

Oregon Commission on Statewide Law Enforcement Standards of Conduct and Discipline

Narrative Guide

Introduction

The purpose of this narrative guide is to assist law enforcement officers, law enforcement agencies, disciplining bodies, and the public in understanding and applying the [rules](#) issued by the [Commission on Statewide Law Enforcement Standards of Conduct and Discipline \(LESC\)](#) under [HB 2930 \(2021\)](#), as codified in statute at [ORS 243.706, 243.808 – 243.812](#).

This narrative guide is prepared by the LESC and is intended to be an assistive tool. It is not a legally binding document and should not be construed as legal advice.

Scope of Application and Effective Dates

The LESC rules apply to all “law enforcement agencies” and “law enforcement officers” (LEOs) in Oregon, as those terms are defined in [ORS 243.809](#), including unionized LEOs. The LESC rules became effective on November 1, 2022; however, the effective date for the application of the LESC rules is different for unionized and non-unionized LEOs: for unionized LEOs, the LESC rules become effective when their collective bargaining agreement (CBA) is entered into or renewed on or after November 1, 2022.

For unionized LEOs, the Oregon Legislature also revised “just cause” disciplinary standards and arbitration rules at [ORS 243.706\(3\)](#) and [243.808](#) under the Public Employee Collective Bargaining Act (PECBA). The revised disciplinary standards and associated arbitration standards become effective for unionized LEOs when their CBAs are entered into or renewed on or after July 1, 2021.

LESC Rules for Misconduct

The LESC has issued rules that govern the level of discipline for proven misconduct by LEOs as specifically required by the Oregon Legislature. A simplified [Discipline Matrix](#) of those rules is set forth below.

The LESC may later modify or expand the currently adopted rules to include other misconduct.

A mandatory or presumptive disciplinary action imposed by the disciplining body applies for findings of misconduct under the LESC rules. Mandatory disciplinary actions are prescribed by the LESC rules and cannot be altered upon a finding of misconduct. In contrast, presumptive disciplinary actions may be modified by the disciplining body after the application of [aggravating and mitigating factors](#), as more fully discussed below.

Applying LESC Rules

The following are some basic terms to understand in applying the LESC rules. Additional defined terms are found in the LESC rules (excerpted [below](#)).

- A “disciplining body” means a law enforcement agency or, if applicable, a civilian or community oversight board, agency or review body. Disciplining bodies are required to incorporate LESC rules in their policies, whether directly or by reference.
- “Law enforcement agency” means “an agency employing law enforcement officers to enforce criminal laws” and “law enforcement officer” means “a member of the Oregon State Police, a sheriff or a municipal police officer.” [ORS 131.930](#). The LESC rules apply only to those officers as defined in that statute.
- “Misconduct” is a broad term that is not limited just to a violation of specific LESC rules as identified in the [Discipline Matrix](#); it also includes conduct that violates state, tribal or federal law or violates the policies of the law enforcement agency employing the LEO.
- “Finding” refers to the final determination by the decision maker of a disciplining body—often the police chief or sheriff—that a LEO engaged in misconduct.
- A “disciplinary action” for misconduct includes only the following personnel actions:
 - Written reprimand
 - Suspension without pay
 - Reduction in salary
 - Demotion
 - TerminationCoaching, counseling, training, or other similar tools for improving performance are not disciplinary actions.
- For a unionized LEO, the “exclusive representative” means their union.

A disciplining body should follow the steps below in applying the LESC rules. In addition to complying with LESC rules in fulfilling these steps, a disciplining body must also comply with applicable employer policies and CBA provisions that are not inconsistent with these rules.

Step 1: The disciplining body should conduct a full, fair, and complete investigation into the alleged misconduct by the LEO. For unionized LEOs, proof of misconduct is by a preponderance of the evidence; for non-unionized LEOs, proof of misconduct may be covered by employer policies or applicable law. **If** the disciplining body determines there is proof of misconduct, the disciplining body proceeds to the next steps.

Step 2: The disciplining body fulfills any applicable procedural due process steps, often referred to as “*Loudermill*” or “pre-disciplinary” meeting. As a best practice, the disciplining

body's pre-disciplinary notice should include aggravating and mitigating factors known at that time. After completing the procedural due process procedure or, if no procedural due process applies, the disciplining body proceeds directly to step 3.

