

D R A F T

SUMMARY

Modifies definition of “employment relations” for purposes of collective bargaining to include safety issues and staffing levels that have significant impact on on-the-job safety of employees.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to collective bargaining over matters concerning on-the-job safety;
3 creating new provisions; amending ORS 243.650; and declaring an emer-
4 gency.

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

6 **SECTION 1.** ORS 243.650, as amended by section 5, chapter 541, Oregon
7 Laws 2021, is amended to read:

8 243.650. As used in ORS 243.650 to 243.809, unless the context requires
9 otherwise:

10 (1) “Appropriate bargaining unit” means the unit designated by the Em-
11 ployment Relations Board or voluntarily recognized by the public employer
12 to be appropriate for collective bargaining. However, an appropriate bar-
13 gaining unit may not include both academically licensed and unlicensed or
14 nonacademically licensed school employees. Academically licensed units may
15 include but are not limited to teachers, nurses, counselors, therapists, psy-
16 chologists, child development specialists and similar positions. This limita-
17 tion does not apply to any bargaining unit certified or recognized prior to
18 June 6, 1995, or to any school district with fewer than 50 employees.

19 (2) “Board” means the Employment Relations Board.

20 (3) “Certification” means official recognition by the board that a labor

1 organization is the exclusive representative for all of the employees in the
2 appropriate bargaining unit.

3 (4) "Collective bargaining" means the performance of the mutual obli-
4 gation of a public employer and the representative of its employees to meet
5 at reasonable times and confer in good faith with respect to employment re-
6 lations for the purpose of negotiations concerning mandatory subjects of
7 bargaining, to meet and confer in good faith in accordance with law with
8 respect to any dispute concerning the interpretation or application of a col-
9 lective bargaining agreement, and to execute written contracts incorporating
10 agreements that have been reached on behalf of the public employer and the
11 employees in the bargaining unit covered by such negotiations. The obli-
12 gation to meet and negotiate does not compel either party to agree to a
13 proposal or require the making of a concession. This subsection may not be
14 construed to prohibit a public employer and a certified or recognized repre-
15 sentative of its employees from discussing or executing written agreements
16 regarding matters other than mandatory subjects of bargaining that are not
17 prohibited by law as long as there is mutual agreement of the parties to
18 discuss these matters, which are permissive subjects of bargaining.

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

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

25 (7)(a) "Employment relations" includes, but is not limited to, matters
26 concerning direct or indirect monetary benefits, hours, vacations, sick leave,
27 labor organization access to and communication with represented employees,
28 grievance procedures, **safety issues that have an impact on the on-the-**
29 **job safety of the employees or staffing levels that have a significant**
30 **impact on the on-the-job safety of the employees,** and other conditions
31 of employment.

1 (b) “Employment relations” does not include subjects determined to be
2 permissive, nonmandatory subjects of bargaining by the Employment Re-
3 lations Board prior to June 6, 1995.

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

8 (d) “Employment relations” does not include subjects that have an in-
9 substantial or de minimis effect on public employee wages, hours, and other
10 terms and conditions of employment.

11 (e) For school district bargaining:

12 (A) “Employment relations” includes class size and caseload limits in
13 schools that qualify for assistance under Title I of the federal Elementary
14 and Secondary Education Act of 1965.

15 (B) “Employment relations” excludes the school or educational calendar,
16 standards of performance or criteria for evaluation of teachers, the school
17 curriculum, reasonable dress, grooming and at-work personal conduct re-
18 quirements respecting smoking, gum chewing and similar matters of personal
19 conduct, the standards and procedures for student discipline, the time be-
20 tween student classes, the selection, agendas and decisions of 21st Century
21 Schools Councils established under ORS 329.704, requirements for expressing
22 milk under ORS 653.077, and any other subject proposed that is permissive
23 under paragraphs (b), (c) and (d) of this subsection.

24 *[(f) For employee bargaining involving employees covered by ORS 243.736*
25 *and employees of the Department of Corrections who have direct contact with*
26 *adults in custody, “employment relations” includes safety issues that have an*
27 *impact on the on-the-job safety of the employees or staffing levels that have a*
28 *significant impact on the on-the-job safety of the employees.]*

29 *[(g)] (f)* For all other employee bargaining except school district bar-
30 gaining *[and except as provided in paragraph (f) of this subsection]*, “employ-
31 ment relations” excludes *[staffing levels and safety issues (except those*

