

(Including Amendments to Resolve Conflicts)

## B-Engrossed House Bill 2372

Ordered by the Senate April 30  
Including House Amendments dated March 26 and Senate Amendments  
dated April 30

Sponsored by Representatives BERGER, ROSENBAUM, Senator BURDICK (Presession 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.

Requires employers of 25 or more employees to provide unpaid rest periods to employees to express milk if providing rest periods does not cause undue hardship on operation of employer's business. Requires employer to make reasonable efforts to provide private location where employee can express milk. Provides civil penalty.

Requires school district boards to adopt policy regarding breast-feeding in workplace to accommodate employees needing to express milk. Excludes expressing milk from collective bargaining.

Directs Commissioner of Bureau of Labor and Industries to appoint advisory committee to address difficulties industries or professions have in complying with requirements relating to expressing milk.

### A BILL FOR AN ACT

1  
2 Relating to breast-feeding; creating new provisions; and amending ORS 243.650, 653.077 and 653.256.

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

4 **SECTION 1.** ORS 653.077 is amended to read:

5 653.077. **(1) As used in this section:**

6 **(a) "Reasonable efforts" means efforts that do not impose an undue hardship on the op-**  
7 **eration of an employer's business.**

8 **(b) "Undue hardship" means significant difficulty or expense when considered in relation**  
9 **to the size, financial resources, nature or structure of the employer's business.**

10 *[(1)]* **(2)(a)** An employer *[may]* **shall** provide reasonable unpaid rest periods to accommodate an  
11 employee who needs to express milk for her child.

12 **(b)** The employee shall *[notify]* **provide reasonable notice to** the employer that the employee  
13 intends to express milk upon returning to work. *[The employee shall, if feasible, take the rest periods*  
14 *to express milk at the same time as rest periods that are otherwise provided to the employee. The em-*  
15 *ployer may provide the employee up to 60 minutes in rest periods per eight-hour shift to express*  
16 *milk.]*

17 **(c) Unless otherwise agreed to by the employer and the employee, the employer shall**  
18 **provide the employee a 30-minute rest period to express milk during each four-hour work**  
19 **period, or the major part of a four-hour work period, to be taken by the employee approxi-**  
20 **mately in the middle of the work period.**

21 **(d) The employee shall, if feasible, take the rest periods to express milk at the same time**  
22 **as the rest periods or meal periods that are otherwise provided to the employee.**

**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 (e) If the employer is required by law or contract to provide the employee with paid rest peri-  
2 ods, the employer shall treat the rest periods used by the employee for expressing milk as paid rest  
3 periods, up to the amount of time the employer is required to provide as paid rest periods. If an  
4 employee takes unpaid rest periods, the employer may allow the employee to work before or after  
5 her normal shift to make up the amount of time used during the unpaid rest periods. If the employee  
6 does not work to make up the amount of time used during the unpaid rest periods, the employer is  
7 not required to compensate the employee for that time.

8 **(3) When an employer's contribution to an employee's health insurance is influenced by**  
9 **the number of hours the employee works, the employer shall treat any unpaid rest periods**  
10 **used by the employee to express milk as paid work time for the purpose of measuring the**  
11 **number of hours the employee works.**

12 **(4) An employer is not required to provide rest periods under this section if to do so**  
13 **would impose an undue hardship on the operation of the employer's business.**

14 [(2)(a)] **(5)(a)** An employer [may] shall make reasonable efforts to provide a [room or other]  
15 location, other than a public restroom or toilet stall, in close proximity to the employee's work area  
16 for the employee to express milk in private.

17 (b) The [room or other] location may include, **but is not limited to:**

18 (A) The employee's work area if the work area meets the requirements of paragraph (a) of this  
19 subsection; [or]

20 **(B) A room connected to a public restroom, such as a lounge, if the room allows the**  
21 **employee to express milk in private; or**

22 [(B)] (C) A child care facility in close proximity to the employee's work location where the  
23 employee can express milk in private.

24 [(3)] **(6)** An employer may allow an employee to temporarily change job duties if the employee's  
25 regular job duties do not allow her to express milk.

26 [(4)] **(7)** This section applies only to an employer whose employee is expressing milk for [a] **her**  
27 child 18 months of age or younger.

28 [(5)] **(8)** This section applies only to employers who employ 25 or more employees in the State  
29 of Oregon for each working day during each of 20 or more calendar workweeks in the year in which  
30 the rest periods are to be taken or in the year immediately preceding the year in which the rest  
31 periods are to be taken.

