

D R A F T

SUMMARY

Restricts arbitration award from ordering disciplinary action that differs from disciplinary action imposed by law enforcement agency if arbitrator makes finding of employee misconduct, consistent with agency's finding of misconduct, and disciplinary action imposed by agency was made pursuant to discipline guide incorporated into agency's disciplinary policies.

A BILL FOR AN ACT

1
2 Relating to arbitration awards; creating new provisions; and amending ORS
3 243.706.

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

5 **SECTION 1.** ORS 243.706 is amended to read:

6 243.706. (1) A public employer may enter into a written agreement with
7 the exclusive representative of an appropriate bargaining unit setting forth
8 a grievance procedure culminating in binding arbitration or any other dis-
9 pute resolution process agreed to by the parties. As a condition of
10 enforceability, any arbitration award that orders the reinstatement of a
11 public employee or otherwise relieves the public employee of responsibility
12 for misconduct shall comply with public policy requirements as clearly de-
13 fined in statutes or judicial decisions including but not limited to policies
14 respecting sexual harassment or sexual misconduct, unjustified and egregious
15 use of physical or deadly force and serious criminal misconduct, related to
16 work. In addition, with respect to claims that a grievant should be reinstated
17 or otherwise relieved of responsibility for misconduct based upon the public
18 employer's alleged previous differential treatment of employees for the same
19 or similar conduct, the arbitration award must conform to the following

1 principles:

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

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

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

13 **(3) Notwithstanding subsection (1) of this section, when an arbi-**
14 **tration proceeding involves alleged misconduct by a public employee**
15 **of any law enforcement agency and the arbitrator makes a finding of**
16 **misconduct consistent with the law enforcement agency's finding of**
17 **misconduct, the arbitration award may not order any disciplinary**
18 **action that differs from the disciplinary action imposed by the agency,**
19 **if the disciplinary action imposed by the agency was determined pur-**
20 **suant to a discipline guide incorporated into the agency's disciplinary**
21 **policies.**

22 [(3)] (4) In an arbitration proceeding under this section, the arbitrators,
23 or a majority of the arbitrators, may:

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

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

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

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

31 (c) Adjourn a hearing from day to day, or for a longer time, and from

1 place to place.

2 [(4)] (5) The arbitrators shall promptly provide a copy of a subpoena is-
3 sued under this section to each party to the arbitration proceeding.

4 [(5)] (6) The arbitrators issuing a subpoena under this section may rule
5 on objections to the issuance of the subpoena.

6 [(6)] (7) If a person fails to comply with a subpoena issued under this
7 section or if a witness refuses to testify on a matter on which the witness
8 may be lawfully questioned, the party who requested the subpoena or seeks
9 the testimony may apply to the arbitrators for an order authorizing the party
10 to apply to the circuit court of any county to enforce the subpoena or compel
11 the testimony. On the application of the attorney of record for the party or
12 on the application of the arbitrators, or a majority of the arbitrators, the
13 court may require the person or witness to show cause why the person or
14 witness should not be punished for contempt of court to the same extent and
15 purpose as if the proceedings were pending before the court.

16 [(7)] (8) Witnesses appearing pursuant to subpoena, other than parties or
17 officers or employees of the public employer, shall receive fees and mileage
18 as prescribed by law for witnesses in ORS 44.415 (2).

19 (9) **As used in this section:**

20 (a) **“Discipline guide” means a grid that is designed to determine**
21 **the presumptive level of discipline to apply to an act of misconduct**
22 **that is categorized by the level of severity of the misconduct, accord-**
23 **ing to the intersection where the category of misconduct and the dis-**
24 **ciplinary action meet.**

25 (b) **“Law enforcement agency” has the meaning given that term in**
26 **ORS 131.930.**

27 **SECTION 2. The amendments to ORS 243.706 by section 1 of this**
28 **2019 Act apply to arbitration proceedings occurring on or after the ef-**
29 **fective date of this 2019 Act.**

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