Step 3: If the misconduct is proven and covered by the LESC rules, the disciplining body identifies the mandatory or presumptive disciplinary action in the [Discipline Matrix](#) below.

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

Step 3a: For *mandatory disciplinary* action under LESC rules (for example, a finding of felony misconduct that results in termination under the [Discipline Matrix](#)), the disciplining body must impose the *prescribed* disciplinary action.

Step 3b: For *presumptive disciplinary* action under LESC rules, the disciplining body must impose the *presumptive* sanction, unless the disciplining body finds and documents that one or more of the [aggravating or mitigating factors](#) justifies increasing or reducing the presumptive disciplinary action.

A disciplining body cannot apply an [aggravating or mitigating factor](#) if the factor is already included in determining whether the misconduct occurred. For example, if "intent" is an element of the misconduct rule violation, intent cannot thereafter be applied as an aggravating factor.

If the disciplining body determines that a *mitigated* disciplinary action is justified, it may impose no less than the range of mitigated sanctions under LESC rules, but no more than the presumptive sanction.

If the disciplining body determines that an *aggravated* disciplinary action is justified, it may impose no greater than the range of aggravated sanctions in LESC rules, but no less than the presumptive sanction.

Step 4: The disciplining body imposes the disciplinary action and documents its reasoning, including its compliance with LESC rules and whether it found and applied [aggravating or mitigating factors](#) and the relative weight given to each factor.

For the imposition of disciplinary action for *non-unionized* LEOs, a disciplining body must comply with LESC rules and may have additional obligations when imposing discipline under employer rules and regulations, such as civil service commission rules.

For the imposition of disciplinary action for *unionized* LEOs, every disciplinary action is subject to the requirements of [ORS 243.808](#), including proof by a preponderance of the evidence that the LEO engaged in the alleged misconduct and that the disciplinary action taken against the LEO was with just cause. "Just cause" is defined in [ORS 236.350](#) and means "a cause

reasonably related to the public safety officer's ability to perform required work. The term includes a willful violation of reasonable work rules, regulations or written policies."

Additional Considerations for CBA Discipline Arbitrations For Unionized LEOs

Further, for unionized LEOs, disciplinary actions may be subject to grievance and arbitration procedures under CBAs.

Procedurally, selecting an arbitrator for disciplinary cases is governed by [ORS 243.808\(2\)](#), which requires the employer and union to request an arbitrator through the Oregon Employment Relations Board by following the process [here](#).

Substantively, the arbitrator is bound by [ORS 243.706](#) and [ORS 243.808-.812](#).

For single instances of misconduct, if an arbitrator determines that the disciplining body failed to prove by a preponderance of evidence: that the LEO engaged in the alleged misconduct; or that the disciplinary action was for just cause as defined in [ORS 236.350](#), then the arbitrator must rescind the disciplinary action.

For multiple instances of misconduct, if an arbitrator determines that the disciplining body failed to prove by a preponderance of evidence: that the LEO engaged in one or more of the instances of misconduct; or that the disciplinary action for one or more of the instances of misconduct was for just cause as defined in [ORS 236.350](#), **then** the arbitrator must rescind the disciplinary action imposed on those allegations of misconduct and refer the matter (versus "that disciplinary action" from Schuback) back to the disciplining body. ~~Disciplinary actions that are sustained for proof of misconduct and just cause proceed....~~ (Note: Karia struck through. See comment.)

If an arbitrator determines a disciplining body has met its burden of proof of misconduct and just cause, an arbitrator will also consider the reasonableness of the level of the discipline, including whether the level of discipline is appropriate. An arbitrator must uphold the disciplinary action unless the arbitrator finds that the disciplinary action was arbitrary and capricious under [ORS 243.808\(1\)](#). Further, the arbitrator may not order any disciplinary action that differs from that imposed by the disciplining body per [ORS 243.706\(3\)](#), **unless** the arbitrator finds that the imposed disciplinary action was not in accordance with the provisions of the LESC [Discipline Matrix](#).

For example, a disciplinary action may not be consistent with the LESC [Discipline Matrix](#) and/or may be arbitrary and capricious if the disciplining body fails to include a written explanation of the proof of misconduct, just cause, reasoning for the disciplinary action imposed, and the application and relative weight of [aggravating and mitigating factors](#) that were considered or not considered by the disciplining body when imposing a disciplinary action on a unionized LEO.

