



Office of Congressional Workplace Rights

OCWR BROWN BAG LUNCH SERIES CAA REFORM ACT JANUARY 23, 2019

I. Introduction

In December 2018, Congress unanimously passed the Congressional Accountability Act of 1995 Reform Act, Pub. L. No. 115-397, 132 Stat. 5297 (2018) (“CAA Reform Act”). The CAA Reform Act, which was signed into law on December 21, 2018, makes significant changes to the Congressional Accountability Act of 1995 (“CAA”), 2 U.S.C. § 1301 *et seq.*, for the first time in the history of the statute. The CAA still applies the same federal labor and employment laws to Legislative Branch employing offices and employees, but its coverage has been expanded and the administrative dispute resolution process for claims brought under the CAA has been dramatically overhauled.

In this Brown Bag session we will discuss those procedural changes and changes to the rights and responsibilities of employees and employing offices within the Legislative Branch. Unless otherwise noted, procedural changes under the revised CAA will take effect 180 days after enactment, on **June 19, 2019**.

II. What Hasn’t Changed

The CAA Reform Act made no changes to the following:

- Which labor and employment laws apply to the Legislative Branch¹
- The 180-day statute of limitations for claims brought under the CAA
- Enforcement of the Occupational Safety and Health Act, the Americans with Disabilities Act public access provisions, or the Federal Service Labor-Management Relations Statute
- The independent, nonpartisan nature of the OOC/OCWR

¹ The CAA Reform Act clarifies that the Genetic Information Nondiscrimination Act of 2008 (GINA) applies to covered employees. This is not a new development, because GINA by its terms has always applied to covered employees and employing offices as defined in the CAA (see 42 U.S.C. § 2000ff(2)(A)(iii), (B)(iii)), but prior to the CAA Reform Act GINA was not mentioned in the CAA itself. Now section 102(c) of the CAA, 2 U.S.C. § 1302(c), explicitly applies the provisions covering violations of CAA section 201(a)(1) to violations of GINA.

III. Overview of Major Changes

- The Office of Compliance is now the **Office of Congressional Workplace Rights (OCWR)**
- The coverage of the CAA has expanded to include new employing offices and additional categories of employees
- The ADR process no longer includes mandatory counseling, mandatory mediation, or a “cooling-off” period, although a confidential advisor and optional mediation are available
- Claims will undergo a preliminary review by a Hearing Officer
- Employing offices have new posting and training requirements
- The OCWR has new mandatory reporting requirements
- Members of Congress and other employing offices must reimburse the Treasury fund for certain awards and settlements

IV. ADR Process

The CAA Reform Act was born out of the #MeToo Congress movement in the fall of 2017, during which several concerns were raised regarding the Administrative Dispute Resolution (ADR) process mandated by the original CAA and administered by the Office of Compliance (OOC). The CAA Reform Act amends title IV of the CAA, changing certain key aspects of the ADR process and clarifying others.

A. Claim Filing

Under the old system, a covered employee initiated ADR proceedings by filing a request for counseling. Before they could move on to file an actual complaint, they were required to go through a counseling period of up to 30 days, followed by a mandatory mediation period of at least 30 days, and then wait at least 30 days (the “cooling-off” period) but no more than 90 days to file a complaint either with the OOC Board of Directors or in federal district court.

Under the new procedures, **filing a claim with the OCWR is the first required step.** *402(a)(1), 2 U.S.C. § 1402(a)(1)*. Counseling is no longer mandatory, and accordingly, employees will no longer file requests for counseling. Covered employees may, however, contact the OCWR prior to filing a claim to seek information about their rights and the procedures available under the CAA. *402(a)(3), 2 U.S.C. § 1402(a)(3)*. This is similar to what was known as “informal counseling” under the old system. Mediation is available later in the process, but it is optional, and will take place only if requested and only if both parties agree.

Note: The CAA Reform Act uses the word “claim” in place of “complaint,” except for Americans with Disabilities Act public access, unfair labor practice, or Occupational Safety and Health Act complaints filed by the OCWR General Counsel.

Timing

- Claims must be filed **within 180 days of the alleged violation**, which mirrors the filing deadline under the old system to submit a request for counseling. *402(d), 2 U.S.C. § 1402(d)*
- The OCWR may not accept any untimely claim for filing. *402(a)(1), 2 U.S.C. § 1402(a)(1)*

Content

The claim must be in writing under oath or affirmation, describe the facts that form the basis of the claim and the violation that is being alleged, identify the employing office alleged to have committed the violation or in which the violation is alleged to have occurred, and be in the form required by the OCWR. *402(a)(2), 2 U.S.C. § 1402(a)(2)*

Intake

When the OCWR receives the claim, the OCWR makes record of the claim and provides the claimant with information about their rights under the CAA, similar to the old counseling process. *402(a)(2), 2 U.S.C. § 1402(a)(2)*

Notice to Employing Office

Previously, as a function of the CAA's strict confidentiality requirements, the OOC did not inform the employing office that a request for counseling had been filed unless and until the employee elected to proceed to mediation.

