Office of Compliance

CAA handbook

advancing safety, health, and workplace rights in the legislative branch

Office of Compliance

CAA Handbook

Office of Compliance, 2005

This information does not constitute advice or an official ruling of the Office of Compliance or the Board of Directors and is intended for educational purposes only. For further information, please refer to the Congressional Accountability Act (2 U.S.C. 1301 et seq.) and the regulations issued by the Board, or you may contact the Office of Compliance.

How to Use the CAA Handbook 3

Introduction to the Congressional Accountability Act 4

- *About the Office of Compliance* 5
- *Employees Covered by the Congressional Accountability Act* 6
- *What Does the CAA Not Regulate?* 6
- *A Note to Congressional District Staff* 7
- *Notices and Record Keeping for Employing Offices* 7

Protection from Intimidation and Reprisal 8

The Dispute Resolution Process 11

- *Step One: Counseling* 11
- *The Second Step: Mediation* 12
- *The Third Step: Civil Action or Administrative Hearing* 13
- *The Fourth Step: Review by the Board of the Office of Compliance* 13
- *Informal Resolutions* 14
- *Awards, Penalties, and Attorney's Fees* 14
- *The Dispute Resolution Process (graphic)* 15

Safety and Health, Public Access, and Labor Practices Violations 16

- *Violations Involving Safety and Health, Access to Public Services and Accomodations Rights for the Disabled, and Unfair Labor Practices* 16

Contents

Contents

- *Safety and Health Violations* 16
- *Access to Public Services and Accommodations Rights for the Disabled* 17
- *Unfair Labor Practices* 17

Section 210 – Access to Public Services and Accommodations for the Disabled 21

Section 201 – Age Discrimination 26

Section 220 – Collective Bargaining and Unionization 30

Section 201 – Disability Discrimination 36

Section 201 – Equal Employment Opportunity 42

Section 203 – Fair Labor Standards and the Minimum Wage 46

Section 202 – Family and Medical Leave 52

Section 205 – Notification of Office Closings or Mass Layoffs 58

Section 215 – Occupational Safety and Health 63

Section 204 – Protection from Polygraph Testing 68

Section 206 – Uniformed Services Rights and Protections 74

Introduction

How to Use the CAA Handbook

The *CAA Handbook* is a complete and fast resource for basic information on the Congressional Accountability Act (CAA). Inside, you will find brief information about the Office of Compliance and the administrative dispute resolution process used to settle complaints brought under the CAA. The *Handbook* also includes – in quick reference format – summaries of all the rights and responsibilities of covered employees and employing offices in the Legislative Branch.

The *eHandbook* on CD-ROM (if it has been included with your copy) provides even more information and reference material. The *eHandbook* offers the same contents as the printed *CAA Handbook*, but also includes expanded summaries of each law applied by the CAA, applicable Office of Compliance Regulations, procedural rules, and the text of the CAA in the U.S. Code. The material in the *eHandbook* is in Adobe Portable Document Format (PDF) to allow easy viewing and navigation between terms and sections.

Although every effort is made to keep the information in the *CAA Handbook* and the *eHandbook* on CD-ROM up to date, our web site – *www.compliance.gov* – is the most up-to-date resource for information on the CAA and the Office of Compliance. Our web site also includes special features, publications, and online tools not available in the *CAA Handbook* or *eHandbook*.

The information in the *CAA Handbook*, the *eHandbook*, and our web site is intended for educational purposes only and does not constitute advice or an official ruling of the Office of Compliance or the Board of Directors. For further information, please refer to the Congressional Accountability Act (2 U.S.C. 1301 et seq.) and the regulations issued by the Board, or you may contact the Office of Compliance.

Introduction to the Congressional Accountability Act

The Congressional Accountability Act (CAA), enacted in 1995, was one of the first pieces of legislation passed by the 104th Congress. The CAA applies twelve civil rights, labor, and workplace safety laws to Congress and certain Legislative Branch agencies, requiring them to follow many of the same employment and workplace safety laws applied to businesses and the Federal Government. The CAA also established a dispute resolution procedure that emphasizes counseling and mediation for the resolution of disputes.

The laws applied by the CAA include:

- The Age Discrimination in Employment Act of 1967
- The Americans with Disabilities Act of 1990
- Title VII of the Civil Rights Act of 1964
- The Employee Polygraph Protection Act of 1988
- The Fair Labor Standards Act of 1938
- The Family and Medical Leave Act of 1993
- The Federal Service Labor-Management Relations Statute
- Occupational Safety and Health Act of 1970
- The Rehabilitation Act of 1973
- Veterans' employment and reemployment rights at Chapter 43 of Title 38 of the U.S. Code
- The Worker Adjustment and Retraining Notification Act

The CAA was amended in 1998 to include certain provisions of the Veterans Employment Opportunities Act.

About the Office of Compliance

The Office of Compliance is an independent agency established to administer and enforce the CAA. The Office of Compliance administers the dispute resolution system established to resolve disputes that arise under the CAA; carries out an education and training program for the regulated community on the rights and responsibilities of the CAA; and advises Congress on needed changes and amendments to the CAA. The General Counsel of the Office of Compliance has independent investigatory and enforcement authority for certain violations of the CAA.

The Office of Compliance has a five-member non-partisan Board of Directors appointed by the majority and minority leaders of both the House of Representatives and the Senate. The members of the Board of Directors come from across the United States and are chosen for their expertise in employment and labor law. The Office of Compliance has four statutory employees appointed by the Board of Directors who carry out the day-to-day functions of the office, including an Executive Director, two Deputy Executive Directors, and a General Counsel. The office also employs education and communications staff, general administrative staff, and staff attorneys and safety and health inspectors who report to the General Counsel.

It is important to remember that the Office of Compliance is a non-partisan independent agency within the Legislative Branch. Although an agency of Congress subject to Congressional oversight, the Office of Compliance does not report to any other employing office in the Legislative Branch, and the CAA explicitly prohibits oversight "... with respect to the disposition of individual cases [.]" [2 U.S.C. 1381(i)] Employees and employing offices may contact the Office of Compliance for information about the rights and protections afforded them under the CAA without fear that any contact will be reported to any other entity. Contacts with the Office of Compliance are confidential.

The Office of Compliance welcomes requests for information from both employees and employing offices. Please be aware, however, that the House of Representatives, the Senate, and other agencies covered by the CAA offer employing offices the services of legal counsels who represent management in personnel issues and employment matters. Employing offices seeking advice on specific personnel matters – such as the hiring and firing of employees – should contact their appropriate employment counsel for assistance.

Employees Covered by the Congressional Accountability Act

The CAA protects over 30,000 employees of the Legislative Branch, including employees of the House of Representatives and the Senate (both Washington, D.C. and state district office staff); the Office of the Architect of the Capitol; the Capitol Guide Service; the Capitol Police; the Congressional Budget Office; the Office of the Attending Physician; and the Office of Compliance. Certain provisions of the CAA also apply to the Government Accountability Office(GAO, formerly General Accounting Office) and to the Library of Congress. The CAA protects both current employees and job applicants, and in certain instances former employees may also be covered.

Certain provisions of the CAA may not apply to every office and agency of Congress. Please refer to the "Who is Covered" section of each law summary in this *Handbook* for specific information on which employees are protected by individual provisions of the CAA.

What Does the CAA Not Regulate?

Individual employing offices still maintain wide discretion in setting many workplace policies, subject to the standards set by House or Senate rules, or internal rules or civil service laws as they may apply to each particular employer. The CAA does not impose uniform workplace practices, such as work schedules, job duties, salaries, vacation and leave policies, holidays, fringe benefits, or procedures for hiring and firing staff.

A Note to Congressional District Staff

The CAA protects all covered employees of Congress, no matter where the covered employees are located. District office staff should not hesitate to contact the Office of Compliance by telephone or e-mail. The Office of Compliance may provide services locally to process claims brought by district office staff.

Notices and Record Keeping for Employing Offices

With certain exceptions (regarding the Family and Medical Leave Act and the Polygraph Protection Act), the CAA does not generally require employing offices to either post notices of CAA rights or keep records. It is prudent, however, for employing offices to keep records that document their actions in employment and personnel matters.

The Office of Compliance has produced a poster with all of the rights and protections afforded covered employees under the CAA. Although not required, offices are encouraged to display the poster where notices for employees are customarily placed.

The Office of Compliance also routinely distributes educational information about various topics relating to the rights and protections under the CAA and offices are encouraged to disseminate this information to all employees. The *CAA Handbook*, our poster, and many other educational products produced by the Office of Compliance may be downloaded from the web site, *www.compliance.gov*. Covered employees and employing offices may also contact the Office of Compliance directly for copies of informational materials.

Protection from Intimidation and Reprisal

The rights applied by the CAA are strictly protected. An employer may not intimidate, retaliate, or discriminate against employees who exercise their rights applied by the CAA. This includes a prohibition on retaliation against an employee who opposes practices made unlawful by the CAA; initiates proceedings; makes a charge; provides testimony; or participates in a hearing or other proceeding brought under the CAA. Those who assist others in these activities are also protected.

protection

Dispute Resolution

The Dispute Resolution Process

The CAA provides a mandatory dispute resolution process of counseling and mediation for the settling of disputes. If the parties involved are not able to resolve their dispute through counseling and mediation, an employee may either pursue a non-judicial administrative hearing process with the Office of Compliance or file suit in Federal court. The administrative hearing process offers speedier resolution and greater confidentiality than a Federal civil suit while still offering the same remedies that a court can provide.