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

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

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

18 (10) “Fair-share agreement” means an agreement between the public em-
19 ployer and the recognized or certified bargaining representative of public
20 employees whereby employees who are not members of the employee organ-
21 ization are required to make an in-lieu-of-dues payment to an employee or-
22 ganization except as provided in ORS 243.666. Upon the filing with the board
23 of a petition by 30 percent or more of the employees in an appropriate bar-
24 gaining unit covered by such union security agreement declaring they desire
25 that the agreement be rescinded, the board shall take a secret ballot of the
26 employees in the unit and certify the results thereof to the recognized or
27 certified bargaining representative and to the public employer. Unless a
28 majority of the votes cast in an election favor the union security agreement,
29 the board shall certify deauthorization of the agreement. A petition for de-
30 authorization of a union security agreement must be filed not more than 90
31 calendar days after the collective bargaining agreement is executed. Only

1 one such election may be conducted in any appropriate bargaining unit dur-
2 ing the term of a collective bargaining agreement between a public employer
3 and the recognized or certified bargaining representative.

4 (11) “Final offer” means the proposed contract language and cost sum-
5 mary submitted to the mediator within seven days of the declaration of im-
6 passe.

7 (12) “Labor dispute” means any controversy concerning employment re-
8 lations or concerning the association or representation of persons in negoti-
9 ating, fixing, maintaining, changing, or seeking to arrange terms or
10 conditions of employment relations, regardless of whether the disputants
11 stand in the proximate relation of employer and employee.

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

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

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

21 (16) “Managerial employee” means an employee of the State of Oregon
22 or a public university listed in ORS 352.002 who possesses authority to for-
23 mulate and carry out management decisions or who represents management’s
24 interest by taking or effectively recommending discretionary actions that
25 control or implement employer policy, and who has discretion in the per-
26 formance of these management responsibilities beyond the routine discharge
27 of duties. A “managerial employee” need not act in a supervisory capacity
28 in relation to other employees. Notwithstanding this subsection, “manage-
29 rial employee” does not include faculty members at a community college,
30 college or university.

31 (17) “Mediation” means assistance by an impartial third party in recon-

1 ciling a labor dispute between the public employer and the exclusive repre-
2 sentative regarding employment relations.

3 (18) "Payment-in-lieu-of-dues" means an assessment to defray the cost for
4 services by the exclusive representative in negotiations and contract admin-
5 istration of all persons in an appropriate bargaining unit who are not mem-
6 bers of the organization serving as exclusive representative of the employees.
7 The payment must be equivalent to regular union dues and assessments, if
8 any, or must be an amount agreed upon by the public employer and the ex-
9 clusive representative of the employees.

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

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

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

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

1 matter related to the conditions of employment.

2 (23)(a) "Supervisory employee" means any individual having authority in
3 the interest of the employer to hire, transfer, suspend, lay off, recall, pro-
4 mote, discharge, assign, reward or discipline other employees, or responsibly
5 to direct them, or to adjust their grievances, or effectively to recommend
6 such action, if in connection therewith, the exercise of the authority is not
7 of a merely routine or clerical nature but requires the use of independent
8 judgment. Failure to assert supervisory status in any Employment Relations
9 Board proceeding or in negotiations for any collective bargaining agreement
10 does not thereafter prevent assertion of supervisory status in any subsequent
11 board proceeding or contract negotiation.

12 (b) "Supervisory employee" includes a faculty member of a public univer-
13 sity listed in ORS 352.002 or the Oregon Health and Science University who:

14 (A) Is employed as a president, vice president, provost, vice provost, dean,
15 associate dean, assistant dean, head or equivalent position; or

16 (B) Is employed in an administrative position without a reasonable ex-
17 pectation of teaching, research or other scholarly accomplishments.

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

19 (A) A nurse, charge nurse or nurse holding a similar position if that po-
20 sition has not traditionally been classified as supervisory;

21 (B) A firefighter prohibited from striking by ORS 243.736 who assigns,
22 transfers or directs the work of other employees but does not have the au-
23 thority to hire, discharge or impose economic discipline on those employees;

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

27 (D) An employee of the Oregon State Police who:

28 (i) Serves in a rank equivalent to or below the rank of sergeant;

29 (ii) Is prohibited from striking by ORS 243.736; and

30 (iii) Assigns, transfers or directs the work of other employees but does
31 not hire, discharge or impose economic discipline on those employees.

1 (24) “Unfair labor practice” means the commission of an act designated
2 an unfair labor practice in ORS 243.672.

3 (25) “Voluntary arbitration” means the procedure whereby parties in-
4 volved in a labor dispute mutually agree to submit their differences to a
5 third party for a final and binding decision.