Under the new procedures, **the OCWR is required to transmit a copy of the claim to the head of the employing office and the employing office's representative immediately once the claim is filed.** *402(b)(1), 2 U.S.C. § 1402(b)(1)*

There are additional notification requirements for claims against current or former Members of Congress. In the case of a claim alleging that an individual, who was at the time of the violation a Member of the House of Representatives (including a Delegate or Resident Commissioner to the Congress) or Senator, personally committed acts of:

- unlawful harassment in violation of 201(a) (Title VII, ADEA, Rehabilitation Act, and ADA Title I rights protections) or 206(a) (veterans' employment and reemployment rights protections), or
- unlawful intimidation, reprisal, or discrimination under section 207 which were taken against a covered employee *because of a claim alleging unlawful harassment in violation of 201(a) or 206(a)*,

the OCWR must immediately notify the individual of the claim, the possibility that the individual may be required to reimburse the applicable settlement and awards account in the Office of the Treasury of the United States for the reimbursable portion of any award or settlement in connection with the claim, and the right of the individual under section 415(d)(8) to

intervene in any mediation, hearing, or civil action under the CAA with respect to the claim. *402(b)(2), 2 U.S.C. § 1402(b)(2)*

B. Hearing Officer Review

Prior to the CAA Reform Act, there was no legal review of ADR cases unless and until they reached the hearing phase.

Under the new procedures, **a Hearing Officer must conduct a preliminary review of claims filed by covered employees under part A of title II of the CAA as a condition precedent to proceeding to a hearing. This review is the second major step in the process after the claim is filed.** *403(a), 42 U.S.C. § 1403(a)*

During the preliminary review, the Hearing Officer assesses the following:

1. Whether the claimant is a covered employee authorized to obtain relief relating to the claim, *403(b)(1), 2 U.S.C. § 1403(b)(1)*
2. Whether the office at issue is an employing office, *403(b)(2), 2 U.S.C. § 1403(b)(2)*
3. Whether the individual filing the claim has met the applicable deadlines for filing the claim, *403(b)(3), 2 U.S.C. § 1403(b)(3)*
4. The identification of factual and legal issues involved in the claim, *403(b)(4), 2 U.S.C. § 1403(b)(4)*
5. The specific relief sought by the individual, *403(b)(5), 2 U.S.C. § 1403(b)(5)*
6. **Whether, on the basis of the assessments made under paragraphs (1) through (5), the individual filing the claim is a covered employee who has stated a claim for which, if the allegations contained in the claim are true, relief may be granted under the CAA,** *403(b)(6), 2 U.S.C. § 1403(b)(6)*
7. The potential for the settlement of the claim without a formal hearing as provided under section 405 or a civil action as provided under section 408, *403(b)(7), 2 U.S.C. § 1403(b)(7)*

Within 30 days after the claim is filed, the Hearing Officer must issue a report on the preliminary review to the claimant and the office at issue, and must include in the report a determination regarding whether the claimant is a covered employee who has stated a claim for which relief may be granted under the CAA. *403(c)(1), 2 U.S.C. § 1403(c)(1)*

The report must also be submitted to the House or Senate ethics committee in case of a claim against a Member of the House of Representatives or a Senator for:

- unlawful harassment in violation of 201(a) (Title VII, ADEA, Rehabilitation Act, and ADA Title I rights protections) or 206(a) (veterans' employment and reemployment rights protections), or
- unlawful intimidation, reprisal, or discrimination under section 207 which were taken against a covered employee *because of a claim alleging unlawful harassment in violation of 201(a) or 206(a).*

403(e), 2 U.S.C. § 1403(e)

In case of a determination that the claimant is not a covered employee or has not stated a claim for which relief may be granted, the claimant may not obtain a formal hearing on the claim and the Hearing Officer must notify the claimant and the OCWR Executive Director (ED) that the claimant may file a civil action. *403(d), 2 U.S.C. § 1403(d)*

If an employee files a civil action, this terminates the Hearing Officer's preliminary review. *401(b)(2)(A), 2 U.S.C. § 1401(b)(2)(A)*

C. Mediation

Under the old process, mediation was a required step in the process before an employee could file either an administrative complaint or civil action. Mediation was initiated by the covered employee by filing a request for mediation no later than 15 days after their receipt of the notice of end of counseling.

