



COMPLIANCE@WORK

An educational resource for Legislative Branch employees and employers to help understand workplace rights and legal responsibilities under the Congressional Accountability Act of 1995

Employment
Law Series

HARASSMENT IS PROHIBITED IN THE CONGRESSIONAL WORKPLACE

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WHAT IS HARASSMENT?

Anti-discrimination laws that apply to the Legislative Branch protect current and former employees and applicants from adverse employment actions based on an employee's protected class, including race, color, religion, sex, national origin, age, disability (physical or mental), genetic information, and service in the uniformed services.¹ Unlawful harassment is a form of discrimination involving verbal, physical, or visual conduct of an offensive and discriminatory nature. Harassment is one of the most common claims made by Congressional employees when filing cases of discrimination with the Office of Compliance (OOC).

Anti-discrimination laws are not civility codes: they do not prohibit all inappropriate conduct. Nevertheless, these laws exist to give employees the right to work in an environment free from discrimination, and from discriminatory intimidation, harassment, and ridicule.

Workplace harassment is illegal when the conduct is either severe and pervasive, or results in an adverse employment action. An adverse employment

action is a significant change in employment status, such as firing, failing to promote, denying a transfer, giving a negative review or reassigning to a less desirable position. An adverse employment action causes significant changes in benefits, and other actions affecting the terms, conditions, and benefits of employment.

Harassment can occur anywhere in the workplace, such as an office or the hallways of Congress, or off-site, such as at happy hour or a retreat. The harasser can be a supervisor, co-worker, vendor, or almost anyone in the workplace. Illegal sexual harassment can occur between different sexes or the same sex.

Generally, two forms of harassment can occur in the Congressional workplace.

1. Quid Pro Quo Harassment

Quid pro quo harassment occurs when terms and conditions of employment (e.g., compensation, promotion, continued employment, etc.) are made contingent on the provision of favors, usually by an employer, supervisor, or agent of the employer who

¹ The Congressional Accountability Act of 1995 (CAA) applies anti-discrimination laws to Congress, including Title VII of the Civil Rights Act, Americans with Disabilities Act, Rehabilitation Act, Age Discrimination in Employment Act, Genetic Information Nondiscrimination Act, and Uniformed Services Employment and Reemployment Rights Act. Certain provisions of the CAA do not apply to the Government Accountability Office and the Library of Congress; however, employees of those agencies may have similar legal rights under different statutory provisions and procedures.

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has the authority to make decisions about employment actions. Quid pro quo harassment can also occur when the rejection of such favors results in a tangible employment detriment, such as a loss of a job or job benefit. Commonly, quid pro quo harassment involves an adverse employment action that occurs after sexual advances are rejected by an employee or sexual favors are required for an employment benefit, such as a pay raise or job assignment.

2. Hostile Work Environment

A hostile work environment occurs when there is unwelcome conduct, such as insults, slurs, or other verbal or physical conduct or activity regarding a protected trait. This conduct creates an intimidating, hostile, or offensive work environment, that unreasonably interferes with an individual's work performance. Unless it is unusually severe, a single incident on its own generally does not constitute illegal harassment.



UNWELCOME CONDUCT

can be words (unwanted attention, flirtation, sexual innuendo, explicit talk, propositioning, derogatory comments, jokes); displays (magazines, posters, objects, computer images, screen savers); physical contact (touching, invasion of personal space); or sexual favoritism (preference in promotions, assignments). Unwelcome conduct can be transmitted through several mediums of communication, such as face-to-face conversations, voicemails, text messages, emails, Twitter, and Facebook.

ACTIONS EMPLOYEES MAY TAKE IF HARASSMENT OCCURS

- An employee may, but is not required to, tell the harasser that the behavior is unwelcome.
- An employee may report the harassment to management or a supervisor, using the employing office's procedures for reporting such harassment.
- Legislative Branch employees may seek the services of the Employee Assistance Program (EAP) to help cope with a harassment situation.
- The employee may contact the OOC to discuss the matter and learn how to assert a claim for harassment in a strictly confidential setting with an OOC counselor. The dispute resolution process for resolving such claims is discussed further below.

