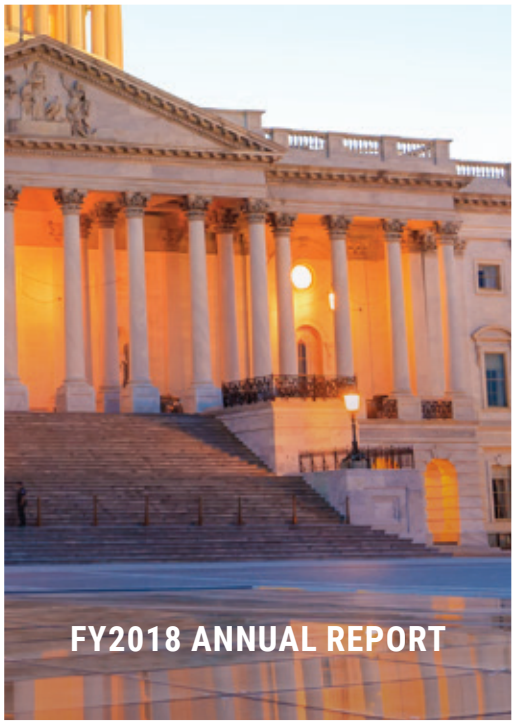
STATE OF THE CONGRESSIONAL WORKPLACE

A Report on Workplace Rights, Safety and Health, and Accessibility under the Congressional Accountability Act



FY2018 ANNUAL REPORT

OFFICE OF CONGRESSIONAL WORKPLACE RIGHTS
UNITED STATES CONGRESS

The Congressional Accountability Act of 1995 (CAA) applies workplace protections to the more than 30,000 employees of the legislative branch. The CAA established the Office of Compliance (OOC) to administer and ensure the integrity of the Act through its programs of dispute resolution, education, and enforcement. The Congressional Accountability Act of 1995 Reform Act, enacted on December 21, 2018, renamed the OOC the Office of Congressional Workplace Rights to better reflect the mission of the Office. This Annual Report covers the activities of the OOC during the fiscal year 2018, and corresponding references in this report reflect that name.

CONGRESSIONAL WORKPLACES COVERED BY THE CAA IN FY18

- Congressional Budget Office
- Government Accountability Office*
- U.S. House of Representatives
- Library of Congress
- Architect of the Capitol
- Office of Compliance
- Office of the Attending Physician
- Office of Congressional Accessibility Services
- U.S. Senate
- U.S. Capitol Police

Certain provisions of the CAA do not apply to the Government Accountability Office; however, GAO employees may have similar legal rights under different statutory provisions.

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Your Rights in the Congressional Workplace

Legislative branch employees are protected by the Congressional Accountability Act of 1995 (CAA). Please visit www.ocwr.gov for further information about the rights below or contact the Office at (202) 724-9250. All contacts are confidential.

PROTECTION FROM UNLAWFUL DISCRIMINATION

Prohibits harassment and discrimination in personnel actions based on race, color, national origin, sex, religion, age, or disability.

CAA SEC. 201

FAMILY & MEDICAL LEAVE

Provides rights and protections for employees taking or requesting leave for specified family and medical reasons.

CAA SEC. 202

FAIR LABOR STANDARDS

Requires the payment of minimum wage and overtime compensation to nonexempt employees, restricts child labor, and prohibits sex-based wage differentials.

CAA SEC. 203

POLYGRAPH TESTING PROHIBITION

Except in certain circumstances, 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 for refusing to take a test.

CAA SEC. 204

NOTIFICATION OF OFFICE CLOSINGS & 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.

CAA SEC. 205

UNIFORMED SERVICES RIGHTS & PROTECTIONS

Protects the job rights of individuals who leave employment positions to undertake military service and prohibits discrimination on the basis of present or past membership in the uniformed services.

CAA SEC. 206

PROTECTION FOR EXERCISING WORKPLACE RIGHTS

Prohibits employing offices from intimidating or retaliating against employees who exercise their rights under the CAA.

CAA SEC. 207

ACCESSIBILITY

Protects members of the public with qualified disabilities from being denied access to public services, programs, activities, or places of public accommodation in the legislative branch.

CAA SEC. 210

HAZARD-FREE WORKSPACES

Requires employing offices to comply with occupational safety and health standards and to provide workplaces free of recognized hazards.

CAA SEC. 215

COLLECTIVE BARGAINING & UNIONIZATION

Protects the rights of certain legislative branch employees to form, join, or assist a labor organization or to refrain from such activity.

CAA SEC. 220

GENETIC INFORMATION NONDISCRIMINATION & PRIVACY

Prohibits the use of genetic information as a basis for personnel actions.

GINA TITLE II

VETERANS' EMPLOYMENT OPPORTUNITIES

Gives eligible veterans enhanced access to certain job opportunities and establishes a redress system in the event that their veterans' preference rights are violated.

VEOA SEC. 4(c)

Statement from the Chair of the Board

"It was a notable year for many reasons, but most significantly because of the rise in awareness and concern about sexual harassment in the workplace, including on Capitol Hill."

On behalf of the Board of Directors of the Office of Congressional Workplace Rights (OCWR), formerly the Office of Compliance (OOC), I am pleased to present our Annual Report on the State of the Congressional Workplace for FY18. It was a notable year for many reasons, but most significantly because of the rise in awareness and concern about sexual harassment in the workplace, including on Capitol Hill.

Seeking to improve the climate in congressional offices for all employees, Members of Congress worked together on legislation to advance workplace protections and, on December 21, 2018, the Congressional Accountability Act of 1995 (CAA) Reform Act was signed into law. Reforms to the CAA require offices to post notices of workplace rights, and to implement anti-discrimination and anti-harassment policies and training programs. It also extends protections to unpaid staff, and requires Members to be personally liable for acts of harassment and retaliation committed by them. Effective June 19, 2019, a new and more streamlined process for resolving workplace claims will be implemented.

For more than two decades, our Board and staff have worked tirelessly to advance the principles of the CAA, protecting the rights of congressional employees to work in an accessible and safe environment free from harassment and discrimination. This report highlights the many accomplishments of our Office, including educating employees and employing offices on their rights and responsibilities, providing a neutral and independent process for resolving workplace disputes, and inspecting over 18 million square feet of legislative branch facilities and grounds to ensure hazard-free workspaces.

We look forward to continuing our work with the congressional community to advance workplace protections for the more than 30,000 employees of the legislative branch, and to ensure access for more than 1.3 million visitors to the Capitol and to state and district offices.

Sincerely,
Barbara Childs Wallace
Chair, Board of Directors

Statement from the Executive Director

"Our mission remains as important as it was under the Office of Compliance banner: to advance the rights and responsibilities in the Congressional Accountability Act of 1995."

It is my privilege to present the Annual Report for FY18. In my second year as the Executive Director, I have the honor of serving with a talented and motivated staff as we embrace the new name and new procedures for the Office of Congressional Workplace Rights.

Our mission remains as important as it was under the Office of Compliance banner: to advance the rights and responsibilities established by the Congressional Accountability Act of 1995 (CAA).

This year, the Office saw sweeping changes as a result of the #MeToo movement on Capitol Hill. In our testimony before the Committee on House Administration in November and December of 2017, we highlighted suggested legislative changes to our statutory framework and process, many of which were adopted in the CAA Reform Act. Both the House and the Senate mandated workplace rights training for all employees, including unpaid staff. These actions adopt our Section 102(b) recommendations to Congress from previous years.

Because our jurisdiction has expanded to now include the Library of Congress, we are seeing a notable increase in the number of cases filed in our Administrative Dispute Resolution (ADR) process. Still, we continue to process cases without a backlog, and the Board of Directors has a 100% affirmance rate from the U.S. Court of Appeals for the Federal Circuit.

In FY18, we convened our second ADR Summit to discuss current legal developments and share best practices with mediators and hearing officers. Our training and outreach efforts were tremendously successful and included new in-person and online modules, showing a triple-digit increase in activity following the #MeToo movement last fall. We no longer live in a time when it suffices to merely train on the legal definitions of discrimination, harassment, and retaliation. Our training catalog now includes bystander intervention and unconscious bias awareness, as part of our ongoing efforts to change the climate of the workplace and prevent behaviors that could lead to violations of the CAA.

More exciting developments in education continue, as we look forward to educating the legislative branch community on the protections provided by the CAA and the Reform Act. It continues to be our pleasure to serve the legislative branch community in carrying out our broad mandate advancing workplace rights, safety and health, and accessibility in the legislative branch.