In the new system, **mediation is voluntary, may be initiated by either party, and may only proceed if both parties agree.** Upon receipt of a claim, the OCWR must notify the covered employee about the mediation process and applicable deadlines, and must similarly provide such notice to the employing office upon transmitting the claim to the office. Additionally, the parties must be separated during mediation at the request of either party. *404(a)(2), (b)(2), 2 U.S.C. §§ 1404(a)(2), (b)(2)*

Applicable time periods:

- Mediation may be requested at any time during the period beginning on the day the covered employee or employing office receives notice of information about the process for mediation regarding a claim under section 402 and ending on the date when either the Hearing Officer issues a final written decision or the covered employee files a civil action. *404(a)(2)(B), 2 U.S.C. § 1404(a)(2)(B)*
- The mediation period lasts for 30 days, beginning on the day when the non-requesting party agrees to mediate. *404(c), 2 U.S.C. § 1404(c)*
- Any deadlines related to claims being mediated that have not passed by the first day of mediation are stayed during mediation. *404(c), 2 U.S.C. § 1404(c)*

D. Hearing

In the old system, covered employees could file an administrative complaint upon the completion of mediation and counseling, and, absent dismissal of that complaint as frivolous or for failure to state a claim, obtain a formal administrative hearing before an independent Hearing Officer appointed by the Executive Director.

Under the new procedures, **covered employees may only proceed to an administrative hearing if the Hearing Officer conducting the preliminary review determines that they have stated a cognizable claim.** *403(d)(1), 2 U.S.C. § 1403(d)(1)*. Such claimants must submit a hearing request to the OCWR ED within 10 days after the issuance of the preliminary review report. *405(a)(1), 2 U.S.C. § 1405(a)(1)*

The OCWR ED then appoints an independent Hearing Officer, who must not be the same individual who conducted the preliminary review. *405(c), 2 U.S.C. § 1405(c)*. This Hearing Officer must commence a hearing within 90 days of the hearing request, unless the parties mutually agree to an additional 30-day extension. *405(d)(2), 2 U.S.C. § 1405(d)(2)*

Further, if the claim asserts facts that would, if sustained, subject a Member of Congress² to the reimbursement provisions, discussed below, the Member has the right to intervene and participate in hearings. *415(d)(8), 2 U.S.C. § 1415(d)(8)*

The procedures related to the conduct of OCWR administrative hearings and appeals to the OCWR Board remain largely unchanged.

E. Confidential Advisor

The CAA Reform Act mandates the creation of a new OCWR professional staff position, the Confidential Advisor, and prescribes the duties and minimum qualifications for that position. *302(d), 2 U.S.C. § 1382(d)*. The OCWR ED is required to either appoint one or more Confidential Advisors or designate a qualified employee of the OCWR to serve in that role. *302(d)(1), 2 U.S.C. § 1382(d)(1)*.

To act as a Confidential Advisor, one must be a lawyer, admitted and in good standing to practice in a State or territory of the U.S. or in the District of Columbia, and experienced in representing clients in employment cases. *302(d)(3), 2 U.S.C. § 1382(d)(3)*.

The Confidential Advisor will be available upon request to provide covered employees with certain services, “on a privileged and confidential basis,” including consulting on:

- The employee’s rights under the CAA;
- The roles, responsibilities, and authority of the OCWR;
- The merits of obtaining private counsel, designating a non-attorney representative, or proceeding unrepresented;
- The relative merits of and procedural options for pursuing potential claims, for which the Confidential Advisor may provide drafting assistance; and
- The option of pursuing, in appropriate circumstances, a complaint with the House or Senate ethics committees.

302(d)(2)(B), 2 U.S.C. § 1382(d)(2)(B)

There are also certain specified limitations on the Confidential Advisor’s role. The Confidential Advisor may not:

- Serve as a covered employee’s “designated representative” in any proceeding under the CAA, or any judicial or congressional proceeding;
- Provide the services listed above to an employee who has designated an attorney representative, except to provide general assistance to the designated attorney; or

² “Member of Congress” is defined as a “Member of the House of Representatives (including a Delegate or Resident Commissioner to Congress) or a Senator.”

- Serve as a mediator under section 404 of the CAA.

302(d)(5), 2 U.S.C. § 1382(d)(5)

F. Confidentiality

The CAA Reform Act amends and clarifies some of the CAA’s confidentiality provisions. The old confidentiality section provided that “all counseling” and “all mediation” were to be “strictly confidential,” and that with limited exceptions all Hearing Officer and Board of Directors proceedings and deliberations would be “confidential.”

