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The Congressional Accountability Act's Employment Discrimination Provisions

Before the Congressional Accountability Act of 1995 (CAA), federal legislative branch employees were largely exempt from the federal employment protections available to employees in the private sector, state and local governments, and the executive branch. The CAA applied much of the body of federal employment law to legislative branch employees, including the primary laws prohibiting employment discrimination. This In Focus briefly reviews the application of federal employment discrimination law to the legislative branch through the CAA. It does not address other laws applied to the legislature through the CAA, including those related to employee bargaining rights, family and medical leave, workplace safety, layoff protections, and disability accommodations for non-employees, among other things.

The CAA's Employment Discrimination Prohibitions

The federal employment discrimination laws the CAA applies to federal legislative branch employees include

- Title VII of the Civil Rights Act of 1964 (Title VII), prohibiting discrimination on the basis of race, color, religion, sex, or national origin;
- The Age Discrimination in Employment Act (ADEA), prohibiting discrimination on the basis of age (40+);
- Section 501 of the Rehabilitation Act (Section 501) and Title I of the Americans with Disabilities Act (ADA), prohibiting discrimination on the basis of disability and requiring reasonable accommodations; and
- The Uniformed Services Employment and Reemployment Rights Act (USERRA), prohibiting discrimination on the basis of a person's past, present, or intended uniformed service, among other requirements.

Certain later-passed employment discrimination laws cover legislative branch employees while adopting the CAA's enforcement mechanisms. These are

- The Genetic Information Nondiscrimination Act (GINA), prohibiting discrimination on the basis of genetic information or family medical history; and
- The Pregnant Workers Fairness Act (PWFA), requiring employers to provide reasonable accommodations for pregnancy, childbirth, and related medical conditions.

Generally, the CAA applies all of the substantive rights of these laws to federal legislative branch employees. That means these employees can bring the same kinds of

discrimination claims that are available to employees in other sectors, including disparate treatment and harassment claims and, where the underlying laws allow, disparate impact and reasonable accommodation claims. The CAA also provides broad protections against retaliation for employees who exercise their CAA rights. Courts and OCWR hearing officers adjudicating CAA claims apply precedent from the underlying antidiscrimination laws.

The CAA employment discrimination provisions cover House of Representatives and Senate employees, as well as employees in other legislative offices and agencies, including, for example, the U.S. Capitol Police (USCP), Architect of the Capitol (AOC), and the Congressional Budget Office (CBO). Covered employees include applicants for employment and former employees. For many employment discrimination claims, covered employees also include unpaid staff.

Federal employment discrimination law covers the Library of Congress (LOC), the Government Accountability Office (GAO), and the Government Publishing Office (GPO) differently than other legislative branch offices. Title VII, the ADA, and the ADEA directly cover employees in these agencies. These employees' rights under these laws are enforced through different administrative mechanisms than those available under the CAA. (LOC employees may elect to proceed under either the CAA or the underlying antidiscrimination law.)

The CAA contains a provision requiring Congress to consider how future employment-related laws should apply to the legislative branch. In committee reports on bills "relating to terms and conditions of employment," Congress is to explain how the bill applies to the legislative branch or why it does not. This provision is adopted as a rule of each house of Congress and can be changed in the same manner as other rules.

Enforcement and the Office of Congressional Workplace Rights

Before they can bring employment discrimination suits, most employees outside the legislative branch must first file claims with the Equal Employment Opportunity Commission (EEOC) or a state-level equivalent. (USERRA operates differently.) Rather than vest the EEOC with authority over claims by legislative branch employees, Congress created the Office of Congressional Workplace Rights (OCWR) (originally named the Office of Compliance) to administer and enforce the CAA.

To initiate enforcement, a legislative branch employee must file a claim with OCWR within 180 days of a violation. A

preliminary hearing officer appointed by OCWR conducts an initial review of the claim and submits a report to the claimant and employing office. Congressional ethics committees also receive reports for claims alleging harassment by a Member personally or a Member's retaliation for a harassment claim. If the hearing officer finds that the claim is viable, the claimant may then request a confidential hearing conducted by a merits hearing officer, who has authority to allow the parties to conduct discovery, hold a hearing (similar to a trial), issue a decision on the merits of the claim, and award damages and impose other remedies. If both parties agree, they may pursue confidential mediation through OCWR at any time before the merits hearing officer's written decision. Parties may appeal the merits hearing officer's decision to the Board of OCWR. Parties may then appeal a Board decision to the U.S. Court of Appeals for the Federal Circuit.