Sincerely,
Susan Tsui Grundmann
Executive Director

Education and Training: Practical Materials

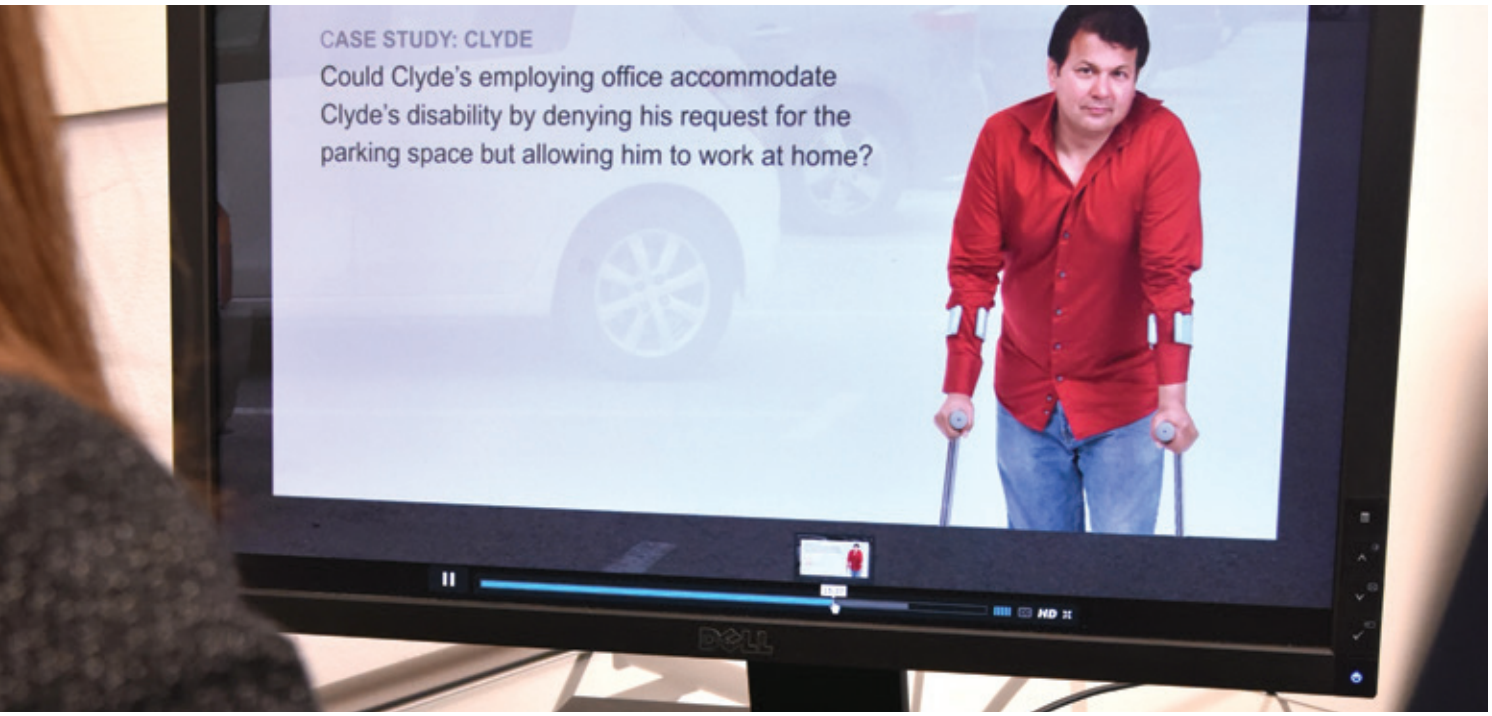
In FY18, the OOC added three courses to its training curriculum: Introduction to the Family & Medical Leave Act (FMLA), Bystander Intervention, and Preventing Sexual Harassment. These courses present common workplace scenarios and provide practical advice for legislative branch employees. The Congressional Accountability Act of 1995 (CAA) mandates an education program and the OOC provides the legislative branch with resources and tools that promote compliance with the CAA. To cater to a workforce with unpredictable or unconventional schedules, and to those working remotely in district and state offices around the country, most courses are available both in person and online.

- From having a baby to caring for aging parents, the **Introduction to the Family & Medical Leave Act (FMLA)** training course reviews how the law is applied in the legislative branch. The course outlines FMLA requirements, including eligibility and entitlement, as well as employees and employer obligations under the FMLA as applied to Congress. The training is particularly valuable because most employees will require an extended leave at some point in their careers for childbirth, adoption, recovery from surgery, military deployment, or to address the medical needs of an immediate family member.
- Should you say something? What should you say? Then what? Our **Bystander Intervention** course recognizes that people are more likely to act when they see inappropriate behavior if they know how to get involved. Bystander response training has historically focused on college campuses and military installations. However, congressional employees can also benefit from this unique, practical training to recognize offensive and discriminatory conduct and respond effectively.
- **Preventing Sexual Harassment** goes beyond the legal definitions of quid pro quo sexual advances and hostile work environment to equip employees with skills and strategies for dealing with nuanced situations such as suggestive compliments, hugs, and jokes that might go too far. This updated, interactive course contains practical advice about real-world scenarios and how to nip inappropriate behaviors in the bud. Some offices have chosen to require their employees to complete the 30-minute course as part of orientation so that expectations are clear from their first day in the office.

Additionally, the OOC developed a workshop on **Unconscious Bias**. It includes an overview of the psychology and science of bias, and provides employees with practical strategies for recognizing and minimizing the effects of both cognitive and unconscious bias in the workplace. The 60-minute workshop was delivered times in person and via webinar so that district and state staff were able to participate.

The Special Report on Sexual Harassment in the FY17 Annual Report also covered educational outreach that extended into FY18.

In FY18, the OOC's training catalog also included anti-discrimination, anti-harassment, and anti-retaliation training specifically developed for Senate employees to meet the requirements of S.Res. 330, passed in the 115th Congress. Training on disability discrimination prevention, a guide to understanding veterans' rights, an introduction to the Congressional Accountability Act, and specialized senior staff training were also available.



At the request of employing offices, the OOC is able to customize educational materials, including training sessions and publications.

EDUCATIONAL OUTREACH

In addition to online courses and webinars for state and district staff, the OOC provided safety information designed to empower employees to assess their offices and ensure that basic safety measures, such as emergency plans, are in place. An online form was provided to allow state and district offices to certify results of self-inspections. State and district staff participation is required of offices that wish to be considered for Safety Recognition Awards.

The OOC presented at Congressional Research Service's District and State Staff Institute conferences, providing an overview of the CAA and explaining workplace rights and protections.

Congressional leaders urged offices to post Notices of Workplace Rights, and the OOC was pleased to meet the demand. These highly visible displays reflect a commitment by employing offices to educate their workforce and reinforce their goals for a legislative branch free from discrimination and harassment.

The OOC reorganized its website in FY18 to make resources and materials easier to find and used a full spectrum of social media and traditional publications to broadly disseminate information. Quarterly e-newsletters were sent to employees of the Senate, House of Representatives, U.S. Capitol Police, Congressional Budget Office (CBO), Architect of the Capitol, and the OOC.

The OOC hosted numerous educational events, including an ADR Summit for mediators and hearing officers to discuss current legal developments and share best practices. The OOC also delivered training for EEO Counselors at the CBO. Additionally, the OOC was pleased to present information about the CAA and the Administrative Dispute Resolution process to the contracted trainers providing workplace rights training to House employees.

COLLABORATION

The OOC partnered with other legislative branch offices to develop harassment prevention courses, tailored to resonate with the legislative branch's unique and diverse workforce. Courses reflected leadership's goals of heading off offensive behavior and urging employees to report incidents.

The OOC was also pleased to present a series of in-person workshops on bystander intervention for the CBO. Delivered over the course of four days, the workshops were interactive and allowed for impromptu discussions by employees and supervisors. The leadership team at CBO worked to ensure that the material would be both relevant and thought-provoking. The result was a series of frank discussions about important workplace issues on Capitol Hill, including how to respond to an offensive email or comment, why bystanders should respond if they see a colleague mistreated, and where to get help if there's a problem.

The OOC hopes that these projects will serve as a model for future collaboration, as all offices strive toward the goal of a culture of collegial respect and professionalism in the legislative branch.

Catalog of Staff Workshops:
https://bit.ly/2JJ2str

Administrative Dispute Resolution Process (FY18)

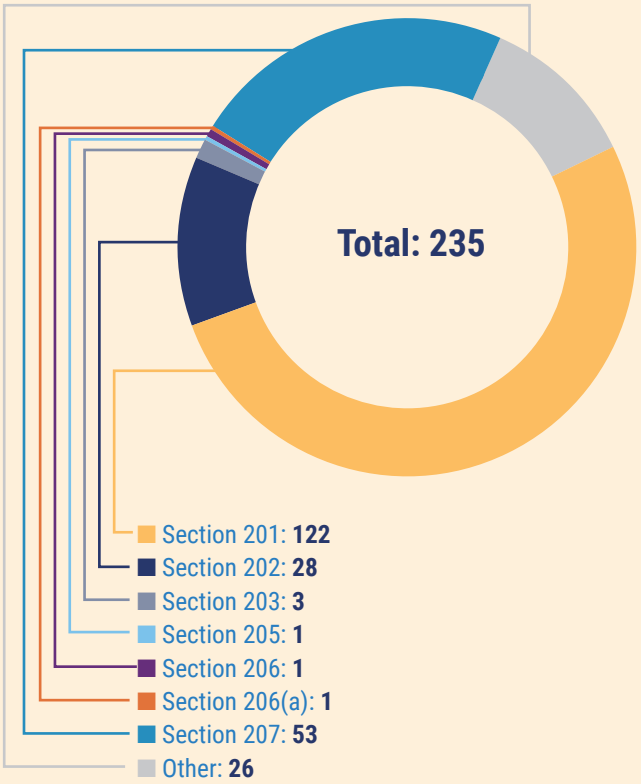
The Congressional Accountability Act of 1995 (CAA) established an Administrative Dispute Resolution (ADR) process to resolve claims made by covered employees alleging that their workplace rights under the CAA were violated. With the passage of the CAA Reform Act on December 21, 2018, a new ADR process was established that will take effect on June 19, 2019. This report covers FY18 case activity before the new ADR process was implemented under the CAA Reform Act, and includes counseling, mediation, administrative hearings, and appeals to the Board of Directors.