In the revised statute, the subsection on counseling is gone; instead, should a covered employee choose to take advantage of the services provided by the OCWR’s Confidential Advisor, those services are provided “on a privileged and confidential basis.” *302(d)(2)(B), 2 U.S.C. § 1382(d)(2)(B)*. Instead of “all mediation,” the strict confidentiality requirement now applies to “All information discussed or disclosed in the course of any mediation.” *416(a), 2 U.S.C. § 1416(a)*. And although Hearing Officer and Board proceedings and deliberations are still confidential, the exceptions have changed as a result of the new requirements for automatic referral of dispositions of certain claims to the ethics committees. *416(d), 2 U.S.C. § 1416(d)*

Further, a new subsection provides that a covered employee may disclose the “factual allegations underlying the covered employee’s claim” and an employing office may disclose “the factual allegations underlying the employing office’s defense to the claim[.]” *416(f), 2 U.S.C. § 1416(f)*

The CAA Reform Act requires the OCWR ED to notify Members about claims alleging facts that could potentially subject the Member to the new law’s reimbursement obligations, *402(b)(2), 2 U.S.C. § 1402(b)(2)*, but the OCWR ED may redact data in the annual report on awards and settlements to protect the identities of claimants, *301(l)(4), 2 U.S.C. § 1381(l)(4)*, and the ethics committees are required to ensure that any reports they issue with respect to claims referred to them by the OCWR do not directly disclose the identities or positions of the individuals who filed those claims, *416(d), 2 U.S.C. § 1416(d)*.

G. Electronic Filing

The CAA Reform Act mandates the establishment of a secure electronic case filing and tracking system, which is accessible to all parties to the case, until all proceedings in the case are completed. *402(c), 2 U.S.C. § 1402(c)*

V. District Court Filing

Previously, after an employee went through counseling and mediation, if the employee wished to proceed with a claim, they had to wait at least 30 days but no longer than 90 days (the so-called “cooling-off period”) to file either an administrative complaint with the OOC or a civil action in federal district court.

Once the new procedures take effect, the employee’s options for filing in district court will be as follows:

- After an employee has filed a timely claim with the OCWR, the employee may file a civil action in federal district court within a 70-day period beginning on the date the employee files the OCWR claim. *401(b)(1), (b)(3), 2 U.S.C. § 1401(b)(1), (b)(3)*
- However, the employee may not file a civil action if they have already requested an administrative hearing through the OCWR. *401(b)(1), 2 U.S.C. § 1401(b)(1)*
- If an employee files a civil action while a Hearing Officer is conducting a preliminary review of that employee’s claim, the review terminates immediately upon the filing of the civil action, and the Hearing Officer has no further involvement. *401(b)(2), 2 U.S.C. § 1401(b)(2)*
- An employee also has the ability to wait until the Hearing Officer concludes the preliminary review before deciding whether to file in district court. If the Hearing Officer determines that the employee has not stated a claim for which relief may be granted and issues a written notice stating that the employee has a right to file a civil action, then the time period for filing in district court resets, and the employee has 90 days from their receipt of the Hearing Officer’s notice to file a civil action. *401(b)(4), 2 U.S.C. § 1401(b)(4)*

There are two key differences between the old process and the new one. First, **the only prerequisite to filing in district court is the timely filing of a claim with the OCWR.** Employees are not required to undergo counseling or mediation, and there is no more waiting period. Second, if the OCWR claim does not successfully pass the Hearing Officer’s preliminary review, the employee will not be able to choose between district court or an administrative proceeding – if they wish to move forward, their only option will be to file in district court.

VI. Reimbursement

Under the old system, the OCWR paid monetary awards and settlements, pursuant to section 415(a), from a U.S. Treasury account created for that purpose, and no reimbursement from any individual or employing office was required.

Now, although awards and settlements are still paid out of the OCWR section 415(a) account, Members of Congress³ and all other employing offices must reimburse the account for certain payments under specified circumstances.

A. Members

The CAA Reform Act amends section 415 of the CAA by adding a new subsection (d), which addresses reimbursement by Members of Congress. Members must reimburse the “compensatory damages” portion⁴ of an award or settlement for specified CAA violations that the Member is found to have “committed personally.” *415(d)(1)(A), 2 U.S.C. § 1415(d)(1)(A).*

³ “Member of Congress” is defined as “a Member of the House of Representatives (including a Delegate or Resident Commissioner to the Congress) or a Senator.” *415(d)(1)(A), 2 U.S.C. § 1415(d)(1)(A)*

⁴ A Member’s reimbursement obligation is limited to the portion of an award or settlement that represents compensatory damages, as defined and limited by 42 U.S.C. § 1981a(b)(3).

The types of violations for which the Member must reimburse the Treasury account are specified as:

- Harassment that is unlawful under CAA section 201(a) or 206(a), which encompasses harassment based on race, color, religion, sex, national origin, age, disability, or military service; or
- Intimidation, reprisal, or other discrimination under CAA section 207 in connection with a section 201(a) or 206(a) harassment claim.

415(d)(1)(C), 2 U.S.C. § 1415(d)(1)(C)

Where the payment is made pursuant to an award, rather than a settlement, the reimbursement requirement is conditioned on a Hearing Officer (in an OCWR administrative hearing) or court (in a civil action) making “a separate finding” that the violation occurred “which was committed personally by an individual who, at the time of committing the violation, was a [Member].”