If the arbitrator finds that a disciplinary action is arbitrary and capricious, the disciplinary action imposed is rescinded and the arbitrator must refer **the** matter (versus

Schuback: “the disciplinary action”) back to the disciplining body. Similarly, in cases of multiple instances of misconduct, the arbitrator must refer those disciplinary action(s) found to be arbitrary and capricious back to the disciplining body.

Upon referral from the arbitrator, the disciplining body may, at its discretion, amend the disciplinary action. In such cases, if the union agrees with the disciplining body’s amended (or non-amended) disciplinary action, then the matter is concluded. If the union disagrees with the disciplining body’s amended or non-amended disciplinary action, then the union may return the matter to the same arbitrator who referred the matter back to the disciplining body. That same arbitrator retains jurisdiction over the continued arbitration proceeding by the union that challenges a disciplinary action imposed by the disciplining body after the referral by the arbitrator.

In addition, for termination cases, an arbitrator may not set aside or reduce the termination if doing so is inconsistent with the public interest in maintaining community trust, enforcing a higher standard of conduct for law enforcement officers, and ensuring an accountable, fair and just disciplinary process.

DRAFT

Discipline Matrix

SEXUAL ASSAULT (OAR 265-010-0001):

MISCONDUCT	MITIGATED	PRESUMPTIVE	AGGRAVATED
An act of sexual assault	<ul style="list-style-type: none"> • Demotion • Salary Reduction • Suspension Without Pay • Written Reprimand 	Termination	N/A

SEXUAL HARASSMENT (OAR 265-010-005):

MISCONDUCT	MITIGATED	PRESUMPTIVE	AGGRAVATED
Sexual harassment	Written Reprimand	<ul style="list-style-type: none"> • Demotion • Salary Reduction • Suspension Without Pay 	Termination

ASSAULT (OAR 265-010-0010):

MISCONDUCT	MITIGATED	PRESUMPTIVE	AGGRAVATED
An act of intentional assault without justification	<ul style="list-style-type: none"> • Demotion • Salary Reduction • Suspension Without Pay • Written Reprimand 	Termination	N/A

UNJUSTIFIED OR EXCESSIVE USE OF DEADLY FORCE THAT RESULTS IN DEATH OR SERIOUS PHYSICAL INJURY (OAR 265-010-0015):

MISCONDUCT	MITIGATED	MANDATED	AGGRAVATED
Unjustified or excessive use of deadly physical force by the officer that results in death or serious physical injury	N/A	Termination	N/A

UNJUSTIFIED OR EXCESSIVE USE OF PHYSICAL FORCE THAT RESULTS IN DEATH OR SERIOUS PHYSICAL INJURY (OAR 265-010-0015):

MISCONDUCT	MITIGATED	PRESUMPTIVE	AGGRAVATED
Unjustified or excessive use of physical force by the officer that results in death or serious physical injury	<ul style="list-style-type: none"> • Demotion • Salary Reduction • Suspension Without Pay • Written Reprimand 	Termination	N/A

CONDUCT THAT IS MOTIVATED BY OR BASED ON A REAL OR PERCEIVED FACTORS OF AN INDIVIDUAL'S RACE, ETHNICITY, NATIONAL ORIGIN, SEX GENDER IDENTITY, SEXUAL ORIENTATION, RELIGION, OR HOMELESSNESS. (OAR 265-101-0020):

MISCONDUCT	MITIGATED	PRESUMPTIVE	AGGRAVATED
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*	<ul style="list-style-type: none"> • Demotion • Salary Reduction • Suspension Without Pay 	Termination	N/A

*It is not misconduct 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.

ENGAGING IN MISCONDUCT DEMONSTRATING LACK OF GOOD MORAL CHARACTER (OAR 265-010-0025):

MISCONDUCT*	MITIGATED	MANDATED	AGGRAVATED
Conduct constituting: a felony under state or federal law; domestic violence: stalking: a drug-related offense, except for offenses involving use or possession of marijuana; a bias or hate crime under state or federal law; a sex crime; untruthfulness; or misuse of authority for financial gain.	N/A	Termination	N/A

* Proof of conviction of a crime based on the listed misconduct is conclusive evidence that the misconduct occurred.

