

Statement of
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Before the Committee on House Administration
United States House of Representatives
“Oversight of the Office of Congressional Workplace Rights:
Lessons learned from the Congressional Accountability Act of 1995 Reform Act.”
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Chairwoman Lofgren, Ranking Member Davis, and Members of the Committee, thank you for the opportunity to submit for the record this statement regarding the work of our Office and its mission to advance workplace rights, safety, and health in the legislative branch, and to safeguard accessibility for members of the public with disabilities. The Office of Congressional Workplace Rights (OCWR) also appreciates the opportunity to share with you the lessons we have learned since the implementation of the changes embodied in the Congressional Accountability Act of 1995 Reform Act.

This year marks the 26th anniversary of the passage of the Congressional Accountability Act (CAA), and the second full year implementing the provisions of the CAA Reform Act. I first came to work for the OCWR—then known as the Office of Compliance—as a career employee in 1999. Since that time, I have served in several capacities, including Director of the OCWR’s Administrative Dispute Resolution (ADR) program from 2011 to 2018, and now as Deputy Executive Director. Over the years, it has been a privilege to work with colleagues and stakeholders who have dedicated their careers to the principles embodied in the CAA and the CAA Reform Act, i.e., that the legislative branch should serve as a model workplace that is respectful, safe, healthy, and accessible, with equal employment opportunity and treatment for all.

The CAA Reform Act Changes to the ADR Process.

The OCWR is responsible for administering and ensuring the integrity of an ADR program to resolve alleged violations of certain provisions of the CAA. The CAA Reform Act brought significant changes to the legislative branch workplace and community. Among other changes, the Reform Act made extensive revisions to the OCWR’s ADR process, which became effective for cases filed with the OCWR on or after June 19, 2019.

Cases filed with the OCWR before June 19, 2019 went through a multistep dispute resolution process. The first step in the former process was for an employee to file a written request for counseling with the OCWR. During the counseling period, an OCWR counselor discussed an employee's concerns on a strictly confidential basis and informed the employee of his or her rights under the CAA. If an alleged CAA violation was not resolved during the counseling phase, and the employee wished to pursue the matter, the CAA required that the case go through mandatory mediation.

If mediation failed to resolve the dispute, the employee either could file an administrative complaint and proceed with a confidential administrative hearing at the OCWR or file a civil suit in federal district court. If the employee chose to pursue an administrative hearing, he or she had to file a written complaint with the OCWR. An independent OCWR hearing officer would conduct a hearing and thereafter issue a written decision. If the employee chose to proceed with a civil action in federal district court, the case would proceed under the rules that normally apply to such actions.

After an administrative hearing, if either the employee or the employing office was dissatisfied with the hearing officer's final decision, the dissatisfied party could request review of the decision by the OCWR's Board of Directors. If the employee or the employer was dissatisfied with the Board of Directors' ruling, the decision could be appealed to the U.S. Court of Appeals for the Federal Circuit.

Confidential Advising

As mentioned, the CAA Reform Act significantly changed how cases are processed in the ADR program. As with the former process, the current process permits covered employees to contact the OCWR before filing a claim form to seek information about their rights and the procedures under the CAA. Rather than mandatory counseling, however, the new process offers optional confidential advising services to covered employees. To act as a Confidential Advisor, one must be a lawyer and experienced in representing clients in employment cases. The Confidential Advisor is available upon request to provide covered employees with services, on a privileged and confidential basis, including consulting on: (1) the employee's rights under the CAA; (2) the roles, responsibilities, and authority of the OCWR; (3) the merits of obtaining private counsel, designating a non-attorney representative, or proceeding unrepresented; (4) the relative merits of and procedural options for pursuing potential claims, for which the Confidential Advisor may provide drafting assistance; and (5) the option of pursuing, in appropriate circumstances, a complaint with the House or Senate ethics committees. There are also certain specified limitations on the Confidential Advisor's role. For example, the Confidential Advisor may not

serve as a covered employee's designated representative in any proceeding under the CAA; nor may the Confidential Advisor serve as a mediator under the CAA. Employees of the House of Representatives also may contact the Office of Employee Advocacy to request free representation when pursuing claims under the CAA.

