



## **CONTENTS:**

1. H.R. 4924 — Requiring each employing office of the House of Representatives to adopt an anti-harassment and anti-discrimination policy for the office’s workplace, establishing the Office of Employee Advocacy to provide legal assistance and consultation to employees of the House regarding procedures and proceedings under the Congressional Accountability Act of 1995, and for other purposes.
2. H. Res. 724 — To amend the Congressional Accountability Act of 1995 to reform the procedures provided under such Act for the initiation, investigation, and resolution of claims alleging that employing offices of the legislative branch have violated the rights and protections provided to their employees under such Act, including protections against sexual harassment, and for other purposes.

# H.R. 4924 — To amend the Congressional Accountability Act of 1995 to reform the procedures provided under such Act for the initiation, investigation, and resolution of claims alleging that employing offices of the legislative branch have violated the rights and protections provided to their employees under such Act, including protections against sexual harassment, and for other purposes (Rep. Harper, R-MS)

CONTACT: [Noelani Bonifacio](#), 202-226-9719

## FLOOR SCHEDULE:

Expected to be considered February 6, 2018, under suspension of the rules, which requires a 2/3 majority for passage.

### TOPLINE SUMMARY:

[H.R. 4924](#) would amend and update the procedures outlined in the Congressional Accountability Act related to the consideration of harassment, discrimination and retaliation violations. The bill would require Members to repay settlements involving claims of violations, institute an automatic referral to the appropriate ethics committee for all claims involving a Member of Congress or senior staff, require the retention of records by the Office of Compliance, extend protections to unpaid staff, including interns, and require an employee training program on an employee's rights and protections under the Congressional Accountability Act.

### COST:

No Congressional Budget Office (CBO) estimate is available.

Rule 28(a)(1) of the Rules of the Republican Conference prohibit measures from being scheduled for consideration under suspension of the rules without an accompanying cost estimate. Rule 28(b) provides that the cost estimate requirement may be waived by a majority of the Elected Leadership.

### CONSERVATIVE CONCERNS:

- **Expand the Size and Scope of the Federal Government?** No.
- **Encroach into State or Local Authority?** No.
- **Delegate Any Legislative Authority to the Executive Branch?** No.
- **Contain Earmarks/Limited Tax Benefits/Limited Tariff Benefits?** No.

## DETAILED SUMMARY AND ANALYSIS:

This bill would amend the procedure for the consideration of alleged violations of congressional accountability, which includes prohibitions against sexual harassment.

### **Procedure for Consideration of Alleged Violations**

The current procedure for the consideration of alleged violations requires: (1) counseling; (2) mediation; and then, (3) election to submit a formal complaint and conduct a hearing or to file for civil action.

The new procedure is outlined as followed:

1. Filing of the claim with the Office of Compliance (OOC);
2. Investigation of the claim by the General Counsel;
3. A formal hearing if the General Counsel finds that there is reasonable cause to believe a violation occurred or if the General Counsel cannot determine if there is reasonable cause. The hearing is subject to a review by the Board of Directors of the Office of Compliance and judicial review in the U.S. Court of Appeals for the Federal Circuit.

A congressional employee who files a claim may file civil action in federal court within 45 days of filing a claim. If an employee files a civil action, the General Counsel's investigation and subsequent hearings are terminated and no additional investigations by the General Counsel or formal hearings may be held.

Should the General Counsel find no reasonable cause to believe a violation occurred, the employee has 90 days to file civil action in federal court.

OOC may recommend that the employees of the Architect of the Capitol or the Capitol Police utilize the grievance procedures provided by the appropriate entity for the resolution of the grievance.

Employees, heads of employing offices, and individuals who are alleged to have committed a violation have the authority to retain private counsel at any point of the procedures described above. Counsels and all parties to the proceedings are subject to [Rule 11](#) of the Federal Rules of Civil Procedure. Namely; (1) no pleading, written motion, or other paper may be presented for an improper purpose, such as for harassment, to cause delay, or to increase the cost of resolution; (2) claims, defenses, and other legal contentions must be warranted by law or by a non-frivolous argument for modifying existing law or establishing new law; (3) the factual contentions must be backed by evidence or will be backed by evidence after an investigation; and, (5) the denials of factual contentions must be warranted on the evidence or reasonably based on belief or a lack of information.

### **Initiation of Procedures**

To begin a proceeding, a congressional employee must file a claim with OOC, made in writing, under oath or affirmation. Once the claim has been filed, OOC must take the necessary steps to record the claim, provide the employee with information on their rights, and notify the head of the employee's office of the claim.

In regards to claims against Members of Congress, OOC must notify the Member that: (1) a claim has been filed; (2) a reimbursement any award or settlement made in connection with the claim shall be required; and, (3) the Member has the right to intervene in mediations, hearings or civil actions related to the claim. Reimbursement requirements and the right of the Member to intervene are detailed in the Reimbursements in Claims Involving Members section below.

