

Draft Rules for Discussion Purposes
7/21/2022

Division 5: General/Definitions and Policy

OAR 265-005-0001: Definitions:

- (1) **Assault** has the meaning given that term in ORS 163.115.
- (2) **Civilian or community oversight board, agency or review body** has the meaning given that term in ORS 243.812.
- (3) **Controlled Substance** has the meaning given that term in ORS 475.005.
- (4) **Deadly physical force** has the meaning given that term in ORS 161.015.
- (5) **Disciplinary action** means a personnel action against a law enforcement officer in the form of a written reprimand, suspension without pay, reduction in salary, demotion, or termination of employment upon a finding that the law enforcement officer engaged in misconduct.
- (6) **Disciplining body** means a law enforcement agency or, if applicable, a civilian or community oversight board, agency or review body.
- (7) **Domestic violence** has the meaning given that term in ORS 135.230.
- (8) **Finding** means a final determination by the decision maker of a disciplining body that a law enforcement officer has engaged in misconduct for which the decision maker making the determination has authority to impose disciplinary action.
- (9) **Intentional** has the meaning given that term in ORS 161.085.
- (10) **Justification** means a justifiable use of physical or deadly physical force pursuant to ORS 161.205 to ORS 161.267.
- (11) **Just Cause** has the meaning given that term in ORS 236.350.
- (12) **Law enforcement agency** has the meaning given that term in ORS 131.930.
- (13) **Law enforcement officer** has the meaning given that term in ORS 131.930.
- (14) **Misconduct** means conduct that violates state, tribal or federal law or the policies of the law enforcement agency employing the law enforcement officer, or that subjects the law enforcement officer to disciplinary action under these rules.

- (15) **Misuse of authority for financial gain** occurs when a law enforcement officer's vote, opinion, judgment, action, decision or exercise of discretion is influenced by the officer's solicitation or acceptance of a financial benefit for the officer or a third person. This rule does not apply to agency-approved fundraising activities.
- (16) **Moral Character** means performing the duties of a law enforcement officer in a manner that demonstrates honesty, fairness, and respect for the rights of others and for the laws of the state and the nation.
- (17) **Physical Force** has the meaning given that term in ORS 161.015.
- (18) **Physical Injury** has the meaning given that term in ORS 161.015.
- (19) **Serious Physical Injury** has the meaning given that term in ORS 161.015.
- (20) **Sexual assault** has the meaning given that term in ORS 243.317.
- (21) **Sex crime** has the meaning given that term in ORS 163A.005.
- (22) **Sexual Harassment** has the meaning given that term in OAR 839-005-0030.
- (23) **Stalking** means engaging in conduct constituting the crime of stalking in ORS 163.732.
- (24) **Untruthfulness** means knowingly or willfully making false statements, falsifying work-related records or official documents, omitting material facts or material information, or answering questions or providing information in a manner that is incomplete, evasive, deceptive, or misleading. A statement is not considered untruthful when the officer reasonably believes that deception (i) is necessary due to the nature of the officer's assignment, such as an undercover assignment; (ii) is necessary to acquire information for a criminal investigation, or (iii) to protect the officer or others from an articulable threat. The use of deception in these circumstances must be for a specific and legitimate law enforcement purpose and must be temporary in nature.

OAR 265-005-0005 Application of Oregon Revised Statutes

These rules are subject to the Oregon Revised Statutes, including but not limited to ORS 243.808, 236.350, and 243.706.

OAR 265-005-0006 Burden of Proof

For any collective bargaining agreement entered into or renewed on or after July 1, 2021, for all disciplinary actions imposed upon a law enforcement officer, a disciplining body has the burden to prove by a preponderance of evidence that the officer engaged in misconduct and that any disciplinary action taken against the officer was with just cause as defined by ORS 236.350. No collective bargaining agreement entered into or renewed on or after July 1, 2021, may include a standard of just cause other than the standard as defined in ORS 236.350.

OAR 265-005-0010 Disciplinary Action for Misconduct Not Identified By These Rules

Upon a finding of misconduct not specifically identified within these rules, a disciplining body may take disciplinary action pursuant to the employing law enforcement agency's policies and practices so long as the disciplinary action is consistent with these rules.

OAR 265-005-0015 Multiple Instances of Misconduct

For purposes of an arbitration proceeding concerning multiple instances of alleged misconduct by a law enforcement officer, if the arbitrator finds that a disciplining body has not met its burden of proof by a preponderance of the evidence to show that: (A) The officer engaged in one or more of the instances of alleged misconduct or (B) that the disciplinary action taken against the officer was with just cause, as defined in ORS 236.350, for one or more of the instances of misconduct, the arbitrator must rescind the disciplinary action imposed on those allegations of misconduct and refer the matter back to the disciplining body. The disciplining body may, at its discretion, amend the disciplinary action on any instances of misconduct upheld by the arbitrator. Nothing in this rule precludes the officer from initiating an arbitration proceeding regarding a disciplinary action imposed after the referral by the arbitrator.

OAR 265-005-0020 Incorporation of Rules

All disciplining bodies shall adopt policies incorporating these rules. The failure of a disciplining body to adopt policies incorporating these rules does not impair the application of these rules.

