

Senate Bill 383

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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 **as introduced**.

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 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.

24 **(3) Notwithstanding subsection (1) of this section, when an arbitration proceeding in-**
25 **volves alleged misconduct by a public employee of any law enforcement agency and the**
26 **arbitrator makes a finding of misconduct consistent with the law enforcement agency's**
27 **finding of misconduct, the arbitration award may not order any disciplinary action that dif-**
28 **fers from the disciplinary action imposed by the agency, if the disciplinary action imposed**
29 **by the agency was determined pursuant to a discipline guide incorporated into the agency's**

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 **disciplinary policies.**

2 [(3)] (4) In an arbitration proceeding under this section, the arbitrators, or a majority of the
 3 arbitrators, may:

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

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

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

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

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

10 [(4)] (5) The arbitrators shall promptly provide a copy of a subpoena issued under this section
 11 to each party to the arbitration proceeding.

12 [(5)] (6) The arbitrators issuing a subpoena under this section may rule on objections to the is-
 13 suance of the subpoena.

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

22 [(7)] (8) Witnesses appearing pursuant to subpoena, other than parties or officers or employees
 23 of the public employer, shall receive fees and mileage as prescribed by law for witnesses in ORS
 24 44.415 (2).

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

26 (a) **“Discipline guide” means a grid that is designed to determine the presumptive level**
 27 **of discipline to apply to an act of misconduct that is categorized by the level of severity of**
 28 **the misconduct, according to the intersection where the category of misconduct and the**
 29 **disciplinary action meet.**

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

31 **SECTION 2. The amendments to ORS 243.706 by section 1 of this 2019 Act apply to arbi-**
 32 **tration proceedings occurring on or after the effective date of this 2019 Act.**