BEST PRACTICES TO PREVENT AND HANDLE HARASSMENT CLAIMS IN EMPLOYING OFFICES

- Employing offices should take all steps necessary to prevent harassment from occurring and should take all complaints about harassment seriously. Ignoring harassment or allowing it to linger in the workplace will only increase liabilities and have negative consequences on the office's morale.
- Employing offices should inform employees of their right to work in an environment that is free from harassment, advise all employees (regardless of position) that harassment will not be tolerated, and train employees and managers to identify and prevent harassment behavior. Employing offices may obtain free posters titled "Your Rights in the Congressional Workplace" from the OOC. The OOC

NEGATIVE EFFECTS OF HARASSMENT IN THE WORKPLACE

If harassment is tolerated and left to flourish in the workplace, it can have significant consequences for the parties directly and indirectly involved in a case including:

- Creating an unproductive, unhealthy, and distracting work environment that diminishes employee morale and causes stress-related illnesses that can lead to absenteeism and increased medical costs;
- Bringing unwanted and unnecessary publicity that undermines the credibility of the work of, and the people in, Congress and its agencies in the Legislative Branch;
- Destroying the lives, reputations, careers, and means for earning a living of the individual harassed and the individuals accused of harassment;
- Driving away valued and talented employees and applicants; and
- Consuming and diverting enormous resources for all, including legal fees, as well as time spent by witnesses and managers who become involved in a case.



also offers brochures about workplace rights that employing offices may make available to staff.

- Employing offices should have an effective policy against harassment that includes defined and clear procedures for reporting, investigating, and resolving claims. An employing office may have additional policies concerning anti-discrimination and inappropriate conduct that are stricter than (but not less than) what the law requires.
- Once put on notice, an employing office has a legal obligation to take swift, remedial action to correct the problem, including protecting the employee from further harassment and retaliation. The law strictly prohibits reprisal or intimidation against employees who exercise their rights under the Congressional Accountability Act (CAA).

RESOLVING HARASSMENT DISPUTES UNDER THE CAA

Legislative Branch employees may contact the OOC for assistance in resolving harassment claims through a mandated legal dispute resolution process. An employee seeking to pursue a harassment claim must file a Formal Request for Counseling with the OOC no later than 180 days of the alleged incident to preserve the claim. An employee who brings a claim to the OOC may retain representation, such as an attorney, at any time during the dispute resolution process, at his or her expense.

Counseling with the OOC is strictly confidential and the employing office is not notified that the employee has filed the claim unless the employee decides to pursue the claim after the counseling period has ended. During counseling, an OOC counselor will meet with the employee to answer questions and inform him/her of the law and procedures under the



It is critical to remember that employees must file a formal request for counseling with the OOC no later than 180 days of the alleged harassment incident to preserve a claim. Reporting a harassment claim to a co-worker, a supervisor, leadership, an ethics committee, the Employee Assistance program, an executive branch agency (e.g., EEOC), or any other entity or person does not satisfy this legal requirement.

CAA. The counseling phase normally lasts for 30 days and provides the employee with an opportunity to assess his/her case before deciding whether to pursue the claim(s) beyond counseling.

If counseling does not resolve the matter, the employee may request confidential mediation, during which the employing office, employee, and OOC mediator meet to discuss and resolve the matter. If the matter is not resolved in mediation, an employee may file an administrative complaint with the OOC, and an independent hearing officer will determine the outcome of the case in a confidential proceeding. Alternatively, the employee may file his or her case in federal district court, where the case will become part of the public record.

If an employee prevails in his/her case, the hearing officer or a court may order monetary awards and other appropriate remedies. Attorney's fees, expert fees, and certain other costs may also be awarded. Civil penalties or punitive damages are not available under the CAA.

For additional information on harassment, the procedures of the OOC, or other rights under the CAA, please visit our website at www.compliance.gov, or call our office at 202-724-9250.