OAR 265-005-0025 Application of Aggravating and Mitigating Factors

(1) A disciplining body shall impose the presumptive sanction required by these rules unless it finds that one or more of the aggravating or mitigating factors enumerated in OAR 265-015-0035 justifies a departure from the presumptive sanction.

(2) If the disciplining body determines that a mitigated sanction is justified, it shall impose a sanction that is no less than the mitigated sanction for the specific instance of misconduct but may impose a sanction that is no more than the presumptive sanction.

(3) Except when the presumptive sanction for misconduct is termination, if the disciplining body determines that an aggravated sanction is justified, it shall impose a sanction that is no more than the aggravated sanction for the specific instance of misconduct but may impose a sanction that is no less than the presumptive sanction.

(4) A disciplinary body shall not apply an aggravating or mitigating factor if the factor is already included in determining whether misconduct occurred (example: intentionality).

(5) A disciplinary body has the discretion to impose mitigated or aggravated sanctions as permitted by these rules. A disciplining body shall document its reasoning, including whether it found aggravating or mitigating factors **and the relative weight it gave to each factor**, for imposing a disciplinary action other than the presumptive sanction.

OAR 265-010-0001 Sexual Assault

(1) A disciplining body shall impose upon a law enforcement officer disciplinary action within the following disciplinary range upon a finding that the officer engaged in misconduct constituting an act of sexual assault:

- A. The presumptive sanction shall be termination.
- B. The mitigated sanction shall be suspension without pay, salary reduction, demotion, or a written reprimand.

OAR 265-010-0005 Sexual Harassment

(1) A disciplining body shall impose upon a law enforcement officer disciplinary action within the following disciplinary range upon a finding that the officer engaged in misconduct constituting sexual harassment:

- A. The presumptive sanction shall be demotion, suspension without pay, or salary reduction.
- B. The mitigated sanction shall be a written reprimand.
- C. The aggravated sanction shall be termination.

OAR 265-010-0010 Assault

(1) A disciplining body shall impose upon a law enforcement officer disciplinary action within the following disciplinary range upon a finding that the officer engaged in misconduct constituting an act of intentional assault without justification:

- A. The presumptive sanction shall be termination.
- B. The mitigated sanction shall be suspension without pay, salary reduction, demotion, or a written reprimand.

OAR 265-010-0015 Unjustified or Excessive Use of Physical or Deadly Force

(1) A disciplining body shall impose upon a law enforcement officer disciplinary action of termination upon a finding that the officer engaged in misconduct constituting unjustified or excessive use of deadly physical force by the officer that results in death or serious physical injury.

(2) A disciplining body shall impose upon a law enforcement officer disciplinary action within the following disciplinary range upon a finding that the officer engaged in misconduct constituting unjustified or excessive use of physical force by the officer that results in death or serious physical injury:

A. The presumptive sanction shall be termination.

B. The mitigated sanction shall be suspension without pay, salary reduction, demotion, or a written reprimand.

OAR 265-010-0020 Conduct that is Motivated by or Based on a Real or Perceived Factor of an Individual's Race, Ethnicity, National Origin, Sex, Gender Identity, Sexual Orientation, Religion, or Homelessness

(1) A disciplining body shall impose upon a law enforcement officer disciplinary action within the following disciplinary range upon a finding that the officer engaged in misconduct in violation of statutory or constitutional law by intentionally targeting an individual for a suspected violation of law based solely on the individual's real or perceived race, ethnicity, national origin, sex, gender identity, sexual orientation, religion, or homelessness:

A. The presumptive sanction shall be termination.

B. The mitigated sanction shall be suspension without pay, salary reduction or demotion.

(2) It is not misconduct under this rule if the law enforcement officer is acting on a suspect description or information related to an identified or suspected violation of a provision of law.

OAR 265-010-0025 Moral Character

(1) For the purposes of this rule, lack of good moral character includes conduct constituting:

A. A felony under state or federal law

B. Domestic violence

C. Stalking

D. A drug-related offense, except for offenses involving use or possession of marijuana

E. A bias or hate crime under state or federal law

F. A sex crime

G. Untruthfulness

H. Misuse of authority for financial gain

(2) If a law enforcement officer is convicted of a crime based on conduct identified in subsection (1) of this rule, proof of the conviction is conclusive evidence that the conduct occurred.

(3) A disciplining body shall impose upon a law enforcement officer disciplinary action of termination upon a finding that the officer engaged in misconduct demonstrating a lack of good moral character.

OAR 265-010-0030 The Use of Drugs or Alcohol While on Duty

(1) A disciplining body shall impose upon a law enforcement officer disciplinary action within the following disciplinary range upon a finding that the law enforcement officer engaged in misconduct by unlawfully using a controlled substance while on duty.

A. The presumptive sanction shall be termination.

B. The mitigated sanctions shall include suspension without pay, a salary reduction, or demotion.

(2) A disciplining body shall impose upon a law enforcement officer disciplinary action within the following disciplinary range upon a finding that the law enforcement officer engaged in misconduct by being impaired to any degree due to the consumption of an alcoholic beverage while reporting to duty or while on duty.

A. The presumptive sanction shall be termination.

B. The mitigated sanctions shall be suspension without pay, a salary reduction, demotion, or written reprimand.

(3) For the purposes of this rule, “being impaired to any degree” means having a BAC greater than .00.

OAR 265-010-0035 Aggravating and Mitigating Factors