



## **WORKPLACE RIGHTS**

### **For Congressional Employees**

#### **OFFICE OF CONGRESSIONAL WORKPLACE RIGHTS**

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

The Congressional Accountability Act of 1995 (CAA), as amended by the Congressional Accountability Act of 1995 Reform Act (CAA Reform Act), applies the following employment, labor, safety & health, and accessibility rights to the legislative branch, including Congress and its instrumentalities:

- Protection from Discrimination
- Protection from Reprisal for Exercising Workplace Rights
- Access to Public Services and Accommodations
- Collective Bargaining and Unionization (certain employees only)
- Fair Labor Standards
- Family and Medical Leave
- Genetic Information Nondiscrimination and Privacy
- Hazard-Free Workplaces
- Notification of Office Closings and Mass Layoffs
- Polygraph Testing Protections
- Uniformed Services Rights and Protections
- Veteran's Employment Opportunities (certain employees only)

The CAA provides congressional employees with many of the same protections as employees in the private sector and the executive branch. The CAA also establishes a dispute resolution process, administered by the Office of Congressional Workplace Rights (OCWR), that emphasizes confidential advising and mediation for the early resolution of certain workplace disputes, and the right to pursue further adjudication of a claim either through an administrative hearing at the OCWR or in federal court.

Who is covered by the CAA?

The CAA protects over 30,000 employees and unpaid staff, including interns, detailees, and fellows, of the legislative branch:

- The China Review Commission
- The Congressional Budget Office
- The Congressional-Executive China Commission
- The Helsinki Commission
- The House of Representatives (Washington, DC and district office staff)
- The John C. Stennis Center for Public Service Training and Development
- The Office of the Architect of the Capitol
- The Office of the Attending Physician
- The Office of Congressional Accessibility Services
- The Office of Congressional Workplace Rights
- The Office of Technology Assessment
- The Library of Congress (except for section 1351)
- The Senate (Washington, DC and state office staff)
- The U.S. Capitol Police

In certain instances, former employees, job applicants, members of the public, and employees of the Government Accountability Office may be protected by the CAA.

### **What workplace rights do legislative branch employees have under the CAA?**

#### **No Discrimination or Harassment**

Section 201 of the CAA applies certain sections of the following laws to covered employees: Title VII of the Civil Rights Act of 1964, the Rehabilitation Act of 1973, Title I of the Americans with Disabilities Act of 1990, and the Age Discrimination in Employment Act of 1967. These laws require that all personnel actions involving covered employees must be made free from discrimination based on race, color, religion, sex, national origin, age, and disability.

- A “personnel action” includes hiring, termination, promotion, pay, benefits, reassignment, and other actions affecting the terms and conditions of employment.
- Employees are also protected from harassment based on race, color, religion, sex, national origin, age, and disability.

### **Family and Medical Leave**

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

- Employees on leave continue to receive health insurance benefits and should be restored to their former position at the conclusion of leave.
- Leave may be taken for childbirth, the adoption of a child, a covered employee's serious health condition, or the care of a family member with a serious health condition.
- Leave may be taken all at once, in separate blocks of time, or on a reduced work schedule.
- Certain situations related to military service and/or deployment may qualify for FMLA leave.

### **Fair Labor Standards**

Section 203 of the CAA applies provisions of the Fair Labor Standards Act of 1938 (FLSA) to eligible employees. These rights and protections require the payment of a minimum wage and overtime compensation to non-exempt employees, restrict child labor, require reasonable break time for nursing mothers, and prohibit sex discrimination in wages paid to men and women.

- Non-exempt employees are entitled to a minimum wage and to compensation for overtime work.
- Employees whose duties meet defined criteria may be exempt from the overtime wage and hour requirements.
- The FLSA does not apply to properly classified interns.

### **Polygraph Testing Protections**

Section 204 of the CAA applies provisions of the Polygraph Protection Act of 1988 to the legislative branch. With certain exceptions, these provisions prohibit: requiring or requesting that a lie detector test 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.

