

An analysis of federal workplace rights, safety and health, and accessibility laws and regulations that should be made applicable to Congress and its agencies

RECOMMENDATIONS FOR IMPROVEMENTS TO THE

# CONGRESSIONAL ACCOUNTABILITY ACT

DECEMBER 2016

Office of Compliance—Board of Directors Biennial Report  
required by §102(b) of the Congressional Accountability Act  
issued at the conclusion of the 114<sup>th</sup> Congress (2015–2016)  
for consideration by the 115<sup>th</sup> Congress (2017–2018)







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## STATEMENT FROM

# The Board of Directors

The Office of Compliance (OOC) officially opened its doors on January 23, 1996. This year marked two decades that the OOC has been advancing workplace rights, safety and health, and accessibility for workers and visitors on Capitol Hill as envisioned in the Congressional Accountability Act of 1995 (CAA). That landmark legislation was a promise by Congress that it would hold itself accountable to the same federal workplace and accessibility laws that it requires of private sector employers and executive branch agencies.

The CAA was crafted to provide for ongoing review of the workplace laws that apply to Congress. Section 102(b) of the CAA tasks the Board of Directors of the OOC to do just that. Thus, every Congress, the Board reports on:

*whether or to what degree [provisions of Federal law (including regulations) relating to (A) the terms and conditions of employment (including hiring, promotion, demotion, termination, salary, wages, overtime compensation, benefits, work assignments or reassignments, grievance and disciplinary procedures, protection from discrimination in personnel actions, occupational health and safety, and family and medical and other leave) of employees; and (B) access to public services and accommodations]...are applicable or inapplicable to the legislative branch, and (2B) with respect to provisions inapplicable to the legislative branch, whether such provisions should be made applicable to the legislative branch.*

Today, the Office of Compliance enforces 13 federal laws relating to workers' rights, safety and health, and public access to programs and accommodations for individuals with disabilities. The key recommendations of this biennial report to the 115<sup>th</sup> Congress, if adopted, would go a long way toward closing the gap in those current protections for legislative branch employees. As described in more detail in this Report, the Board is making four recommendations—

1. *Congress should approve the regulations that have been carefully considered and adopted by this Board to implement the Family and Medical Leave Act (FMLA), the Titles II and III of the Americans with Disabilities Act (ADA), and the Uniformed Services Employment and Reemployment Rights Act (USERRA) in the legislative branch.*<sup>1</sup>

When an employee of the legislative branch or their loved one experiences a serious health condition that requires time off from work, the stress from worrying about keeping their job may add to an already difficult situation. The Family and Medical Leave Act (FMLA) was passed in 1993 in response to this concern. Clear regulations are necessary to improve communication between employees, employing offices, and health care providers and to make the law operate more smoothly, as the law itself does not identify the means for employees to communicate their FMLA requests and does not outline requirements

<sup>1</sup> The FMLA, Titles II and III of the ADA, and USERRA are incorporated in the CAA at Sections 202, 210, and 206, respectively.

for granting leave. The Board-adopted regulations ensure that same-sex spouses are recognized under the FMLA, in accordance with Supreme Court rulings, and further extend important protections for military caregivers and service members.

Titles II and III of the Americans with Disabilities Act help individuals with disabilities gain access to Capitol Hill and public programs through mandated barrier removals and reasonable accommodation. The Department of Justice issued new standards and regulations in 2010 that differ substantially from the 1991 standards and regulations. The current OOC regulations pending before Congress are now obsolete and must be updated. The Board's adopted regulations will avoid costly construction and contracting errors that result when there is uncertainty or ambiguity regarding what standards apply, and will improve access to Capitol Hill for visitors and employees with disabilities.

USERRA, as incorporated in the CAA, guarantees an employee returning from military service or training the right to be reemployed at their former job (or as nearly comparable a job as possible) with the same benefits. USERRA also ensures that an applicant or employee is not subjected to discrimination based on their military service. The Board of Directors transmitted to Congress its adopted USERRA regulations on December 3, 2008 and identified "good cause" to modify the executive branch regulations to implement more effectively the rights and protections for veterans as applied to the Senate, the House of Representatives, and the other employing offices. These rules are necessary to commit to our nation's veterans and to efficiently administer the law subject to the many rules and exceptions outlined in the regulations.