Filing a Claim

Under the current process, covered employees have the option of electing to proceed through the OCWR's ADR process or to filing a civil action in federal court. In either case, the employee must first file a claim form with the OCWR. Employees may use the OCWR's online filing system or use other methods such as email, facsimile, or hand-delivery to submit a downloadable claim form. Once the claim form is received, the OCWR records it and provides the claimant with information about his or her rights under the CAA. The OCWR transmits a copy of the claim form to the head of the employing office and to the employing office's representative.

If a claimant alleges that a Member of the U.S. House of Representatives or the U.S. Senate personally committed unlawful harassment or reprisal for filing a claim of harassment, or violated an applicable Senate or House of Representatives rule that would require the Member of Congress to reimburse the Treasury account established by Section 415(a) of the Act, 2 U.S.C. § 1415(a), the OCWR notifies the Member of Congress that he or she has the right to intervene and participate in OCWR proceedings concerning the claim.

Preliminary Review

Each claim form undergoes a preliminary review by an independent hearing officer, known as a preliminary hearing officer, to determine whether the claimant is a covered employee who has stated a claim for which, if the allegations in the claim form are true, relief may be granted under the CAA. If the preliminary review officer determines that the claimant is a covered employee who has stated at least one claim for which relief may be granted under the Act, then the claimant may either obtain an administrative hearing concerning all claims asserted or file a civil action, but the claimant may not do both. If upon preliminary review, the preliminary hearing officer determines that the claimant is not a covered employee who has stated a claim for which relief may be granted under the CAA, the claimant is notified that an administrative hearing at the OCWR is not available, and that filing a complaint in federal district court is their only remaining option.

The preliminary review report must be submitted to the House or Senate ethics committee whenever a claim is filed against a Member of the U.S. House of Representatives or the U.S. Senate for unlawful harassment or unlawful intimidation, reprisal, or discrimination that was taken against a covered employee because of a claim alleging unlawful harassment.

Optional Mediation

Under the Reform Act, mediation is no longer a jurisdictional prerequisite. Rather, it is voluntary and may be requested by either the claimant or the employing office at any time after the employing office receives notice of the claim and up until the date when a hearing officer issues a final written decision on the merits or the claimant files a civil action. A matter will proceed to mediation only if both parties agree to mediate the matter. Upon mutual agreement to mediate, processing of the claim is stayed for 30 days—which may be extended an additional 30 days—to seek a mutually agreeable resolution of the matter.¹

Administrative Hearing and Appeals

The Reform Act made no changes to the CAA's provisions for conducting administrative hearings, appeals to the OCWR Board of Directors, or judicial review mentioned previously. Accordingly, after an administrative hearing is conducted, the merits hearing officer issues a decision. Any party dissatisfied with the hearing officer's decision on the merits of the case may file a petition requesting that the OCWR's Board of Directors review the decision. Final Board decisions are appealable to the U.S. Court of Appeals for the Federal Circuit.

Remedies

Depending on the law and the facts of the case, the merits hearing officer, the OCWR's Board of Directors, or a federal court may order monetary awards and other appropriate remedies, such as reinstatement, promotion, or back pay. Attorney fees, expert witness fees, and certain other costs also may be awarded.

Reimbursement Provisions

The CAA provides that only funds which are appropriated to an account of the Office in the Treasury for the payment of awards and settlements may be used for the payment of CAA

¹As is discussed in the Statement of Barbara Camens, the OCWR Board of Directors recommends that the CAA be further amended to require mediation upon request of the claimant.

awards and settlements. Section 415(a) of the CAA creates a Treasury account to make payments pursuant to the Act. The OCWR administers that account and reports to Congress on an annual basis payments from the account.

Previously, the CAA contained no provisions requiring employing offices to reimburse the Treasury account for payment of awards and settlements. The CAA Reform Act amendments now require employing offices (other than an employing office of the House or Senate) to reimburse awards and settlements paid from the Treasury account in connection with claims alleging discrimination based on race, color, religion, sex, national origin, age, or disability, genetic information, or uniformed service.