The procedures in FY18 were as follows:

- At any time, covered employees could call the OOC to informally discuss a workplace issue. Not all informal discussions with an OOC counselor resulted in a formal proceeding. During the ADR process, employees could designate a representative, such as an attorney, to represent them in a matter.
- To initiate a case, a formal request for counseling must have been filed within 180 days of an alleged violation of the CAA. Counseling provided employees the opportunity to discuss workplace issues in a confidential setting and learn how the CAA protections might apply to their concerns.
- Employees seeking to pursue their case beyond counseling had to file a request for mediation. With the assistance of a third-party neutral, mediation provided an opportunity for the parties to discuss the issues confidentially and seek a mutual resolution to the claim.
- If a matter was not resolved in mediation, employees could file an administrative complaint that promptly was heard by a hearing officer, or could file a civil action in federal court. A decision of a hearing officer could be appealed to the Board of Directors, and a decision of the Board could be appealed to the Federal Circuit.
- Depending on the law and facts in a case, a hearing officer, the Board of Directors, or a federal court could order monetary awards and other appropriate remedies, such as reinstatement, promotion, back pay, attorney's fees, and costs. No civil penalties or punitive damages could be awarded for any claim under the CAA.

Administrative Dispute Resolution Statistics (FY18)

GENERAL INFORMATION REQUESTS FROM COVERED EMPLOYEES BY SECTION OF THE CAA

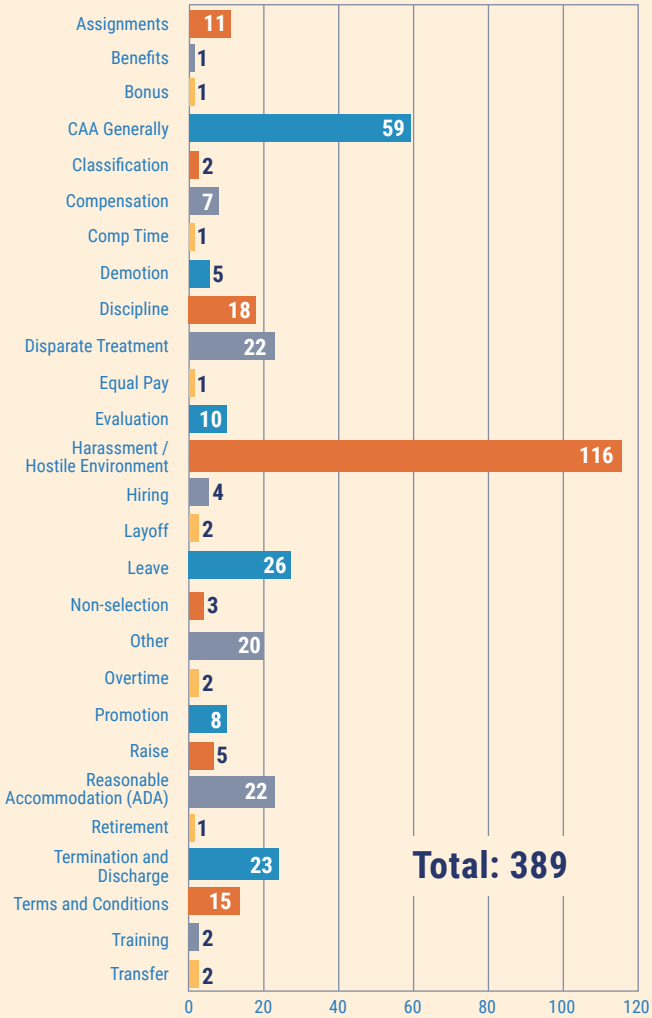


No requests were made under Section 204—Polygraph protections.

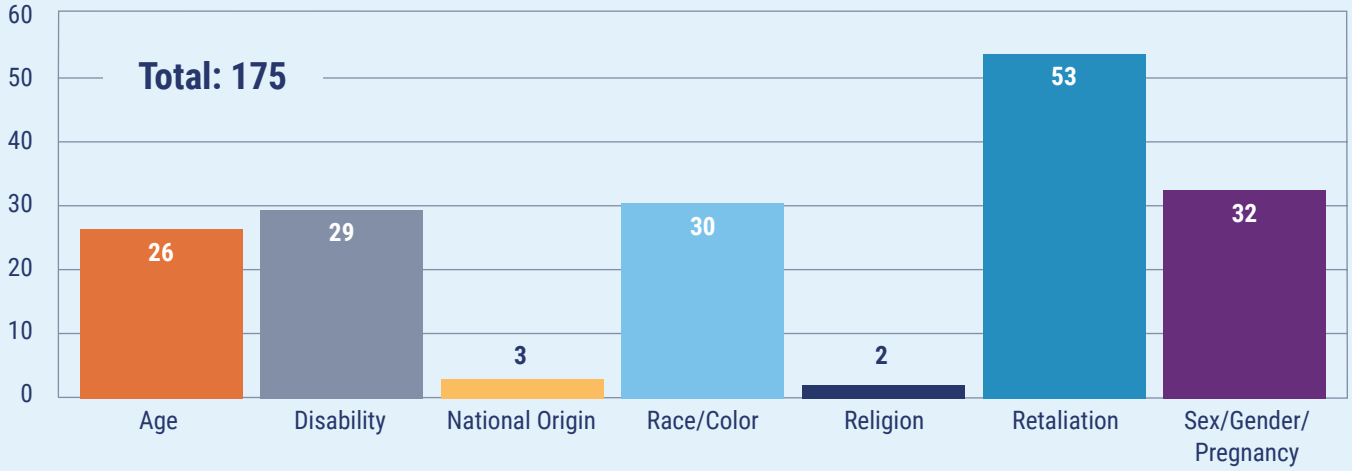
ADR statistics do not include requests for information from employing offices, calls from the public and non-eligible employees, requests for and about training, or media inquiries.

GENERAL INFORMATION REQUESTS FROM COVERED EMPLOYEES BY WORKPLACE ISSUE

An individual contacting the OOC may inquire about more than one workplace issue.



INFORMATION REQUESTS BY COVERED EMPLOYEES REGARDING DISCRIMINATION AND RETALIATION



Requests for Confidential Counseling: Initiating a Formal Proceeding

COUNSELING

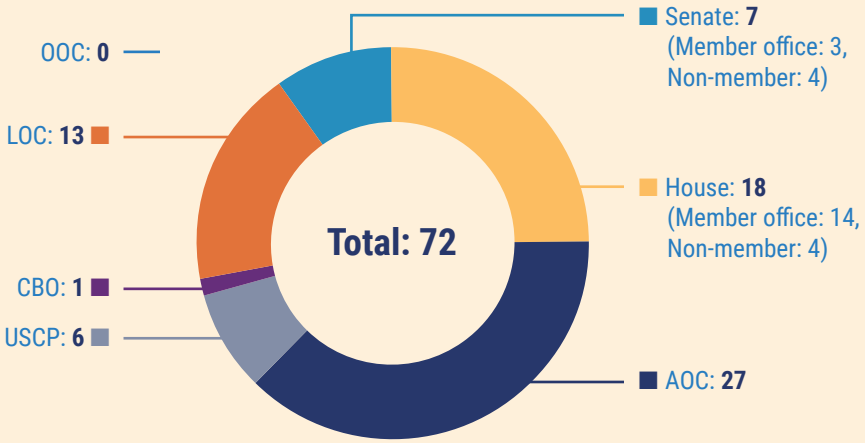
Pending from FY17	11
Newly filed in FY18	72
Total	83

Resolved in counseling	15
Pending in counseling	6
Requested mediation	53
Waiting period to request mediation	9

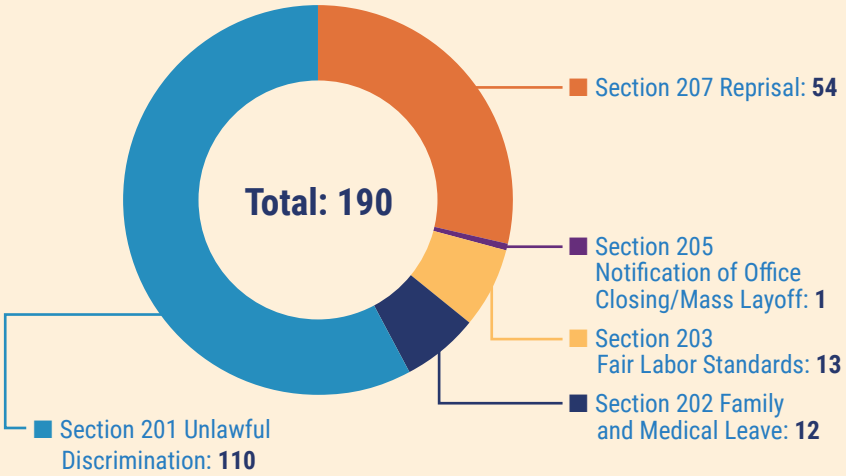
WORKPLACE ISSUES RAISED BY EMPLOYEES IN COUNSELING

The most common issue raised in counseling in FY18 was harassment/hostile work environment. Other issues that arose frequently in counseling included disparate treatment, termination, leave, and discipline.