Approving the three sets of Board-adopted regulations outlined above would not only signify a commitment to the laws of the CAA—which passed in 1995 with nearly unanimous, bi-cameral, and bipartisan support—but would further help legislative branch managers effectively implement the laws' protections and benefits on behalf of the workforce.

2. *Congress should increase efforts to educate and train managers and employees on the anti-discrimination laws incorporated in the CAA*

*and mandate training for all newly hired legislative branch employees.*

Unlike in the executive branch, there is no current obligation on the part of Congress to inform or train legislative branch employees on their rights and responsibilities under anti-discrimination laws that apply to them under the CAA. Additionally, the law does not provide managers with clear instructions or rules to follow when granting requests. Training for new employees on workplace rights is essential for all employees starting a career in any branch of government or the private sector. The benefits of required and regular training include staff retention and resultant success for an employing office. Failing to educate and update employees on workplace behaviors and rights increases the risk of legal violations that could lead to costly and disruptive litigation. Additionally, many employees of the legislative branch, especially Member office staff, are entering the workforce for the first time. Enhancing their understanding of how federal workplace laws contribute to a fair, safe, and accessible workplace will be invaluable as they become the employers and leaders of the future.

3. *Congress should provide whistleblower protection to the legislative branch to safeguard workers against retaliation for reporting violations of laws, rules, or regulations, gross mismanagement, gross waste of funds, abuse of authority, or a substantial and specific danger to public health or safety.*

Civil service law provides broad protection to "whistleblowers" in the executive branch, but these provisions do not apply to the legislative branch. Employees subject to these whistleblower provisions are generally protected against retaliation for disclosing any information the employee reasonably believes evidences a violation of law or regulation, gross mismanagement or abuse of authority, or substantial danger to public health or safety. (In the private sector, whistleblowers also are often protected by provisions of specific federal laws.) The Office has received a number of inquiries from congressional employees concerned about the lack of whistleblower protections. The absence of specific statutory protection such as that provided under 5 U.S.C. § 2302(b)(8) chills the disclosure of such information. Granting "whistleblower" protection could significantly improve the rights and protections afforded

to legislative-branch employees in an area fundamental to the institutional integrity of the legislative branch by uncovering waste and fraud and safeguarding the budget.

4. *Congress should apply the Wounded Warriors Federal Leave Act of 2015 to the legislative branch.*

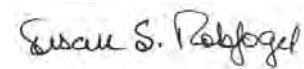
The 114<sup>th</sup> Congress collaborated on a bipartisan effort to support wounded warriors who seek federal employment opportunities. The Wounded Warrior Federal Leave Act signed into law in late 2015 encourages veterans with a 30% disability to apply for a job in the federal service with a promise that on day one of their appointment they will be entitled to 104 hours of advanced "wounded warrior leave" to seek medical attention for their disabilities without fear of losing pay or having to skip doctor's appointments. We believe that Capitol Hill and district offices would benefit from the services of wounded warriors and that the same amount of leave should be advanced to new employees of the legislative branch as is afforded to executive branch staff.

The Board welcomes an opportunity to further discuss these recommendations and asks for careful consideration of the requests by the 115<sup>th</sup> Congress.

Sincerely,



Barbara L. Camens, Chair



Susan S. Robfogel



Barbara Childs Wallace



Roberta L. Holzwarth



Alan V. Friedman

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# THE CONGRESSIONAL WORKPLACE AND THE Congressional Accountability Act

The Congressional Accountability Act of 1995 (CAA) applies private sector and executive branch workplace rights, safety and health, and public access laws to Congress and its agencies and provides the legal process to resolve alleged violations of the CAA through the Office of Compliance (OOC). The CAA protects over 30,000 employees of the legislative branch nationwide including state and district offices. Under certain circumstances, job applicants and former employees are protected. The CAA also provides protections and legal rights for members of the public with disabilities who are entitled to access to public accommodations and services in the legislative branch.

