



## Workplace Rights

**In the Legislative Branch**

### **Office of Congressional Workplace Rights**

Promoting a legislative branch free of discrimination and harassment, safety and health hazards, accessibility barriers, and employment and labor law violations.

# What is the Congressional Accountability Act?

The Congressional Accountability Act of 1995 (CAA), 2 U.S.C. §§ 1301 et seq., applies employment, labor, safety and health, and accessibility laws to the legislative branch, including:

- Title VII of the Civil Rights Act of 1964
- Rehabilitation Act
- Americans with Disabilities Act (ADA)
- Age Discrimination in Employment Act (ADEA)
- Family and Medical Leave Act (FMLA)
- Fair Labor Standards Act (FLSA)
- Employee Polygraph Protection Act (EPPA)
- Worker Adjustment and Retraining Notification Act (WARN Act)
- Uniformed Services Employment and Reemployment Rights Act (USERRA)
- Veterans Employment Opportunities Act (VEOA)
- Occupational Safety and Health Act (OSHA Act)
- Federal Service Labor-Management Relations Statute
- Genetic Information Nondiscrimination Act

The CAA provides legislative branch employees with many of the same protections that apply to employees in the private sector and the executive branch of the federal government.

All allegations of reprisal, intimidation, or discrimination in retaliation for asserting workplace rights under the CAA must be initiated by filing a claim with the Office of Congressional Workplace Rights (OCWR).



## Who is covered by the CAA?

The CAA, as amended by the CAA Reform Act of 2018, protects legislative branch staff in the following offices:

- U.S. House of Representatives
- U.S. Senate
- Office of Congressional Accessibility Services
- United States Capitol Police
- Congressional Budget Office
- Office of the Architect of the Capitol
- Office of Attending Physician
- Office of Congressional Workplace Rights
- Library of Congress
- Office of Technology Assessment
- Stennis Center for Public Service
- U.S.-China Economic and Security Review Commission
- Congressional-Executive Commission on China
- Commission on Security and Cooperation in Europe (U.S. Helsinki Commission)

In certain instances, unpaid staff, job applicants, and former employees are protected by the CAA. Some CAA provisions apply to Government Accountability Office employees, and the accessibility laws apply to members of the public with disabilities.

# What Workplace Rights Do Legislative Branch Employees Have under the CAA?

## Protection from Unlawful Discrimination and Harassment

Section 201 of the CAA (2 U.S.C. § 1311) applies sections of the following laws to covered employees: Title VII of the Civil Rights Act of 1964, the Rehabilitation Act of 1973, Title I of the Americans with Disabilities Act of 1990, and the Age Discrimination in Employment Act of 1967. These provisions require that all personnel actions (such as hiring, termination, promotion, pay, benefits, reassignment, and other actions affecting the terms and conditions of employment) occur free from unlawful discrimination and harassment.

- Negative personnel actions involving covered employees must be made free from discrimination based on race, color, religion, sex, national origin, age, and disability.
- Employees also are protected from harassment based on race, color, religion, sex, national origin, age, and disability.

## Family and Medical Leave

Section 202 of the CAA (2 U.S.C. § 1312) applies the benefits of the Family and Medical Leave Act of 1993 (FMLA) to covered employees. Eligible employees are entitled to take up to 12 weeks of unpaid, job-protected leave in a 12-month period for certain family and medical reasons.

- Employees on leave continue to receive health insurance benefits and should be restored to their former or equivalent position at the conclusion of leave.
- Leave may be taken for the birth of a child or the placement of a child with a covered employee for adoption or foster care, a covered employee's serious health condition, or the care of a family member with a serious health condition.
- Employees may be eligible for up to 12 weeks of paid parental leave in connection with the birth of a child or the placement of a child with a covered employee for adoption or foster care occurring on or after October 1, 2020.
- Leave may be taken all at once, in separate blocks of time, or on a reduced work schedule.
- Certain situations related to military service and/or deployment may qualify for FMLA leave.



## Fair Labor Standards

Section 203 of the CAA (2 U.S.C. § 1313) applies provisions of the Fair Labor Standards Act of 1938 (FLSA) to covered employees. These rights and protections require the payment of a minimum wage and overtime compensation to nonexempt employees and restrict child labor. In addition, discrimination in wages paid to men and women is prohibited, and employers must provide reasonable break times and a private place for employees for lactation purposes.

- Nonexempt employees are entitled to a minimum wage and compensation for overtime work.
- Employees whose duties meet defined criteria may be exempt from the overtime wage and hour requirements.

## Genetic Information Nondiscrimination and Privacy

Title II of the Genetic Information Nondiscrimination Act of 2008 (GINA) protects employees covered under the CAA and prohibits using employees' genetic information to discriminate against them in personnel actions such as hiring, discharge, payment, or promotion.

- Information that is protected by GINA includes, but is not limited to, genetic information and testing of an individual employee or an employee's family member.
- Family medical history is included in the definition of "genetic information."
- Harassment because of an employee's genetic information is prohibited.