The dispute resolution process is a multi-step process. All employees, including district office staff, must follow established dispute resolution procedures in order to process their claims under the CAA. Only after an employee has engaged in the required counseling and mediation can a remedy be granted. The failure to follow these procedures or to meet established time lines may jeopardize any claims raised under the CAA.

This is only a brief description of the dispute resolution process. For complete information on the rights, procedures, and remedies established by the CAA, refer to the Congressional Accountability Act (2 U.S.C. 1301 et seq.) and the Office of Compliance Procedural Rules. The text of the CAA and the complete procedural rules of the Office of Compliance are available in the *eHandbook* on CD-ROM and on the Office of Compliance web site. Printed copies are also available upon request.

Step One: Counseling

The first step in the dispute resolution process is to file a written request for counseling with the Office of Compliance. A request for counseling must be made within 180 days after the date of the alleged violation. The counseling period normally lasts for 30 days.

During the counseling period, an Office of Compliance counselor will discuss an employee's concerns and inform the employee of his or her rights under the law. The counselor does not serve as a representative or advocate, only as an advisor to help an individual understand how the law works and to clarify facts and issues. A covered employee may retain representation at any time during the dispute resolution process.

The Executive Director of the Office of Compliance has authority to recommend that employees of the Architect of the Capitol and Capitol Police use their office's own internal grievance process before first utilizing the CAA's dispute resolution procedures. If so, this will not count against the time limits available for counseling and mediation with the Office of Compliance.

The Second Step: Mediation

If an employee chooses to continue with a claim after the counseling period, the next step is to request mediation with the Office of Compliance. Mediation must be requested within 15 days of receiving notification of the completion of the counseling period and lasts for 30 days unless both parties request an extension of time.

During mediation, the Office of Compliance appoints one or more neutral mediators – professionals at dispute resolution – who will meet with the parties to the dispute to seek a solution to the problem that is acceptable to both parties. The goal of mediation is a voluntary resolution acceptable to all. Mediated settlements are always voluntary and can never be imposed by the mediator.

Mediation is intended to provide a confidential, informal means of settling disputes. Mediation permits both employees and their employing office to come together with a neutral third party to attempt to resolve a dispute under mutually acceptable terms. Mediation also permits the parties to resolve a dispute promptly and avoid a formal adversarial complaint process. The advantage of a mediated settlement is that it allows both parties to a dispute to take an active role in reaching a settlement rather than having one imposed upon them by a Hearing Officer or judge.

civil action

The Third Step: Civil Action or Administrative Hearing

If mediation fails to resolve a complaint, an employee may either proceed with an administrative hearing or file suit in Federal District Court. Either course of action must be initiated within 90 days (but no sooner than 30 days) of the time that written notice that mediation has ended is received.

If an employee chooses to proceed with a civil action after mediation, the suit and any appeals will proceed under the rules that normally apply to actions in Federal court. Employees who work on Capitol Hill who choose to file a civil suit after mediation normally must do so with the U.S. District Court for the District of Columbia. Employees who work outside of the District of Columbia may choose to file suit in the U.S. District Court where they work.

If an employee chooses to pursue an administrative hearing after mediation, a formal complaint must be filed with the Office of Compliance in writing. A copy of the complaint will be served on the employee's employing office, which has 15 days to respond. An independent Hearing Officer is assigned to conduct the hearing to determine the facts and may issue subpoenas and require information from the parties involved. An administrative hearing normally begins within 60 days after a complaint is filed, and the Hearing Officer will issue a written decision no later than 90 days after the hearing's conclusion.

The Fourth Step: Review by the Board of the Office of Compliance

If either the employee or employing office is dissatisfied with the final decision of the Hearing Officer, a request may be made to have the Hearing Officer's decision reviewed by the Board of Directors of the Office of Compliance. A request for review by the Board of Directors must be made within 30 days of the time the Hearing Officer's decision is entered into the records of the Office of Compliance. After reviewing the arguments from both sides in a dispute, the Board of Directors will issue a written decision on the case along with its reasoning for the decision.

If either the employee or employing office is dissatisfied with the outcome of the appeal to the Board of Directors, the decision may be appealed to the U.S. Court of Appeals for the Federal Circuit for further review.

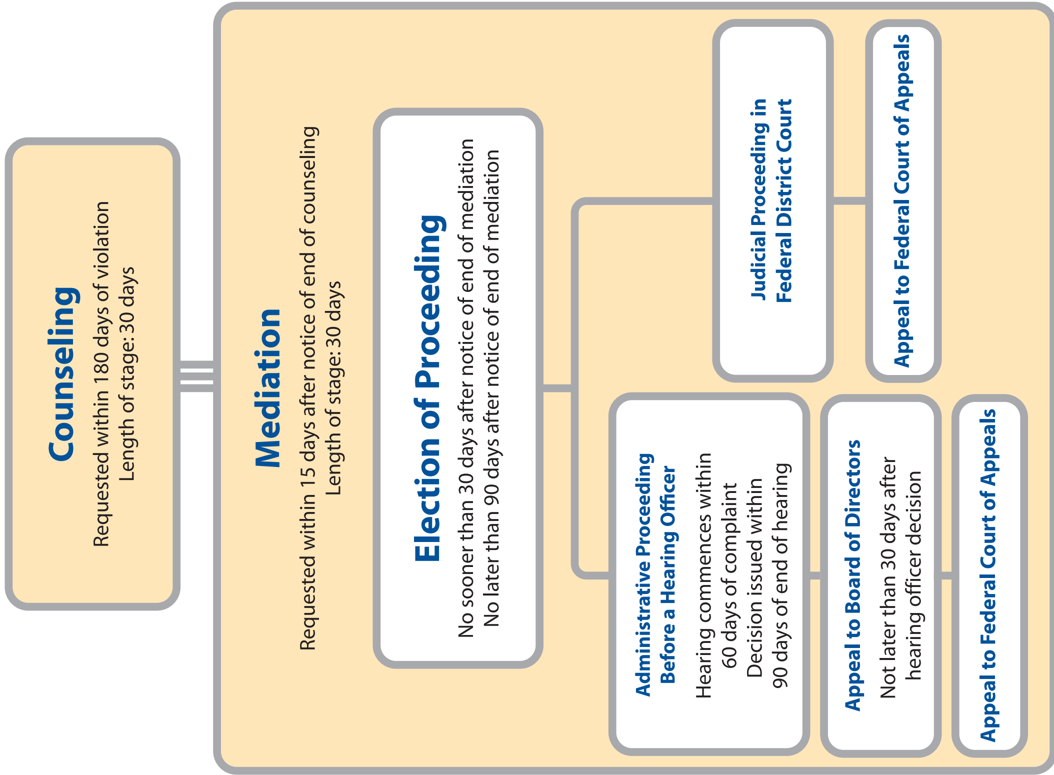
Informal Resolutions

At any time during the dispute resolution process, the parties involved may choose to settle their dispute before a final decision in the case is made. Settlements must be in writing and must be approved by the Executive Director of the Office of Compliance.

Awards, Penalties, and Attorney's Fees

If an employee prevails in a case, the Hearing Officer, Board of Directors, or Federal court may order monetary awards and other appropriate remedies. Attorney's fees, expert fees, and certain other costs may also be awarded. No civil penalties or punitive damages may be awarded for any claims under the CAA.

The Dispute Resolution Process



Violations Involving Safety and Health, Access to Public Services and Accomodations Rights for the Disabled, and Unfair Labor Practices

Certain rights applied by the CAA are not enforced through the counseling and mediation process. The General Counsel of the Office of Compliance may bring an enforcement action when violations of safety and health, unfair labor practices, and access to public services and accommodations rights for the disabled are alleged.

Safety and Health Violations

A party who believes that a safety or health violation exists may request that the General Counsel of the Office of Compliance conduct an inspection. A Request for Inspection must be in writing and can be filed by both employees and employing offices. The party making the Request for Inspection may choose to remain anonymous.

When there are reasonable grounds to believe a violation exists, the General Counsel will conduct an investigation. Representatives of the employing office and of the employees may accompany the inspector during the inspection. If the General Counsel finds a violation, a notification or citation is issued to the offices responsible for correcting the problem.

If the violation is not corrected once a citation has been issued, the General Counsel may file a complaint before an independent Hearing Officer with the Office of Compliance. Decisions by Hearing Officers may be appealed to the Board of Directors of the Office of Compliance and then to the U.S. Court of Appeals for the Federal Circuit.

safety

Access to Public Services and Accommodations Rights for the Disabled

A member of the public who is a qualified individual with a disability may file a charge with the General Counsel alleging a violation of the public services and accommodations rights provisions of the CAA. The General Counsel investigates the allegations and may suggest mediation between the individual filing the charge and the offices responsible for correcting the violation.