Violations include discriminatory practices and intimidation or retaliation of an employee who has opposed discriminatory practices, as described by section 201(a) and section 207 of the [Congressional Accountability Act](#).

OOC is required to establish an electronic reporting system that allows an employee to initiate a proceeding electronically. The system must keep a record of the date of the proceeding's initiation, track all subsequent actions and proceedings, and must be accessible to all parties until the completion of the proceedings. OOC must use the system to assess the effectiveness of providing a timely resolution through the procedure process and must submit semi-annual reports to the appropriate congressional committee.

Employees have 180 days from the date of the alleged violation to submit a claim.

Employees are not prohibited from: (1) contacting OOC for information on their rights; (2) referring information to the appropriate Committee on Ethics, if the employee is employed by the House or Senate; or, (3) filing civil action, as described above.

### **General Counsel Investigations**

Once a claim is processed, the General Counsel must conduct an investigation of the claim.

The General Counsel is allowed to issue subpoenas on the General Counsel's own initiative, without regard to whether or not a party has requested the subpoena.

Once an investigation is concluded, the General Counsel is required to submit a report on the results of the investigation to the employee and the employing office. The report must specify one of the following findings: (1) there is reasonable cause to believe the employing office committed a violation, as alleged; (2) there is no reasonable cause to believe the employing office committed a violation, as alleged; or, (3) the General Counsel is unable to determine whether or not there is reasonable cause to believe the employing office committed a violation, as alleged. The General Counsel is required to notify the employee of the right to file civil action if the General Counsel has found there is no reasonable cause. In the case that the General Counsel has found there is reasonable cause or that the General Counsel was unable to determine if there is reasonable cause, the General Counsel must submit the report to the Executive Director of OOC.

For investigations involving a Member of Congress, the General Counsel must submit the report to the appropriate Committee on Ethics.

During any time of the investigation, the General Counsel may recommend mediation.

The General Counsel must complete an investigation and submit the report within 90 days of a claim being filed, though an additional 30 days may be utilized after notifying both parties.

### **Hearings**

If the General Counsel submits a report to the Executive Director of OOC that finds there is reasonable cause to believe a violation occurred or that the General Counsel cannot determine if there is reasonable cause to believe whether or not a violation occurred, OOC must conduct a hearing and issue a decision.

The hearing must begin within 60 days of the Executive Director receiving the General Counsel's report.

### **Mediation**

The bill reforms mediation procedures currently located under [2 U.S.C. 1403](#).

Current law requires employees to file a request for mediation before filing a complaint with the Office of Compliance or filing civil action. The bill allows for, at any point of an investigation, the employee and the employing office to jointly file a mediation request with the OOC.

The bill also amends the opportunity to file for an extension of the mediation period. Current law does not specify how long the extension period may last. The bill limits the extension to one addition period of 30 days.

Mediation meetings with both parties are to be held separately, at the request of the employee.

### **Reimbursements of Claims Involving Members**

The bill amends [2 U.S.C. 1415](#) to require Members of Congress to reimburse the Treasury for awards or settlements paid in connection with a claim alleging a violation by the Member.

The payroll administrator is required to withhold compensation from a Member and transfer amounts to the appropriate account if the Member has not reimbursed the account within 90 days of the payment of a settlement. The applicable committee (the Committee on House Administration in the House, or the Committee on Rules and Administration, in the Senate) is required to establish a timetable and procedures for withholding compensation from Members of Congress in order to provide reimbursement. When withholding a Member's salary, their Thrift Savings Fund contribution is not affected. However, if the settlement has not been fully reimbursed within 180-days from the payment of the settlement, a transfer shall be made from the Member's Thrift Savings Fund to the appropriate Treasury account in the amount of the outstanding balance. The Executive Director is required to make this transfer without consent of the Member or the Member's spouse upon receiving a letter from the Secretary of the Treasury.

If an individual is no longer receiving compensation as a Member of Congress, and the settlement amount has not yet been repaid, the payroll administrator is required to notify the Director of the Office of Personal Management to withhold annuity payments to the former Member until the amount is fully paid back. The payroll administrator is also required to notify the Secretary of the Treasury, who is authorized to withhold social security payments, if necessary.

The Member of Congress has the right to intervene in any mediation, hearing or civil action to protect their interests in the determination of whether or not a settlement should be made or the amounts of the settlement. The bill further ensures an employee is not burdened by despositions that may result from the intervention.

This section takes effect upon enactment. The Twenty-Seventh Amendment provides that "No law varying the compensation for the services of the Senators and Representatives shall take effect, until an election of Representatives shall have intervened."

