

# A-Engrossed Senate Bill 383

Ordered by the Senate April 22  
Including Senate Amendments dated April 22

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## 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.

Restricts arbitration award from ordering disciplinary action that differs from disciplinary action imposed by law enforcement agency if arbitrator makes finding [*of employee misconduct,*] **that misconduct occurred** 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*] **is consistent with provisions of discipline guide or discipline matrix adopted by agency as result of collective bargaining and incorporated into agency's disciplinary policies.**

**Specifies that for purposes of collective bargaining involving sworn employees of law enforcement agency, "employment relations" includes development of discipline guide or discipline matrix.**

## A BILL FOR AN ACT

1  
2 Relating to arbitration awards; creating new provisions; and amending ORS 243.650 and 243.706.

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

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

5 243.706. (1) A public employer may enter into a written agreement with the exclusive represen-  
6 tative of an appropriate bargaining unit setting forth a grievance procedure culminating in binding  
7 arbitration or any other dispute resolution process agreed to by the parties. As a condition of  
8 enforceability, any arbitration award that orders the reinstatement of a public employee or other-  
9 wise relieves the public employee of responsibility for misconduct shall comply with public policy  
10 requirements as clearly defined in statutes or judicial decisions including but not limited to policies  
11 respecting sexual harassment or sexual misconduct, unjustified and egregious use of physical or  
12 deadly force and serious criminal misconduct, related to work. In addition, with respect to claims  
13 that a grievant should be reinstated or otherwise relieved of responsibility for misconduct based  
14 upon the public employer's alleged previous differential treatment of employees for the same or  
15 similar conduct, the arbitration award must conform to the following principles:

16 (a) Some misconduct is so egregious that no employee can reasonably rely on past treatment for  
17 similar offenses as a justification or defense to discharge or other discipline.

18 (b) Public managers have a right to change disciplinary policies at any time, notwithstanding  
19 prior practices, if such managers give reasonable advance notice to affected employees and the  
20 change does not otherwise violate a collective bargaining agreement.

21 (2) In addition to subsection (1) of this section, a public employer may enter into a written  
22 agreement with the exclusive representative of its employees providing that a labor dispute over  
23 conditions and terms of a contract may be resolved through binding arbitration.

**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       **(3) Notwithstanding subsection (1) of this section, when an arbitration proceeding in-**  
2 **volves alleged misconduct by a sworn public employee of any law enforcement agency and**  
3 **the arbitrator makes a finding that misconduct has occurred consistent with the law**  
4 **enforcement agency’s finding of misconduct, the arbitration award may not order any disci-**  
5 **plinary action that differs from the disciplinary action imposed by the agency, if the disci-**  
6 **plinary action imposed by the agency is consistent with the provisions of a discipline guide**  
7 **or discipline matrix adopted by the agency as a result of collective bargaining and incorpo-**  
8 **rated into the agency’s disciplinary policies.**

9       [(3)] **(4)** In an arbitration proceeding under this section, the arbitrators, or a majority of the  
10 arbitrators, may:

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

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

13       (B) Require from either party the production of books, papers and documents the arbitrators find  
14 are relevant to the proceeding;

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

16       (c) Adjourn a hearing from day to day, or for a longer time, and from place to place.

17       [(4)] **(5)** The arbitrators shall promptly provide a copy of a subpoena issued under this section  
18 to each party to the arbitration proceeding.

19       [(5)] **(6)** The arbitrators issuing a subpoena under this section may rule on objections to the is-  
20 suance of the subpoena.

21       [(6)] **(7)** If a person fails to comply with a subpoena issued under this section or if a witness  
22 refuses to testify on a matter on which the witness may be lawfully questioned, the party who re-  
23 quested the subpoena or seeks the testimony may apply to the arbitrators for an order authorizing  
24 the party to apply to the circuit court of any county to enforce the subpoena or compel the testi-  
25 mony. On the application of the attorney of record for the party or on the application of the  
26 arbitrators, or a majority of the arbitrators, the court may require the person or witness to show  
27 cause why the person or witness should not be punished for contempt of court to the same extent  
28 and purpose as if the proceedings were pending before the court.

29       [(7)] **(8)** Witnesses appearing pursuant to subpoena, other than parties or officers or employees  
30 of the public employer, shall receive fees and mileage as prescribed by law for witnesses in ORS  
31 44.415 (2).

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

33       (a) **“Discipline guide” means a grid that is designed to provide parameters for the level**  
34 **of discipline to be imposed for an act of misconduct that is categorized by the severity of the**  
35 **misconduct and take into account the presumptive level of discipline for the misconduct and**  
36 **any aggravating or mitigating factors.**

37       (b) **“Discipline matrix” means a grid used to determine the level of discipline to be im-**  
38 **posed for an act of misconduct that is categorized by the severity of the misconduct, ac-**  
39 **ording to the intersection where the category of misconduct and the level of disciplinary**  
40 **action meet.**

41       (c) **“Law enforcement agency” has the meaning given that term in ORS 131.930.**

42       **SECTION 2.** ORS 243.650 is amended to read:

43       243.650. As used in ORS 243.650 to 243.782, unless the context requires otherwise:

44       (1) **“Appropriate bargaining unit” means the unit designated by the Employment Relations Board**  
45 **or voluntarily recognized by the public employer to be appropriate for collective bargaining. How-**

1 ever, an appropriate bargaining unit may not include both academically licensed and unlicensed or  
2 nonacademically licensed school employees. Academically licensed units may include but are not  
3 limited to teachers, nurses, counselors, therapists, psychologists, child development specialists and  
4 similar positions. This limitation does not apply to any bargaining unit certified or recognized prior  
5 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 This subsection may not be construed to prohibit a public employer and a certified or recognized  
18 representative of its employees from discussing or executing written agreements regarding matters  
19 other than mandatory subjects of bargaining that are not prohibited by law as long as there is mu-  
20 tual agreement of the parties to discuss these matters, which are permissive subjects of bargaining.

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

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

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

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

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

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

36 (e) For school district bargaining, "employment relations" excludes class size, the school or ed-  
37 ucational calendar, standards of performance or criteria for evaluation of teachers, the school cur-  
38 riculum, reasonable dress, grooming and at-work personal conduct requirements respecting smoking,  
39 gum chewing and similar matters of personal conduct, the standards and procedures for student  
40 discipline, the time between student classes, the selection, agendas and decisions of 21st Century  
41 Schools Councils established under ORS 329.704, requirements for expressing milk under ORS  
42 653.077, and any other subject proposed that is permissive under paragraphs (b), (c) and (d) of this  
43 subsection.

44 (f) For employee bargaining involving employees covered by ORS 243.736 and employees of the  
45 Department of Corrections who have direct contact with inmates, "employment relations" includes

1 safety issues that have an impact on the on-the-job safety of the employees or staffing levels that  
2 have a significant impact on the on-the-job safety of the employees.

3 **(g) For employee bargaining involving sworn employees of a law enforcement agency as**  
4 **defined in ORS 131.930, “employment relations” includes the development of a discipline guide**  
5 **or discipline matrix as those terms are defined in ORS 243.706.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

42 (b) "Supervisory employee" includes a faculty member of a public university listed in ORS  
43 352.002 or the Oregon Health and Science University who:

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

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

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

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

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

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

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

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

15 **SECTION 3. The amendments to ORS 243.650 and 243.706 by sections 1 and 2 of this 2019**  
16 **Act apply to collective bargaining agreements entered into on or after the effective date of**  
17 **this 2019 Act.**

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