32 **(9) Notwithstanding ORS 653.020 (3), this section applies to individuals engaged in ad-**  
33 **ministrative, executive or professional work as described in ORS 653.020 (3).**

34 **(10)(a) In addition to, and not in lieu of, any other requirement under this section, each**  
35 **school district board shall adopt a policy regarding breast-feeding in the workplace to ac-**  
36 **commodate an employee who needs to express milk for her child.**

37 **(b) Each policy must, at a minimum, designate a location at the school facility, other**  
38 **than a public restroom or toilet stall, in close proximity to the employee's work area for the**  
39 **employee to express milk in private.**

40 **(c) A policy adopted under this subsection, including the designated locations where an**  
41 **employee may express milk, must be published in an employee handbook. In addition, a list**  
42 **of the designated locations must be readily available, upon request, in the central office of**  
43 **each school facility and in the central administrative office for each school district.**

44 **(11) The Commissioner of the Bureau of Labor and Industries shall adopt rules to im-**  
45 **plement and enforce this section.**

1        **SECTION 2.** ORS 653.256 is amended to read:

2        653.256. (1) In addition to any other penalty provided by law, the Commissioner of the Bureau  
3 of Labor and Industries may assess a civil penalty not to exceed \$1,000 against any person who  
4 willfully violates ORS 653.025, 653.030, 653.045, 653.050, 653.060 or 653.261 or any rule adopted  
5 thereunder.

6        **(2) In addition to any other penalty provided by law, the commissioner may assess a civil  
7 penalty not to exceed \$1,000 against any person who intentionally violates ORS 653.077 or any  
8 rule adopted thereunder.**

9        [(2)] **(3)** Civil penalties authorized by this section shall be imposed in the manner provided in  
10 ORS 183.745.

11        [(3)] **(4)(a)** All sums collected as penalties under this section shall be first applied toward re-  
12 imbursement of costs incurred in determining the violations, conducting hearings under this section  
13 and addressing and collecting [*such*] **the** penalties.

14        **(b)** The remainder, if any, of the sums collected as penalties under **subsection (1) of this section**  
15 shall be paid over by the commissioner to the Department of State Lands for the benefit of the  
16 Common School Fund of this state. The department shall issue a receipt for the money to the com-  
17 missioner.

18        **(c) The remainder, if any, of the sums collected as penalties under subsection (2) of this  
19 section shall be paid over by the commissioner to the Department of Human Services for the  
20 benefit of the Breastfeeding Mother Friendly Employer Project. The department shall issue  
21 a receipt for the moneys to the commissioner.**

22        **SECTION 3.** ORS 243.650 is amended to read:

23        243.650. As used in ORS 243.650 to 243.782, unless the context requires otherwise:

24        (1) "Appropriate bargaining unit" means the unit designated by the Employment Relations Board  
25 or voluntarily recognized by the public employer to be appropriate for collective bargaining. How-  
26 ever, an appropriate bargaining unit [*cannot*] **may not** include both academically licensed and unli-  
27 censed or nonacademically licensed school employees. Academically licensed units may include but  
28 are not limited to teachers, nurses, counselors, therapists, psychologists, child development special-  
29 ists and similar positions. This limitation [*shall*] **does** not apply to any bargaining unit certified or  
30 recognized prior to June 6, 1995, or to any school district with fewer than 50 employees.

31        (2) "Board" means the Employment Relations Board.

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

34        (4) "Collective bargaining" means the performance of the mutual obligation of a public employer  
35 and the representative of its employees to meet at reasonable times and confer in good faith with  
36 respect to employment relations for the purpose of negotiations concerning mandatory subjects of  
37 bargaining, to meet and confer in good faith in accordance with law with respect to any dispute  
38 concerning the interpretation or application of a collective bargaining agreement, and to execute  
39 written contracts incorporating agreements that have been reached on behalf of the public employer  
40 and the employees in the bargaining unit covered by such negotiations. The obligation to meet and  
41 negotiate does not compel either party to agree to a proposal or require the making of a concession.  
42 [*Nothing in*] This subsection [*shall*] **may not** be construed to prohibit a public employer and a cer-  
43 tified or recognized representative of its employees from discussing or executing written agreements  
44 regarding matters other than mandatory subjects of bargaining that are not prohibited by law, so  
45 long as there is mutual agreement of the parties to discuss these matters, which are permissive

1 subjects of bargaining.

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

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

7 (7)(a) "Employment relations" includes, but is not limited to, matters concerning direct or indi-  
8 rect monetary benefits, hours, vacations, sick leave, grievance procedures and other conditions of  
9 employment.