- Both current and prospective employees are protected.
- Some employees are excepted from protection, including the U.S. Capitol Police and those who work with top secret intelligence information.

### **Notification of Office Closings or Mass Layoffs**

Section 205 of the CAA applies the rights and protections of the Worker Adjustment and Retraining Notification Act (WARN) to covered employees, and requires the employees within offices of a certain size be notified of an office closing or of a mass layoff at least 60 days in advance of the event.

- Notice of a closing or layoff must be provided to either the affected employees or to their representatives (for example, a labor organization), and must be in writing.

- Special provisions apply to temporary employees.

### **Uniformed Services Rights and Protections**

Section 206 of the CAA applies the rights and protections of the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA). The law protects service members from discrimination and provides them with certain benefits and reemployment rights.

- The term “uniformed services” includes the U.S. Armed Forces (active and reserve), the National Guard, and the Public Health Service.
- Denying initial employment, reemployment, retention in employment, promotion, or any benefit of employment on the basis of uniformed service is prohibited.

### **Reprisal or Intimidation Prohibited for Exercising Workplace Rights**

Section 207 of the CAA provides that an employing office may not intimidate, retaliate, or discriminate against employees who exercise their rights applied by the CAA. This protection includes opposing practices made unlawful by the CAA, initiating proceedings, making a charge, providing testimony, assisting, or participating in a hearing or other proceeding brought under the CAA.

### **Access to Public Services and Accommodations**

Section 210 of the CAA applies Titles II and III of the Americans with Disabilities act of 1990 (ADA), which protect members of the public who are qualified individuals with disabilities from discrimination concerning access to public services, programs, activities, or places of public accommodation in legislative branch facilities.

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

### **Hazard-Free Workplaces**

Section 215 of the CAA applies the rights and protections of the Occupational Safety and Health Act of 1970 (OSHAct) to the legislative branch. The OSHAct requires that all workplaces be free of recognized hazards that might cause death or serious injury. Both employing offices and employees must comply with these workplace safety requirements, including implementing proper emergency evacuation plans.

- At least once each Congress, the OCWR inspects all legislative branch facilities for compliance with health and safety regulations.
- The OCWR’s Office of the General Counsel investigates alleged violations of workplace safety standards and ensures that unsafe working conditions are abated.
- The CAA requires that employing offices correct unsafe working conditions.

### **Collective Bargaining and Unionization**

Section 220 of the CAA applies provisions of the Federal Service Labor-Management Relations Statute, which protect the rights of certain legislative branch employees to form, join, or assist a labor organization, or to refrain from such activity. Once a labor organization becomes the exclusive bargaining representative of employees, an employing office is obligated to bargain in good faith over the terms and conditions of employment.

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

### **Genetic Information Nondiscrimination and Privacy**

Title II of the Genetic Information Nondiscrimination Act of 2008 (GINA) applies protections to covered employees under the CAA and prohibits the use of an employee's genetic information as a basis for discrimination in personnel actions such as hiring, discharge, payment, or promotion.

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

### **Veterans' Employment Opportunities**

Section 4(c) of the Veterans Employment Opportunities Act of 1998 (VEOA) gives certain veterans, who are covered under the CAA, enhanced access to job opportunities and establishes a redress system for preference-eligible veterans in the event that their veterans' preference rights are violated.

- Certain veterans or relatives of certain veterans are considered "preference eligible" and may receive some preference in an initial hiring decision or higher retention standing in the event of a layoff.
- Veterans' preference does not guarantee veterans a job or give them preference in internal actions.

### **Redress for Violations of the CAA**

The CAA provides that employees may be entitled to certain remedies for violations of the CAA, which may include monetary awards, attorney's fees, costs, reinstatement, promotion, or back pay. No civil penalties or punitive damages may be awarded for any claims under the CAA.

### **Dispute Resolution Process for Most Types of Claims\***

The CAA established an administrative and judicial dispute resolution (ADR) program to resolve disputes under most workplace rights laws applied by the CAA.