If the mediation is not successful, the General Counsel may file a complaint before an independent Hearing Officer with the Office of Compliance. The individual filing the charge may request to participate in the hearing. Decisions by Hearing Officers may be appealed to the Board of Directors of the Office of Compliance and then to the U.S. Court of Appeals for the Federal Circuit.

Unfair Labor Practices

An unfair labor practice charge can be made by an employing office, a labor organization, or an individual. Charges must be made within 180 days of the occurrence of an alleged unfair labor practice. The parties have 15 days to informally resolve their dispute.

If there is no resolution within the 15-day period, the General Counsel will investigate the charge and, if it has merit, file a complaint before an independent Hearing Officer with the Office of Compliance. The individual, labor organization, or employing office filing the charge is a party to the proceedings. Decisions by Hearing Officers may be appealed to the Board of Directors of the Office of Compliance and then to the U.S. Court of Appeals for the Federal Circuit.

Rights & Protections

Section 210 – Access to Public Services and Accommodations for the Disabled

What Does This Section of the Law Mean?

Offices in the Legislative Branch must make their public services, programs, activities, and places of public accommodation accessible to members of the public who have a disability.

Key Provisions

- The law requires that members of the public with disabilities have the same access as the non-disabled to public services, programs, activities, and places of public accommodation in the Legislative Branch
- The law may require offices to provide an accommodation for someone with a disability
- Charges of discrimination are investigated by the General Counsel of the Office of Compliance
- This provision, in general, is not applicable to employees (see page 36)

Who is Covered?

Members of the public who are qualified individuals with a disability are protected. The following offices and their subunits (including all committees and state district offices) must comply with this provision:

- The House of Representatives
- The Senate
- The Capitol Guide Service
- The Capitol Police
- The Congressional Budget Office
- The Office of the Architect of the Capitol
- The Office of the Attending Physician
- The Office of Compliance

Public Access

Summary

Section 210 of the Congressional Accountability Act (CAA) protects members of the public who are qualified ***individuals with disabilities*** from discrimination with regard to access to public services, programs, activities, or places of public accommodation in ***covered locations and offices***.

Offices of the Senate and the House of Representatives (including district offices); all committees of Congress; the Capitol Police; the Capitol Guide Service; the Congressional Budget Office; the Office of the Architect of the Capitol; the Office of the Attending Physician; and the Office of Compliance are all required to comply with this requirement in their dealings with the public.

Individuals who feel their rights under this provision have been violated can file a ***charge of discrimination*** with the General Counsel of the Office of Compliance. This charge must be filed within 180 days of the alleged discrimination. After a charge is filed, the General Counsel will conduct an investigation. If the ***investigation of the alleged discrimination*** reveals that a violation may have occurred, the General Counsel may either request mediation to resolve the dispute and/or file a formal complaint before a Hearing Officer with the Office of Compliance.

At least once each Congress, the General Counsel is required to inspect and report to Congress on the compliance of the Legislative Branch with the CAA's requirements regarding access to public services and accommodations for the disabled.

Summary

key terms

Key Terms and Definitions

Individuals with Disabilities: A person who has, has a record of having, or is considered to have a physical or mental impairment that substantially limits one or more major life activities.

Covered Locations and Offices: Offices of the Senate and the House of Representatives (including district offices); all committees of Congress; the Capitol Guide Service; the Capitol Police; the Congressional Budget Office; the Office of the Architect of the Capitol; the Office of the Attending Physician; and the Office of Compliance.

Charge of Discrimination: A written document that provides the details of the event in which an individual alleges his or her public services and accommodations rights were violated, such as when and where the event took place and who was involved. The charge of discrimination is filed with the General Counsel of the Office of Compliance.

Investigation of Alleged Discrimination: The attempt by the General Counsel of the Office of Compliance to determine if a claim of discrimination has merit. If the investigation substantiates the claim of discrimination, the General Counsel will take the first step in the complaint resolution process for charges of discrimination, which is to request mediation.

Frequently Asked Questions

May a member of the public file a charge of discrimination against a covered entity?

Yes, if the member of the public is a qualified individual with a disability and is a visitor, guest, or patron of a covered office of Congress. If such an individual believes that he or she has suffered discrimination when attempting to access public services, programs, and activities, or when attempting to access places of public accommodation in covered locations and offices, he or she may file a charge of discrimination with the Office of Compliance.

What is defined as a covered public entity under the CAA that may be held responsible for correcting a substantiated violation of disability access and accommodations rights?

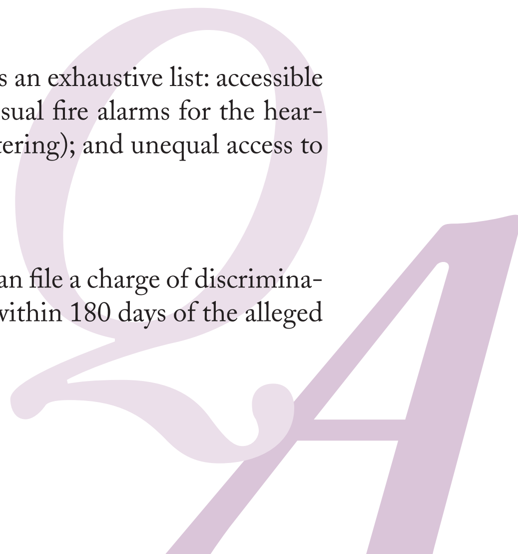
The term *"public entity,"* as used in the CAA, means an entity that provides public services, programs, or activities. These entities include all offices of the House of Representatives and Senate (including district offices); all committees of Congress; the Capitol Guide Service; the Capitol Police; the Congressional Budget Office; the Office of the Architect of the Capitol; the Office of the Attending Physician; and the Office of Compliance.

What may constitute a violation of disability access and accommodations rights?

The following is a list of areas where possible violations may occur, but it is by no means an exhaustive list: accessible public restrooms; accessible public dining facilities; unequal access to public events; visual fire alarms for the hearing impaired; appropriate signage for the sight impaired (such as Braille and raised lettering); and unequal access to offices open to the public.

What does filing a charge of discrimination involve on the part of an individual?

Individuals who believe their rights under Section 210 of the CAA have been violated can file a charge of discrimination with the General Counsel of the Office of Compliance. The charge must be filed within 180 days of the alleged act of discrimination. The General Counsel's office will then conduct its investigation.



Assuming a violation of disability access and accommodations rights is substantiated by an investigation, how will the Office of Compliance seek correction of the violation?

If the investigation by the General Counsel finds that a violation has occurred, the General Counsel may request mediation to resolve the dispute. The General Counsel cannot participate in the mediation. If the mediation does not succeed in resolving the dispute, then the General Counsel may choose to file a complaint before a Hearing Officer with the Office of Compliance against any entity responsible for correcting the violation.

Investigation

Section 201 – Age Discrimination

What Does This Section of the Law Mean?

Employees 40 years old or older cannot be discriminated against in personnel actions because of their age.

Key Provisions

- The law prohibits discrimination in personnel actions based on age
- Harassment based on age is also prohibited
- Only those 40 years old or older are protected
- Bona fide seniority or merit systems are allowed so long as they are not instituted to discriminate on the basis of age

Who is Covered?

You are covered by this provision of the CAA if you are an employee of one of the following offices or one of its subunits (including all committees and state district offices):

- The House of Representatives
- The Senate
- The Capitol Guide Service
- The Capitol Police
- The Congressional Budget Office
- The Office of the Architect of the Capitol
- The Office of the Attending Physician
- The Office of Compliance

Age

Summary

Section 201 of the Congressional Accountability Act (CAA) provides that all personnel actions affecting covered employees 40 years old or older shall be free from discrimination based on age. The CAA only protects individuals who are at least 40 years old against discrimination. Individuals younger than 40 are not protected.

The law generally forbids the use of age as a motivating factor in ***personnel actions***, such as hiring, discharge, promotion, pay, or benefits. A covered employee over 40 may also assert that he or she is ***harassed*** because of age if certain conduct creates a hostile work environment or interferes with an individual's work performance.

There is no single test for determining whether age was a motivating factor in an alleged discriminatory action, but instead, proving motivation will depend on the facts of the individual case. For example, placing a phrase like "age 25-50" or "young" or "college student" in a help-wanted notice or advertisement may be evidence of discriminatory motive. Furthermore, a covered employee must prove that he or she was treated differently from others in similar circumstances and that age was a motivating factor in that treatment.

There are several ***exceptions*** to the general prohibition on age discrimination. The employing office must prove that the conditions for a particular exception have been met.

Summary

Key Terms and Definitions

Personnel Actions: Hiring, discharge, promotion, pay, benefits, reassignment, and other personnel actions affecting the terms, conditions, and privileges of employment.

Harassment: Insults, jokes, slurs, or other verbal or physical conduct or activity that create a hostile or offensive work environment or that unreasonably interfere with an individual's work performance.

Exceptions: Age discrimination law generally recognizes several exceptions. For example, a bona fide seniority or merit system may be permissible if it is not intended to discriminate on the basis of age. The employing office must prove that the conditions for a particular exception have been met.

key terms

Frequently Asked Questions

At what age is an employee protected from discrimination based on age?
The Age Discrimination in Employment Act, as made applicable by Section 201 of the CAA, prohibits discrimination against any individual aged 40 or older. Persons younger than 40 are not protected.

