

THE AMERICANS WITH DISABILITIES ACT OF 1990

ALL ANTI-DISCRIMINATION LAWS

EVALUATION

Substantive Rights

The basic prohibitions against discrimination under the anti-discrimination laws (Title VII, ADEA, ADA and EPA) at GAO are generally the same as those afforded other federal sector employees, those in the private sector, and other legislative branch employees covered under the CAA.

pilot basis for private sector discrimination claims. Alternative dispute resolution in the form of mediation is provided in the executive branch EEO process in some agencies.¹

Section 201(c)(3)(E) of the CAA, while granting employees of GAO (and the other two instrumentalities) administrative and judicial procedures for ADA violations, provides that the authorities of the EEOC will be exercised by the head of the employing instrumentality. GAO has suggested that the law be clarified to assure that this provision does not affect the PAB's authority to decide claims alleging discrimination on the basis of disability.

Judicial

Employees at GAO may file a civil action under anti-discrimination laws at various points after filing an administrative complaint, or as an alternative to filing an administrative complaint in the case of an ADEA or EPA claim. But as discussed above, the *Ramey* decision left some legal uncertainty as to when, and whether, any of the anti-discrimination laws provides any right to GAO employees to file a civil action in federal district court.

Under the CAA, covered legislative branch employees may elect to file a civil action in federal district court after counseling and mediation. Employees in the private sector may obtain a "right to sue notice" from the EEOC.

Relief

The relief available to GAO employees for EEO violations is generally the same as that available

Procedures

D\$ministrative

The administrative processes at GAO for EPA violations are the same as those for Title VII violations, as described above in the section on Title VII.

Judicial

Civil Action. GAO employees are entitled under the EPA to file a civil action in federal district court.¹ The FLSA (of which the EPA is a part) authorizes a civil action in any court of competent jurisdiction. Jury trials are ordinarily not available against the federal government without express statutory authority, and, therefore, are probably not available in EPA cases against GAO or other federal agencies.²

Appellate Review of Agency D\$ministrative Processes. In a case alleging discrimination

Regulations

Regulations

GAO is not covered under EEOC's regulations on federal sector equal employment opportunity.

General Counsel provides the charging employee with a “Right to Appeal Letter,” accompanied by a confidential statement of the General Counsel advising the charging party of the results of the investigation.¹ Whenever the General Counsel finds reasonable grounds to believe that the charging party’s rights have been violated, the General Counsel represents the charging party unless that party elects otherwise.

In the case of a class complaint, a petition for review may be submitted directly to the Board, following a GAO decision rejecting or modifying the class action, or after a final GAO decision on the complaint, or if more than 180 days have elapsed, without a final GAO decision. A formal adjudicatory hearing is then held, ordinarily before a single Board member, who renders an initial decision, with appeal to the entire Board.² In the case of a class complaint, the Board may choose to render a decision without further hearing, based on the record of the hearing

regulations provide that, upon receipt of a petition for enforcement, or of a report from the PAB's Solicitor indicating non-compliance, the PAB may initiate a PAB proceeding to determine whether there was non-compliance, and may then seek judicial enforcement of its order.¹

PAB's Oversight Authority.

including employment discrimination, labor-management relations, adverse actions, and a general administrative grievance procedure.¹

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Procedures

Under the GAOPA, several procedural avenues are available to GAO employees to resolve employment-related disputes. The GAOPA retains many features of the federal employee dispute resolution system, itself complicated, and transfers authorities administered and enforced by the executive branch to GAO management and to the Personnel Appeals Board (PAB). The PAB has adjudicative and appellate authority, including authority over the appeal of discrimination cases, and appeals from agency decisions involving certain adverse actions and prohibited personnel practices, including retaliation.

Administrative Grievance Procedure

The GAOPA requires the GAO personnel management system to include comprehensive procedures for processing complaints and grievances.¹

and may be removed only by a majority of the other PAB members, and only for inefficiency,

LABOR-MANAGEMENT RELATIONS
(Chapter 71, Title 5, U.S.C.)

Substantive Rights

**WORKER ADJUSTMENT AND RETRAINING NOTIFICATION ACT
(WARN)**

Substantive Rights

The Worker Adjustment and Retraining Notification Act (WARN), which assures employees in

**EMPLOYEE POLYGRAPH PROTECTION ACT
(EPPA)**

Substantive Rights

The Employee Polygraph Protection Act of 1988 (EPPA) does not apply to GAO or its employees, nor does this legislation apply to any federal agencies or employees, except as made

CONCLUSIONS

Substantive Rights

GAO employees are currently granted substantive rights under most CAA laws, and, one year after this study is transmitted to Congress, the CAA will extend the substantive rights under additional laws to fill most remaining gaps in coverage. In addition, GAO employees enjoy many of the substantive civil service protections that apply generally in the executive branch. Consequently, employees at the instrumentality have certain rights and protections beyond those afforded legislative branch employees covered by the CAA. No employee comment endorsed the idea of transferring GAO from civil-service-based coverage to CAA coverage, and some employees suggested that it would be advisable to provide GAO employees with a statutory guarantee of all protections that apply in the executive branch.