Alternatively, a claimant may choose to initiate a claim with OCWR and then file a suit in federal district court without going through the OCWR hearing process. A suit may be filed within 70 days of filing a claim with OCWR. If a claimant waits for the preliminary review phase to end and the hearing officer determines that the allegations do not pass preliminary review, the claimant has 90 days after receiving the report to file a suit in federal court.

In addition to its role in the claims process, OCWR issues procedural and, in limited cases, substantive regulations implementing parts of the CAA. OCWR may adopt procedural rules after affording Congress a notice and comment period. OCWR does not have authority to issue substantive regulations implementing most of the employment discrimination laws; USERRA is an exception. The CAA requires OCWR to issue three sets of substantive regulations with respect to USERRA: one governing the House of Representatives, one the Senate, and one for all other covered employees and employing offices. Regulations may be approved by the relevant house of Congress or, for those applying to other legislative branch offices, by a concurrent or joint resolution. OCWR last submitted its USERRA regulations for approval in 2023. Congress has not acted on these regulations.

OCWR also conducts workplace climate surveys; provides training and confidential advisory services to covered employees about their rights and remedies under the CAA; and publishes an annual report on the office's work, including statistics about the use of OCWR services and the types of CAA claims raised. The CAA instructs OCWR to publish a biennial report reviewing federal employment laws and regulations, among other things, and informing Congress of which provisions do not apply to the legislative branch and whether they should be made to apply.

Remedies

Legislative branch employees largely have access to the same remedies for employment discrimination as executive branch employees do. Remedies can include, depending on the law, equitable relief as the court deems appropriate, compensatory damages, backpay, and liquidated damages (as well as attorney's fees and costs). Legislative branch

employees, like other government employees, are not entitled to punitive damages.

Generally, awards and settlements are paid from a U.S. Treasury account established by Congress for such purposes (except for awards against GAO and GPO). Employing offices, other than House and Senate offices, must reimburse the account for payments on discrimination claims from funds available for operating expenses. Members of Congress individually must reimburse the account for certain awards or settlements of claims that a Member illegally harassed the claimant or retaliated against the claimant for making a harassment claim. After final disposition, OCWR must refer harassment claims against a Member or senior staffer to the relevant ethics committee.

The CAA requires OCWR to annually report payments resulting from employment discrimination claims. For calendar year 2025, not counting payments made the previous year and reimbursed in 2025, OCWR reported

- approximately \$257,000 in payments from offices outside the House of Representatives and Senate, including from the AOC, LOC, CBO, USCP, and OCWR itself;
- one payment of \$98,650 from a House of Representatives office; and
- no payments from Senate offices.

Considerations for Congress

Lawmakers periodically seek to amend discrimination protections for federal employees. In considering whether or how to amend the CAA, Congress could seek input from OCWR or look to recommendations in OCWR's biennial reports. Recent bills that would amend the CAA include H.R. 8126 (119th Congress), which would, among other things, require Members to reimburse the Treasury for damages and settlements resulting from any employment discrimination claim against them personally (rather than only for claims involving harassment as under current law).

Congress can also regulate legislative branch employment to some extent without passing a statute or amending the CAA. The House and Senate have substantial flexibility to establish the rules governing affairs in their own chambers. The House rules for the 119th Congress, for example, adopted a provision forbidding the Committee on House Administration from approving employment discrimination settlements alleging a violation by a Member personally unless the Member agrees to reimburse the Treasury. In 2018, the House adopted a resolution establishing an Office of Employee Advocacy to provide both "legal assistance" and "representation" to House employees in CAA administrative matters. The House and Senate ethics committees "retain full power" to exercise their authority, notwithstanding any provision of the CAA. The House and Senate could thus continue to address employment discrimination via their own, internal policies.

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