- Confidential advising is available at no cost to covered employees seeking information, guidance, and assistance with drafting claims.

- A claim alleging a violation of the CAA must be filed with the OCWR within **180 days** of the date of the violation.
- If a claim passes a preliminary review by a hearing officer, an employee may either pursue a non-judicial administrative hearing process with the OCWR or file a civil suit in federal court. Some advantages to using the OCWR's administrative hearing process instead of filing a civil suit is that the OCWR process is efficient, confidential, and there are no filing fees, yet it still provides an independent review of the claim and can order the same remedies as a court.
- If a claim does not pass the preliminary review, an employee may still file a case in federal district court. Mediation is available upon request and by agreement of the parties.
- At any time during the ADR process an employee may designate, at their own expense, an attorney or other representative to represent them in the matter.

The CAA Reform Act's ADR process applies to most legislative branch employees. In certain instances, applicants and former employees also may be protected. Depending on the circumstances, the OCWR will provide services locally to process claims brought by district or state office staff, or the OCWR will provide services through its Washington, D.C. office.

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

### **Dispute Resolution for Violations of the OSHAct**

Under section 215 of the CAA, the legislative branch must comply with the OSHAct and its standards requiring that the workplace be free of recognized hazards that are likely to cause death or serious injury. The OCWR's Office of the General Counsel inspects congressional properties biennially for violations and reports them to the Speaker of the House and President pro tempore of the Senate.

The CAA also provides that a congressional employee or employing office may file a *Request for Safety and Health Inspection* to determine if a workplace hazard exists. Once the request is filed, the Office of the General Counsel is responsible for investigating the suspected unsafe working condition.

When an investigation reveals a workplace hazard, the General Counsel notifies the responsible employing office or offices, which must take appropriate action to correct the hazardous condition. The General Counsel may issue citations and file complaints to enforce compliance with OSHA.

### **Dispute Resolution for Violations of Accessibility Laws**

Under section 210 of the CAA, the OCWR's Office of the General Counsel is required to inspect covered employing office facilities in the legislative branch for compliance with the public services and accommodations provisions of Titles II and III of the ADA.

Additionally, members of the public who allege legislative branch ADA violations in public services and accommodations may file a *Request for ADA Inspection* with the General Counsel. If, following

investigation, the General Counsel believes that a violation has occurred, the General Counsel may request mediation to resolve the dispute or may file an administrative complaint with the OCWR against the entity responsible for correcting the alleged violation.

Covered employees alleging ADA Title I employment discrimination under section 201 of the CAA must use the procedures outlined in section 401 of the CAA.

### **Dispute Resolution for Violations of Federal Labor Law**

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

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

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

### **ABOUT US**

The Office of Congressional Workplace Rights (OCWR) is an independent, non-partisan legislative branch office established to administer and enforce the Congressional Accountability Act (CAA) of 1995, as amended by the Congressional Accountability Act of 1995 Reform Act.

### **WHAT WE DO**

- Manage and ensure the integrity of an administrative dispute resolution program to resolve workplace disputes arising under the CAA.
- Investigate, enforce, and resolve disputes under certain safety and health, public access, and labor-management laws applied to the legislative branch through the CAA.
- Carry out an education and outreach program for Members of Congress and congressional employees to understand their workplace rights and responsibilities.
- Advise Congress on needed changes and amendments to the CAA that would advance congressional employee rights.

This information does not constitute advice or an official ruling of the Office of Congressional Workplace Rights or the Board of Directors (BOD) and is intended for educational purposes only. For further information, please refer to the Congressional Accountability Act of 1995 (2 U.S.C. 1302 et seq.), the Congressional Accountability Act of 1995 Reform Act (Pub. L. No. 115-397, 132 Stat. 5297 (2018)), and the regulations issued by the BOD, or you may contact the Office of Congressional Workplace Rights.

[www.ocwr.gov](http://www.ocwr.gov)

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