## CONGRESSIONAL WORKPLACES COVERED BY THE CAA

- House of Representatives
- Senate
- Congressional Budget Office
- Government Accountability Office\*
- Library of Congress\*
- Office of the Architect of the Capitol
- Office of the Attending Physician
- Office of Compliance
- Office of Congressional Accessibility Services
- United States Capitol Police

*\* Certain provisions of the CAA may not apply to the Government Accountability Office and Library of Congress; however, employees of those agencies may have similar legal rights under different statutory provisions and procedures.*

**The CAA protects over 30,000 employees of the legislative branch nationwide including state and district offices.**

## LAWS APPLIED TO THE CONGRESSIONAL WORKPLACE BY THE CAA:

<b>Section 201 of the CAA</b>	No Harassment or Discrimination	Prohibits harassment and discrimination in personnel actions based on race, national origin, color, sex, religion, age, or disability. Laws applied: Title VII of the Civil Rights Act, Age Discrimination in Employment Act (ADEA), Rehabilitation Act of 1973, Title I of the Americans with Disabilities Act (ADA), Americans with Disabilities Act Amendments Act of 2008 (ADAA)
<b>Section 202 of the CAA</b>	Family and Medical Leave	Provides leave rights and protections for certain family and medical reasons. Law applied: Family and Medical Leave Act (FMLA)
<b>Section 203 of the CAA</b>	Fair Labor Standards	Requires the payment of minimum wage and overtime compensation to nonexempt employees, restricts child labor, and prohibits sex discrimination in wages paid to men and women. Law applied: Fair Labor Standards Act (FLSA)
<b>Section 204 of the CAA</b>	Polygraph Testing Protections	With some exceptions, prohibits requiring or requesting that lie detector tests be taken; using, accepting, or inquiring about the results of a lie detector test; or firing or discriminating against an employee based on the results of a lie detector test or refusing to take a test. Law applied: Employee Polygraph Protection Act (EPPA)
<b>Section 205 of the CAA</b>	Notification of Office Closing or Mass Layoffs	Under certain circumstances, requires that employees be notified of an office closing or of a mass layoff at least sixty days in advance of the event. Law applied: Worker Adjustment and Retraining Notification Act (WARN)
<b>Section 206 of the CAA</b>	Uniformed Services Rights and Protections	Protects employees who are performing service in the uniformed services from discrimination and provides certain benefits and reemployment rights. Law applied: Uniformed Services Employment and Reemployment Rights Act (USERRA)
<b>Section 207 of the CAA</b>	Prohibition of Reprisal or Intimidation for Exercising Workplace Rights	Prohibits employing offices from intimidating, retaliating, or discriminating against employees who exercise their rights, as applied by the CAA.
<b>Section 210 of the CAA</b>	Access to Public Services and Accommodations	Protects members of the public who are qualified individuals with disabilities from discrimination with regard to access to public services, programs, activities, or places of public accommodation in legislative branch agencies. Law applied: Titles II and III of the Americans with Disabilities Act (ADA)
<b>Section 215 of the CAA</b>	Hazard-Free Workplaces	Requires that all workplaces be free of recognized hazards that might cause death or serious injury. Law applied: Occupational Safety and Health Act (OSHAAct)
<b>Section 220 of the CAA</b>	Collective Bargaining and Unionization	Protects the rights of certain legislative branch employees to form, join, or assist a labor organization, or to refrain from such activity. Law applied: chapter 71 of Title 5
<b>Genetic Information Nondiscrimination Act (GINA)</b>	Genetic Information Nondiscrimination & Privacy	Prohibits the use of an employee's genetic information as a basis for discrimination in personnel actions.
<b>Veterans' Employment Opportunities Act (VEOA)</b>	Veterans' Employment Opportunities	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.

## KEY RECOMMENDATIONS

# By the Board of Directors

This table provides a brief summary of the key recommendations by the Board of Directors of the Office of Compliance regarding the federal laws and regulations that currently do not apply to Congress, but do apply to private sector and/or federal executive branch employers.