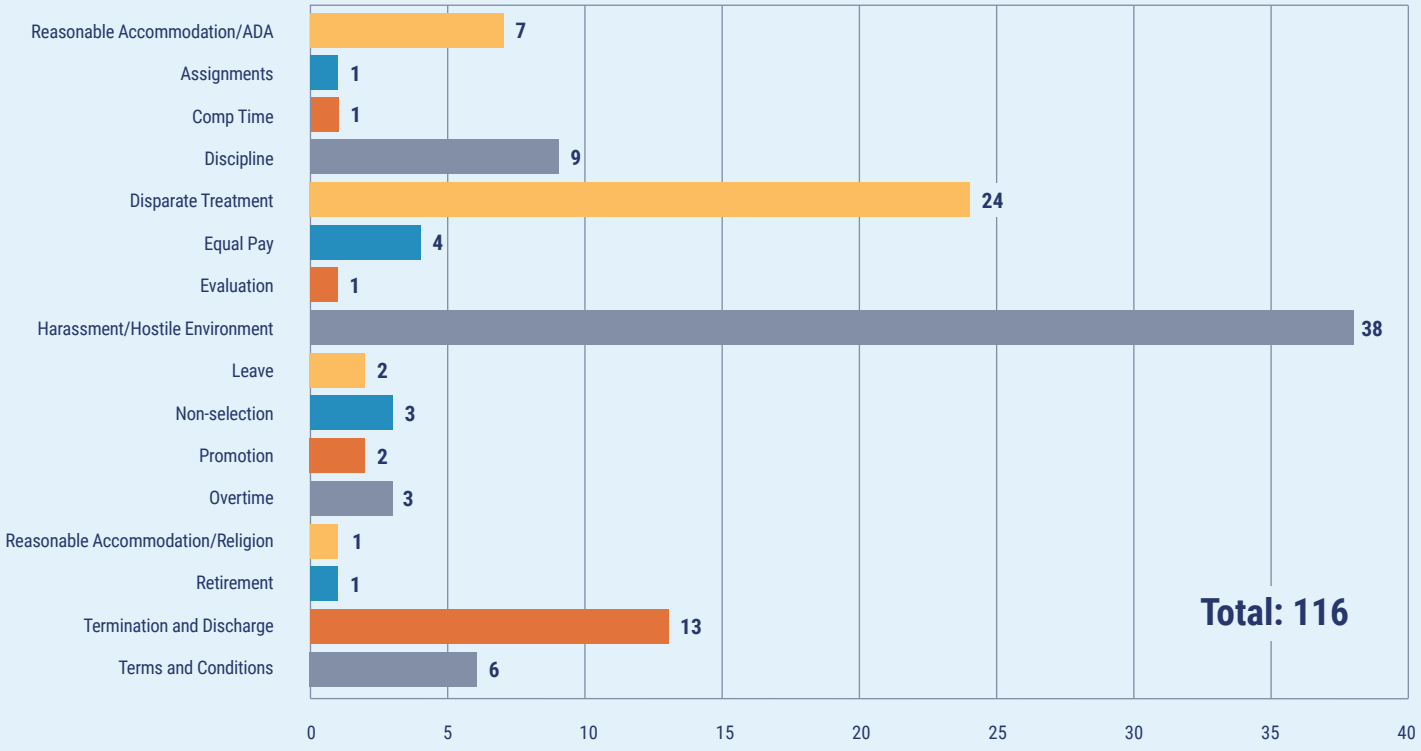
FORMAL REQUESTS FOR COUNSELING FILED BY EMPLOYING OFFICES



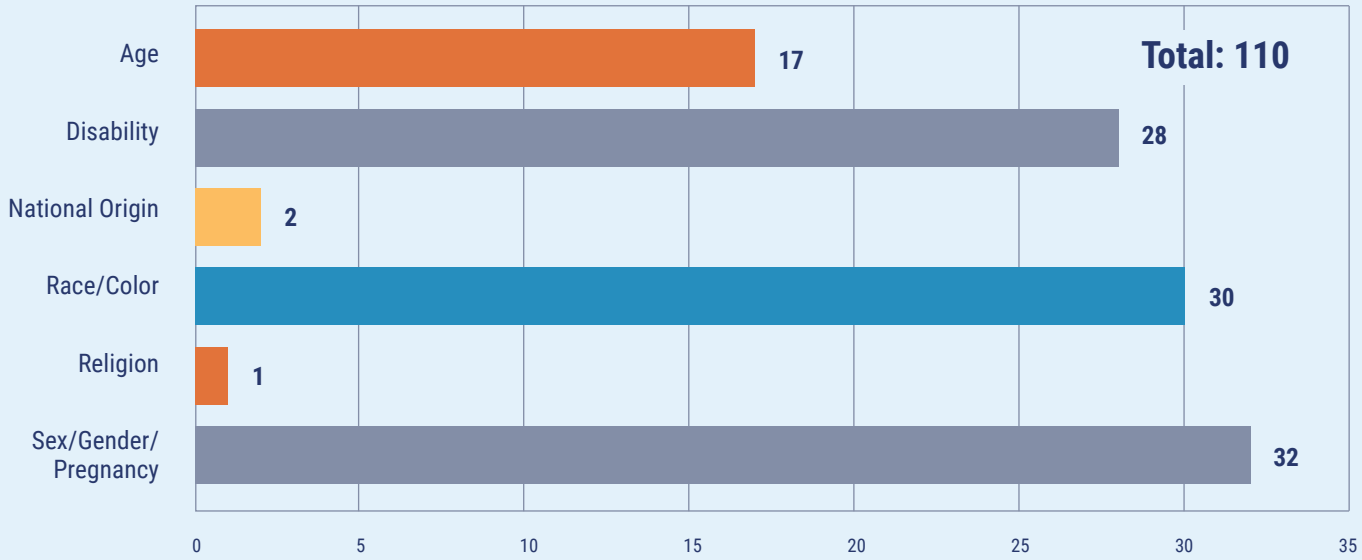
FORMAL REQUESTS FOR COUNSELING BY SECTION OF THE CAA



WORKPLACE ISSUES RAISED IN COUNSELING



SECTION 201 ALLEGATIONS OF DISCRIMINATION AND/OR HARASSMENT LISTED BY PROTECTED CATEGORY



Requests For Mediation: Efforts To Resolve Disputes Rather Than Litigate

Once a case proceeded to mediation, the employing office was notified and the parties attempted to resolve the matter with the assistance of a neutral mediator appointed by the OOC. The mediation period was 30 days, unless both parties agreed to extend it. Resolving a case during mediation enabled parties to sculpt a resolution that met their needs and saved them from often burdensome litigation.

MEDIATION PROCEEDINGS

Pending from FY17	22
New mediation requests filed in FY18	53
Total	75

Resolved in mediation (settled/withdrawn/no further action)	44
In waiting period to file complaint	12
Pending in mediation	16
Administrative complaint filed	3

Adjudication: Confidential Hearing or Federal Court

If parties were unable to resolve their dispute in mediation, the employee could file an administrative complaint with the OOC or file a lawsuit in federal court. In both proceedings, the parties had the opportunity to present their evidence to a hearing officer or judge who issued a decision based on the merits of the case.

The same remedies were available whether the employee filed with the OOC or in court. When an employee filed an administrative complaint with the OOC, the case was heard in a confidential setting and decided by a neutral and experienced hearing officer appointed by the OOC. If the employee prevailed, or the hearing officer's decision was appealed to the Board of Directors, the opinion became public. If instead the employee filed a lawsuit in court, the proceedings were a matter of public record decided by a federal judge.

ADMINISTRATIVE COMPLAINT PROCEEDINGS

Pending complaints	1
New complaints filed	4
Total	5
Resolved during hearing (settled or withdrawn)	2
Hearing officer decision issued	2
Pending in hearing at end of FY18	1

MONETARY SETTLEMENTS AND AWARDS

Section 415 of the CAA established "an account of the Office in the Treasury of the United States for the payment of awards and settlements." The CAA further appropriated "such sums as may be necessary to pay such awards and settlements." Section 415 required that awards and settlements under the CAA be paid from that account. Under the CAA, this Treasury account was separate from the operating expenses account of the OOC. The parties decided the settlement amounts and terms. Awards or judgments could also be ordered by a hearing officer, the Board of Directors, or a court of competent jurisdiction. A monetary settlement or award could resolve multiple alleged CAA violations. The settlements and awards in the accompanying chart resolved allegations of harassment, discrimination, and retaliation, as well as alleged violations arising out of contract and/or pay disputes. In FY18, the total number of settlements/awards was 10, and the total aggregate monetary amount was $338,816.