### **Ethics Committees Referrals: Members and Senior Staff**

The bill amends [2 U.S.C. 1416\(d\)](#) to require an automatic referral of a claim to the appropriate committee on ethics for any claim involving a Member of Congress or senior staff. The referral will

occur once a settlement agreement is reached, a hearing officer's final decision is issued, a final decision of the OOC's Board of Directors is issued, or a final decision in civil action is issued. The committee will have access to all records regarding investigations, hearings, decisions and settlements related to the claim. Should an ethics committee issue a report regarding a claim, the committee is required to protect the identity of the employee filing the claim.

Senior staff includes anyone who was required to file a financial disclosure statement at the time the violation occurred.

### **Remote Work or Paid Leave Options**

The bill provides the opportunity for an employee to submit a request to the employing office to allow the employee to work remotely while any procedures related to a claim are pending. If an office determines that an employee's duties cannot be carried out remotely, the office may grant paid leave to the employee. An office is prohibited from granting a request in a manner that constitutes retaliation.

This section does not apply in a manner inconsistent with collective bargaining agreements.

### **Confidentiality**

The filing of a claim and the investigation of a claim is confidential. However, an employee or employing office may disclose information related to the claim.

Information discussed in mediation is strictly confidential.

### **Reimbursement for Other Employing Offices in the Legislative Branch**

When a settlement has been made as a result of a claim of a violation within an employing office in the legislative branch that is not the House or the Senate, the Executive Director of OOC is required to notify the head of the employing office of the amount of the settlement that was paid. The head of the employing office must then transfer the payment amount from their operating expenses to appropriate account. The office must transfer a payment according to any timetable or procedures established by OOC.

OOC is required to submit to Congress and publish publicly online a biannual report describing each settlement that was paid, including the office that was involved and, for claims involving settlements and Members of Congress, whether or not the Member is in compliance with reimbursement requirements. The report may not include the identity or position of the employee who made the claim. This shall apply to claims submitted beginning in 2018.

Within 30 days of enactment, OOC is required to submit to Congress and publish publicly online a report describing the total payments made with public funds prior to enactment. The report must include award amounts and the source of funds.

### **Workplace Climate Surveys**

OOC is required to conduct a workplace environment survey of employing offices, including the Library of Congress, within 1 year of enactment, and every 2 years following. The survey must include questions on sexual harassment. The survey is required to be anonymous and survey results must be transmitted to the appropriate congressional committees.

### **Record Retention**

OOC is required to establish a program to ensure the permanent retention of records.

### **Management Practices Study**

The Comptroller General is required to conduct a study of management practices within OOC and submit a report, which includes recommendations for improvements, to congress within 180 days.

### **Cybersecurity Audit**

The Comptroller General is required to conduct a cybersecurity system and practice audit within OOC and submit a report, which includes recommendations for improvements, to congress within 180 days.

### **Rights and Protections for Unpaid Staff**

The protections against discriminatory practices and associated remedies are extended to unpaid interns, detailees, and fellows.

### **Library of Congress Employees**

The protections against discriminatory practices and associated remedies are extended to Library of Congress employees. In addition, Library of Congress employees are allowed to use the Library of Congress's alternative grievance procedures instead of the procedures previously outlined by this bill unless the employee files a claim with OOC. This applies to claims made on or after enactment.

### **Helsinki and China Commissions**

The bill clarifies that employees of the Helsinki Commission, U.S.-China Economic and Security Review Commission and the Congressional-Executive Commission on the People's Republic of China are covered employees and that the commissions are considered employing offices subject to the Congressional Accountability Act. In addition, legal representation with respect to the proposal or acceptance of the disposition of a claim shall be provided to the commissions by the appropriation employment counsel, dependent upon whether the chair is a Member of the House or Senate.

The bill also includes the John C. Stennis Center for Public Service Training and Development on the list of covered employees and employing offices.

### **Training and Education Programs**

The bill requires employing offices to develop and implement a training program on the rights and protections of the Congressional Accountability Act and submit a report to the appropriate congressional committee at the beginning of each Congress regarding the implementation of the training program. House and Senate employment offices are exempt from this requirement.

### **Renaming the Office of Compliance**

The bill renames the Office of Compliance as the Office of Congressional Workplace Rights.

### **Effective Date**

The bill takes effect 180-days after enactment, unless otherwise provided. However, it does not affect pending proceedings.

### **COMMITTEE ACTION:**

H.R. 4924 was introduced on February 5, 2018. The bill was referred to the House Committees on House Administration, Oversight and Government Reform, and Ways and Means. There has been no further committee action on the bill.

The Committee on House Administration held a series of [hearings](#) on sexual harassment in the Congressional workplace.

**ADMINISTRATION POSITION:**

No Statement of Administration Policy is available at this time.