WHICH REGULATIONS HAVE NOT BEEN APPROVED BY CONGRESS?	WHAT IS THE PURPOSE OF THE REGULATION?
<b>FMLA</b>	<ul style="list-style-type: none"> <li>• Implement the federal law that provides twelve weeks of leave without loss of job for specified family and medical reasons.</li> <li>• Grants enhanced military-caregiver leave, and ensures that same-sex spouses are granted FMLA protections in accordance with Supreme Court law.</li> </ul>
<b>ADA</b>	<ul style="list-style-type: none"> <li>• Implements federal law that provides individuals with disabilities access to public services, programs, activities, or places of public accommodation in the legislative branch and ensures pre-construction access.</li> </ul>
<b>USERRA</b>	<ul style="list-style-type: none"> <li>• Implements the federal law that protects employees who are performing service in the uniform services from discrimination and provides to them certain reemployment rights.</li> </ul>
WHICH LAW DOES NOT APPLY TO THE LEGISLATIVE BRANCH?	WHAT IS THE PURPOSE OF THE LAW?
<b>5 U.S.C. § 2301 (No FEAR Act)</b>	<ul style="list-style-type: none"> <li>• Requires that federal agencies be accountable for violations of antidiscrimination and whistleblower protection laws.</li> <li>• Requires that agencies inform current employees, former employees, and applicants for employment of the rights and protections available under federal antidiscrimination, whistleblower protection, and retaliation laws.</li> </ul>
<b>Whistleblower Protection Act of 1989 and Whistleblower Protection Enhancement Act of 2012</b>	<ul style="list-style-type: none"> <li>• Protects whistleblowers who disclose violations of laws, rules or regulations, gross mismanagement, gross waste of funds, abuses of authority, or substantial and specific dangers to public health.</li> </ul>
<b>Wounded Warriors Federal Leave Act of 2015</b>	<ul style="list-style-type: none"> <li>• Provides enhanced leave for new federal employees who are 30% or more disabled veterans.</li> </ul>





## WORKPLACE RIGHTS

# Recommendation # 1

### RECOMMENDATION TO THE 115<sup>TH</sup> CONGRESS

In an effort to bring accountability to itself and its agencies, Congress passed the CAA, establishing the OOC to, among other roles, promulgate regulations implementing the CAA to keep Congress current and accountable to the workplace laws that apply to private and public employers. The Board is required to amend its regulations to achieve parity, unless there is good cause shown to deviate from the private sector or executive branch regulations. The Board recommends that Congress approve its pending regulations that would implement the Family Medical Leave Act (FMLA), Americans with Disabilities Act (ADA) Titles II and III, and the Uniformed Services Employment and Reemployment Rights Act (USERRA) in the legislative branch.

#### ***Analysis of pending FMLA regulations:***

On June 22, 2016, the Board of Directors of the OOC adopted and transmitted to Congress for approval its regulations necessary for implementing the Family and Medical Leave Act (FMLA) in the legislative branch. In accordance with the CAA, those regulations are the same as the substantive regulations adopted by the Secretary of Labor, 2 U.S.C. § 1312(d)(2), except where good cause was shown that a modification would be more effective in implementing FMLA rights under the CAA.

We seek Congressional approval of these important FMLA regulations. The FMLA regulations provide needed clarity on important aspects of the law, including essential requirements for certifying leave and documentation, defining “spouse” to include same-sex spouses as required by the Supreme Court precedent, and adding military caregiver leave. Adoption of these regulations will reduce uncertainty for both employing offices and employees and provide greater predictability in the Congressional workplace.

**“As someone who battled ovarian cancer as a chief of staff, I can appreciate how legislative branch employees need the protections of the Family and Medical Leave Act at a minimum. And those protections should be implemented through consistent regulations that explain in detail an employee’s right and an employing office’s responsibility.”**

**—REPRESENTATIVE  
ROSA DELAURO (D-CT-03)**

The Board recommends that Congress approve its adopted regulations implementing FMLA, Titles II and III of the ADA, and USERRA to Capitol Hill and the district offices.

**“The historic buildings of the Capitol weren’t built with today’s accessibility standards in mind. But under the leadership of both Republicans and Democrats, there has been a strong commitment to making the Capitol complex more accessible to Members of Congress, staff and visitors... However, our work is not done.”**

**—REPRESENTATIVE JIM LANGEVIN (D-RI-02)**

First, these FMLA regulations add the military leave provisions of the FMLA, enacted under the National Defense Authorization Acts (NDAA) for Fiscal Years 2008 and 2010,<sup>2</sup> that extend the availability of FMLA leave to family members of the Regular Armed Forces for qualifying exigencies arising out of a servicemember’s deployment. They also define those deployments covered under these provisions, extend FMLA military caregiver leave for family members of current servicemembers to include an injury or illness that existed prior to service and was aggravated in the line of duty on active duty, and extend FMLA military caregiver leave to family members of certain veterans with serious injuries or illnesses.