SETTLEMENTS AND AWARDS BY FISCAL YEAR

Fiscal Year	Number*	Total $ Amount
1997	7	$45,729
1998	16	$103,180
1999	6	$72,350
2000	16	$55,638
2001	7	$121,400
2002	10	$3,974,077
2003	11	$730,071
2004	15	$388,209
2005	14	$909,872
2006	18	$849,529
2007	25	$4,053,274
2008	10	$875,317
2009	13	$831,360
2010	9	$246,271
2011	16	$437,465
2012	12	$426,539
2013	14	$334,823
2014	11	$806,450
2015	13	$483,529
2016	14	$573,929
2017	8	$934,754
2018	10	$338,816

**Monetary settlements and awards could resolve multiple alleged CAA violations across fiscal years.*

Board of Directors

The Board of Directors is comprised of five members appointed by the joint leadership of the House of Representatives and the Senate. The Board members come from across the United States and are chosen for their expertise in employment and labor law. Their full biographies appear on the OCWR website at www.ocwr.gov.

Decisions by the Board of Directors set legal precedent for the interpretation and application of workplace rights in the legislative branch.

As the appellate body, the Board decides cases on review from hearing officers' rulings on matters that go through the OCWR's Administrative Dispute Resolution Process (ADR), including issues of discrimination, reprisal, and overtime pay. In addition to deciding cases appealed through the ADR process, the Board of Directors issues final decisions on union representation and election issues, negotiability petitions, and exceptions to arbitrators' awards. The Board also serves as the appellate body that reviews hearing officers' decisions regarding Unfair Labor Practice (ULP) complaints.

In FY18, the Board of Directors issued seven decisions resolving five ADR cases and four labor relations matters. The Board issued an order on three related ADR cases that was appealed to the U.S. Court of Appeals for the Federal Circuit. Two ADR cases were pending before the Board at the end of FY18.

The Office completed investigations into three representation petitions involving a change in union affiliation for previously certified bargaining units; one case was withdrawn and the Board granted the remaining two petitions. The Board also issued a decision denying exceptions to an arbitration award, and another decision affirming a hearing officer's order dismissing a complaint. Seven Board decisions were the subject of enforcement action in the Federal Circuit in FY18.

In addition to deciding cases, the Board has rulemaking responsibilities. The Board adopts for congressional approval substantive regulations implementing workplace laws under the CAA, and approves the Procedural Rules of the OCWR. The Board awaits congressional approval of pending regulations on the Family and Medical Leave Act, Americans with Disabilities Act titles II and III, and Uniformed Services Employment and Reemployment Rights Act in the legislative branch. Without congressional approval, the Board's adopted substantive regulations do not go into effect. In its Section 102(b) report to Congress, issued at the conclusion of the 115th Congress for consideration by the 116th Congress, the Board requested that the regulations be adopted.

Section 102(b) Recommendations to Congress:
https://bit.ly/2WOQsxc

PETITIONS FOR BOARD REVIEW IN FY18

Board decisions issued	7
ADR cases resolved	5
Labor cases resolved	4
Total	9

ADR Cases

Pending from previous year	5
New appeals filed in FY18	2
Resolved by the Board	5
Board decisions appealed to the Federal Circuit	3
Pending before the Board at the end of FY18	2

Labor Relations Cases

Pending from previous year	2
New appeals filed in FY18	4
Resolved by the Board	4
Board decisions appealed to the Federal Circuit	3
Board decisions that were the subject of enforcement actions in the Federal Circuit during FY18	7
Pending before the Board at the end of FY18	1

From the Office of the General Counsel

The General Counsel of the OOC is responsible for matters arising under three sections of the CAA: Section 215 (Occupational Safety and Health Act of 1970; OSHAct or OSH), Section 210 (Public Services and Accommodations under the Americans with Disabilities Act of 1990 or ADA), and Section 220 (Unfair Labor Practices under Chapter 71 of Title 5, United States Code).

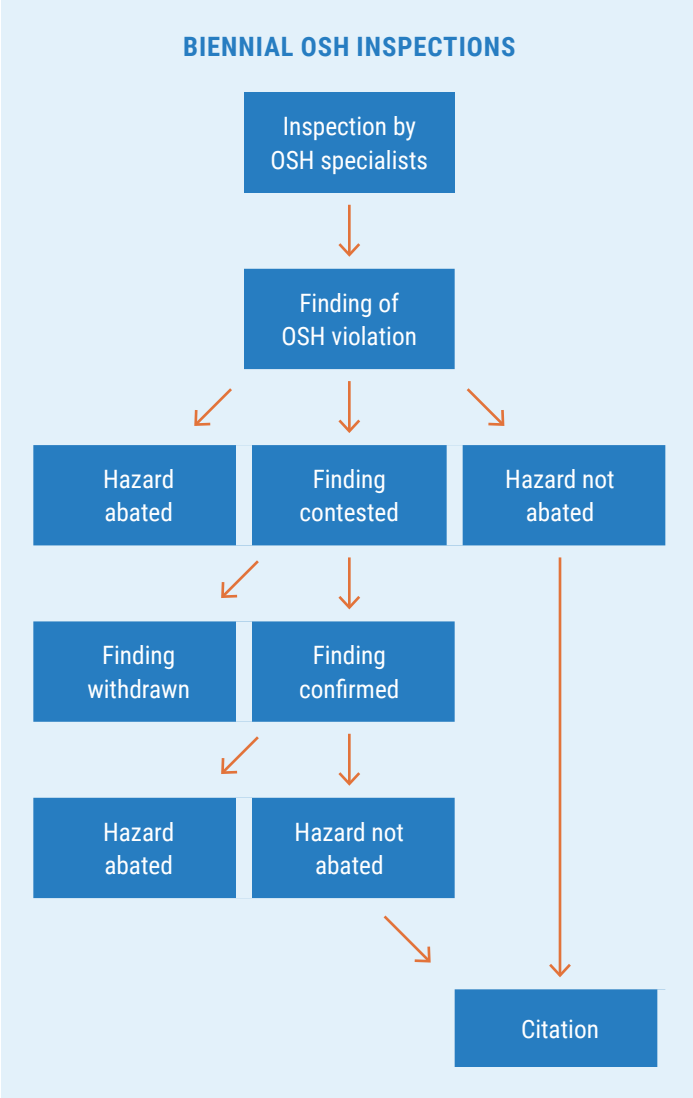
In FY18, the Office of the General Counsel (OGC) successfully defended the OOC Board of Directors' decisions in a variety of cases before the U.S. Court of Appeals for the Federal Circuit and filed several unfair labor practice complaints.

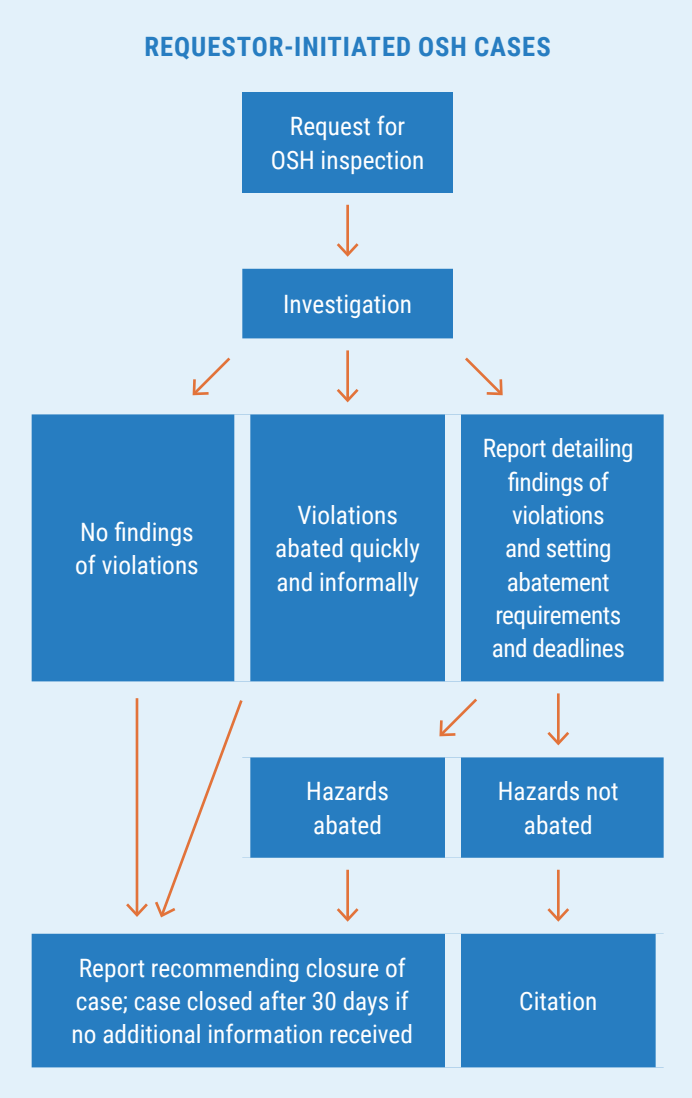
Meanwhile, the OGC continued its biennial OSH and ADA inspections for the 115th Congress; completed several OSH and ADA investigations; opened new OSH and ADA investigations based on reported incidents or requests from covered employees and the public; and continued to work with employing offices to abate safety and health hazards and remove barriers to access for persons with disabilities.

