

LESC Standards – Discussion of Definitions

Sexual Assault

Sexual Assault is defined in ORS243.317: “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.”

Discussion (and decision to include written reprimands as a possible sanction) focused primarily on Workplace context:

Examples of Sexual Misconduct Below the Criminal Threshold (But Still Grounds for Employment Action):

These behaviors might not rise to the level of prosecutable **criminal sexual assault**, but they still violate workplace policies and ethical standards:

Unwanted Physical Contact Not Amounting to Criminal Assault

- Touching someone’s leg, back, or shoulders in a sexualized or suggestive manner without consent are examples, or a pinch or a smack on the behind
- Hugging or kissing a co-worker or subordinate without clear consent, especially if repeated or unwelcome.

Not criminal unless force, coercion, or specific body parts are involved, but would violate most harassment policies.

It is important to also keep non-workplace contexts in mind, too: sexual assault of a member of the public, and sexual assault that constitutes a sex crime, but does not result in prosecution or conviction.

Sexual Harassment

BOLI Chapter 839 -- Division 5 DISCRIMINATION 839-005-0030 Sexual Harassment in Employment

- (1) 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.
- (2) The standard for determining whether harassment based on an individual's sex is sufficiently severe or pervasive to create a hostile, intimidating or offensive working environment is whether a reasonable person in the circumstances of the complaining individual would so perceive it.

Note: this doesn't define potential sexual harassment outside the workplace context.

Assault 163.115 6(a)

- “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.

Use of Force (Physical and Deadly)

- **161.015 General definitions.** As used in chapter 743, Oregon Laws 1971, and ORS 166.635, unless the context requires otherwise:
 - (1) “Dangerous weapon” means any weapon, device, instrument, material or substance which under the circumstances in which it is used, attempted to be used or threatened to be used, is readily capable of causing death or serious physical injury.
 - (2) “Deadly weapon” means any instrument, article or substance specifically designed for and presently capable of causing death or serious physical injury.
 - (3) “Deadly physical force” means physical force that under the circumstances in which it is used is readily capable of causing death or serious physical injury.
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 - (6) “Physical force” includes, but is not limited to, the use of an electrical stun gun, tear gas or mace.
 - (7) “Physical injury” means impairment of physical condition or substantial pain.
 - (8) “Serious physical injury” means physical injury which creates a substantial risk of death or which causes serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ.

Force (part 2)

- We haven't been referencing this or including it in discussion, but it would apply:

- **161.233 Use of physical force by peace officer.** (1) A peace officer may use physical force upon another person only when it is objectively reasonable, under the totality of circumstances known to the peace officer, to believe:
 - (a) That the person poses an imminent threat of physical injury to the peace officer or to a third person; or
 - (b) That the use of physical force is necessary to:
 - (A) Make a lawful arrest when the peace officer has probable cause to believe the person has committed a crime; or
 - (B) Prevent the escape from custody of the person when the peace officer has probable cause to believe the person has committed a crime.
- (2) A peace officer may use physical force upon another person under this section only to the degree that the peace officer reasonably believes necessary to prevent physical injury under subsection (1)(a) of this section or to carry out a purpose described in subsection (1)(b) of this section.
- (3) Prior to using physical force upon another person, if the peace officer has a reasonable opportunity to do so, the peace officer shall:
 - (a) Consider alternatives such as verbal de-escalation, waiting or using other available resources and techniques if reasonable, safe and feasible; and
 - (b) Give a verbal warning to the person that physical force may be used and provide the person with a reasonable opportunity to comply. [2020 s.s.2 c.3 §7]
- **161.237 Use of physical force involving pressure on throat or neck by peace officer or corrections officer.** (1) Notwithstanding ORS 161.233, a peace officer or corrections officer is not justified in any circumstance in knowingly using physical force that impedes the normal breathing or circulation of the blood of another person by applying pressure on the throat or neck of the other person except in circumstances in which physical force is justified under ORS 161.209 and 161.215.
- (2) Notwithstanding ORS 161.233, it is not reasonable under any circumstance for a peace officer or corrections officer to knowingly use physical force that impedes the normal breathing or circulation of the blood of another person by applying pressure on the throat or neck of the other person except in circumstances in which physical force is justified under ORS 161.209 and 161.215.
- (3) As used in this section, "corrections officer" means a guard, peace officer or other official employed in a jail, prison or correctional facility, including a youth correction facility, who primarily performs the duty of custody, control or supervision of individuals charged with or convicted of a crime or otherwise confined under a court order. [2020 s.s.1 c.3 §2; 2020 s.s.2 c.3 §§1,10]
- **161.242 Use of deadly physical force by peace officer.** (1) A peace officer may use deadly physical force upon another person only when it is objectively reasonable, under the totality of circumstances known to the peace officer, to believe that the person poses an imminent threat of death or serious physical injury to the peace officer or to a third person and the use of deadly physical force is necessary to:
 - (a) Make a lawful arrest when the peace officer has probable cause to believe the person has committed a violent felony;
 - (b) Defend the peace officer or a third person from the imminent threat of death or serious physical injury; or
 - (c) Prevent the escape from custody of the person when the peace officer has probable cause to believe the person has committed a violent felony.
- (2) Prior to using deadly physical force upon another person, if the peace officer has a reasonable opportunity to do so, the peace officer shall:
 - (a) Consider alternatives such as verbal de-escalation, waiting, using other available resources and techniques if reasonable, safe and feasible, or using a lesser degree of force; and
 - (b) Give a verbal warning to the person that deadly physical force may be used and provide the person with a reasonable opportunity to comply.
- (3) Nothing in subsection (1) of this section constitutes justification for reckless or criminally negligent conduct by a peace officer constituting an offense against or with respect to innocent persons whom the peace officer is not seeking to arrest or retain in custody.
- (4) As used in this section, "violent felony" has the meaning given that term in ORS 419A.004. [2020 s.s.2 c.3 §8]

Bias/Profiling

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 (OAR 265-010-0020)

- 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.

Moral Character

Engaging in Misconduct demonstrating a lack of good moral character (OAR 265-010-0025)

“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.”

It includes 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

The mandatory sanction if termination

Use of Drugs/Alcohol on Duty

- Unlawfully using a controlled substance while on duty
- Being impaired to a noticeable or perceptible degree due to 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.

Untruthfulness/Deceit/dishonesty

LESC Rule definition

- “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.

DPSST definition in OAR 259-008-0290: (4)

Discretionary Grounds for Denial. The Department may deny an applicant’s certification based upon a finding that the applicant has a pre-employment criminal disposition, other than a conviction constituting mandatory grounds for denial as defined in [OAR 259-008-0300 \(Grounds for Denial, Revocation or Emergency Suspension of Public Safety Professional Certifications\)](#)(2), in which the criminal disposition or the underlying conduct include either or both of the following elements:

- **(a) Dishonesty.** Dishonesty includes intentional conduct that includes untruthfulness, dishonesty by admission or omission, deception, misrepresentation, falsification or reckless disregard for the truth;

(“Reckless disregard for the truth” did not come from DPSST workgroup members but from DOJ review. It was included in the rule revision versions moving forward and approved by the Board, but there are no minutes that capture any discussion on that addition.)