415(d)(1)(B), 2 U.S.C. § 1415(d)(1)(B)

In cases where an award includes multiple claims, reimbursement is limited to the portion of the award or settlement attributable to the above-specified types of harassment and retaliation violations. *415(d)(1)(D), 2 U.S.C. § 1415(d)(1)(D)*. Further, the statute prescribes detailed procedures to ensure that reimbursement by the Member in fact occurs, including the potential for withholding the Member’s federal compensation, pension, social security or TSP benefits, and garnishment of non-federal wages, if the personally responsible Member fails to reimburse the required amount. *415(d)(2)-(6), 2 U.S.C. § 1415(d)(2)-(6)*.

B. Other Employing Offices

The CAA Reform Act further amends section 415 by adding a new subsection (e), which requires all other employing offices (other than an employing office of the House or Senate) to reimburse awards and settlements paid from the OCWR section 415(a) account in connection with claims alleging violations of CAA section 201(a) (prohibiting discrimination based on race, color, religion, sex, national origin, age, or disability) or 206(a) (veterans employment and reemployment rights). *415(e)(1), 2 U.S.C. § 1415(e)(1)*. Such reimbursement must be made within 180 days after receipt of notice from the OCWR Executive Director, and is to be transferred to the OCWR 415(a) account out of funds available for the employing office’s operating expenses. *415(e)(2), 2 U.S.C. § 1415(e)(2)*

VII. Duties of Employing Offices

A. Posting

Prior to the CAA Reform Act, the OOC was required to develop posters notifying covered employees of their rights, but employing offices were not required to post them. Moving forward, **employing offices must post** and keep posted in conspicuous places on their premises the notices provided by the OCWR, which must contain information about employees’ rights and the OCWR’s ADR process, along with OCWR contact information. *226, 2 U.S.C. § 1362*

B. Training

Under the old system, the OOC had primary responsibility for training and educating covered employees on the laws made applicable to them under the CAA and their rights under these laws. Now, **each employing office is required to develop and implement a program to train and educate covered employees on the rights and protections provided under the CAA**, including the procedures available under CAA title IV, which describes the OCWR administrative and judicial dispute resolution procedures. *509(a), 2 U.S.C. § 1438(a)*

Note: Employing offices of the House of Representatives and the Senate are not subject to this requirement. *509(c), 2 U.S.C. § 1438(c)*

Employing offices must submit **a report on the implementation of their CAA-required training and education programs** to the Committee on House Administration of the House of Representatives and the Committee on Rules and Administration of the Senate no later than 45 days after the beginning of each Congress, beginning with the 117th Congress. For the 116th Congress, this report is due no later than 180 days after the enactment of the CAA Reform Act, which is June 19, 2019. *509(b)(1), (b)(2), 2 U.S.C. § 1438(b)(1), (b)(2)*

VIII. Coverage of CAA

In addition to the procedural changes described above, the CAA Reform Act also extends coverage to additional categories of Legislative Branch employees, expands the list of employing offices, and clarifies the rights of staff located outside of Washington, D.C.

A. Unpaid Staff

The CAA Reform Act amends section 201 of the CAA – which applies Title VII of the Civil Rights Act of 1964 (outlawing discrimination based on race, color, religion, sex, or national origin), the Age Discrimination in Employment Act, the Rehabilitation Act, and Title I of the Americans with Disabilities Act – to apply the protections and remedies of those laws to current and former “unpaid staff,” which is defined as “any staff member of an employing office who carries out official duties of the employing office but who is not paid by the employing office for carrying out such duties... **including an intern, an individual detailed to an employing office, and an individual participating in a fellowship program[.]**” These laws apply to unpaid staff “in the same manner and to the same extent as such subsections apply with respect to a covered employee[.]” *201(d), 2 U.S.C. § 1311(d)*

The new section 201(d) further defines “intern” as “an individual who performs service for an employing office which is uncompensated by the United States to earn credit awarded by an educational institution or to learn a trade or occupation, and includes any individual participating in a page program operated by any House of Congress.” *201(d)(3), 2 U.S.C. § 1311(d)(3)*

B. Clarification of Employing Offices

The CAA Reform Act divides the definitions section of the CAA, section 101, into two subsections, (a) and (b). Section 101(a) now contains the definitions, and section 101(b)

provides that three Commissions will be considered employing offices and their employees will be considered covered employees under the CAA. *101(b)(1), 2 U.S.C. § 1301(b)(1)*. These employing offices are:

- The China Review Commission, <https://www.uscc.gov/>
- The Congressional-Executive China Commission, <https://www.cecc.gov/>
- The Helsinki Commission, <https://www.csce.gov/>

The statute now specifies that these three Commissions will be represented in proceedings under the CAA by either the Office of House Employment Counsel or the Office of Senate Chief Counsel for Employment, depending on whether the chair of the Commission in question is a Member of the House or a Senator at the time the initial claim is filed. *101(b)(2), 2 U.S.C. § 1301(b)(2)*

Further, the new section 101(a)(3) adds a new employing office, whose employees will also be considered covered employees under section 101(a)(9):