As noted, the FMLA amendments providing additional rights and protections for servicemembers and their families were enacted into law by the NDAA for Fiscal Years 2008 and 2010. The Congressional committee reports that accompany the NDAA for Fiscal Years 2008 and 2010 and the amended FMLA provisions do not “describe the manner in which the provision of the bill [relating to terms and conditions of employment]...apply to the legislative branch” or “include a statement of the reasons the provision does not apply

[to the legislative branch]” (in the case of a provision not applicable to the legislative branch), as required by Section 102(b)(3) of the CAA.<sup>3</sup> Consequently, when the FMLA was amended to add these additional rights and protections, it was not clear whether Congress intended that these additional rights and protections apply in the legislative branch. To the extent that there may be an ambiguity regarding the applicability to the legislative branch of the 2008 and 2010 FMLA amendments, the Board makes clear through these regulations that the rights and protections for military servicemembers apply in the legislative branch, and that protections under the CAA are in line with existing public and private sector protections under the FMLA.

The Board-adopted FMLA regulations implement leave protections of significant importance to legislative branch employees and employing offices. Accordingly, the Board recommends that Congress approve the Board’s adopted FMLA regulations.

Second, these regulations set forth the revised definition of “spouse” under the FMLA in light of the DOL’s February 25, 2015 Final Rule on the definition of spouse, and the United States Supreme Court’s decision in *Obergefell, et al., v. Hodges*,<sup>4</sup> which requires a state to license

<sup>2</sup> Pub.L. 110-181, Div. A, Title V §§ 585(a)(2), (3)(A)-(D) and Pub.L. 111-84, Div. A, Title V § 565(a)(1)(B) and (4).

<sup>3</sup> 2 U.S.C. §1302(3); House Committee on Armed Services, H.Rpt. 110-146 (May 11, 2007), H.Rpt. 111-166 (June 18, 2009).

<sup>4</sup> *Obergefell, et al., v. Hodges*, No. 14-556, 135 S. Ct. 2584 (2015).

## Approving USERRA regulations would signal encouragement to the veterans who seek work in the legislative branch...

a marriage between two people of the same sex and to recognize a marriage between two people of the same sex when their marriage was lawfully licensed and performed out-of-state.

### **Analysis of pending ADA regulations:**

Public access to Capitol Hill and constituent access to district and state offices has been a hallmark of many congresses. The Board recommends that Congress approve its adopted regulations implementing Titles II and III of the ADA to Capitol Hill and the district offices. First, the Board's ADA regulations clarify which Title II and Title III regulations apply to the legislative branch. This knowledge will undoubtedly save taxpayers money by ensuring pre-construction review of construction projects for ADA compliance—rather than providing for only post-construction inspections and costly redos when the access is not adequate. Second, under the regulations adopted by the Board, all leased spaces must meet some basic accessibility requirements that apply to all federal facilities that are leased or constructed. In this way, Congress will remain a model for ADA compliance and public access.

Under the authority of the landmark CAA, the OOC has made significant progress towards making Capitol Hill more accessible for persons with disabilities. Our efforts to improve access to the buildings and facilities on the campus are consistent with the priority guidance in the Board's recently adopted

ADA regulations. Congressional approval of those regulations would reaffirm its commitment to provide barrier-free access to the visiting public to the Capitol Hill complex.

### **Analysis of pending USERRA regulations:**

On December 3, 2008, the Board of Directors adopted USERRA regulations to apply to the legislative branch. Those regulations, transmitted to Congress over eight years ago, should be immediately approved. They support our nation's veterans by requiring continuous health care insurance and job protections for the men and women of the service who have supported our country's freedoms. The 114<sup>th</sup> Congress was particularly focused on issues concerning veterans health, welfare, access, and employment status. Approving the USERRA regulations will assist servicemembers in attaining and retaining a job despite the call to duty. The regulations commit to anti-discrimination, anti-retaliation, and job protection under USERRA.

Approving USERRA regulations would signal Congressional encouragement to veterans to seek work in the legislative branch where veteran employment levels have historically been well below the percentage in the executive branch, or even in the private sector, which is not under a mandate to provide a preference in hiring to veterans. Indeed, many reports have put the level of veteran employees on congressional staffs at two to three percent or less.

The Veterans Congressional Fellowship Caucus, started in 2014, has supported efforts to bridge the gap between military service and legislative work. In addition, the Wounded Warrior Fellowship Program exists in the House Chief Administrative Officer (CAO) where Members can hire veteran fellows for 2-year terms. In the Senate, the Armed Forces Internship Program exists to provide on-the-job training for returning veterans with disabilities.

