

## HOUSE AMENDMENTS TO HOUSE BILL 2372

By COMMITTEE ON HUMAN SERVICES AND WOMEN'S WELLNESS

March 26

- 1 On page 1 of the printed bill, line 2, after "ORS" insert "243.650,".
- 2 In line 9, delete "and" and insert "or".
- 3 In line 12, delete "notify" and insert "provide reasonable notice to".
- 4 Delete lines 29 and 30.
- 5 On page 2, delete line 1.
- 6 In line 2, delete "(4)" and insert "(3)".
- 7 In line 6, delete "(5)" and insert "(4)".
- 8 In line 8, delete "(6)(a)" and insert "(5)(a)".
- 9 In line 18, delete "(7)" and insert "(6)".
- 10 In line 20, delete "(8)" and insert "(7)" and delete "a" and insert "her".
- 11 In line 22, delete "(9)" and insert "(8)".
- 12 In line 26, delete "(10)" and insert "(9)".
- 13 After line 27, insert:
- 14 "(10)(a) In addition to, and not in lieu of, any other requirement under this section, each school
- 15 district board shall adopt a policy regarding breast-feeding in the workplace to accommodate an
- 16 employee who needs to express milk for her child.
- 17 "(b) Each policy must, at a minimum, designate a location at the school facility, other than a
- 18 public restroom or toilet stall, in close proximity to the employee's work area for the employee to
- 19 express milk in private.
- 20 "(c) A policy adopted under this subsection, including the designated locations where an em-
- 21 ployee may express milk, must be published in an employee handbook. In addition, a list of the
- 22 designated locations must be readily available, upon request, in the central office of each school
- 23 facility and in the central administrative office for each school district."
- 24 In line 33, delete ", 653.077".
- 25 After line 34, insert:
- 26 "(2) In addition to any other penalty provided by law, the commissioner may assess a civil pen-
- 27 alty not to exceed \$1,000 against any person who intentionally violates ORS 653.077 or any rule
- 28 adopted thereunder."
- 29 In line 35, delete "(2)" and insert "(3)".
- 30 In line 37, delete "(3)" and insert "(4)".
- 31 Delete lines 43 and 44 and insert:
- 32 "**SECTION 3.** ORS 243.650 is amended to read:
- 33 "243.650. As used in ORS 243.650 to 243.782, unless the context requires otherwise:
- 34 "(1) 'Appropriate bargaining unit' means the unit designated by the Employment Relations Board
- 35 or voluntarily recognized by the public employer to be appropriate for collective bargaining. How-

1 ever, an appropriate bargaining unit *[cannot]* **may not** include both academically licensed and unli-  
2 censed or nonacademically licensed school employees. Academically licensed units may include but  
3 are not limited to teachers, nurses, counselors, therapists, psychologists, child development special-  
4 ists and similar positions. This limitation *[shall]* **does** not apply to any bargaining unit certified or  
5 recognized prior to June 6, 1995, or to any school district with fewer than 50 employees.

6 “(2) ‘Board’ means the Employment Relations Board.

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

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

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

24 “(6) ‘Confidential employee’ means one who assists and acts in a confidential capacity to a per-  
25 son who formulates, determines and effectuates management policies in the area of collective bar-  
26 gaining.

27 “(7)(a) ‘Employment relations’ includes, but is not limited to, matters concerning direct or indi-  
28 rect monetary benefits, hours, vacations, sick leave, grievance procedures and other conditions of  
29 employment.

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

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

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

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

45 “(f) For all other employee bargaining except school districts, ‘employment relations’

1 [expressly] excludes staffing levels and safety issues (except those staffing levels and safety issues  
2 which have a direct and substantial effect on the on-the-job safety of public employees), scheduling  
3 of services provided to the public, determination of the minimum qualifications necessary for any  
4 position, criteria for evaluation or performance appraisal, assignment of duties, workload when the  
5 effect on duties is insubstantial, reasonable dress, grooming, and at-work personal conduct require-  
6 ments respecting smoking, gum chewing, and similar matters of personal conduct at work, and any  
7 other subject proposed that is permissive under paragraphs (b), (c) and (d) of this subsection.

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

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

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

27 “(11) ‘Final offer’ means the proposed contract language and cost summary submitted to the  
28 mediator within seven days of the declaration of impasse.

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

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

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

37 “(15) ‘Legislative body’ means the Legislative Assembly, the city council, the county commission  
38 and any other board or commission empowered to levy taxes.

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

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

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

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

13 “(20) ‘Public employer’ means the State of Oregon, and the following political subdivisions:  
14 Cities, counties, community colleges, school districts, special districts, mass transit districts, metro-  
15 politan service districts, public service corporations or municipal corporations and public and  
16 quasi-public corporations.

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

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

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

37 “(24) ‘Unfair labor practice’ means the commission of an act designated an unfair labor practice  
38 in ORS 243.672.

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

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

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

45 “(a) Determine when the ordinary course of the requesting industry or profession makes

1 compliance with ORS 653.077 difficult for an employer in that industry or profession; and

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

4 “(3) The commissioner shall determine the terms and organization of the advisory com-  
5 mittee.

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

10 “SECTION 5. ORS 653.075 and 653.077 are added to and made a part of ORS 653.010 to  
11 653.261.

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

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

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