How does an employee establish a claim of age discrimination?
By demonstrating that an adverse action taken by an employing office was actually motivated by age. For example, an employee may have direct evidence of discrimination, or discrimination may be inferred when: a) the employee is within the protected age group (aged 40 or older); b) the employee was doing satisfactory work; c) the employee was discharged despite the adequacy of his or her work; and d) the position was filled by a younger employee.

How can an employing office show that it did not discriminate against the employee based on age?
Once an employee makes an initial showing of age discrimination, the employing office can rebut the charge by showing that there was a legitimate non-discriminatory reason for the employee's treatment. For example, the employing office may take unfavorable action against an employee in the protected group (aged 40 or older) where the action is based on an employee's inability to continue to perform the job or because of the employee's unsatisfactory job performance.

May an employing office replace an employee aged 40 or older (for example aged 50) with an employee who is also in the protected age group (for example aged 43)?
It does not matter that the newly hired employee is also within the protected age group if the employing office in fact terminated the first employee based on that employee's age.

What remedies does an employee aged 40 or older have if an employing office discriminated against that employee based on his or her age?
An employee may have a right to be hired, reinstated, or promoted. In addition, an employee may be entitled to unpaid wages or overtime compensation and liquidated damages.

Section 220 – Collective Bargaining and Unionization

What Does This Section of the Law Mean?

Certain Legislative Branch employees have the right to join a union and collectively bargain with an employing office.

Key Provisions

- Legislative Branch employees are entitled to form, join, or assist a union for the purpose of collective bargaining, although not all employees are eligible
- Employees vote in an election to choose whether they want to join a union
- The law prohibits certain unfair labor practices by both employers and unions
- The law does not permit Legislative Branch employees to go on strike or engage in a work stoppage

Who is Covered?

Not all Legislative Branch employees are permitted to seek representation through a labor organization. To find out if you are covered by this provision of the CAA, please contact the Office of Compliance.

Summary

Section 220 of the Congressional Accountability Act (CAA) applies certain provisions of the Federal Service Labor-Management Relations Statute and protects Legislative Branch employees' ***rights to form, join, or assist a labor organization*** (union) for the purpose of collective bargaining without fear of penalty or reprisal. The rights of employees who choose not to join or participate in a labor organization are also protected. Not all Congressional employees are currently permitted to seek representation through a labor organization.

The decision to have a labor organization represent employees with management is made in a secret ballot ***election*** among the affected employees, also known as the "bargaining unit." These elections are supervised and the results certified by the Office of Compliance, and the CAA spells out the specific process under which this election takes place. A majority of the employees in the bargaining unit who vote must be in favor of unionization for a labor organization to become their exclusive representative.

The law vests employing offices and labor organizations with ***rights and responsibilities*** with respect to both the establishment and the conduct of a ***collective bargaining*** relationship. The law also forbids certain ***unfair labor practices*** by both employing offices and labor organizations.

The General Counsel of the Office of Compliance investigates and prosecutes ***unfair labor practice charges***. Unfair labor practice charges can be made by an employing office, a labor organization, or an individual. If, after an investigation, the General Counsel believes that an unfair labor practice has taken place, a complaint will be filed before an independent Hearing Officer with the Office of Compliance.

Unlike the private sector, the CAA does not permit Legislative Branch employees to engage in a work stoppage or slowdown. Picketing of an employing office in a labor-management dispute is also not permitted if the picketing interferes with an employing office's operations.

Summary

Key Terms and Definitions

Right to Form, Join, or Assist a Labor Organization: This right includes acting for a labor organization in the capacity of a representative and presenting the views of the labor organization to the heads of agencies and other officials of the Executive Branch, the Congress, or other appropriate authorities. It also includes the right to engage in collective bargaining with respect to conditions of employment through representatives chosen by employees.

Election (to Determine Labor Representation): To request an election, a labor organization must file a petition with the Office of Compliance showing the support of at least 30% of the employees of an appropriate bargaining unit. Any other labor organization may be placed on the ballot if it can show the support of at least 10% of employees in the same bargaining unit. Labor organizations that already represent the bargaining unit may also be included on the ballot by showing a valid or recently expired collective bargaining agreement with the unit.

Rights and Responsibilities of an Employing Office: Upon the certification of a labor organization as the exclusive bargaining representative, an employing office is under an obligation to recognize the labor organization as the bargaining agent of its employees. At the request of the labor organization, the employing office must meet and negotiate in good faith for the purpose of collective bargaining.

Rights and Responsibilities of a Labor Organization: As the exclusive representative of employees, a labor organization has both the right and the obligation to negotiate in good faith with an employing office over conditions of employment. A labor organization is responsible for representing the interests of all employees in the unit it represents without regard to labor organization membership.

Collective Bargaining: Collective bargaining is the performance of the mutual obligation of the representative of the employing office and the exclusive representative of the employees of a bargaining unit to meet at reasonable

times and to consult and bargain in a good faith effort to reach an agreement with respect to the conditions of employment affecting such employees.

Unfair Labor Practices: The law restricts both employing offices and labor organizations from certain practices. Examples of unfair labor practices by employers include threats of reprisal; making threatening statements to discourage the filing of a representation petition; or refusing to consult or negotiate in good faith with a labor organization. Unfair labor practices by labor organizations include discriminating against an employee with regard to the terms or conditions of membership in the labor organization on the basis of race, color, creed, national origin, sex, or age; or refusing to consult or negotiate in good faith with an employing office as required.

Unfair Labor Practice Charges: Either an employing office, a labor organization, or an individual may file an unfair labor practice charge with the General Counsel of the Office of Compliance. The charge must be filed within six months of the occurrence. If an investigation shows that the charge has evidence to support it, a complaint will be filed and prosecuted before an independent Hearing Officer with the Office of Compliance.

labor practices

Frequently Asked Questions

What is an appropriate bargaining unit and how is it determined?

For collective bargaining purposes, a labor organization is certified as the exclusive representative of an appropriate unit of employees if three criteria are met: (1) the unit must ensure a clear and identifiable community of interest among the employees as to matters pertaining to terms of employment and working conditions; (2) the unit must promote effective dealings with the employing office; and (3) the unit must promote efficiency of the operations of the employing office. Absent an election agreement between a labor organization and an employing office, a pre-election investigatory hearing will be held and the Board of Directors of the Office of Compliance will decide what is an appropriate bargaining unit.

May professional employees be included in a bargaining unit with nonprofessional employees?

Yes. Professional employees may organize and may comprise a bargaining unit solely of professional employees. However, professional employees may – by majority vote – decide to be included in an otherwise appropriate bargaining unit that includes nonprofessional employees.

May an employing office recognize a labor organization as the exclusive bargaining representative without employees voting on the issue of representation?

No. An employing office may recognize a labor organization as the bargaining representative of its unit employees only after the unit employees vote for such representation in a secret ballot election, conducted by the Office of Compliance.

Are employees required to become a member of a labor organization as a condition of employment?

No. An employee is not required to become a member of a labor organization or to pay dues as a condition of employment with an employing office.

Employees elect a union as their exclusive bargaining representative. Six months after the election, several unit employees decide the union isn't doing a good job representing them. What can the employees in the bargaining unit do?

No more than one labor representation election may be held within a 12-month period of time. Therefore, if employees in a bargaining unit change their minds about representation, they must wait for 12 months to elapse before an election can be held to determine whether or not a majority of the employees wish to continue being represented by the union. In addition, if the incumbent union has negotiated a contract with the employing office, an election may not take place before the end of either three years or the term of the contract, whichever occurs first.

bargaining

Section 201 – Disability Discrimination

What Does This Section of the Law Mean?

Employees cannot be discriminated against in personnel actions because of a disability, and offices may be required to accommodate the special needs of a person with a disability.

Key Provisions

- It is not permissible to discriminate in personnel actions against a qualified individual with a disability
- An employer may be required to make a "reasonable accommodation" for an employee's disability if that employee is otherwise qualified for the job
- An employer does not have to provide a reasonable accommodation if it can show that the accommodation will create an "undue hardship"
- Employers are not permitted to ask job applicants about the existence or severity of a disability

Who is Covered?

You are covered by this provision of the CAA if you are an employee of one of the following offices or one of its subunits (including all committees and state district offices):

- The House of Representatives
- The Senate
- The Capitol Guide Service
- The Capitol Police
- The Congressional Budget Office
- The Office of the Architect of the Capitol
- The Office of the Attending Physician
- The Office of Compliance

Summary

Section 201 of the Congressional Accountability Act (CAA) provides protection against discrimination in all *personnel actions* of *qualified individuals with a disability*. The CAA also prohibits *other kinds of discrimination* against people with a *disability*.

Only certain *inquiries about the physical abilities* of a prospective employee are permissible before a job offer is made. For example, an applicant may be asked if he or she can perform the basic functions of a job, but not about the nature or existence of a disability. Likewise, an employing office may not *condition a job offer on the results of a medical examination* unless a medical examination is required for all entering employees.