An extension of these laudable efforts should include the long-delayed passage of the Board's adopted USERRA regulations which implement protections for initial hiring and protect against discrimination based on military service. Congress can lead by example by applying the USERRA law encompassed in the CAA.

## WORKPLACE RIGHTS

# Recommendation #2

### RECOMMENDATION TO THE 115<sup>TH</sup> CONGRESS

Congress mandate anti-discrimination, anti-harassment, and anti-retaliation training for new employees and biennial update training for supervisors.

Section 301(h)(1) of the CAA requires that the Office of Compliance (OOC) carry out a program of education for Members of Congress and other employing offices of the legislative branch with regard to the laws made applicable to them and a program to inform individuals of their rights under those laws. The Board recommends that Congress mandate anti-discrimination, anti-harassment, and anti-retaliation training in accordance with this section. Currently, training is provided to new employees and is updated on a voluntary basis. In the case of some employing offices, the training does not involve, nor even mention the Office of Compliance as a resource or for information or assistance in resolving workplace disputes. To ensure that the congressional community is aware of the laws affecting the workplace, we recommend mandatory training on the CAA for every new employee and biennial update training for supervisory personnel.

It is widely acknowledged that anti-discrimination and anti-retaliation training for employees provides many benefits to the workplace. Education directly impacts employee behavior. A comprehensive training program continues to be the most effective investment an organization can make in reducing complaints and creating a more productive workforce. By

informing employees about their rights and employing offices about their responsibilities, they learn to differentiate between what the law prohibits, such as unlawful harassment, and what the law does not prohibit, such as every day non-discriminatory personnel decisions. Employees also learn how to seek redress for violations of their rights and the remedies available to them under the law. The CAA is a unique law and its processes and programs are unique to the legislative branch workforce. Training on the CAA informs managers of their obligations under the CAA and provides them one more avenue to seek information about best practices and how to handle discrimination and retaliation issues.

In the executive branch, under Section 202(c) of the Notification and Federal Employee Anti-Discrimination and Retaliation Act of 2002 (No FEAR Act) each federal agency must provide employees training regarding their rights and remedies under anti-discrimination and anti-retaliation laws. New employees must receive training as part of a new hire orientation program, and where there is no new hire orientation program, new employees must receive the applicable training within 90 days of their appointment. The No FEAR Act mandates that all current employees and managers be trained by a date

certain, and training thereafter must be conducted no less than every two years.

Employing offices must understand the importance of curtailing objectionable behavior at the outset. Training can and does accomplish this goal. Where victims receive the training, they may recognize that they do not have to endure a harassing and hostile workplace. They have a method of redress in the CAA which is confidential and can even be anonymous. Studies have claimed that sexual harassment in any workforce can be grossly underreported based on the high profile and public nature of an allegation and the backlash that an accuser may suffer, and can lead to increased absence from work, decrease in productivity, and eventual resignation from an otherwise suitable position.

The OOC has the statutory mandate from Congress to carry out a program of education under the CAA, and practical and subject matter expertise to effectively work with Members, employing offices, and individuals as a neutral and independent educator. A comprehensive training program developed by the OOC would greatly benefit the entire Congressional community and would go far in creating a model workplace if Congress required employing offices to provide anti-discrimination training to all employees.



## WORKPLACE RIGHTS

# Recommendation #3

### RECOMMENDATION TO THE 115<sup>TH</sup> CONGRESS

Congress apply to the legislative branch whistleblower protection for disclosing violations of law, rule, or regulation, gross mismanagement, gross waste of funds, abuse of authority, or substantial and specific dangers to public health.

**C**urrently, Congress and its agencies are exempt from the whistleblower protections that cover employees in the executive branch and the private sector. The Board of Directors has been steadfast in its recommendation that Congress be held accountable under appropriate provisions similar to those in the Whistleblower Protection Act of 1989 and Whistleblower Protection Enhancement Act of 2012. These provisions would protect Congressional employees from retaliation when they disclose violations of law, rule or regulation, gross mismanagement, gross waste of funds, abuse of authority, or a substantial and specific danger to public health or safety in the legislative branch.