## Uniformed Services Rights and Protections

Section 206 of the CAA (2 U.S.C. § 1316) applies the rights and protections of the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) to covered employees. The law protects past and present service members from discrimination and retaliation and provides them with particular benefits and reemployment rights.

- The term “uniformed services” under USERRA covers all categories of military training and service, including duty performed on a voluntary or involuntary basis in times of peace or war. The term also includes the U.S. Armed Forces (active and reserve), the National Guard, active components of the National Disaster Medical System, and the Commissioned Corps of the Public Health Service.
- Denying initial employment, reemployment, retention in employment, promotion, or any benefit of employment on the basis of uniformed service is prohibited under USERRA.

## Notification of Office Closings or Mass Layoffs

Section 205 of the CAA (2 U.S.C. § 1315) applies the rights and protections of the Worker Adjustment and Retraining Notification Act (WARN Act) to covered employees. It requires that employees within offices of a particular size be notified of an office closing or of a mass layoff at least 60 days in advance of the event.

- Notice of a closing or a mass layoff must be provided to either the affected employees or to their representatives (for example, a labor union) and must be in writing.
- Special provisions of the WARN Act apply to temporary employees.

## Veterans' Employment Opportunities

The CAA contains a provision (2 U.S.C. § 1316a) applying Section 4(c) of the Veterans Employment Opportunities Act of 1998 (VEOA) to the legislative branch. This provision gives certain veterans enhanced access to job opportunities and establishes a redress system for preference-eligible veterans in the event that their veterans' preference rights are violated.

- Veterans and their relatives who are considered "preference eligible" may receive some preference in an initial hiring decision or higher retention standing in the event of a layoff.
- Veterans' preference rights under VEOA do not guarantee veterans a job or give them preference in internal employing office actions.

## Polygraph Testing Protections

Section 204 of the CAA (2 U.S.C. § 1314) applies provisions of the Employee Polygraph Protection Act of 1988 to the legislative branch. With some exceptions, these provisions prohibit employing offices from requiring or requesting that a lie detector test be taken and from firing or discriminating against an employee based on the results of a lie detector test or for refusing to take a test.

- Both current and prospective employees are protected.
- Some exceptions apply; United States Capitol Police employees and those who work with top secret intelligence information may be required to take a lie detector test.

## Reprisal or Intimidation Prohibited for Exercising Workplace Rights

Section 207 of the CAA (2 U.S.C. § 1317) prohibits an employing office from intimidating, retaliating, or discriminating against employees who exercise their rights under the CAA. Protected activities include opposing practices made unlawful by the CAA; initiating proceedings; filing a claim; or providing testimony, assisting, or participating in a hearing or other proceeding brought under the CAA.



## Access to Public Services and Accommodations

Section 210 of the CAA (2 U.S.C. § 1331) applies Titles II and III of the Americans with Disabilities Act of 1990 (ADA), which protect members of the public who are qualified individuals with disabilities from discrimination that denies them access to public services, programs, activities, or places of public accommodation in legislative branch facilities.

- The law may require offices to provide an accommodation for someone with a disability.
- The OCWR's Office of the General Counsel investigates charges of ADA public access violations filed by members of the public with disabilities.
- Access requirements, in general, are limited to public spaces.

## Hazard-free Workplaces

Section 215 of the CAA (2 U.S.C. § 1341) applies the rights and protections of the Occupational Safety and Health Act of 1970 (OSHA) to the legislative branch. Under the OSHA provisions, employing offices must comply with applicable safety standards and provide employees with a workplace free of recognized hazards that might cause death or serious injury. Both employing offices and employees must comply with these workplace safety requirements.

- The OCWR conducts biennial inspections of legislative branch facilities for compliance with occupational safety and health regulations, reports the inspection findings to Congressional leadership and the Architect of the Capitol, and monitors the employing offices' abatement of identified hazards.
- The OCWR's Office of the General Counsel investigates alleged violations of workplace safety standards.



## Collective Bargaining and Unionization

Section 220 of the CAA (2 U.S.C. § 1351) applies provisions of the Federal Service Labor-Management Relations Statute, which protects the rights of certain legislative branch employees to form, join, or assist a labor organization, or to refrain from such activity. Once a labor organization becomes the exclusive bargaining representative of employees, an employing office must bargain in good faith over the terms and conditions of employment.

- Limited categories of legislative branch employees are permitted to unionize.
- Employees vote to approve the selection of a labor organization as their representative.
- Legislative branch employees are not permitted to strike.

## Redress for CAA Violations

Employees may be entitled to remedies for violations of the CAA, which may include monetary awards, attorneys' fees, costs, reinstatement, promotion, or back pay. No civil penalties or punitive damages may be awarded for any claims under the CAA.