An employing office is required to make a *reasonable accommodation* for the known physical or mental limitations of an otherwise qualified employee or applicant with a disability. Employing offices, however, must only accommodate a *known physical or mental limitation* of an otherwise qualified applicant or employee. If an employer can demonstrate that a reasonable accommodation would impose an *undue hardship* on the functioning of the office, an accommodation does not have to be provided.

Covered employees and applicants currently engaging in the *illegal use of drugs* are not protected. An alcoholic may be considered an individual with a disability and protected by law, but can still be held to the same performance standards as other employees.

Key Terms and Definitions

Personnel Actions: Hiring, discharge, promotion, pay, benefits, reassignment, and other actions affecting the terms, conditions, and privileges of employment.

Qualified Individuals With a Disability: A person with a disability who has the basic qualifications and skills for the job he or she applied for or currently holds.

Other Kinds of Discrimination: The CAA prohibits actions that amount to de facto discrimination against a person with a disability. For example, using standards or criteria that have the effect of discrimination on the basis of disability, or using qualification standards or other selection criteria that tend to screen out an individual with a disability would be prohibited.

Disability: A physical or mental impairment that substantially limits one or more major life activities.

Inquiries About Physical Abilities: Employing offices are not permitted to inquire about the existence, nature, or severity of a disability before a job offer is made to an applicant. Only inquires about the ability of an applicant to perform the functions of the job are permitted.

Conditioning a Job Offer on the Results of a Medical Examination: A job offer may be conditioned on the results of a medical examination conducted after the job offer is made only if all entering employees, regardless of disability, must take an examination. Information obtained from medical exams must be maintained separately as confidential medical records, with only limited job-related access allowed.

Reasonable Accommodation: A means of ensuring that a person with a disability, who is otherwise qualified for a position, can perform the essential functions of the job. Reasonable accommodations can include such steps as

modifying equipment so that it can be used by someone with a physical impairment or providing an interpreter for a person who is deaf.

Known Physical or Mental Limitation: The requirement to accommodate an employee's disability is only triggered when the employee makes known his or her disability to the employing office and requests an accommodation.

Undue Hardship: An action requiring significant difficulty or expense when weighed against other factors, such as an employing office's size or financial resources.

Illegal Use of Drugs: Both the use of illegal drugs and the illegal use of legal prescription drugs.

hardship

Frequently Asked Questions

What are "essential job functions"?

The "essential functions of a job" are the fundamental job duties that an employee must be able to perform on his or her own or with the help of a reasonable accommodation. Essential functions do not include marginal functions of the position, meaning those that are merely incidental to the performance of the fundamental job duties of a position. An employing office cannot refuse to hire an individual because the individual's disability prevents the individual from performing duties that are not essential to the job.

Does an employing office have to give preference to a qualified applicant with a disability over other applicants?

No. An employing office is free to select the most qualified applicant available and to make decisions based on reasons unrelated to a disability. For example, suppose two persons apply for a job as a typist and an essential function of the job is to type 75 words per minute accurately. One applicant, an individual with a disability, who is provided with a reasonable accommodation for a typing test, types 50 words per minute; the other applicant who has no disability accurately types 75 words per minute. The employing office may hire the applicant with the higher typing speed if typing speed is needed for successful performance of the job.

Must an employing office give the employee the exact accommodation the employee requests?

No. The decision of what constitutes a reasonable accommodation in a given case is made through an interactive process between the employing office and the employee seeking accommodation. An employee requesting accommodation may not necessarily get the accommodation he or she has requested. The employing office is simply required to provide a reasonable accommodation that allows the employee to perform the essential functions of the job.

Must an employing office lower its standards for a particular position in order to accommodate an individual with a disability?

No. The employing office is not required to lower standards as an accommodation. An individual with a disabil-

ity must be qualified for the position, and the employing office is under no obligation to change the essential job functions or accept a work of inferior quality.

May an employing office refuse to hire an applicant because the employing office believes that it would be unsafe because of the applicant's disability?

An employing office may refuse to hire an individual if it can prove that the individual poses a direct threat to the health or safety of him or herself or others. A direct threat means a significant risk of substantial harm. The determination that there is a direct threat must be based on objective, factual evidence regarding an individual's present ability to perform the essential functions of a job, and must be based on medical judgment that uses the most current medical knowledge. An employing office cannot refuse to hire someone because of a slightly increased risk, or because of fears that there might be a significant risk sometime in the future. The employing office must also consider whether a risk can be eliminated or reduced to an acceptable level with a reasonable accommodation.

Does the employee have to pay for a needed reasonable accommodation?

No. The law requires that the employing office provide the accommodation unless doing so would impose an undue hardship on the operation of the employing office's business. If the cost of providing the needed accommodation would be an undue hardship, the employee must be given the choice of providing the accommodation or paying for the portion of the accommodation that causes the undue hardship.

Section 201 – Equal Employment Opportunity

What Does This Section of the Law Mean?

Employees cannot be harassed or discriminated against in personnel actions because of their race, color, religion, sex, or national origin.

Key Provisions

- The law prohibits harassment and discrimination in personnel actions based on an employee's race, color, religion, sex, or national origin
- The law prohibits sexual harassment in the workplace
- The law prohibits discrimination against women who are pregnant or who have given birth
- Employers may be required to accommodate employees' religious practices and observances

Who is Covered?

You are covered by this provision of the CAA if you are an employee of one of the following offices or one of its subunits (including all committees and state district offices):

- The House of Representatives
- The Senate
- The Capitol Guide Service
- The Capitol Police
- The Congressional Budget Office
- The Office of the Architect of the Capitol
- The Office of the Attending Physician
- The Office of Compliance

Opportunity

Summary

Section 201 of the Congressional Accountability Act (CAA) requires that all *personnel actions* – such as hiring, discharge, promotion, pay, or benefits – must be free from discrimination based on race, color, religion, sex, or national origin. The law forbids discrimination based on these characteristics even if other factors also motivate the action. *Harassment* based on race, color, religion, sex, or national origin is prohibited as well.

The law forbids certain employment practices that, while they may appear neutral in practice, in fact, cause a "disparate impact" on an employee on the basis of race, color, religion, sex, or national origin. The practice may be lawful in certain circumstances only if the employing office proves that the practice is job-related for the position in question and is consistent with business necessity.

Section 201 of the CAA also prohibits *sexual harassment* in the workplace and *discrimination because of pregnancy, childbirth, or related medical conditions*. In addition, the law requires that an employing office must reasonably accommodate an applicant or employee's religious observances and practices so long as it does not create an undue hardship on the conduct of business.

Proving motivation depends on the facts of a particular case. For example, a covered employee must not only prove that he or she was treated differently from others in similar circumstances, but must also show that race, color, religion, sex, or national origin was a motivating factor in that treatment. Under certain circumstances, an employing office may need to prove that it took adverse personnel action against a covered employee for non-discriminatory reasons, and accurate records of employees' job performance may be critical in such a case.

There are several *exceptions* to Section 201's prohibition on discrimination. It should also be noted that, under the CAA, it *is* lawful for certain House of Representatives and Senate offices to consider party, place of residence, or political compatibility in making employment decisions.

Key Terms and Definitions

Personnel Actions: Hiring, discharge, promotion, pay, benefits, reassignment, and other actions affecting the terms, conditions, and privileges of employment.

Harassment: Insults, jokes, slurs, or other verbal or physical conduct or activity that create an intimidating, hostile, or offensive work environment or that unreasonably interfere with an individual's work performance.

Sexual Harassment: Unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature if the implication is that submission to such conduct is expected as part of the job.

Discrimination Because of Pregnancy, Childbirth, or Related Medical Conditions: Pregnancy, childbirth, and any related medical conditions must be treated the same as other medical conditions under fringe benefit plans; discrimination because of pregnancy, childbirth, or related medical conditions is considered sex discrimination.

Exceptions: Exceptions against discrimination based on race, color, religion, sex, or national origin include bona fide merit and seniority systems, so long as they are not instituted with the intent to discriminate on the basis of race, color, religion, sex, or national origin.

key terms

Frequently Asked Questions

If an employing office is paying employees of one race more than comparable employees of another race, is the employing office violating the CAA?

Yes, if the reason for the differential in pay is race. It is not prohibited discrimination for an employing office to apply different standards of compensation, or different terms, conditions, or privileges of employment pursuant to a bona fide seniority or merit system, or a system that measures earnings by quantity or quality of production, or to employees who work in different locations, so long as such differences are not the result of an intent to discriminate on the basis of race. The same standard applies to situations involving employees of different color, religion, sex, and national origin.

May an employing office remove an employee from a position because of the employee's foreign accent?

In general, the answer is no. An employing office may not take a negative employment action against an employee because of that individual's accent, unless the employee's accent is too difficult to understand and the employee is in a job position which requires that he or she be clearly understood, such as in a receptionist position.

Must an employing office allow an employee time-off for the employee's religious observances?

An employing office must allow employees time-off for their religious observances to the extent that such accommodations do not impose an undue hardship on the employing office.

If, for pregnancy related reasons, an employee is unable to perform the functions of her job, does the employing office have to provide her an alternative job?

