit their differences to a third party for a final and binding decision.

20 **SECTION 3. The amendments to ORS 243.650 by sections 1 and 2 of this 2023 Act apply**  
21 **to contracts or collective bargaining agreements entered into, renewed, modified or extended**  
22 **on or after the effective date of this 2023 Act.**

23 **SECTION 4. This 2023 Act being necessary for the immediate preservation of the public**  
24 **peace, health and safety, an emergency is declared to exist, and this 2023 Act takes effect**  
25 **on its passage.**

26