Whistleblowers serve the public interest by safeguarding the integrity of public service and saving taxpayer dollars. It is a fact that employees are often in the best position to know about and report on violations of law, waste, mismanagement, and abuse in government. To ensure that violations are properly exposed, employees need to know that they will be protected from retaliation for making such disclosures.

Since 1989, federal workers in the executive branch have been protected by the WPA. Since that time, Congress has passed other whistleblower protection laws, such as the Sarbanes-Oxley Act, to protect employees in the private sector from reporting similar violations. While the legislative branch is not immune to the type of abuse and gross mismanagement that may occur in the private sector and the executive branch, Congressional employees do not have any whistleblower protection should they decide to report such matters.

Like executive branch employees, employees of the legislative branch are subject to certain ethical standards that require that they expose waste, fraud, abuse, and corruption. Whistleblower protection is necessary to ensure that when employees uphold the standards required of them, they are protected. Since 1998, the Board of the Office of Compliance has urged lawmakers to guarantee employees of the legislative branch appropriate whistleblower protections.

Currently, when the OOC gets a call from a legislative branch employee concerned about disclosing violations and seeking information on their whistleblower protection rights, we must inform the employee that protection

**“Whistleblowers are our first line of defense against the abuse of taxpayer dollars. They play a critical role in ensuring government remains accountable to the public by exposing waste, fraud and abuse—and their place of employment shouldn’t mean they aren’t afforded legal protections that enable to them to come forward to report wrongdoing.”**

**—SENATOR CLAIRE MCCASKILL (D-MO)**

**“Congress has worked hard** to encourage employees in the bureaucracy to come forward and disclose misconduct or waste at work, and we’ve put in place many protections so that these patriotic employees don’t face retribution for exposing the truth. But Congress is not without its own flaws, and legislative branch employees should enjoy the same protections.

**–SENATOR CHARLES GRASSLEY (R-IA)**

under the CAA does not exist. The anti-retaliation provisions of the CAA only provide protection to employees who exercise rights currently protected by the provisions of the CAA. Once whistleblower protections are enacted, they will prohibit employers from taking retaliatory employment action against an employee who discloses information which they reasonably believe evidences a violation of law, gross mismanagement, or substantial and specific danger to public health or safety.

Legislation to amend the CAA to give legislative branch employees some of the same whistleblower protection rights that are available to executive branch employees has been introduced in every Congress since the 109th Congress. However, all efforts to pass the legislation have stalled.

In 2015, a bipartisan group of Senators launched the Whistleblower Protection Caucus to deal with legislative issues surrounding whistleblower protections

in both the public and private sectors. The OOC has met with staff of the Whistleblower Protection Caucus on numerous occasions to discuss how the protections would be applied under the CAA. On March 17, 2016, Senator Grassley introduced the Congressional Whistleblower Protection Act of 2016. This bill, cosponsored by Senators McCaskill and Wyden, would amend the CAA to provide whistleblower protections for employees of the legislative branch who disclose violations. Since 2006, similar legislation has been proposed in both the House and Senate that would provide whistleblower protection to employees of the legislative branch.

The OOC supports the work of the Whistleblower Protection Caucus and encourages other lawmakers to support efforts to apply whistleblower protections to employees of the legislative branch.

## WORKPLACE RIGHTS

# Recommendation #4

### APPLY THE WOUNDED WARRIOR FEDERAL LEAVE ACT OF 2015 TO THE LEGISLATIVE BRANCH

On November 5, 2015, President Barack Obama signed into law the Wounded Warrior Federal Leave Act which was unanimously passed in the House and Senate during the first session of the 114<sup>th</sup> Congress. The law affords wounded warriors the flexibility to receive medical care as they transition to serving the nation in a new capacity. Specifically, new federal employees, who are also disabled veterans with a 30% or more disability, may receive 104 hours of “wounded warrior leave” during their first year in the federal workforce so that they may seek medical treatment for their service-connected disabilities without being forced to take unpaid leave or forego their medical appointments. The Act amends Title 5 of the United States Code and was reportedly passed as a way to show gratitude and deep appreciation for the hardship and sacrifices of veterans and, in particular wounded warriors, in service to the United States.<sup>5</sup>

**T**he OOC Board recommends that Congress apply the Wounded Warrior Federal Leave Act to veterans employed in the legislative branch. As many legislative workers begin with a zero sick leave

balance, disabled veterans beginning civilian jobs may often have insufficient leave to receive necessary medical treatment for post-traumatic stress disorder, severe physical injuries, and other service-connected disabilities. Currently, first-year