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

12 (c) After June 6, 1995, "employment relations" [shall] **does** not include subjects which the Em-  
13 ployment Relations Board determines to have a greater impact on management's prerogative than  
14 on employee wages, hours, or other terms and conditions of employment.

15 (d) "Employment relations" [shall] **does** not include subjects that have an insubstantial or de-  
16 minimis effect on public employee wages, hours, and other terms and conditions of employment.

17 (e) For school district bargaining, "employment relations" [shall expressly exclude] **excludes**  
18 class size, the school or educational calendar, standards of performance or criteria for evaluation  
19 of teachers, the school curriculum, reasonable dress, grooming and at-work personal conduct re-  
20 quirements respecting smoking, gum chewing and similar matters of personal conduct, the standards  
21 and procedures for student discipline, the time between student classes, the selection, agendas and  
22 decisions of 21st Century Schools Councils established under ORS 329.704, **requirements for ex-**  
23 **pressing milk under ORS 653.077**, and any other subject proposed that is permissive under para-  
24 graphs (b), (c) and (d) of this subsection.

25 (f) For all other employee bargaining except school districts, "employment relations"  
26 [expressly] excludes staffing levels and safety issues (except those staffing levels and safety issues  
27 which have a direct and substantial effect on the on-the-job safety of public employees), scheduling  
28 of services provided to the public, determination of the minimum qualifications necessary for any  
29 position, criteria for evaluation or performance appraisal, assignment of duties, workload when the  
30 effect on duties is insubstantial, reasonable dress, grooming, and at-work personal conduct require-  
31 ments respecting smoking, gum chewing, and similar matters of personal conduct at work, and any  
32 other subject proposed that is permissive under paragraphs (b), (c) and (d) of this subsection.

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

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

39 (10) "Fair-share agreement" means an agreement between the public employer and the recog-  
40 nized or certified bargaining representative of public employees whereby employees who are not  
41 members of the employee organization are required to make an in-lieu-of-dues payment to an em-  
42 ployee organization except as provided in ORS 243.666. Upon the filing with the board of a petition  
43 by 30 percent or more of the employees in an appropriate bargaining unit covered by such union  
44 security agreement declaring they desire that such agreement be rescinded, the board shall take a  
45 secret ballot of the employees in such unit and certify the results thereof to the recognized or cer-

1 tified bargaining representative and to the public employer. Unless a majority of the votes cast in  
2 an election favor such union security agreement, the board shall certify deauthorization thereof. A  
3 petition for deauthorization of a union security agreement must be filed not more than 90 calendar  
4 days after the collective bargaining agreement is executed. Only one such election *[shall]* **may** be  
5 conducted in any appropriate bargaining unit during the term of a collective bargaining agreement  
6 between a public employer and the recognized or certified bargaining representative.

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

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

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

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

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

19 (16) "Managerial employee" means an employee of the State of Oregon who possesses authority  
20 to formulate and carry out management decisions or who represents management's interest by tak-  
21 ing or effectively recommending discretionary actions that control or implement employer policy,  
22 and who has discretion in the performance of these management responsibilities beyond the routine  
23 discharge of duties. A "managerial employee" need not act in a supervisory capacity in relation to  
24 other employees. Notwithstanding this subsection, "managerial employee" *[shall not be construed*  
25 *to]* **does not** include faculty members at a community college, college or university.

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

28 (18) "Payment-in-lieu-of-dues" means an assessment to defray the cost for services by the exclu-  
29 sive representative in negotiations and contract administration of all persons in an appropriate  
30 bargaining unit who are not members of the organization serving as exclusive representative of the  
31 employees. The payment *[shall]* **must** be equivalent to regular union dues and assessments, if any,  
32 or *[shall]* **must** be an amount agreed upon by the public employer and the exclusive representative  
33 of the employees.

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

38 (20) "Public employer" means the State of Oregon, and the following political subdivisions:  
39 Cities, counties, community colleges, school districts, special districts, mass transit districts, metro-  
40 politan service districts, public service corporations or municipal corporations and public and  
41 quasi-public corporations.

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

45 (22) "Strike" means a public employee's refusal in concerted action with others to report for

1 duty, or his or her willful absence from his or her position, or his or her stoppage of work, or his  
 2 or her absence in whole or in part from the full, faithful or proper performance of his or her duties  
 3 of employment, for the purpose of inducing, influencing or coercing a change in the conditions,  
 4 compensation, rights, privileges or obligations of public employment; however, nothing shall limit  
 5 or impair the right of any public employee to lawfully express or communicate a complaint or  
 6 opinion on any matter related to the conditions of employment.