The OGC expanded its education and outreach efforts concerning safety and health, and continued its Brown Bag Lunch series, which aims to educate legal counsel from the legislative branch on various topics covered by the CAA to facilitate the employing offices' compliance with applicable laws. Brown Bag sessions in the past year covered sexual harassment, the Speech or Debate Clause and sovereign immunity, the Genetic Information Nondiscrimination Act (GINA), and issues involving social media in relation to the laws applied by the CAA.

SAFETY AND HEALTH

CAA Section 215 (2 U.S.C. § 1341) requires compliance with the OSHAct, which mandates that employing offices comply with occupational safety and health standards and provide employees with workplaces free from recognized hazards that are likely to cause death or serious injury. The OGC conducts required biennial inspections of legislative branch facilities, grounds, and programs for violations of applicable standards and reports its findings to Congress and the Architect of the Capitol. The OGC also investigates allegations from covered employees regarding potential safety and health violations in legislative branch workplaces. Hazards identified through either the biennial inspection or requestor-initiated investigations must be abated, and the failure to correct the hazards may result in the issuance of citations and, ultimately, the filing of administrative complaints against the responsible employing office.





ENSURING A SAFE AND HEALTHY CONGRESSIONAL WORKPLACE

The CAA requires that, at least once each Congress, the OGC conduct inspections of all facilities, grounds, and programs within its jurisdiction and report its findings to Congress and the Architect of the Capitol. Beginning with the 112th Congress, the OGC moved to a risk-based OSH inspection program to focus on inspecting and abating higher-risk hazards that pose the greatest risk of injury, illness, and death to legislative branch employees. In FY18, the OOC's OSH specialists continued the inspections for the 115th Congress, covering areas including Senate offices, the Capitol Building, the Capitol Visitor Center, the Botanic Garden, the Power Plant, the Utility Tunnels, the Library of Congress Madison Building, the Library of Congress Packard Campus, the Supreme Court, and the Government Accountability Office. As in previous inspections, the most common violations campus-wide related to electrical hazards, means of egress, and fire safety.

The OGC also opened five new cases and worked with the responsible employing offices to address a variety of employee concerns including trip hazards, respiratory protection, and potential lead exposure. Additionally, the OGC continued to work with employing offices, including the Architect of the Capitol, the Library of Congress, and the U.S. Capitol Police, to abate hazards identified in cases from previous years, such as those arising out of a tree-related fatality, safety for police officers accessing building rooftops, and floor loading and emergency egress concerns.

This year, the OOC continued to expand its education and outreach efforts regarding some of the safety and health topics that frequently affect legislative branch employees including an online safety self-certification process for Members' District and State offices, new or updated "Fast Facts" on the OOC's website, and a webinar for employing offices.

Tips for Improving Office Accessibility: https://bit.ly/2WHQwLQ

Prevent Common Office Safety Hazards: https://bit.ly/2LHIWQB

Fast Facts: https://bit.ly/2CD3Nxs

SAFETY AND HEALTH—BY THE NUMBERS

Cases pending from FY17	16
New cases in FY18	5
Cases closed in FY18	7
Cases open at end of FY18	14
OSH-related inquiries that did not become cases*	12

** Either because they were outside of the OOC's jurisdiction or because the responsible entity resolved the issue based on OOC technical assistance.*

During FY18, the OGC worked collaboratively with the Library of Congress and several jurisdictions within the Office of the Architect of the Capitol to investigate alleged hazards and address any violations that were found:**

Architect of the Capitol	4 cases
Library of Congress	2 cases

*** Some cases involved both the LOC and the AOC.*

This year, the OOC continued to expand its education and outreach efforts regarding some of the safety and health topics that frequently affect legislative branch employees.

SAFETY AWARDS

For the 114th Congress the OOC reintroduced its Safety Recognition Awards for Members of Congress whose office spaces were found to be hazard-free during the biennial OSH inspections, as well as its Safety Advocate Awards for individuals who have made substantial contributions to improving safety in legislative branch facilities. To be eligible for the Safety Recognition Awards for the 115th Congress, in addition to having hazard-free offices on Capitol Hill, Members must also certify that their District and State offices have completed self-inspections for common office safety hazards. The awards will be presented at a ceremony in mid-2019.

About the safety awards:
https://bit.ly/2YjkG9A

OSH Self-Certification Form for District and State Offices:
https://bit.ly/2VjUXel

ENSURING ACCESS TO PUBLIC SERVICES AND ACCOMMODATIONS

CAA Section 210 (2 U.S.C. § 1331) requires legislative branch employees and employing offices to comply with certain provisions of Titles II and III of the ADA. These provisions mandate that public services and accommodations, including the facilities and buildings where public services are provided, be accessible to persons with disabilities. The OGC enforces these provisions through two main avenues: biennial inspections and investigations from Requests for Inspection filed with the office.

Biennial Inspections

The OGC, in partnership with Evan Terry Associates, inspects areas of public access in legislative branch facilities, grounds, and programs at least once each Congress to identify violations of applicable standards. The OGC reports its findings to Congress and the Architect of the Capitol, and notifies any other employing offices responsible for remediation. Since the 111th Congress, the OGC has used a barrier-removal survey approach to conduct its inspections, which involves: (1) identifying public access violations, known as barriers to access; (2) assessing the severity of each barrier to quantify the need for removal; and (3) evaluating potential solutions to the barriers based upon cost and need. To maximize resources, each biennial inspection focuses on specific facilities or grounds. In FY18, OOC inspectors continued their inspections for the 115th Congress, focusing on the Library of Congress, the Capitol Visitor Center, the House and Senate cafeterias and gift shops, the Ford House Office Building, and the U.S. Capitol Police headquarters.

ADA Requests for Inspection

The OGC investigates allegations of ADA public access violations raised in Requests for ADA Inspection. Requests may be filed by persons who experience or observe barriers to access, including non-employees and members of the public with disabilities. In FY18, the OOC received two Requests for ADA Inspection and eleven inquiries that did not become cases, either because they were outside of the OOC's jurisdiction or because the OOC provided technical assistance. Both of the formal requests concerned access to constituent services, and the OGC investigated and closed both cases.

Barrier Removal and Enforcement

Barriers to access identified through either the biennial inspection or the requestor-initiated investigation program must be removed, and the failure to do so may result in the filing of administrative complaints against the responsible employing office. Under this process, the OGC files a complaint with the Board of Directors, which is adjudicated by a hearing officer. The hearing officer's decision may be appealed to the Board for a final decision that may be appealed to the U.S. Court of Appeals for the Federal Circuit.

FACILITATING ADA COMPLIANCE

Education and outreach continued to be key tools for the OGC in facilitating ADA compliance in FY18. The Office focuses on these areas so that employing offices are in the best position to address issues before they arise and to make them aware of the resources the Office offers to help remediate any problems. In FY18, the OOC hosted a collaborative meeting with representatives from the AOC, the Office of the Chief Administrative Officer for the House, the Office of the House Employment Counsel, and our public access inspection contractor, Evan Terry Associates, to discuss strategies for addressing common physical public access issues in Member Offices. As a result of this meeting, stakeholders directly involved with office configuration and furniture fabrication were provided with practical information on office accessibility, including ideas for both short- and long-term solutions. The OGC also incorporated ADA outreach into larger OOC feature events, such as the quarterly Union Forum for legislative branch labor representatives. The OGC educated labor partners on the ADA public access inspection program and upcoming inspection dates affecting their respective buildings. The OGC also incorporated ADA public access and reasonable accommodation training in the EEO counselor training provided for the Congressional Budget Office in partnership with the OOC Executive Director staff. Additionally, the first edition of the OOC's FY18 Compliance@Work series focused on ADA reasonable accommodation requests.

The CAA protects a covered employee's right to form, join, or assist a labor organization without fear of penalty or reprisal.

LABOR-MANAGEMENT RELATIONS

CAA Section 220 (2 U.S.C. § 1351) makes the Federal Service Labor-Management Relations Statute (FSLMRS) applicable to covered employees and employing offices within the legislative branch and prohibits unfair labor practices by both employing offices and labor organizations. The CAA protects a covered employee's right to form, join, or assist a labor organization without fear of penalty or reprisal. It also protects those who choose not to join or participate in a labor organization.

The OGC is responsible for protecting the labor-management relations rights of covered employees and employing offices through the investigation of Unfair Labor Practice (ULP) charges and prosecution of ULP complaints. The Office has jurisdiction over approximately twenty union-represented bargaining units composed of a wide variety of employees, including police officers, masons, carpenters, electricians, plumbers, freight and material handlers, visitor guides and visitor assistants, power plant laborers, photographers and videographers, and clerical and administrative workers.