An employing office must treat an employee temporarily unable to perform the functions of her job because of her pregnancy-related condition in the same manner as it treats other temporarily disabled employees. For example, if an employing office accommodates such temporary disabilities by providing alternative assignments or modifying job requirements, it must do so for pregnancy related conditions as well.

May an employing office have a rule that prohibits an employee from returning to work for a predetermined length of time after childbirth?

No.

Section 203 – Fair Labor Standards and the Minimum Wage

What Does This Section of the Law Mean?

Employees must get paid at least the current minimum wage, and certain employees are entitled to overtime pay.

Key Provisions

- Employees must be paid at least the current minimum wage
- Overtime pay may be required for more than 40 hours of work in a week, but certain employees are exempt from this requirement
- The law prohibits sex discrimination in determining wages
- Interns are not covered by this provision

Who is Covered?

You are covered by this provision of the CAA if you are an employee of one of the following offices or one of its subunits (including all committees and state district offices):

- The House of Representatives
- The Senate
- The Capitol Guide Service
- The Capitol Police
- The Congressional Budget Office
- The Office of the Architect of the Capitol
- The Office of the Attending Physician
- The Office of Compliance

labor

Summary

Section 203 of the Congressional Accountability Act (CAA) applies certain rights and protections of the Fair Labor Standards Act of 1938 (FLSA) to covered employees. These rights and protections require payment of the *minimum wage* and overtime compensation to nonexempt employees, place *restrictions on child labor*, and prohibit *sex discrimination in wages* paid to men and women. The House, Senate, and Instrumentalities of Congress all have slightly different regulations regarding the implementation of the FLSA.

Except for employees with a specific exemption or exclusion, all covered employees are entitled to the minimum wage and to *overtime compensation* when working over forty hours in a workweek. Covered employees in a bona fide executive, administrative, or professional capacity who meet defined criteria are *exempt* from the basic wage and hour standards.

The CAA and Office of Compliance Regulations provide certain exceptions to the general overtime requirements of the FLSA. Regulations provide law enforcement and fire protection employees with a *partial exemption* to the overtime requirements. The CAA also permits compensatory time off, instead of overtime pay, for an employee whose *work schedule directly depends on the schedule of the House of Representatives or the Senate*. Office of Compliance Regulations also permit *three additional methods* of payment and compensation that may be used for employees who work irregular or fluctuating hours.

The CAA provides that *interns*, as defined in Office of Compliance Regulations, are not covered by the Fair Labor Standards provisions of the CAA. The definition of intern *does not* include volunteers, fellows, or pages. For the Senate only, the definition of intern also includes senior citizen interns.

The FLSA sets basic minimum wage and overtime pay standards, but there are many employment practices it does not regulate. Matters such as vacation, holidays, sick pay, premium pay for weekends, discharge notices, and severance pay are determined by individual employing offices and are not regulated by the FLSA.

Key Terms and Definitions

Minimum Wage: The minimum wage that must be paid to all Legislative Branch employees is the current Federal minimum wage.

Restrictions on Child Labor: The FLSA and Office of Compliance Regulations provide that employees 18 years or older can perform any job for unlimited hours. Individuals younger than 18 may face certain restrictions on their work, such as restrictions on working in certain hazardous jobs and limits on the total number of hours that may be worked.

Sex Discrimination in Wages: The CAA applies the Equal Pay Act provisions of the FLSA, which prohibit discrimination between men and women in their wages on the basis of sex. In general, the law requires that individuals with similar qualifications who perform similar work must be paid the same wage, regardless of their sex.

Overtime Compensation: Pay for all hours worked over 40 in a workweek at a rate not less than one-and-one-half times an employee's regular rate of pay.

Exempt Employees: Employees who are not required to be paid overtime under the FLSA. Specific criteria defined in the FLSA and Office of Compliance Regulations determine who may be considered an exempt employee.

Partial Exemption for Law Enforcement and Fire Protection Employees: Overtime must be paid only after hours worked pass a certain threshold. In some cases, compensatory time off may be provided rather than overtime pay.

Work Schedule that Directly Depends on the Schedule of the House or Senate: Work that directly supports the conduct of business in the chamber and work hours that regularly change in response to the schedule of the House and the Senate.

key terms

Three Additional Methods of Compensation for Irregular Work Schedules: Office of Compliance Regulations permit three additional methods for compensating employees with irregular work schedules: time-off plan for the same pay period; fixed salary for fluctuating hours; and "belo" contracts.

Intern: An individual performing services in an office as a part of an educational plan whose temporary work will not exceed a total of 12 months. Office of Compliance Regulations for the Senate also provide for senior citizen interns. The definition of intern does not include volunteers, fellows, or pages.

Frequently Asked Questions

Must an employing office count as hours worked the time spent on a meal break?
No, if the meal break is a bona fide meal period (ordinarily 30 minutes or longer) and the employing office does not require or permit an employee to engage in any work activity during the meal break. On the other hand, if the employing office requires or permits the employee to engage in any work through the meal period, that time is counted as hours worked. For example, it is considered compensable work for an employee to answer the phone while eating at his or her desk during the break.

Are employing offices required to implement a specific type of annual leave policy?
No. Employing offices may set any annual leave policy they wish, as long as it is not administered in a discriminatory fashion.

May an employing office pay a nonexempt employee on a monthly salary basis rather than an hourly basis?
Yes. A nonexempt employee may be paid on a monthly salary basis. To determine whether an employee is being compensated in accordance with the FLSA, an employing office must calculate the salary in terms of a regular hourly wage rate. For purposes of determining overtime compensation, an employing office must utilize a 40-hour workweek unless the employee is compensated for a fluctuating workweek.

After an employee works overtime, when must the overtime be paid out?
Overtime compensation does not have to be paid weekly. The general requirement is that overtime pay earned in a particular workweek must be paid on the regular payday for the period in which the workweek ends. If the correct amount of overtime pay cannot be determined until some time after the regular pay period, the employing office must pay the overtime compensation as soon as practicable. Payment may not be delayed for a period longer than is necessary for the employing office to compute and arrange for payment, and in no event may payment be delayed before the next payday after such computation can be made.

If an employee attends a training session or seminar, does the time spent at the training session or seminar count as hours worked?

Generally, all time spent performing an employee's principal and essential ancillary duties must be counted as work time. If the training is at the employing office's request and is primarily for the benefit of the employing office, then the time spent at the training will be considered work time. If the training is conducted outside of regular work hours, is completely voluntary, does not result in productive work for the employing office, and is not intended to make the employee more proficient in his or her present job, attendance at the training would not be considered work time.

If two individuals, one man and one woman, hold the same position, have the same level of experience, the same education, and perform the same work, may the employing office pay them at different rates?

No. Employing offices are required to pay equal rates for equal work and employing offices may not discriminate on the basis of sex. It should be noted that these protections also extend to employees who are bona fide executive, administrative, or professional employees who are exempt from the minimum wage and overtime requirements of the FLSA.

Section 202 – Family and Medical Leave

What Does This Section of the Law Mean?

Employees are entitled to 12 weeks of leave from work for certain family and medical reasons.

Key Provisions

- Employees are entitled to 12 weeks of leave in a 12-month period for certain family and medical reasons
- Employees are entitled to be restored to their same or equivalent job upon return from leave, with exceptions for certain "key" employees
- Leave may be taken for the birth or adoption of a child, a "serious health condition," or to care for a family member with a serious health condition
- Employers are not required to pay employees on leave
- Employees are entitled to maintain their health care coverage while on leave

Who is Covered?

You are covered by this provision of the CAA if you are an employee of one of the following offices or one of its subunits (including all committees and state district offices):

- The House of Representatives
- The Senate
- The Capitol Guide Service
- The Capitol Police
- The Congressional Budget Office
- The Office of the Architect of the Capitol
- The Office of the Attending Physician
- The Office of Compliance

Family

Summary

Section 202 of the Congressional Accountability Act (CAA) applies certain rights and protections of the Family and Medical Leave Act of 1993 (FMLA) to covered employees. These rights and protections entitle eligible employees to take leave for certain family and medical reasons and to be reinstated to their prior positions upon their return to work.

Eligible employees are entitled to a total of ***12 workweeks*** of family and medical leave during a 12-month period. Employers are not required to pay employees on FMLA leave, but employees are entitled to continue receiving ***health insurance benefits***. Certain ***notifications*** may be required of both employees and employers with regard to taking FMLA leave.

Under some circumstances, employees may take family and medical leave ***intermittently or on a reduced leave schedule***. It is also possible that an eligible employee may choose – or an employing office may require – that an employee substitute vacation, sick, or other types of personal leave for some or all of their unpaid FMLA leave.

At the conclusion of family and medical leave, an employee has the ***right to return to work*** in the same or an equivalent position as that held when leave commenced. There are limited exceptions to this right for ***"key" employees***.

Family and medical leave may be taken for a number of defined reasons. These reasons include the birth and care of a newborn child of the employee; placement of a child with the employee for adoption or foster care; to care for an immediate family member (spouse, child, or parent) with a ***"serious health condition;"*** or because of a serious health condition that makes the employee unable to perform the functions of his or her position.

To qualify as an eligible employee entitled to FMLA benefits, a covered employee must have been employed in any employing office for a total of 12 months and for at least 1,250 hours of employment during the previous 12 months. Certain ***other eligibility requirements*** may apply.