**“Our bill will provide medical leave for returning disabled veterans who now work as federal employees, enabling them to receive treatment while transitioning into civilian life.”**

**—REPRESENTATIVE  
STEPHEN LYNCH (D-MA-08)**

<sup>5</sup> U.S. House, Committee on Oversight and Government Reform. *Wounded Warriors Federal Leave Act, 2015, (to Accompany H.R. 313)* (114 H. Rpt. 180). ext from: Committee Reports. Available from: <http://www.congress.gov>; accessed 12/22/2016

**“Veterans and their families have made tremendous sacrifices in defense of this country and should not be asked to take unpaid leave to get the care they need and have earned. The transition from active duty to civilian life is a tough one, and this bill should make that transition just a little easier.”**

**–SENATOR JON TESTER (D-MT).**

**“Service-disabled veterans who have served our nation with duty and honor deserve peace of mind when transitioning into the federal workforce and civilian life. The Wounded Warriors Federal Leave Act will help make sure certain veterans can pursue a career in the federal government and support their families while also addressing their medical treatment needs.”**

**–SENATOR JERRY MORAN (R-KS)**

government workers accrue four hours of sick leave each pay period, forcing many veterans with disabilities to take unpaid leave because they have not built up the necessary leave time. As a result, they must often take unpaid leave to care for their injuries or forego treatments.

The Wounded Warrior Federal Leave Act meets this challenge by granting 104 hours of wounded warrior leave to newly hired, 30 percent disabled veterans during their first year of employment. The act defines service-connected disability to include non-combat related injuries. Available leave is capped at 104 hours and any leave not used during the employees first year is forfeited. Individuals utilizing this new category of leave must certify use of such leave was related to treatment of their disability subject to regulations prescribed by the Office of Personnel Management.

The CAA Section 102(b)(3) requires a description of the application of any bill to the legislative branch where the bill relates to the terms and conditions of employment or access to public services and accommodations. While the Committee Report for the Wounded Warrior Federal Leave Act confirms that the bill relates to the terms and conditions of employment, the Report does not expressly confirm an application to new wounded warriors of the legislative branch. The Board’s recommendation to extend the benefits of the Wounded Warrior Federal Leave Act to the legislative branch with enforcement and implementation under the programs of the Congressional Accountability Act would

clarify the Act’s intention. The Board would welcome the opportunity to promulgate regulations for congressional approval that would efficiently and effectively implement the law’s benefits to veterans newly employed in the legislative branch.

For many years, the House and Senate have encouraged legislative branch employing offices to help wounded veterans transition to the civilian work world. Disabled veterans interested in working in Congressional offices on Capitol Hill or in district locations can apply for the Wounded Warrior Program, a two-year, paid fellowship sponsored by the House Chief Administrative Officer. Since its inception in February 2008, the program has hired 179 fellows and continues to add more participants each year than the past years. In the Senate, the Sergeant-at-Arms has not only committed to providing internship experiences for disabled veterans in Congress and executive agencies, but it also has helped with the overall transition from military life to the civilian work world and worked with the recovering servicemember after an internship so that they are able to market and use the skillset they acquired from their experience. The intent of Congress to highlight the value of wounded warriors in federal government service in both the executive and legislative branches is clear. Providing the 104 hour leave enhancement to new legislative branch employees who are disabled service members is a program that would strengthen this commitment.



# Acronyms

**ADEA:** Age Discrimination in Employment Act of 1967

**ADA:** Americans with Disabilities Act of 1990

**CAA:** Congressional Accountability Act of 1995

**DOL:** Department of Labor (Federal Executive Branch)

**EPPA:** Employee Polygraph Protection Act of 1988

**FLSA:** Fair Labor Standards Act of 1938

**FMLA:** Family Medical Leave Act of 1993

**GINA:** Genetic Information Nondiscrimination Act of 2008

**No FEAR Act:** Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002

**OSHAct:** Occupational Safety and Health Act of 1970

**OOC:** Office of Compliance

**Title VII:** Title VII of the Civil Rights Act of 1964

**USERRA:** Uniformed Services Employment and Reemployment Rights Act of 1994

**WPA:** Whistleblower Protection Act of 1989

**WPEA:** Whistleblower Protection Enhancement Act of 2012

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