- The John C. Stennis Center for Public Service Training and Development, <https://stennis.gov/>

2 U.S.C. § 1301(a)(3), (a)(9)

The inclusion of these four employing offices is retroactive to the enactment of the original CAA. *Pub. L. No. 115-397 § 305(d)*

C. Out-of-Area Employees

Although the CAA has always applied to covered employees regardless of their physical locations, the CAA Reform Act explicitly provides that “out-of-area covered employees” – i.e., those working outside of the Washington, D.C. area – “shall have equitable access to the resources and services provided by the Office and under this Act” as provided to those covered employees located in the D.C. area. *510(a), 2 U.S.C. § 1439(a)*

In support of that mandate, the OCWR is required to establish a secure method of communication, including an option for real-time audiovisual communication, and to provide guidance to the employing offices on how they can facilitate access to the OCWR’s resources and services for their out-of-area staff. *510(b), 2 U.S.C. § 1439(b)*

IX. OCWR Reporting

A. Awards and Settlements

The CAA Reform Act amends the CAA to require annual OCWR reports on awards and settlements, and also requires the OCWR to issue a one-time report on past awards and settlements.

Past Awards and Settlements

The CAA Reform Act required the OCWR ED to submit to Congress and to publish on the OCWR website a report on all awards and settlements paid to covered employees prior to the date of the bill's enactment in connection with violations of sections 201(a) or 207 of the CAA. *Pub. L. No. 115-397 § 201(b)*. The OCWR published this report on January 20, 2019. As required, the report includes the amount paid and the source of any public funding, but not the identity of any individual Member office as a funding source.

Future Awards and Settlements

Going forward, **the OCWR must issue annual reports that itemize all awards and settlements paid out of the 415(a) Treasury account in connection with claims alleging violations of part A of title II of the CAA (sections 201-207)**, which applies the following laws:

- Title VII of the Civil Rights Act of 1964
- The Age Discrimination in Employment Act
- Title I of the Americans with Disabilities Act
- The Rehabilitation Act
- The Family and Medical Leave Act
- The Fair Labor Standards Act
- The Employee Polygraph Protection Act
- The Worker Adjustment and Retraining Notification Act
- Veterans' employment and reemployment rights
- Prohibition against reprisal

These annual reports must state the amount paid, the employing office involved, the source of funds, and the CAA provision allegedly violated. *301(l)(1)(B), 2 U.S.C. § 1381(l)(1)(B)*. Further, the future annual reports must conform to rules regarding House and Senate employing offices, which the House Administration and Senate Rules and Administration Committees will establish within 180 days of the CAA Reform Act's enactment. *301(l)(2), 2 U.S.C. § 1381(l)(2)*

In fulfilling its reporting responsibilities, the OCWR is required to protect the identity and position of individuals who received awards or settlements or made allegations under the above-listed sections of the CAA, and may redact portions of the reports as necessary to avoid any unintentional disclosure, but must note the reason for any such redaction. *301(l)(3)-(5), 2 U.S.C. § 1381(l)(3)-(5)*

B. Workplace Climate Survey

The CAA Reform Act mandates that, within one year of enactment and biannually thereafter, the OCWR conduct "a secure survey of employing offices under this Act regarding the workplace environment of such offices." *307(a), 2 U.S.C. § 1388(a)*. The OCWR is specifically directed to include in the survey an assessment of respondents' "attitudes regarding sexual harassment." *307(b), 2 U.S.C. § 1388(b)*. Responses are to be kept confidential and anonymous. *307(c)(2), 2 U.S.C. § 1388(c)(2)*. Results of the workplace climate surveys are to be provided to the

Committee on House Administration of the House of Representatives and the Committees on Homeland Security and Governmental Affairs and Rules and Administration of the Senate. *307(d), 2 U.S.C. § 1388(d)*

X. Miscellaneous

A. Ethics Committees (Members and Senior Staff)

Availability to Employees

Prior to the CAA Reform Act, the CAA did not specifically address the availability of the House and Senate ethics committees (i.e., the Committee on Ethics of the House of Representatives or the Select Committee on Ethics of the Senate) as a resource for House or Senate employees seeking to report information about alleged CAA violations. The CAA now specifies that **filing a claim with the OCWR does not restrict House or Senate employees from referring information to the committees about alleged violations of part A of title II of the CAA.** *402(a)(3)(B), 2 U.S.C. § 1402(a)(3)(B)*. In other words, these employees can both file an OCWR claim and bring their allegations to the ethics committees.