USE OF CONTROLLED SUBSTANCE WHILE ON DUTY (OAR 265-010-0030):

MISCONDUCT	MITIGATED	PRESUMPTIVE	AGGRAVATED
Unlawfully using a controlled substance while on duty	<ul style="list-style-type: none"> • Demotion • Salary Reduction • Suspension Without Pay 	Termination	N/A

ALCOHOL IMPAIRMENT WHILE ON DUTY (OAR 265-010-0030):

MISCONDUCT	MITIGATED	PRESUMPTIVE	AGGRAVATED
Being impaired to a noticeable or perceptible degree due to the consumption of an alcoholic beverage while reporting to duty or while on duty. “Being impaired to a noticeable and perceptible degree” includes having a BAC greater than 0.02.	<ul style="list-style-type: none"> • Demotion • Salary Reduction • Suspension Without Pay • Written Reprimand 	Termination	N/A

DRAFT

Aggravating and Mitigating Factors

OAR 265-010-0035

Aggravating Factors:	Mitigating Factors:
Prior disciplinary history.	Positive employment history.
Delay in reporting.	Self-reported the violation
Intentional conduct.	Unintentional conduct.
Significant impact upon the agency's mission, reputation, or relationship with the community.	Limited impact upon the agency's mission, reputation, or relationship with the community.
Significant nature and extent of property damage or harm.	Limited nature and extent of property damage or harm.
Efforts to conceal or cover up conduct or behavior.	Attempt to ameliorate or correct the conduct or behavior.
Does not accept responsibility if misconduct is undisputed.	Promptly accepted responsibility.
Motivated by personal interest or gain	Motivated by public interest or wellbeing of others.
Failure to meet documented expectations.	No repeated or other sustained misconduct
Supervisory position.	Role of the officer (subordinate to supervisor on scene.
Failed or declined to attempt to de-escalate the encounter even though feasible to do so.	Attempted to de-escalate the encounter.
Low probability or limited potential for rehabilitation.	Potential for rehabilitation.
The nature of the event allowed time for deliberate reflection or action.	The nature of the event was unpredictable, volatile, or unfolded rapidly, not allowing time for deliberate action.
Victim's vulnerability.	Extraordinary circumstances or hardships that may be relevant.
The presence of training or experience that is germane to the incident.	The lack of training or experience that is germane to the incident.

Definitions (OAR 265-005-0001):

“Assault” has the meaning given that term in ORS 163.115.

“Civilian or community oversight board, agency or review body” has the meaning given that term in ORS 243.812.

“Controlled Substance” has the meaning given that term in ORS 475.005.

“Deadly physical force” has the meaning given that term in ORS 161.015.

“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.

“Disciplining body” means a law enforcement agency or, if applicable, a civilian or community oversight board, agency or review body.

“Domestic violence” has the meaning given that term in ORS 135.230.

“Exclusive representative” has the meaning given that term in ORS 243.650(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.

“Intentional” has the meaning given that term in ORS 161.085.

“Justification” means a justifiable use of physical or deadly physical force pursuant to ORS 161.205 to ORS 161.267.

“Just Cause” has the meaning given that term in ORS 236.350.

“Law enforcement agency” has the meaning given that term in ORS 131.930.

“Law enforcement officer” has the meaning given that term in ORS 131.930.

“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.

“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.

“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.

“Physical Force” has the meaning given that term in ORS 161.015.

“Physical Injury” has the meaning given that term in ORS 161.015.

“Serious Physical Injury” has the meaning given that term in ORS 161.015.

“Sexual assault” has the meaning given that term in ORS 243.317.

“Sex crime” has the meaning given that term in ORS 163A.005.

“Sexual Harassment” has the meaning given that term in OAR 839-005-0030.

“Stalking” means engaging in conduct constituting the crime of stalking in ORS 163.732.

“Untruthfulness” means being dishonest or untruthful in a manner that reflects adversely on the ability of a law enforcement officer to perform their official duties, which includes 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.

ORS and OAR References

[Rules](#) issued by the [Commission on Statewide Law Enforcement Standards of Conduct and Discipline \(LESC\)](#).

[HB 2930 \(2021\)](#), as codified in statute at [ORS 243.706, 243.808 – 243.812](#).

DRAFT