

Enrolled
House Bill 2372

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

CHAPTER

AN ACT

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

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

SECTION 1. ORS 653.077 is amended to read:

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

(a) **“Reasonable efforts” means efforts that do not impose an undue hardship on the operation of an employer’s business.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(9) Notwithstanding ORS 653.020 (3), this section applies to individuals engaged in administrative, executive or professional work as described in ORS 653.020 (3).

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

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

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

(11) The Commissioner of the Bureau of Labor and Industries shall adopt rules to implement and enforce this section.

SECTION 2. ORS 653.256 is amended to read:

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

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

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

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

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

(c) The remainder, if any, of the sums collected as penalties under subsection (2) of this section shall be paid over by the commissioner to the Department of Human Services for the

benefit of the Breastfeeding Mother Friendly Employer Project. The department shall issue a receipt for the moneys to the commissioner.

SECTION 3. ORS 243.650 is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

(f) For all other employee bargaining except school districts, "employment relations" *expressly* excludes staffing levels and safety issues (except those staffing levels and safety issues

which have a direct and substantial effect on the on-the-job safety of public employees), scheduling of services provided to the public, determination of the minimum qualifications necessary for any position, criteria for evaluation or performance appraisal, assignment of duties, workload when the effect on duties is insubstantial, reasonable dress, grooming, and at-work personal conduct requirements respecting smoking, gum chewing, and similar matters of personal conduct at work, and any other subject proposed that is permissive under paragraphs (b), (c) and (d) of this subsection.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) "Appropriate bargaining unit" means the unit designated by the Employment Relations Board or voluntarily recognized by the public employer to be appropriate for collective bargaining. However, an appropriate bargaining unit [*cannot*] **may not** include both academically licensed and unlicensed or nonacademically licensed school employees. Academically licensed units may include but are not limited to teachers, nurses, counselors, therapists, psychologists, child development specialists and similar positions. This limitation does not apply to any bargaining unit certified or recognized prior to June 6, 1995, or to any school district with fewer than 50 employees.

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

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

(4) "Collective bargaining" means the performance of the mutual obligation of a public employer and the representative of its employees to meet at reasonable times and confer in good faith with respect to employment relations for the purpose of negotiations concerning mandatory subjects of bargaining, to meet and confer in good faith in accordance with law with respect to any dispute concerning the interpretation or application of a collective bargaining agreement, and to execute written contracts incorporating agreements that have been reached on behalf of the public employer

and the employees in the bargaining unit covered by such negotiations. The obligation to meet and negotiate does not compel either party to agree to a proposal or require the making of a concession. This subsection may not be construed to prohibit a public employer and a certified or recognized representative of its employees from discussing or executing written agreements regarding matters other than mandatory subjects of bargaining that are not prohibited by law as long as there is mutual agreement of the parties to discuss these matters, which are permissive subjects of bargaining.

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

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

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

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

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

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

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

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

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

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

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

(10) "Fair-share agreement" means an agreement between the public employer and the recognized or certified bargaining representative of public employees whereby employees who are not members of the employee organization are required to make an in-lieu-of-dues payment to an employee organization except as provided in ORS 243.666. Upon the filing with the board of a petition by 30 percent or more of the employees in an appropriate bargaining unit covered by such union security agreement declaring they desire that the agreement be rescinded, the board shall take a

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 4. (1) The Commissioner of the Bureau of Labor and Industries shall appoint an advisory committee. The advisory committee must include equal representation of members from labor and management.

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

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

(b) Submit to the commissioner recommendations for rules that address compliance difficulties in that industry or profession.

(3) The commissioner shall determine the terms and organization of the advisory committee.

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

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

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

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

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

SECTION 7. Notwithstanding section 6 of this 2007 Act, ORS 653.077 (10) first applies to the 2008-2009 school year.

Passed by House March 29, 2007

Repassed by House May 8, 2007

.....
Chief Clerk of House

.....
Speaker of House

Passed by Senate May 4, 2007

.....
President of Senate

Received by Governor:

.....M,....., 2007

Approved:

.....M,....., 2007

.....
Governor

Filed in Office of Secretary of State:

.....M,....., 2007

.....
Secretary of State