If covered employees take advantage of the services offered by the OCWR's Confidential Advisor, one of those services is providing information about the option to pursue, in appropriate circumstances, a complaint with the House or Senate ethics committee. *302(d)(2)(B)(v), 2 U.S.C. § 1382(d)(2)(B)(v)*

Referral by the OCWR

The CAA Reform Act imposes a new requirement that the OCWR notify Congressional ethics committees of certain cases involving Members of Congress. **Upon completion of the preliminary review, and upon final disposition, the OCWR must refer to the ethics committees claims alleging that a Member or their senior staff⁵ personally committed certain unlawful acts of harassment or reprisal.**

First, when a Hearing Officer conducts a preliminary review of a claim alleging that a Member personally committed acts of unlawful harassment in violation of 201(a), or unlawful intimidation, reprisal, or discrimination under section 207 in retaliation for allegations of violations of section 201(a), the Hearing Officer's preliminary review report must be transmitted to the Committee on Ethics of the House of Representatives (for allegations against a Member of the House, including a Delegate or Resident Commissioner to the Congress), or to the Select Committee on Ethics of the Senate (for allegations against a Senator). *403(e), 2 U.S.C. § 1403(e)*

Later, "Upon the final disposition" of allegations of harassment under section 201(a) or reprisal for alleging such harassment under section 207 committed personally by a Member or their senior staff, the OCWR ED must refer the claim to the House or Senate ethics committee.

⁵ "Senior staff" is defined as any individual who, at the time a violation occurred, was required to file a report under title I of the Ethics in Government Act of 1978 (5 U.S.C. App. 101 *et seq.*). *416(d)(7), 2 U.S.C. § 1416(d)(7)*

416(d)(1), 2 U.S.C. § 1416(d)(1). If the OCWR ED makes such a referral, **the OCWR ED must provide the committee with access to certain records**, including those of any preliminary reviews, hearings, or decisions of the Hearing Officers and the Board, and any information relating to an award or settlement paid, in response to such claim. *416(d)(2), 2 U.S.C. § 1416(d)(2)*

“Final disposition” includes any of the following:

- An order or agreement to pay an award or settlement, including an agreement reached pursuant to mediation under section 404. *416(d)(6)(A), 2 U.S.C. § 1416(d)(6)(A)*
- A final decision of a Hearing Officer under section 405(g) that is no longer subject to review by the Board under section 1406. *416(d)(6)(B), 2 U.S.C. § 1416(d)(6)(B)*
- A final decision of the Board under section 1406(e) that is no longer subject to appeal to the United States Court of Appeals for the Federal Circuit under section 407. *416(d)(6)(C), 2 U.S.C. § 1416(d)(6)(C)*
- A final decision in a civil action under section 408 that is no longer subject to appeal. *416(d)(6)(D), 2 U.S.C. § 1416(d)(6)(D)*

Senate Ethics Committee Review

The CAA Reform Act includes a requirement that the Select Committee on Ethics of the Senate must take certain actions after receipt of a settlement agreement for a claim that includes an allegation that a Senator personally committed unlawful harassment under section 201(a) or reprisal under section 207 for alleging such harassment. The Committee must:

- Review the settlement agreement;
- Determine whether an investigation of the claim is warranted; and
- If the committee determines, after the investigation, that the claim involved an actual violation committed personally by the Senator, then the committee must notify the OCWR ED to request reimbursement described in section 415(d) and include the settlement in the report required by section 301(l).

416(d)(3), 2 U.S.C. § 1416(d)(3)

Note: The CAA does not specify what actions, if any, must be taken by the Committee on Ethics of the House of Representatives in response to referred claims.

Ethics Committee Reports and Personally Identifiable Information

If, after referral of a claim as described above, one of the ethics committees issues a report, that Committee must ensure that the report does not directly disclose the identity or position of the individual who filed the claim. *416(d)(4), 2 U.S.C. § 1416(d)(4)*. The report may be redacted appropriately upon the agreement of the Chairman and Vice Chairman of the Committee. *416(d)(5), 2 U.S.C. § 1416(d)(5)*

B. Remote Work/Paid Leave

The CAA Reform Act adds a provision to the CAA that allows, but does not require, employing offices to provide remote work or paid leave options to employees upon request during the pendency of the employees' claims:

- An employing office may grant a covered employee's request to work remotely during the pendency of OCWR proceedings where such relocation would have the effect of materially reducing interactions between the covered employee and any person alleged to have committed the violation. *417(a)(1), 2 U.S.C. § 1417(a)(1)*
- Alternatively, if the employing office determines that the employee cannot carry out their responsibilities from a remote location or the relocation would not reduce interactions between the employee and the person(s) alleged to have committed the violations, the office may do any of the following:
 - grant a paid leave of absence;
 - permit a remote work assignment and grant a paid leave of absence to the covered employee; or
 - make another workplace adjustment, or permit a remote work assignment, that would have the effect of reducing interactions between the covered employee and any person alleged to have committed the violation.