6 **SECTION 2.** ORS 243.650, as amended by section 2, chapter 146, Oregon
7 Laws 2019, section 3, chapter 18, Oregon Laws 2020 (first special session),
8 section 2, chapter 490, Oregon Laws 2021, and section 6, chapter 541, Oregon
9 Laws 2021, is amended to read:

10 243.650. As used in ORS 243.650 to 243.809, unless the context requires
11 otherwise:

12 (1) “Appropriate bargaining unit” means the unit designated by the Em-
13 ployment Relations Board or voluntarily recognized by the public employer
14 to be appropriate for collective bargaining. However, an appropriate bar-
15 gaining unit may not include both academically licensed and unlicensed or
16 nonacademically licensed school employees. Academically licensed units may
17 include but are not limited to teachers, nurses, counselors, therapists, psy-
18 chologists, child development specialists and similar positions. This limita-
19 tion does not apply to any bargaining unit certified or recognized prior to
20 June 6, 1995, or to any school district with fewer than 50 employees.

21 (2) “Board” means the Employment Relations Board.

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

25 (4) “Collective bargaining” means the performance of the mutual obli-
26 gation of a public employer and the representative of its employees to meet
27 at reasonable times and confer in good faith with respect to employment re-
28 lations for the purpose of negotiations concerning mandatory subjects of
29 bargaining, to meet and confer in good faith in accordance with law with
30 respect to any dispute concerning the interpretation or application of a col-
31 lective bargaining agreement, and to execute written contracts incorporating

1 agreements that have been reached on behalf of the public employer and the
2 employees in the bargaining unit covered by such negotiations. The obli-
3 gation to meet and negotiate does not compel either party to agree to a
4 proposal or require the making of a concession. This subsection may not be
5 construed to prohibit a public employer and a certified or recognized repre-
6 sentative of its employees from discussing or executing written agreements
7 regarding matters other than mandatory subjects of bargaining that are not
8 prohibited by law as long as there is mutual agreement of the parties to
9 discuss these matters, which are permissive subjects of bargaining.

10 (5) “Compulsory arbitration” means the procedure whereby parties in-
11 volved in a labor dispute are required by law to submit their differences to
12 a third party for a final and binding decision.

13 (6) “Confidential employee” means one who assists and acts in a confi-
14 dential capacity to a person who formulates, determines and effectuates
15 management policies in the area of collective bargaining.

16 (7)(a) “Employment relations” includes, but is not limited to, matters
17 concerning direct or indirect monetary benefits, hours, vacations, sick leave,
18 labor organization access to and communication with represented employees,
19 grievance procedures, **safety issues that have an impact on the on-the-**
20 **job safety of the employees or staffing levels that have a significant**
21 **impact on the on-the-job safety of the employees,** and other conditions
22 of employment.

23 (b) “Employment relations” does not include subjects determined to be
24 permissive, nonmandatory subjects of bargaining by the Employment Re-
25 lations Board prior to June 6, 1995.

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

30 (d) “Employment relations” does not include subjects that have an in-
31 substantial or de minimis effect on public employee wages, hours, and other

1 terms and conditions of employment.

2 (e) For school district bargaining:

3 (A) "Employment relations" includes class size and caseload limits in
4 schools that qualify for assistance under Title I of the federal Elementary
5 and Secondary Education Act of 1965.

6 (B) "Employment relations" excludes the school or educational calendar,
7 standards of performance or criteria for evaluation of teachers, the school
8 curriculum, reasonable dress, grooming and at-work personal conduct re-
9 quirements respecting smoking, gum chewing and similar matters of personal
10 conduct, the standards and procedures for student discipline, the time be-
11 tween student classes, the selection, agendas and decisions of 21st Century
12 Schools Councils established under ORS 329.704, requirements for expressing
13 milk under ORS 653.077, and any other subject proposed that is permissive
14 under paragraphs (b), (c) and (d) of this subsection.

15 *[(f) For employee bargaining involving employees covered by ORS 243.736
16 and employees of the Department of Corrections who have direct contact with
17 adults in custody, "employment relations" includes safety issues that have an
18 impact on the on-the-job safety of the employees or staffing levels that have a
19 significant impact on the on-the-job safety of the employees.]*

20 *[(g)]* (f) For all other employee bargaining except school district bar-
21 gaining *[and except as provided in paragraph (f) of this subsection]*, "employ-
22 ment relations" excludes *[staffing levels and safety issues (except those
23 staffing levels and safety issues that have a direct and substantial effect on the
24 on-the-job safety of public employees),]* scheduling of services provided to the
25 public, determination of the minimum qualifications necessary for any posi-
26 tion, criteria for evaluation or performance appraisal, assignment of duties,
27 workload when the effect on duties is insubstantial, reasonable dress,
28 grooming, and at-work personal conduct requirements respecting smoking,
29 gum chewing, and similar matters of personal conduct at work, and any
30 other subject proposed that is permissive under paragraphs (b), (c) and (d)
31 of this subsection.