In FY18, the OGC organized two well-attended Union Forums, bringing together representatives of numerous legislative branch labor organizations to educate them about the Office and their rights under the CAA.

Resolution of Negotiability Disputes

In FY18 the OGC defended the Board of Directors' decisions on five negotiability petitions before the U.S. Court of Appeals for the Federal Circuit. All five petitions involved the United States Capitol Police and the Fraternal Order of Police, United States Capitol Police Labor Committee. The Court affirmed the Board's decision regarding the arbitrability of police officer terminations, and in the consolidated appeal of the other four negotiability petitions, the Court affirmed five, reversed six, and remanded one of the Board's holdings.

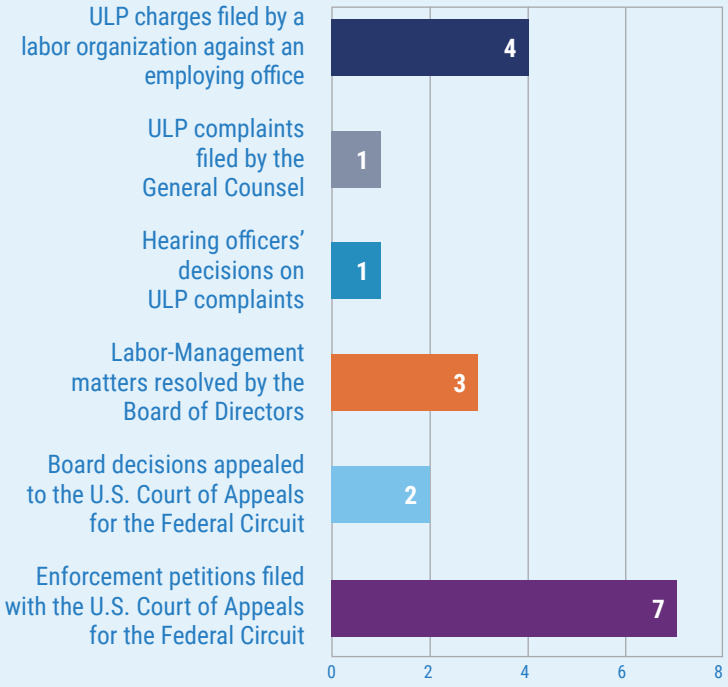
Investigation and Prosecution of ULPs

In FY18 the U.S. Court of Appeals for the Federal Circuit upheld a decision of the OOC Board finding that the United States Capitol Police had committed a ULP by discriminating against a union official for engaging in protected activity.

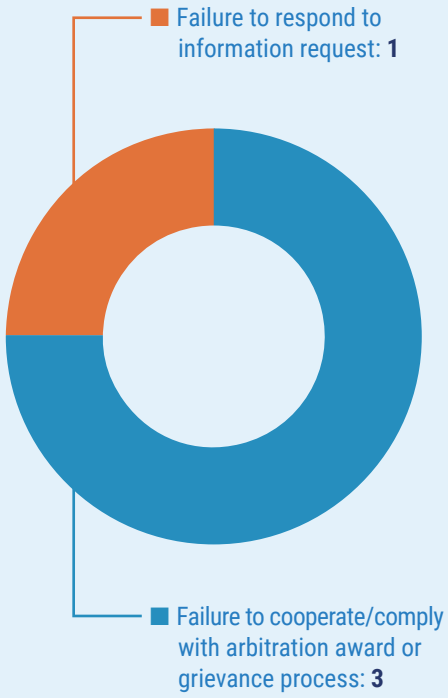
The OGC investigated four new ULP charges filed in FY18. The allegations included failure to respond to an information request, failure to comply with an arbitration award, refusal to participate in the selection of an arbitrator, and refusal to arbitrate a termination grievance.

The General Counsel filed one complaint regarding an employing office's refusal to arbitrate a termination grievance, which was sustained and is now pending before the Board on a petition for review. Also during FY18, the United States Capitol Police filed appeals and the General Counsel filed enforcement petitions with the U.S. Court of Appeals for the Federal Circuit regarding two other ULP decisions of the Board, and the Federal Circuit issued decisions dismissing the USCP appeals and affirming and enforcing the Board's decisions.

LABOR-MANAGEMENT DISPUTES IN FY18—BY THE NUMBERS



TYPES OF ULP CHARGES FILED



Looking Back: Q&A with Tom Seymour

10 Minutes with Tom

When Thomas H. Seymour, Fire Protection and Safety Professional Engineer, started inspecting Capitol Hill in 1998, worker injury rates here were higher than the rates for employees of the U.S. Forest Service. Inspectors routinely found egregious safety and health hazards including malfunctioning fire-suppression systems, inadequate emergency routes, and exposed asbestos.

We sat down with Tom for some historic perspective about just how much has changed and improved from the joint efforts of the OOC and legislative branch employing offices to keep today's legislative branch employees healthy and safe at work.

Q: When we think about the challenges that Forest Service employees often face, including wildfires and wildlife, it's hard to imagine how legislative branch workers would be injured at a higher rate. But according to the first Occupational Safety & Health Report submitted by the OOC in 1998, the Architect of the Capitol (AOC) had the highest occupational injury and illness rate in the federal government at that time. Can you help explain what accounted for the high rate of injuries back then?

A: The AOC had a number of employees off from work on workers' compensation coverage due to prior injuries and illnesses that were job-related. Some of those cases needed to be followed up on, and when we pointed out the problem, they reassessed some of those cases and the numbers came down dramatically. Also, not everyone may realize that the AOC's work includes all the shops, including carpentry, plumbing, electrical, painting, high voltage, air conditioning/ventilation, and the power plant. But there wasn't a fully-functioning safety staff to investigate accidents or "near misses" or a system to remediate the issues found. There were many findings by the OOC, including an absence of a hazard communication program so that employees [could be] fully informed of what chemical hazards existed and the precautions that should be taken to protect themselves and others. We brought the issues to their attention and a concerted effort has been made to fix them.

The different superintendents began to hire safety and fire protection people to help in the buildings they were managing. And the Architect set up a central safety, fire, and environmental group and that continues to this day.

Q: Fire safety was one of the more troubling discoveries, especially after several fires in 1998, including a fire in the Longworth House Office Building that sent seven Capitol Police Officers to the hospital. What has been done to correct those issues?

A: That particular fire occurred in an elevator shaft from welding. Today, the AOC has a hot work permit program with specific controls for fire safety during such operations. But another issue discovered was that many legislative branch buildings, including LOC buildings and the Russell, Longworth, and Cannon office buildings, were equipped with Omega sprinkler heads that were found to be defective and had been recalled by the U.S. Consumer Product Safety Commission and the manufacturer. We found that in some cases, the contractors who were hired to survey and document the locations didn't get into all of the spaces, but we got into the spaces that they did not go into, and we found more of them. In addition to replacement, the OOC called for periodic inspections and routine testing for all fire sprinkler systems.

In the early days, we found improperly stored flammable and combustible liquids. Sometimes, the practices were being conducted by contractors. But from our point of view, we didn't want to see a fire occur in a legislative branch building, so even though the contractors were responsible, we told the employing offices that they needed to make the necessary changes.

Q: A number of accessibility issues have been raised over the years, including a lack of accessible restrooms, visual alarms, and evacuation routes for those with mobility issues. What are some of the more notable solutions you've seen that have made modern day Capitol Hill more accessible to all who visit?

A: It's not enough just to be able to get into a building to enjoy the programs and services. They also need to be able to get out of the building in an emergency. For example, in yesteryear if you were a disabled veteran on an upper floor of the Russell building in a committee hearing that went late, the only accessible exit door would have been locked after 6 p.m. We knew

anyone in a wheelchair or on crutches would have to use the elevators to escape from the upper floors of the building. When Terrance W. Gainer was the chief of the U.S. Capitol Police he committed his forces and had his trained officers taught by AOC elevator officials on how to operate those elevators in an emergency. The staging areas, where disabled visitors are to wait for help, also needed to have two-way communications. And we would test a sample of these devices to make sure that if the person couldn't be understood that the emergency personnel would still know the location.

Q: Some issues have appeared in safety and health reports year after year. Why?

A: The statute says the citations must be fixed within a year, but...in some cases, pretty substantial resources are necessary. Dealing with historical buildings can add even more to the cost. But there has also been compromise. In the case of the Rayburn Office Building, their aluminum doors only got 1-hour fire safety rating by the Underwriters Laboratory, Inc. who tested the doors to a standard fire test (when 1.5- hour door rating is required for a 2-hour code-rated barrier), but we ended up negotiating that if they would fully provide sprinklers for the building that would be an acceptable compromise. As time marched on, the AOC has said they want to install fire sprinkler systems in all the buildings, which will protect the buildings and also help protect people.

Q: The largest and most momentous safety project in the legislative branch was the multi-year, multi-million dollar project to remedy life-threatening hazards in the Capitol Power Plant utility tunnels. Conditions in the tunnels included asbestos exposure, temperatures exceeding 160 degrees Fahrenheit, falling concrete, insufficient emergency exits, and an inadequate emergency communications system, among others. Has it improved?