Summary

Key Terms and Definitions

Twelve Workweeks of Leave: Eligible employees are entitled to 12 workweeks of family and medical leave during a 12-month period. The 12-month period can be any fixed 12-month period, such as a calendar year or fiscal year, but whatever method of measurement used must be applied consistently to all employees.

Health Insurance Benefits: Employers must continue to provide an employee on family and medical leave with the same group health insurance at the same monthly premium as when the employee is not on family and medical leave.

Notifications Required: Employers are required to inform employees about their FMLA rights. Employees are required to provide employers with 30 days notice of their intention to take family and medical leave if the need for leave is foreseeable.

Intermittent and Reduced Leave Schedule: In addition to taking leave on a full-time basis, family and medical leave may be taken in separate blocks of time (for example, one day or one month at a time) or by reducing the hours or number of days an employee works each week.

Right to Return to Work: At the conclusion of family and medical leave, an employee is entitled to be restored to the same position the employee held when leave commenced, or to an equivalent position that involves the same or substantially similar duties and responsibilities, with equivalent benefits, pay, and other terms and conditions of employment.

Key Employee: A salaried eligible employee who is among the highest paid 10 percent of employees within 75 miles of the work site.

Serious Health Condition: An illness, injury, impairment, or condition that involves inpatient care or continuing treatment by a health provider.

key terms

Other Eligibility Requirements: The 12 months of employment do not need to have been consecutive or for a single employing office. If an employee was on the payroll for part of a week, the entire week counts towards the 12 months of employment. The minimum of 1,250 hours of employment must have been worked during the 12 months immediately preceding the commencement of leave. If the employee worked for more than one employing office during that period, the hours of work will be added together.

Frequently Asked Questions

Is family and medical leave paid or unpaid?
Family and medical leave is generally unpaid leave. It is also possible that an eligible employee may choose – or an employing office may require – that an employee substitute vacation, sick, or other types of personal leave for some or all of their unpaid FMLA leave.

How are family and medical leave rights and benefits protected when an employee works for more than one employing office?
Where two or more employing offices exercise some control over the work or working conditions of an employee, or where the employee performs work that simultaneously benefits two or more employing offices, or works for two or more employing offices during a workweek, a "joint employment relationship" may exist. When employing offices employ a covered employee jointly, they may designate one of themselves to be the primary employing office, and the other(s) to be the secondary office(s). The primary employing office is responsible for giving required notices to the covered employee, providing family and medical leave, and maintaining the employee's health benefits.

If family and medical leave is taken for the birth of a child, or for the placement of a child for adoption or foster care, when must the leave be concluded?
An employee's entitlement to leave for the birth or placement for adoption or foster care of a child expires at the end of the 12-month period beginning on the date of the birth or placement of that child, unless the employing office permits leave to be taken for a longer period. Any family and medical leave must be concluded within the one-year period.

May an employing office transfer an employee to an "alternative position" in order to accommodate intermittent leave or a reduced leave schedule?
When an employee requests intermittent leave or a reduced leave schedule that is foreseeable based on planned medical treatment, or where the employing office agrees to permit such leave for the birth or placement of a child,

the employing office can transfer an employee temporarily to an available alternative position if the position has equivalent pay and benefits and accommodates recurring periods of leave better than the regular employment position of the employee.

What notice does an employee have to give an employing office when taking family and medical leave?

When the need for family and medical leave is foreseeable, an employee must give the employing office at least 30 days advance notice of his or her intent to take leave. Where circumstances make that impossible, an employee must give as much notice as is practicable. For medical leave, employees must schedule planned treatment so as not to unduly disrupt the employing office's operations.

When must an employee provide medical certification to support a request for family and medical leave?

When an employee requests family and medical leave, the employing office may require medical certification from the health care provider supporting the need for leave due to a serious health condition affecting the employee or an immediate family member. When the need for leave is foreseeable, and at least 30 days notice has been provided, an employee should provide the requested medical certification before the leave begins. When this is not possible, an employee must provide the requested certification to the employing office within the time frame requested by the employing office (which must allow at least 15 calendar days after the employing office's request), unless it is not practicable under the particular circumstances to do so despite an employee's diligent, good faith efforts.

Section 205 – Notification of Office Closings or Mass Layoffs

What Does This Section of the Law Mean?

Employees are entitled to be given advance notice of an office closing or mass layoff.

Key Provisions

- Employees must be notified at least 60 days in advance of an office closing or a mass layoff
- Notice must be in writing and delivered directly to employees or to their representative (such as a labor organization)
- Employing offices are required to give notice of office closings or mass layoffs only if they meet certain size thresholds
- Special provisions apply to the privatization or sale of operations and to temporary employees

Who is Covered?

You are covered by this provision of the CAA if you are an employee of one of the following offices or one of its subunits (including all committees and state district offices):

- The House of Representatives
- The Senate
- The Capitol Guide Service
- The Capitol Police
- The Congressional Budget Office
- The Government Accountability Office (GAO)*
- The Library of Congress*
- The Office of the Architect of the Capitol
- The Office of the Attending Physician
- The Office of Compliance

* Because of differing legal interpretations, it remains uncertain whether employees of the GAO and the Library of Congress have the statutory right to use the administrative and judicial procedures provided under this provision of the CAA. The Office of Compliance will counsel any employee who initiates proceedings that a question has been raised as to the Office of Compliance's and the court's jurisdiction under the CAA and that the employee may wish to preserve his or her rights under any other procedural options.

Summary

Section 205 of the Congressional Accountability Act (CAA) applies certain rights and protections of the Worker Adjustment and Retraining Notification (WARN) Act to covered employees. This section of the CAA requires that employees must be given prior notice of an *office closing* or *mass layoff*. With *limited exceptions*, notice must be timed to reach the required parties at least 60 days in advance of the event.

There are a number of other requirements when giving notice of an office closing or mass layoff. Notice to affected employees must be in writing, specific, and must contain each of the *required elements* in Office of Compliance Regulations. Notice must be provided directly to either the affected employees or to their representatives (for example, a labor union).

Employing offices are covered by the WARN provisions of the CAA only if they meet certain *size thresholds*. Special provisions apply to the *privatization or sale of operations* and to *temporary employment*.

Summary

Key Terms and Definitions

Office Closing: The permanent or temporary shutdown of an employment site if the shutdown results in an employment loss of 50 or more employees (other than part-time employees) during any 30-day period.

Mass Layoff: A reduction in force (other than an office closing) that results in an employment loss at an employment site during any 30-day period for at least 50 employees who make up at least 33 percent of the active employees (other than part-time employees). Where 500 or more employees (excluding part-time employees) are affected, the 33 percent requirement does not apply.

Limited Exceptions to Time Limits: Notice may be sent with less than 60 days notice if the closing is the result of a natural disaster or if business circumstances were not reasonably foreseeable at the time the 60 day notice would have been required.

Required Elements for Notice: Whether the planned action is expected to be permanent or temporary and if the entire office is to be closed; the expected date when the office closing or mass layoff will commence and when employees will be separated; an indication whether or not “bumping rights” exist; an employing office official to contact for further information; and any other information useful to employees. When notice is given to employee representatives, notice requirements are slightly different.

Size Thresholds: Employing offices are covered if they employ 100 or more employees, excluding part-time employees; or 100 or more employees, including part-time employees, who in the aggregate work at least 4,000 hours per week, exclusive of overtime. Part-time employees are employees who work an average of less than 20 hours per week or who worked less than 6 months in the last 12 months (for example, seasonal employees).

key terms

Privatization or Sale of Operations: The employing office is responsible for providing notice of any office closing or mass layoff that takes place up to and including the effective date (time) of the privatization or sale.

Temporary Employment: Notice is not required if the closing is of a temporary facility or if the closing or layoff is the result of the completion of a particular project or undertaking. This exemption applies only if the affected employees were hired with the understanding that their employment was limited to the duration of the facility or the project or undertaking.

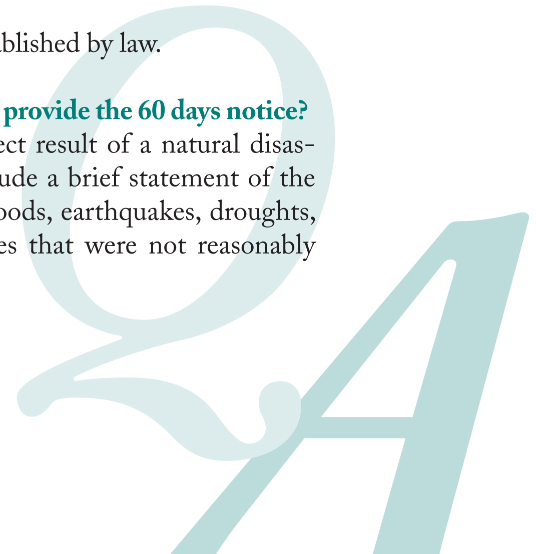
Frequently Asked Questions

Are all employing offices covered by this provision?
No. Not every employing office is covered under this provision of the CAA. Section 205 applies only to employing offices that meet specific size thresholds. This means that employing offices must employ a) 100 or more employees, excluding part-time employees; or b) 100 or more employees, including part-time employees, if in the aggregate the employees work at least 4,000 hours per week, exclusive of overtime.