417(a)(2), 2 U.S.C. § 1417(a)(2)

Employing offices may not require employees to use their own paid vacation or personal leave for the paid leave of absence. *417(b), 2 U.S.C. § 1417(b)*

C. Library of Congress Provisions

ADR for Library Employees

The Library of Congress was already subject to certain provisions of the CAA, and the OOC inspected Library facilities for OSH compliance and for certain types of barriers to physical access, but not until March 2018 were Library employees allowed to use the OOC's ADR process for alleged violations of other statutes applied by the CAA. On March 23, 2018 the President signed into law an appropriations bill, H.R. 1625, 115th Cong. (2018), section 153 of which brought the Library of Congress and its employees within the OOC's jurisdiction for most purposes. That bill amended the definition of "covered employees" under the CAA to include employees of the Library of Congress, and added the Library of Congress as an "employing office" for all purposes except the labor-management relations provisions.

The CAA Reform Act clarifies the rights of Library employees, as follows:

- For alleged violations of the statutes applied by sections 201, 202, or 203 of the CAA, Library employees may elect either to file a claim with OCWR or use the Library's

internal procedure. *401(d), (d)(1)(A), 2 U.S.C. § 1401(d), (d)(1)(A)*.⁶ Those statutes are:

- Title VII of the Civil Rights Act of 1964
 - The Age Discrimination in Employment Act
 - Title I of the Americans with Disabilities Act
 - The Rehabilitation Act
 - The Family and Medical Leave Act
 - The Fair Labor Standards Act
- If a Library claimant alleging violations of sections 201, 202, or 203 files first with the OCWR, they can change their mind and file instead with the Library at any time until 10 days after the Hearing Officer submits the preliminary review report. *401(d)(2), 2 U.S.C. § 1401(d)(2)*
 - If a Library claimant files first with the Library, then they may either continue with the Library's internal procedures and preserve the option (if any) to bring a civil action, or they may change their mind and file with the OCWR instead at any time prior to requesting a hearing through the Library's procedures. *401(d)(3), 2 U.S.C. § 1401(d)(3)*
 - If a Library claimant changes their mind and switches from the OCWR process to the Library process or vice versa in accordance with the time frames described above, then as long as their initial claim was timely filed, they are considered to have met the applicable initial filing deadline for the procedure to which they've switched. *401(d)(4), 2 U.S.C. § 1401(d)(4)*
 - For other alleged violations of statutes applied by the CAA, besides those listed above and the labor-management provisions, Library employees are treated the same as other covered employees.

These provisions are retroactive to March 23, 2018. *401(d)(5), 2 U.S.C. § 1401(d)(5)*

Accessibility for Library Visitors

Prior to the Legislative Branch appropriations bill, because the Library of Congress was not considered an employing office for purposes of ADA public access, the OOC could only enforce the removal of barriers to access on Library property that were the responsibility of other employing offices (i.e., the Office of the Architect of the Capitol or the United States Capitol Police). However, once the Library was brought within the OOC's jurisdiction in March 2018, the OOC assumed jurisdiction over accessibility issues that the Library was responsible for fixing – for example, the accessibility of Library programs to persons with impaired vision or hearing.

The CAA Reform Act clarifies the treatment of Library of Congress visitors for purposes of section 210 of the CAA, which applies Title II and Title III of the ADA. Qualified individuals with disabilities who allege that they have experienced barriers to access with respect to Library visits or programs may now elect to either file a Request for ADA Inspection with the OCWR or

⁶ The term “corresponding Federal agency” in the statute currently means the Library of Congress itself, because each of the six listed statutes gives the Librarian of Congress the authority equivalent to the federal agency that processes claims from employees outside of the Legislative Branch.

lodge a complaint with the Library, and they may also subsequently elect to change from one process to the other within certain specified time frames.⁷ *210(h), 2 U.S.C. § 1331(h)*

D. OCWR Internal Process

Record Retention

The CAA Reform Act adds a new requirement that the OCWR establish a permanent record retention program, including “records of preliminary reviews, mediations, hearings,” and other administrative and judicial proceedings under title IV of the CAA. *301(m), 2 U.S.C. § 1381(m)*

GAO Study/Audit

The CAA Reform Act mandates that the Government Accountability Office conduct a study of OCWR management practices and an audit of the OCWR’s cybersecurity systems and practices. Within 180 days of enactment of the CAA Reform Act, the GAO must submit reports to Congress regarding both the management practices study and the cybersecurity audit, including recommended improvements. *Pub. L. No. 115-397 §§ 205, 206*

Electronic Reporting System

The CAA Reform Act requires the OCWR to use the data collected through the new electronic case filing and tracking system to make “regular assessments of the effectiveness of the procedures under the [CAA] in providing for the timely resolution of claims” and as the basis of semi-annual reports to Congress. *402(c)(3), 2 U.S.C. 1402(c)(3)*

⁷ The statute refers to “the remedies and procedures set forth in section 717 of the Civil Rights Act of 1964... as provided under section 510” of the ADA. Section 510 of the ADA at 42 U.S.C. § 12209(6) delegates to the Librarian of Congress the authority to process claims of ADA Title II and III violations.