A: When the OOC General Counsel filed the administrative complaint under the Congressional Accountability Act in 2006, it was the first and only time that has been done. But the AOC and OOC were then able to enter into a settlement agreement and the abatement was complete in 2012, both early and under budget.

It doesn't mean that conditions are perfect. Because of when the tunnels were built, they weren't waterproof and they still leak. They're concrete, and trucks and all sorts of vehicles drive over the top of them. They're under the city streets and they provide steam and chilled water all around the campus. AOC has done some major improvements. They've provided emergency egress points and they've provided ventilation and there's very little asbestos left. So the grave concern we had initially is no longer there. We still inspect them and structural engineers go down and point out improvements that need to be made, and that is continuing to this day.

Q: What were some of the more common safety violations that have been addressed?

A: Extension cords were a big problem in the early days. There weren't surge protectors in use with long power cords. And some surge protectors and extension cords were often daisy chained together. But the offices kept using them because the office supply stores in the House and Senate sold extension cords. Now they sell surge protectors with a variety of power cord lengths, and many additional electrical outlets have been added by the superintendents to aid Members' staff in performing their work.

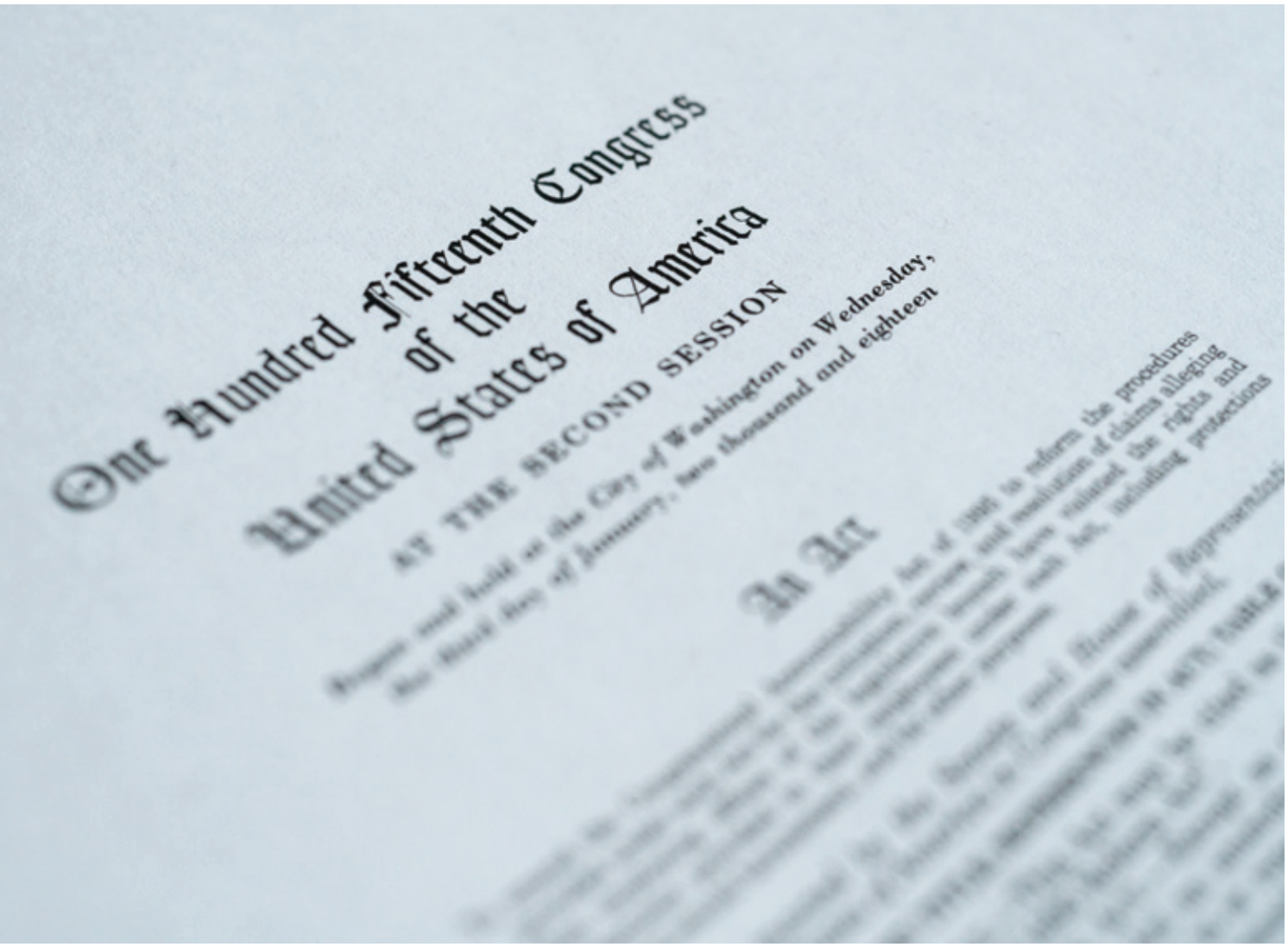
These are old buildings and space heaters are used in some offices. The stores in the House and Senate now sell the types of space heaters that have the tip-over switches. If you knock it over, it's supposed to kill the power and turn off.

We have better coordination now and safety professionals from the jurisdictions go with us on inspections and that gives us a chance to exchange information. They can explain what they're trying to do.

But, of course, money for correcting hazards is still an issue. Rayburn exit route renovations are done, Longworth's exit routes are now done, and when the Cannon renovations are finished, that will abate all the citations for the House that we have right now. More improvements are needed elsewhere... Still, it's a whole lot better today.

Looking Ahead: CAA Reform Act

With the December 2018 passage of the Congressional Accountability Act of 1995 Reform Act (Pub. Law No. 115-397), FY19 began with historic developments for workplace rights in the legislative branch. In addition to renaming the OOC the Office of Congressional Workplace Rights (OCWR) to better reflect the mission of our Office, the Reform Act revised the process for resolving workplace claims and extended protections of the CAA to unpaid staff. Notably, the Reform Act also requires Members of Congress to be personally liable for awards and settlements resulting from acts of harassment and retaliation committed by them. Furthermore, it requires offices to post notices informing employees of their rights and protections under the Act and to implement anti-discrimination and anti-harassment policies and training programs.



Most provisions of the Reform Act take effect on June 19, 2019, which is 180 days after the date of enactment (Dec. 21, 2018). The Office has conducted outreach efforts to explain the substantive and procedural changes, including Brown Bag lunches and Union Forums. FAQs about the Reform Act have also been developed to help employees understand the changes. Detailed information about the revised ADR process is published online at www.ocwr.gov.

Education will be provided in the months ahead to ensure clear guidance on the Reform Act's changes to the ADR process. While some steps in the ADR process are modified or eliminated (such as mandatory counseling), the Reform Act still requires that a claim be filed within 180 days of an alleged violation.

It's important that employees understand that they will still be able to speak to the OCWR confidentially and that the same substantive provisions and protections of the CAA are applied under the CAA Reform Act. For example, employees will continue to be protected from unlawful discrimination and harassment and receive job protection under the FMLA provisions.

In the Fall of 2019, the OCWR will launch a legislative-branch wide climate survey, now required by the CAA, which will provide insight into work culture and attitudes about sexual harassment in the legislative branch.

Additionally, look for:

- Revised Procedural Rules
- The 5-year OCWR Strategic Plan for 2019–2023
- New training on the CAA, developed to meet the Reform Act requirements and also engage legislative branch employees in a unique, relatable format
- Additional educational materials that address changes to the ADR process and emphasize a commitment to eliminating illegal behavior in the workplace
- Revised posters of workplace rights
- New secure e-filing system

If you would like to speak to someone at the OCWR regarding a workplace concern or would like more information on the Reform Act or the Office, please call (202) 724-9250.

About the CAA Reform Act:
https://bit.ly/2VFcymf

Strategic Plan:
https://bit.ly/2E5VcE8

Acronyms

ADR: Administrative Dispute Resolution

ADA: Americans with Disabilities Act

AOC: Architect of the Capitol

CVC: Capitol Visitor Center

CAA: Congressional Accountability Act of 1995

CBO: Congressional Budget Office

EPPA: Employee Polygraph Protection Act

FLSA: Fair Labor Standards Act

FMLA: Family and Medical Leave Act

FLRA: Federal Labor Relations Authority

FSLMRS: Federal Service Labor-Management Relations Statute

GINA: Genetic Information Nondiscrimination Act

GAO: Government Accountability Office

LOC: Library of Congress

OCWR: Office of Congressional Workplace Rights

OGC: Office of General Counsel

OSH: Occupational Safety and Health

OSHAct: Occupational Safety and Health Act

OOC: Office of Compliance

ULP: Unfair Labor Practice

USCP: United States Capitol Police

USERRA: Uniformed Services Employment and Reemployment Rights Act

VEOA: Veterans Employment Opportunities Act

WARN: Worker Adjustment and Retraining Notification Act

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