7 (23) "Supervisory employee" means any individual having authority in the interest of the em-  
 8 ployer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline  
 9 other employees, or responsibly to direct them, or to adjust their grievances, or effectively to re-  
 10 commend such action, if in connection therewith, the exercise of such authority is not of a merely  
 11 routine or clerical nature but requires the use of independent judgment. Failure to assert supervi-  
 12 sory status in any Employment Relations Board proceeding or in negotiations for any collective  
 13 bargaining agreement [shall] **does** not thereafter prevent assertion of supervisory status in any  
 14 subsequent board proceeding or contract negotiation. Notwithstanding the provisions of this sub-  
 15 section, [no] a nurse, charge nurse or similar nursing position [shall] **may not** be deemed to be su-  
 16 pervisory unless [such] **that** position has traditionally been classified as supervisory.

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

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

21 **SECTION 3a. If Senate Bill 400 becomes law, section 3 of this 2007 Act (amending ORS**  
 22 **243.650) is repealed and ORS 243.650, as amended by section 1, chapter \_\_\_\_\_, Oregon Laws**  
 23 **2007 (Enrolled Senate Bill 400), is amended to read:**

24 243.650. As used in ORS 243.650 to 243.782, unless the context requires otherwise:

25 (1) "Appropriate bargaining unit" means the unit designated by the Employment Relations Board  
 26 or voluntarily recognized by the public employer to be appropriate for collective bargaining. How-  
 27 ever, an appropriate bargaining unit [cannot] **may not** include both academically licensed and unli-  
 28 censed or nonacademically licensed school employees. Academically licensed units may include but  
 29 are not limited to teachers, nurses, counselors, therapists, psychologists, child development special-  
 30 ists and similar positions. This limitation does not apply to any bargaining unit certified or recog-  
 31 nized prior to June 6, 1995, or to any school district with fewer than 50 employees.

32 (2) "Board" means the Employment Relations Board.

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

35 (4) "Collective bargaining" means the performance of the mutual obligation of a public employer  
 36 and the representative of its employees to meet at reasonable times and confer in good faith with  
 37 respect to employment relations for the purpose of negotiations concerning mandatory subjects of  
 38 bargaining, to meet and confer in good faith in accordance with law with respect to any dispute  
 39 concerning the interpretation or application of a collective bargaining agreement, and to execute  
 40 written contracts incorporating agreements that have been reached on behalf of the public employer  
 41 and the employees in the bargaining unit covered by such negotiations. The obligation to meet and  
 42 negotiate does not compel either party to agree to a proposal or require the making of a concession.  
 43 This subsection may not be construed to prohibit a public employer and a certified or recognized  
 44 representative of its employees from discussing or executing written agreements regarding matters  
 45 other than mandatory subjects of bargaining that are not prohibited by law as long as there is mu-

1 tual agreement of the parties to discuss these matters, which are permissive subjects of bargaining.

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

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

7 (7)(a) "Employment relations" includes, but is not limited to, matters concerning direct or indi-  
8 rect monetary benefits, hours, vacations, sick leave, grievance procedures and other conditions of  
9 employment.

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

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

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

17 (e) For school district bargaining, "employment relations" does not include class size, the school  
18 or educational calendar, standards of performance or criteria for evaluation of teachers, the school  
19 curriculum, reasonable dress, grooming and at-work personal conduct requirements respecting  
20 smoking, gum chewing and similar matters of personal conduct, the standards and procedures for  
21 student discipline, the time between student classes, the selection, agendas and decisions of 21st  
22 Century Schools Councils established under ORS 329.704, **requirements for expressing milk under**  
23 **ORS 653.077**, and any other subject proposed that is permissive under paragraphs (b), (c) and (d)  
24 of this subsection.

25 (f) For employee bargaining involving employees covered by ORS 243.736, "employment  
26 relations" includes safety and staffing only as they relate to on-the-job safety.

27 (g) For all other employee bargaining except school district bargaining and except as provided  
28 in paragraph (f) of this subsection, "employment relations" does not include staffing levels and safety  
29 issues (except those staffing levels and safety issues that have a direct and substantial effect on the  
30 on-the-job safety of public employees), scheduling of services provided to the public, determination  
31 of the minimum qualifications necessary for any position, criteria for evaluation or performance  
32 appraisal, assignment of duties, workload when the effect on duties is insubstantial, reasonable  
33 dress, grooming, and at-work personal conduct requirements respecting smoking, gum chewing, and  
34 similar matters of personal conduct at work, and any other subject proposed that is permissive un-  
35 der paragraphs (b), (c) and (d) of this subsection.