Administrative Processes

The study also identified several issues regarding GAO that warrant further discussion:

FMLA

GAO is now subject to the FMLA provisions in civil service law, codified in Title 5 of the U.S. Code, and by OPM regulations implementing those provisions. However, section 202(c) of the

Furthermore, unlike the notice requirements that GAO management chose to incorporate in its

Procedures

Administrative

Judicial processes. Section 717, which is made applicable by ADA section 509(6), also provides that the complainant may file a civil action in district court. The complainant may request a trial *de novo*

Administrative and Enforcement

Procedures

A GAO employee who alleges a deprivation of USERRA rights and benefits may also submit a

Procedures

Judicial

The GD PA does not provide the right to file a civil action in case of violation of the rights under the RIF F1rder. Final decisions of the PAB are appealable to the U.S. Court of Appeals for the Federal Circuit.

Future-Effective Changes Under the CAA

Procedures

Administrative

Under the GAOPA, only administrative processes would be available in a case where a GAO

- certifying labor organizations as exclusive representative;
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competitive status under 31 U.S.C. §732(g).¹ In contrast, under the CAA, the definition of covered employee contains no such qualification. With respect to exclusions, there is likewise a difference. Under GAO Order 2711.1, an individual “appointed as a temporary or intermittent expert or consultant” is expressly excluded.² There is no comparable provision under the CAA.

- Definition of “professional employee”. While the GAO Order incorporates the definition of “professional employee” that is found in chapter 71, and is applied by the CAA, the order also adds as an alternative definition an “employee engaged in the performance of audit or evaluator work.”³ The CAA contains no corresponding alternative definition. Thus, under the CAA, the fact that an employee is engaged in the performance of audit and evaluator work by itself would not suffice to classify the individual as a “professional employee.”

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for which there is no right of review; the charging party may not pursue his or her claim individually.

Many similarities exist between the administrative processes for handling labor-management relations matters under the GAOPA and those under the CAA, both being patterned after the processes established under chapter 71 of title 5, U.S.C. Coverage under the CAA, however, would afford GAO employees the ability to pursue their rights with an enforcement office whose adjudicatory body and prosecuting officer are completely separate and independent of the employing office. Under the CAA, a GAO employee would not have the right individually to pursue an unfair labor practice claim that the Office of Compliance's General Counsel has found nonmeritorious.

Judicial

With the one significant exception, the rights of judicial review under the GAO and the CAA schemes are similar. The GAOPA provides that any person, including employees aggrieved by a

GAO Order. D, though the agency is not compelled to comply with the OSHA regulations issued

Throughout the year all accidents, fires, and other emergencies, with or without injuries, should

employing office that is responsible for the particular violation, as determined by the regulations issued by the Board. If the violation is not corrected, the General Counsel may file a complaint against the employing office with the Office of Compliance. The complaint is then submitted to a

Under present law, GAO has an internal investigation and administrative grievance process to address employee safety and health complaints.¹ Under the CAA, however, the General Counsel of the Office of Compliance will exercise the authority to investigate and inspect places of employment, as well as issue citations and prosecute violations that are not corrected by the employing office named in the citation or notification.²

The CAA grants the General Counsel the authority under subsections (a), (d), (e), and (f) of section 8 of OSHA to inspect places of employment under the jurisdiction of employing offices, upon written request of any employing office or covered employee.³

citation to notify the Secretary that he/she wishes to contest the citation.¹ That right is not provided to employing offices under section 215 the CAA.

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- GAO's Memorandum on *FLSA Coverage* describes the process by which GAO determines which employees it will treat as exempt and which employees it will treat as non-exempt from FLSA coverage.¹ For most occupational series or other employee categories, the memorandum states that positions in certain grade-levels or band-levels are exempt and positions in other levels are non-exempt.²

Procedures

Administrative

OPM's FLSA compliance process and general claims settlement authority. The FLSA provides that OPM administers the Act with respect to most federal employees, including GAO

Under section 216(b) of the FLSA, an action to recover any unpaid compensation owed under the FLSA may be brought in any court of competent jurisdiction.¹

circumstances for employees whose schedules depend directly on the schedule of the House or

Procedures

Judicial

As amended by the CAA, the FMLA private sector provisions state that, in the case of GAO, the authority of the Secretary of Labor is to be exercised by the Comptroller General.¹ The Labor Secretary's FMLA authority includes the responsibility to promulgate such regulations as are necessary to carry out the provisions, as well as certain enforcement responsibilities.² GAO and its employees would thus be removed from coverage by the FMLA regulations promulgated by OPM, which apply generally to employees under the FMLA civil service provisions, and would apparently become subject to regulations that the Comptroller General would promulgate to implement the private sector provisions of the FMLA.

The private sector FMLA provisions authorize employees to bring a civil action for FMLA violation to recover damages and obtain equitable relief.³

- Under the

Administrative

The CAA provides a single administrative process for any FMLA claim, starting with counseling and mediation, and then offering the option of a formal administrative adjudication and appeal.

- *The cost of providing care, or any other actual monetary losses sustained as a direct result of the violation, up to a sum equal to 12 weeks of wages or salary for the employee, in a case in which salary and benefits have not been denied or lost.*
- *Liquidated damages, equal to the sum of other damages to which the employee is entitled, including lost salary and benefits or the cost of providing care. (The court*