



PRACTICING EMPLOYMENT LAW IN THE LEGISLATIVE BRANCH UNDER THE CONGRESSIONAL ACCOUNTABILITY ACT

Workplace Rights in the Legislative Branch

In 1995, Congress passed the Congressional Accountability Act (CAA), which requires Congress and its agencies to follow many of the same employment, labor, accessibility, and safety and health laws that Congress had previously applied to private business and the rest of the federal government. Those laws include:

- Age Discrimination in Employment Act
- Americans with Disabilities Act
- Rehabilitation Act
- Employee Polygraph Protection Act
- Fair Labor Standards Act
- Family and Medical Leave Act
- Genetic Information Nondiscrimination Act
- Chapter 71 of the Federal Services Labor-Management Relations Act
- Occupational Safety and Health Act
- Veterans Employment Opportunities Act
- Uniformed Services Employment and Reemployment Rights Act
- Title VII of the Civil Rights Act
- Worker Adjustment and Retraining Notification Act
- Anti-retaliation provisions (Section 207 of the CAA provides that an employer may not intimidate, retaliate, or discriminate against employees who exercise their rights under the CAA).

About the Congressional Workplace

Congress employs over 30,000 employees nationwide and is one of the largest employers in the Washington, DC metro area. The CAA protects employees of the Legislative Branch, including employees of the House of Representatives and the Senate (staff located in Washington, DC, state and district offices); the Congressional Budget Office; the Office of the Architect of the Capitol; the Office of the Attending Physician; the Office of Compliance (OOC); the Office of Congressional Accessibility Services; and the United States Capitol Police.¹ The CAA protects both current employees and job applicants; in certain instances, former employees and members of the public may also be covered.

The OOC's annual report – "State of the Congressional Workplace" – provides additional information about the types of claims that Congressional employees have made. The most common claims are discrimination, harassment, and retaliation.

¹ Certain provisions of the CAA also apply to the Government Accountability Office and to the Library of Congress.

Role of the Office of Compliance

Established by the CAA, the OOC administers a confidential alternative dispute resolution (ADR) and hearing process for employment law claims brought by Congressional employees against employing offices in the Legislative Branch. In addition, the OOC educates employees and employing offices about their rights and responsibilities under the CAA. The General Counsel of the OOC investigates and enforces the CAA provisions relating to disability access, occupational safety and health, and unfair labor practices. The OOC is a non-partisan, independent Legislative Branch agency overseen by a five-member board of directors, which serves as an appellate body for appeals from hearing officer decisions.

The OOC does not prosecute or investigate claims of discrimination or violations of fair labor standards, like the Equal Employment Opportunity Commission (EEOC) or Department of Labor.

Dispute Resolution of Employment Claims

The ADR process requires employees to complete confidential counseling and mediation before litigating their claims. If mediation is unsuccessful, the employee may choose to either file an administrative complaint to obtain a confidential hearing before an appointed, independent OOC hearing officer or file a civil suit in a United States District Court. Appeals from hearing officer decisions are decided by the OOC Board of Directors and are subject to review by the United State Court of Appeals for the Federal Circuit. If a civil suit is filed in a federal district court, the suit and any appeals will proceed under the rules that normally apply to civil actions in federal court.

At any time during the ADR process, an employee may designate (at the option and expense of the employee) a representative, such as an attorney, to represent him or her in the matter. Depending on the circumstances, the OOC will process claims brought by district or state office staff by utilizing services in the locality or by utilizing services available from its Washington, DC office.

Practicing Before the OOC

All parties, mediators, and hearing officers participating in proceedings before the OOC must follow the Procedural Rules of the Office of Compliance. The rules contain provisions and procedures about confidentiality, counseling, mediation, the filing of complaints, discovery, motions practice, hearings, and appeals, among others. Many of these rules are similar to civil procedure rules in federal and state courts, but they also differ substantially in other respects.

The OOC counseling and mediation processes differ substantially from the EEOC's processes. Counseling and mediation are both mandatory under the CAA. Congressional employees do not file charges of discrimination like those filed with the EEOC and employing offices do not file position statements. In addition, there is no investigation of claims of discrimination. Consequently, records of investigation are not compiled and do not exist.

An employee must file a formal request for counseling within 180 days from the date of the alleged violation. During the counseling period, the employing office is not notified that the employee has filed a request for counseling unless the employee chooses to do so. The counseling period is designed to allow the employee to preserve his or her claim while allowing a reasonable period of time to explore and determine whether to proceed with the claim. An OOC counselor will discuss an employee's concerns and inform the employee of his or her rights under the CAA. The counselor does not serve as a representative or advocate, only as a guide to help an individual understand how the law works and to clarify facts and issues. The employing office is only notified of the claim if the employee decides to proceed to mediation or chooses to notify the employing office.

Generally, adjudicatory processes at the OOC are speedier and less expensive than federal court. Claims that proceed to a hearing before the OOC are also confidential and heard by an appointed independent hearing officer. Depending on the law and the facts of the case, the hearing officer may order monetary awards and other appropriate remedies, such as reinstatement, promotion, or back pay. Attorney's fees, expert fees, and certain other costs may be awarded.

There is a \$300,000 statutory cap on violations of employment laws applied by the CAA. There is no statutory cap on claims of intimidation, reprisal, or retaliation claims.

Any settlement entered into by the parties is subject to approval by the Executive Director of the OOC.

The OOC brochures "Workplace Rights for Congressional Employees" and "Dispute Resolution: Asserting Workplace Rights in the Legislative Branch" will answer most questions the OOC receives from practitioners about the ADR process. For additional information, please visit www.compliance.gov or call the OOC directly at (202) 724-9250. For placement on the OOC's attorney referral list, please contact Barbara J. Sapin, Deputy Executive Director, at barbara.sapin@compliance.gov or call (202) 724-9250.