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

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

42 (10) "Fair-share agreement" means an agreement between the public employer and the recog-  
43 nized or certified bargaining representative of public employees whereby employees who are not  
44 members of the employee organization are required to make an in-lieu-of-dues payment to an em-  
45 ployee organization except as provided in ORS 243.666. Upon the filing with the board of a petition

1 by 30 percent or more of the employees in an appropriate bargaining unit covered by such union  
2 security agreement declaring they desire that the agreement be rescinded, the board shall take a  
3 secret ballot of the employees in the unit and certify the results thereof to the recognized or certi-  
4 fied bargaining representative and to the public employer. Unless a majority of the votes cast in an  
5 election favor the union security agreement, the board shall certify deauthorization of the agree-  
6 ment. A petition for deauthorization of a union security agreement must be filed not more than 90  
7 calendar days after the collective bargaining agreement is executed. Only one such election *[shall]*  
8 **may** be conducted in any appropriate bargaining unit during the term of a collective bargaining  
9 agreement between a public employer and the recognized or certified bargaining representative.

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

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

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

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

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

22 (16) "Managerial employee" means an employee of the State of Oregon who possesses authority  
23 to formulate and carry out management decisions or who represents management's interest by tak-  
24 ing or effectively recommending discretionary actions that control or implement employer policy,  
25 and who has discretion in the performance of these management responsibilities beyond the routine  
26 discharge of duties. A "managerial employee" need not act in a supervisory capacity in relation to  
27 other employees. Notwithstanding this subsection, "managerial employee" *[may not be construed*  
28 *to]* **does not** include faculty members at a community college, college or university.

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

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

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

41 (20) "Public employer" means the State of Oregon, and the following political subdivisions:  
42 Cities, counties, community colleges, school districts, special districts, mass transit districts, metro-  
43 politan service districts, public service corporations or municipal corporations and public and  
44 quasi-public corporations.

45 (21) "Public employer representative" includes any individual or individuals specifically desig-



1 nated by the public employer to act in its interests in all matters dealing with employee represen-  
2 tation, collective bargaining and related issues.

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

10 (23) "Supervisory employee" means any individual having authority in the interest of the em-  
11 ployer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline  
12 other employees, or responsibly to direct them, or to adjust their grievances, or effectively to re-  
13 commend such action, if in connection therewith, the exercise of the authority is not of a merely  
14 routine or clerical nature but requires the use of independent judgment. Failure to assert supervi-  
15 sory status in any Employment Relations Board proceeding or in negotiations for any collective  
16 bargaining agreement does not thereafter prevent assertion of supervisory status in any subsequent  
17 board proceeding or contract negotiation. Notwithstanding the provisions of this subsection, [no] a  
18 nurse, charge nurse or similar nursing position [shall] **may not** be deemed to be supervisory unless  
19 [the] **that** position has traditionally been classified as supervisory.

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

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

24 **SECTION 4. (1) The Commissioner of the Bureau of Labor and Industries shall appoint**  
25 **an advisory committee. The advisory committee must include equal representation of mem-**  
26 **bers from labor and management.**

27 **(2) Upon request by a particular industry or profession, the advisory committee shall:**

28 **(a) Determine when the ordinary course of the requesting industry or profession makes**  
29 **compliance with ORS 653.077 difficult for an employer in that industry or profession; and**

30 **(b) Submit to the commissioner recommendations for rules that address compliance dif-**  
31 **ficulties in that industry or profession.**

32 **(3) The commissioner shall determine the terms and organization of the advisory com-**  
33 **mittee.**

34 **(4) All agencies of state government, as defined in ORS 174.111, are directed to assist the**  
35 **advisory committee in the performance of its duties and, to the extent permitted by laws**  
36 **relating to confidentiality, to furnish such information and advice as the members of the**  
37 **advisory committee consider necessary to perform their duties.**

38 **SECTION 5. ORS 653.075 and 653.077 are added to and made a part of ORS 653.010 to**  
39 **653.261.**

40 **SECTION 6. The amendments to ORS 243.650, 653.077 and 653.256 by sections 1 to 3 of this**  
41 **2007 Act apply to conduct occurring on or after the effective date of this 2007 Act.**

42 **SECTION 6a.** If Senate Bill 400 becomes law, section 6 of this 2007 Act is amended to read:

43 **Sec. 6.** The amendments to ORS 243.650, 653.077 and 653.256 by sections 1, **2 and 3a** [to 3] of  
44 this 2007 Act apply to conduct occurring on or after the effective date of this 2007 Act.

45 **SECTION 7. Notwithstanding section 6 of this 2007 Act, ORS 653.077 (10) first applies to**

1 **the 2008-2009 school year.**

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