# The Dispute Resolution Process

The CAA establishes an administrative dispute resolution (ADR) process, administered by the OCWR, to resolve disputes for alleged violations under 2 U.S.C. §§ 1311-1317 and GINA.\*

Once a claim has been timely filed with the OCWR, the claimant may proceed through the OCWR's ADR process or file a civil suit in federal court.

- Confidential advising is available at no cost to covered employees seeking information, advice, and/or assistance with drafting claims.
- A claim alleging a violation of the CAA must be filed with the OCWR within **180 days** of the alleged violation.
- Mediation is available upon request and by agreement of the parties.
- Once a claim is filed with the OCWR, it is submitted to a hearing officer for preliminary review.
- If a claim passes a preliminary review by a hearing officer, then an employee may either pursue an administrative hearing process with the OCWR or file a civil suit in federal court.



- The OCWR's administrative hearing process offers some advantages over federal court litigation, including faster resolution, greater confidentiality, fewer evidentiary restrictions, and lower expenses. In addition, the OCWR offers an independent review of the claim and affords the same remedies that a court can provide.
- Once a hearing has been requested on a claim, the matter may not also be filed in federal court. However, a claim that does not pass preliminary review may only be filed in federal court.
- At any time during the ADR process, employees may designate, at their own expense, an attorney or other individual or entity to represent them in the matter.\*\*

The CAA requires that the OCWR provide covered employees working outside the Washington, D.C. area with equitable access to its resources and services. To facilitate access for out-of-area employees, the OCWR uses various tools, including real-time audiovisual communication.

\*Requests for inspection under the OSHA Act, charges filed under Titles II and III of the ADA (public access), and labor-management relations disputes are resolved through separate processes within the OCWR, also described in this brochure.

\*\*Employees of the House of Representatives may also contact the Office of Employee Advocacy to request representation.



# Office of the General Counsel

## Promoting Occupational Safety and Health

The OCWR's Office of the General Counsel inspects legislative branch workplaces biennially and provides reports to Congressional leadership and the Architect of the Capitol.

To report suspected unsafe working conditions, covered employees may file a *Request for Safety and Health Inspection of Employing Office* with the Office of the General Counsel. Once the request is filed, the Office of the General Counsel conducts an investigation to determine whether applicable standards or the OSHAct's General Duty Clause have been violated.

When an investigation reveals a workplace hazard, the OCWR's Office of the General Counsel notifies the responsible employing office or offices, which must take appropriate action to correct the hazardous condition. The General Counsel is authorized to issue citations and file complaints to enforce compliance with the CAA.



## Ensuring Access for Individuals with Disabilities

Legislative branch facilities must be accessible to the public in accordance with the public services and accommodations provisions of Titles II and III of the ADA. The OCWR's Office of the General Counsel conducts biennial inspections of Member offices and other public areas on Capitol Hill to identify barriers to access, reports its findings to Congressional leadership and the Architect of the Capitol, and ensures that the responsible employing offices work to remove the barriers and improve access for individuals with disabilities.

Members of the public with disabilities who have encountered barriers to access legislative branch services, programs, or accommodations may file a *Request for ADA Inspection*. Once the request is received, the OCWR's Office of the General Counsel conducts an investigation and works with the responsible employing office to ensure that any violations are corrected. The General Counsel may request mediation between the individual and the employing office or file an administrative complaint against the employing office if other attempts at resolution have been unsuccessful.

Covered employees alleging employment discrimination based on disability follow the same ADR process as those alleging other types of discrimination under 2 U.S.C. § 1311.

## Administering Labor-Management Relations in the Legislative Branch

The CAA grants some legislative branch employees\* the right to join a labor organization for the purpose of collective bargaining under the Federal Service Labor-Management Relations Statute. The CAA protects employees' rights to form, join, or assist a labor organization without fear of penalty or reprisal. The law also protects those who choose not to join or participate in a labor organization.

The OCWR Board of Directors has the authority to issue final decisions on union representation and election issues, negotiability appeals, collective bargaining impasses, questions of arbitrability, and exceptions to an arbitrator's award. The Board also serves as the appellate body that issues decisions on unfair labor practice (ULP) complaints filed with the OCWR. The OCWR's Office of the General Counsel investigates ULP allegations and prosecutes ULP complaints before a hearing officer and the OCWR Board of Directors.

\*Not all legislative branch employees are covered by the Federal Service Labor-Management Relations Statute.



## About the OCWR

The OCWR is an independent, nonpartisan legislative branch office established to administer and enforce the Congressional Accountability Act (CAA).

### What We Do

- Administer and ensure the integrity of an administrative dispute resolution program to resolve workplace claims arising under the CAA
- Investigate, enforce, and resolve matters concerning safety and health, public access, and labor-management laws applied to the legislative branch
- Carry out education and outreach programs for Members of Congress and legislative branch employees concerning their workplace rights and responsibilities
- Advise Congress on whether provisions of law relating to employment should be made applicable to the legislative branch



# Notes



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