Moreover, the Reform Act amendments provide that Members of Congress must reimburse the compensatory damages portion of an award or settlement for specified CAA violations that the Member is found to have committed personally. The types of violations for which the Member must reimburse the Treasury account are specified as: (1) harassment that is unlawful under the CAA, which encompasses harassment based on race, color, religion, sex, national origin, age, disability, genetic information, or uniformed service; or (2) intimidation, reprisal, or other discrimination in connection with a harassment claim.²

The Reform Act requires the OCWR to issue annual reports that itemize all awards and settlements paid out of the 415(a) Treasury account in connection with claims alleging violations of 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, the Uniformed Services Employment and Reemployment Act, the Genetic Information Nondiscrimination and of the CAA statutory 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. Further, the annual reports must conform to rules regarding House and Senate employing offices.³ In fulfilling its reporting responsibilities, the OCWR is required to protect the identity and position

² Subsection (g) of House Resolution 8 for the 117th Congress goes beyond the Reform Act by requiring a Member, Delegate, or the Resident Commissioner to reimburse the Treasury for any settlement of a complaint related to a claim alleging a violation by the Member of sections of the CAA that prohibit discrimination based on race, color, religion, sex, national origin, age, disability, or an employee's service in the uniformed services, and retaliation for claims alleging such discrimination.

³ For the House, these rules were first set forth in CHA Committee Resolution 116-11, which was adopted on June 18, 2019.

of individuals who received awards or settlements or made allegations under the above listed laws.

Post-Reform Act Trends

Following the implementation in 2019 of the CAA Reform Act, the OCWR saw several trends develop. In the first 6 months, most contacts with the office were from legislative branch staff seeking information on the new ADR process, as well as on title VII protections from discrimination. Employees also called with questions about their workplace rights under the Americans with Disabilities Act (ADA), the Age Discrimination in Employment Act (ADEA), and protection from reprisal for opposing practices made unlawful by the CAA.

In keeping with the reforms, the OCWR also made it a priority to educate legislative branch employees on their workplace protections. As a result, the OCWR saw requests for training grow substantially. Online and in-person training modules were created, and posters informing employees of their workplace rights were developed and distributed to all covered offices of the legislative branch.

Following the onset of the COVID-19 pandemic in March, 2020, and the resulting pivot to the remote work environment, working conditions throughout the legislative branch changed significantly. One result was a minor down-tick in claims filed with the OCWR, which may be attributed to several factors such as fewer direct interactions among staff, increased awareness of workplace rights and responsibilities following newly mandated training and posting of workplace rights, as well as a serious commitment by employing offices to implement the law.

Throughout the pandemic, the OCWR continued to provide confidential advice and information to employees of the legislative branch on their workplace rights and protections under the CAA. While we have seen an overall decrease in the number of claims filed with the office, we have seen an uptick in requests from employees for information. Requests are related to FMLA for COVID related conditions, Families First Coronavirus Response Act (FFCRA), the Federal Employee Paid Leave Act (FEPLA), and reasonable accommodation under the ADA.

Over the course of the last few months alone, we have seen an increase in inquiries concerning return-to-work. Reopening appears to raise questions about workplace safety, FMLA and ADA protections, and leave for child care. Concerns about retaliation for asserting workplace rights, discrimination, and harassment continue to be the most prevalent issues raised by covered employees.

Going Forward

The Reform Act requires the OCWR to make regular assessments of the effectiveness of the procedures under the CAA in providing for the timely resolution of claims. At this time, the OCWR's analysis is based on just 28 months of available data. The timeframe during which the Reform Act procedures have been in effect includes an unprecedented period of telework in the legislative branch given the COVID pandemic. The fact that most employees are not in the physical workplace may have had a significant impact on the number of claims filed. As additional claims are processed through the new ADR system, the pool of available data will grow and provide the OCWR with increased statistical confidence in its assessments of the effectiveness of the revised ADR procedures in providing for the timely resolution of claims under the CAA.