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

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

9 (10) "Fair-share agreement" means an agreement between the public em-
10 ployer and the recognized or certified bargaining representative of public
11 employees whereby employees who are not members of the employee organ-
12 ization are required to make an in-lieu-of-dues payment to an employee or-
13 ganization except as provided in ORS 243.666. Upon the filing with the board
14 of a petition by 30 percent or more of the employees in an appropriate bar-
15 gaining unit covered by such union security agreement declaring they desire
16 that the agreement be rescinded, the board shall take a secret ballot of the
17 employees in the unit and certify the results thereof to the recognized or
18 certified bargaining representative and to the public employer. Unless a
19 majority of the votes cast in an election favor the union security agreement,
20 the board shall certify deauthorization of the agreement. A petition for de-
21 authorization of a union security agreement must be filed not more than 90
22 calendar days after the collective bargaining agreement is executed. Only
23 one such election may be conducted in any appropriate bargaining unit dur-
24 ing the term of a collective bargaining agreement between a public employer
25 and the recognized or certified bargaining representative.

26 (11) "Final offer" means the proposed contract language and cost sum-
27 mary submitted to the mediator within seven days of the declaration of im-
28 passe.

29 (12) "Labor dispute" means any controversy concerning employment re-
30 lations or concerning the association or representation of persons in negoti-
31 ating, fixing, maintaining, changing, or seeking to arrange terms or

1 conditions of employment relations, regardless of whether the disputants
2 stand in the proximate relation of employer and employee.

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

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

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

12 (16) “Managerial employee” means an employee of the State of Oregon
13 or a public university listed in ORS 352.002 who possesses authority to for-
14 mulate and carry out management decisions or who represents management’s
15 interest by taking or effectively recommending discretionary actions that
16 control or implement employer policy, and who has discretion in the per-
17 formance of these management responsibilities beyond the routine discharge
18 of duties. A “managerial employee” need not act in a supervisory capacity
19 in relation to other employees. Notwithstanding this subsection, “manage-
20 rial employee” does not include faculty members at a community college,
21 college or university.

22 (17) “Mediation” means assistance by an impartial third party in recon-
23 ciling a labor dispute between the public employer and the exclusive repre-
24 sentative regarding employment relations.

25 (18) “Payment-in-lieu-of-dues” means an assessment to defray the cost for
26 services by the exclusive representative in negotiations and contract admin-
27 istration of all persons in an appropriate bargaining unit who are not mem-
28 bers of the organization serving as exclusive representative of the employees.
29 The payment must be equivalent to regular union dues and assessments, if
30 any, or must be an amount agreed upon by the public employer and the ex-
31 clusive representative of the employees.

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

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

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

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

24 (23)(a) "Supervisory employee" means any individual having authority in
25 the interest of the employer to hire, transfer, suspend, lay off, recall, pro-
26 mote, discharge, assign, reward or discipline other employees, or responsibly
27 to direct them, or to adjust their grievances, or effectively to recommend
28 such action, if in connection therewith, the exercise of the authority is not
29 of a merely routine or clerical nature but requires the use of independent
30 judgment. Failure to assert supervisory status in any Employment Relations
31 Board proceeding or in negotiations for any collective bargaining agreement

1 does not thereafter prevent assertion of supervisory status in any subsequent
2 board proceeding or contract negotiation.

3 (b) “Supervisory employee” includes a faculty member of a public univer-
4 sity listed in ORS 352.002 or the Oregon Health and Science University who:

5 (A) Is employed as a president, vice president, provost, vice provost, dean,
6 associate dean, assistant dean, head or equivalent position; or

7 (B) Is employed in an administrative position without a reasonable ex-
8 pectation of teaching, research or other scholarly accomplishments.

9 (c) “Supervisory employee” does not include:

10 (A) A nurse, charge nurse or nurse holding a similar position if that po-
11 sition has not traditionally been classified as supervisory;

12 (B) A firefighter prohibited from striking by ORS 243.736 who assigns,
13 transfers or directs the work of other employees but does not have the au-
14 thority to hire, discharge or impose economic discipline on those employees;
15 or

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

19 (24) “Unfair labor practice” means the commission of an act designated
20 an unfair labor practice in ORS 243.672.

21 (25) “Voluntary arbitration” means the procedure whereby parties in-
22 volved in a labor dispute mutually agree to submit their differences to a
23 third party for a final and binding decision.

24 **SECTION 3. The amendments to ORS 243.650 by sections 1 and 2 of**
25 **this 2023 Act apply to contracts or collective bargaining agreements**
26 **entered into, renewed, modified or extended on or after the effective**
27 **date of this 2023 Act.**

28 **SECTION 4. This 2023 Act being necessary for the immediate pres-**
29 **ervation of the public peace, health and safety, an emergency is de-**
30 **clared to exist, and this 2023 Act takes effect on its passage.**

31