

Discussion Points (6/22/22)

Burden of Proof

Option 1

A law enforcement agency or, if applicable, a civilian or community oversight board, agency or review body, has the burden of proof by a preponderance of the evidence to show that:

- (1) The officer's conduct violated an agency policy;
- (2) The officer engaged in misconduct identified by LESC rules; and
- (3) Any disciplinary action taken against the officer was with just cause, as defined in ORS 236.350.

Option 2

A law enforcement agency or, if applicable, a civilian or community oversight board, agency or review body, has the burden of proof by a preponderance of the evidence to show that:

- (1) The officer engaged in misconduct identified by LESC rules; and
- (2) Any disciplinary action taken against the officer was with just cause, as defined in ORS 236.350.

Sexual Assault:

"Sexual assault" means "unwanted conduct of a sexual nature that is inflicted upon a person or compelled through the use of physical force, manipulation, threat or intimidation." ORS 243.317

Option 1

A law enforcement agency will impose upon a law enforcement officer disciplinary action within the following disciplinary range upon a sustained violation of law enforcement agency policy that involves sexual assault.

Option 2

A law enforcement agency will impose upon a law enforcement officer disciplinary action within the following disciplinary range upon a finding that the officer committed an act of "sexual assault."

Example:

MISCONDUCT	MITIGATED SANCTION	PRESUMPTIVE SANCTION	AGGRAVATED SANCTION
Sexual Assault	Demotion/LWOP/Transfer/ES	Termination	

Assault:

“Assault’ means the intentional, knowing or reckless causation of physical injury to another person. ‘Assault’ does not include the causation of physical injury in a motor vehicle accident that occurs by reason of the reckless conduct of a defendant.” ORS 163.115.

Option 1

A law enforcement agency will impose upon a law enforcement officer disciplinary action within the following disciplinary range upon a sustained violation of law enforcement agency policy that involves the conviction of or plea to a felony, or felonious misconduct, involving assault.

Option 2

A law enforcement agency will impose upon a law enforcement officer disciplinary action within the following disciplinary range upon a finding that the officer committed, without justification an intentional act of “assault.”

MISCONDUCT	MITIGATED SANCTION	PRESUMPTIVE SANCTION	AGGRAVATED SANCTION
Assault	Demotion/LWOP/Transfer/ES	Termination	

Unjustified or Excessive Use of Force

Options:

(1) Unjustified or excessive use of physical or deadly physical force by the officer that results in death or serious physical injury;

(2) The failure to intervene, if safe to do so, to stop or prevent another officer or reserve officer from using unjustified or excessive physical or deadly physical force that results in death or serious physical injury (ORS 181A.681);

(3) The failure to report the unjustified or excessive use of physical or deadly physical force by another officer or reserve officer that results in death or serious physical injury (ORS 181A.681); or

(4) The application of force by the officer that is neither justified or reasonable under ORS 161.237 (impeding breathing/blood circulation by pressure on the throat/neck) and that results in death or serious physical injury.

Sexual Harassment

Definition 1 (BOLI)

Sexual harassment is unlawful discrimination on the basis of sex and includes the following types of conduct:

(a) Unwelcome sexual advances, requests for sexual favors, or other conduct of a sexual nature when such conduct is directed toward an individual because of that individual's sex and:

(A) Submission to such conduct is made either explicitly or implicitly a term or condition of employment; or

(B) Submission to or rejection of such conduct is used as the basis for employment decisions affecting that individual.

(b) Any unwelcome verbal or physical conduct that is sufficiently severe or pervasive to have the purpose or effect of unreasonably interfering with work performance or creating a hostile, intimidating or offensive working environment.

Definition 2 (DAS)

“Sexual harassment” means unwelcome, unwanted or offensive sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

(1) Submission to such conduct is made either explicitly or implicitly a term or condition of the individual’s employment, or is used as a basis for any employment decision (granting leave requests, promotion, favorable performance appraisal, etc.); or

(2) Such conduct is unwelcome, unwanted or offensive and has the purpose or effect of unreasonably interfering with an individual’s work performance or creating an intimidating, hostile or offensive working environment.

MISCONDUCT	MITIGATED SANCTION	PRESUMPTIVE SANCTION	AGGRAVATED SANCTION
Sexual Harassment	Coaching/Training	Letter of Reprimand	Termination