**CONSTITUTIONAL AUTHORITY:**

According to the sponsor, Congress has the power to enact this legislation pursuant to the following: "Article 1, Section 5 of the United States Constitution. "Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide. Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behaviour, and, with the Concurrence of two thirds, expel a Member. Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy; and the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those Present, be entered on the Journal."



# H.Res. 724 — Requiring each employing office of the House of Representatives to adopt an anti-harassment and anti-discrimination policy for the office’s workplace, establishing the Office of Employee Advocacy to provide legal assistance and consultation to employees of the House regarding procedures and proceedings under the Congressional Accountability Act of 1995, and for other purposes (Rep. Harper, R-MS)

CONTACT: [Noelani Bonifacio](#), 202-226-9719

## FLOOR SCHEDULE:

Expected to be considered February 6, 2018, under suspension of the rules, which requires a 2/3 majority for passage.

### TOPLINE SUMMARY:

[H.Res. 724](#) would require offices to adopt an anti-harassment and anti-discrimination policy, establish the Office of Employee Advocacy, and prohibit sexual relationships between employees and Members of Congress.

### COST:

No Congressional Budget Office (CBO) estimate is available.

Rule 28(a)(1) of the Rules of the Republican Conference prohibit measures from being scheduled for consideration under suspension of the rules without an accompanying cost estimate. Rule 28(b) provides that the cost estimate requirement may be waived by a majority of the Elected Leadership.

### CONSERVATIVE CONCERNS:

- **Expand the Size and Scope of the Federal Government?** No.
- **Encroach into State or Local Authority?** No.
- **Delegate Any Legislative Authority to the Executive Branch?** No.
- **Contain Earmarks/Limited Tax Benefits/Limited Tariff Benefits?** No.

## DETAILED SUMMARY AND ANALYSIS:

This resolution would require employing offices within the House of Representatives to adopt an anti-harassment and anti-discrimination policy. The House Committee on House Administration is required to issue regulations to carry out the requirement.

**Office of Employee Advocacy**

The resolution establishes the Office of Employee Advocacy (OEA), within the Office of the Chief Administrative Officer. OEA shall: (1) provide legal assistance to employees of the House regarding the [Congressional Accountability Act](#) (CAA), the responsibilities of various offices and the requirements of the employee in proceedings; (2) provide legal assistance and representation in civil legal matters, other than civil actions, related to participation in claims of harassment, discrimination or retaliation, or in any Office of Compliance or Committee on Ethics proceedings; and, (3) operate a hotline for employees to contact the office.

Attorneys employed by OEA and authorized to provide legal assistance and representation are authorized to do so in any jurisdiction, subject to OEA regulation.

The OEA relationship with an employee is that of an attorney and a client.

OEA may not accept attorney fees or litigation expenses and costs under any hearing or civil action brought under CAA and may not provide legal assistance in any other matters.

OEA may not provide assistance to an employee once an employee has filed civil action in federal court.

The Chief Administrative Office (CAO) of the House must appoint a director for OEA who is a lawyer barred in D.C. and has experience representing employees in workplace discrimination cases. The director's salary is to be established by the CAO and the director may be removed by the CAO for cause.

The director may appoint additional personnel and fix their compensation. The director and personnel are to be appointed in a non-partisan manner.

#### **The Office of the House Employment Counsel (OHEC)**

OHEC will continue to carry out all the functions the office currently carries out, including: (1) providing legal assistance to employing offices of the House in harassment, discrimination and retaliation proceedings; (2) providing offices with confidential advice regarding employment law compliance; and, (3) providing training to offices on employment law compliance. The resolution does not affect pending proceedings.

#### **Payroll Authorization Forms**

CAO is required to incorporate into its payroll authorization form a certification that a salary or title change is not a settlement or award in connection with prohibited actions under CAA.

#### **Sexual Relationships between Employees and Members**

The resolution amends the [Rules of the House](#) to prohibit Members from engaging in sexual relationships with any of their employees, paid or unpaid, unless the Member is married to the employee. Members are further prohibited from welcoming sexual advances from any paid or unpaid employee.

#### **Office of Congressional Ethics**

The Office of Congressional Ethics is prohibited from investigating a violation of CAA or making any recommendations regarding an allegation if the employee has initiated proceedings with the Office of Compliance.

#### **COMMITTEE ACTION:**

H.Res. 724 was introduced on February 5, 2018. The resolution was referred to the House Committees on House Administration and Ethics. There has been no further action on the resolution.

**ADMINISTRATION POSITION:**

No Statement of Administration Policy is available at this time.

**CONSTITUTIONAL AUTHORITY:**

Resolutions do not require constitutional authority statements.

---

**NOTE:** *RSC Legislative Bulletins are for informational purposes only and should not be taken as statements of support or opposition from the Republican Study Committee.*