Must the employing office give notice in the case of the privatization or sale of the employing office's operations?
In the case of the privatization or sale of an employing office's operations, the employing office must give notice of any office closing or mass layoff that takes place up to and including the effective date of the sale or privatization. The contractor or buyer will be responsible for providing any required notice of any office closing or mass layoff that takes place after the effective date of the sale or privatization.

Must notice be given during a temporary shutdown?
Notice must only be given during a temporary shutdown if it meets the requirements established by law.

If an employing office is shutdown due to a natural disaster, must the employing office provide the 60 days notice?
No. Employing offices need not provide 60 days notice where the shutdown is a direct result of a natural disaster, but must give as much notice as is practicable. When notice is given, it must include a brief statement of the reason for reducing the notice period. Natural disasters include occurrences such as floods, earthquakes, droughts, or storms. The same rule applies to closings or layoffs due to business circumstances that were not reasonably foreseeable at the time notice would otherwise have been required.



Section 215 – Occupational Safety and Health

What Does This Section of the Law Mean?

Workplaces in the Legislative Branch must be free of hazards that are likely to cause death or serious injury.

Key Provisions

- The law requires that workplaces be free of hazards that are likely to cause death or serious injury
- Employers are required to abide by workplace safety requirements and to correct unsafe conditions
- Investigations of unsafe working conditions can be requested by either employees or employers
- The General Counsel of the Office of Compliance investigates possible unsafe working conditions

Who is Covered?

You are covered by this provision of the CAA if you are an employee of one of the following offices or one of its subunits (including all committees and state district staff):

- The House of Representatives
- The Senate
- The Capitol Guide Service
- The Capitol Police
- The Congressional Budget Office
- The Government Accountability Office (GAO)
- The Library of Congress
- The Office of the Architect of the Capitol
- The Office of the Attending Physician
- The Office of Compliance

Summary

Section 215 of the Congressional Accountability Act (CAA) requires that the Legislative Branch comply with certain provisions of the Occupational Safety and Health Act and its standards requiring that public areas and the workplace be free of *recognized hazards* that are likely to cause death or serious injury. *Covered employing offices* must comply with these workplace safety requirements.

A *Request for Inspection* to determine if an unsafe working condition exists may be made by either an employing office or a covered Legislative Branch employee. Once a request is filed, the General Counsel of the Office of Compliance is responsible for investigating the suspected unsafe working condition.

When an investigation reveals an unsafe working condition, the General Counsel may issue a citation or notice to the employing office that has exposed employees or members of the public to the hazard and/or to the office responsible for correcting the violation. The office or offices responsible are required to take appropriate action to correct conditions that are in violation of standards. If a hazardous condition is not corrected once a citation is issued, the General Counsel can file a *complaint* before a Hearing Officer with the Office of Compliance and seek an order mandating the correction of the violation.

The General Counsel is required to inspect Legislative Branch facilities and report to the Speaker of the House and the President pro tempore of the Senate on compliance with workplace safety regulations once each Congress.

Summary

key terms

Key Terms and Definitions

Recognized Hazards: Although there is no formal definition, this term encompasses hazards that industry standards generally consider likely to cause death or serious injury. Examples include such things as unprotected exposure to chemical or biological hazardous materials, lack of back-up emergency lighting, or improperly used space heaters.

Covered Employing Offices: All offices of the House and Senate, including all committees and state district offices; joint committees of Congress; the Capitol Guide Service; the Capitol Police; the Congressional Budget Office; the Government Accountability Office; the Library of Congress; the Office of the Architect of the Capitol; the Office of the Attending Physician; and the Office of Compliance.

Request for Inspection: A formal request made with the General Counsel of the Office of Compliance to conduct an investigation and determine if an unsafe working condition exists. Requests for Inspection can be made by both covered employees and covered employing offices.

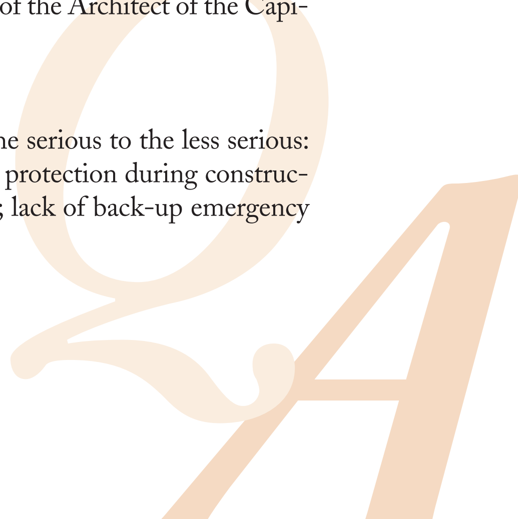
Complaint: A formal request by the General Counsel of the Office of Compliance for a hearing before an independent Hearing Officer to ask that an order be issued mandating the correction of an unsafe working condition. This request will only be made after a citation has been issued and the office responsible for the unsafe condition will not voluntarily correct it.

Frequently Asked Questions

Who qualifies as a covered employee under the CAA and may request an inspection of an alleged OSHA violation?
Any covered employee may request an inspection. The term "covered employee" includes any employee of the following offices or one of its subunits (including all committees and state district offices): the House of Representatives; the Senate; the Capitol Guide Service; the Capitol Police; the Congressional Budget Office; the Office of the Architect of the Capitol; the Office of the Attending Physician; the Office of Compliance; the Government Accountability Office; and the Library of Congress.

Who is defined as an employer or employing office under the CAA and may be held responsible for correcting a substantiated OSHA violation?
The term "employer" as used in the CAA means an "employing office." Employing offices include the Government Accountability Office and the Library of Congress, as well as the following offices if they are responsible for correcting a substantiated OSHA violation: all offices of the Senate, including committees and individual Senators; all offices of the House of Representatives, including committees and individual Members of the House; joint committees of Congress; the Capitol Guide Service; the Capitol Police; the Congressional Budget Office; the Office of the Architect of the Capitol; the Office of the Attending Physician; and the Office of Compliance.

What may constitute a safety and health violation?
The following are a few examples of possible safety and health violations, ranging from the serious to the less serious: unprotected exposure to chemical or biological hazardous materials; insufficient or no fall protection during construction or maintenance; inadequate emergency action plans for the evacuation of employees; lack of back-up emergency lighting; overuse of electrical extension cords or power strips; and unsafe space heaters.



What does filing a Request for Inspection involve on the part of the requesting employee, employee representative, or employing office?

Any Legislative Branch employing office, employee, or former employee who is/was covered by the CAA may file a Request for Inspection with the General Counsel of the Office of Compliance. If so desired, the request may be made anonymously. An employee representative, such as a recognized union, may also file on behalf of a group of employees.

Once the Request for Inspection has been filed, the Office of Compliance may hold an opening conference to outline the inspection process and to answer any questions the parties might have. The General Counsel will proceed with the inspection, which may include a physical survey of the place of the alleged violation, the taking and testing of samples, the obtaining of relevant documentation, and/or interviews with affected employees and management representatives.

Assuming a safety and health violation is substantiated by an investigation, how will the Office of Compliance enforce correction of the violation?

If an investigation finds that there has indeed been a violation of OSHA regulations, the Office of Compliance may take a series of steps to enforce correction of the violation. The first step is for the General Counsel of the Office of Compliance to issue a written report describing the violation. The General Counsel may also issue a citation to the employing office, which places the employing office on notice that the violation must be corrected within a stated period of time. If the employing office still has not corrected the violation after the deadline for doing so has passed, the General Counsel may choose to file a complaint before a Hearing Officer with the Office of Compliance in order to request a hearing.

Section 204 – Protection from Polygraph Testing

What Does This Section of the Law Mean?

With limited exceptions, employees cannot be required to take polygraph ("lie detector") tests.

Key Provisions

- The law generally prohibits employers from administering lie detector tests to current or prospective employees
- Oral and written tests and tests for drugs and alcohol are not covered by this general prohibition against polygraph testing
- There are exceptions to the prohibition for employees involved in intelligence or counterintelligence work who have access to top secret information
- The Capitol Police may require lie detector tests of its own employees and may require a polygraph test from other employees as part of an ongoing investigation

testing

Who is Covered?

You are covered by this provision of the CAA if you are an employee of one of the following offices or one of its subunits (including all committees and state district offices):

- The House of Representatives
- The Senate
- The Capitol Guide Service
- The Capitol Police
- The Congressional Budget Office
- The Government Accountability Office (GAO)*
- The Library of Congress*
- The Office of the Architect of the Capitol
- The Office of the Attending Physician
- The Office of Compliance

* Because of differing legal interpretations, it remains uncertain whether employees of the GAO and the Library of Congress have the statutory right to use the administrative and judicial procedures provided under this provision of the CAA. The Office of Compliance will counsel any employee who initiates proceedings that a question has been raised as to the Office of Compliance's and the court's jurisdiction under the CAA and that the employee may wish to preserve his or her rights under any other procedural options.

Summary

Section 204 of the Congressional Accountability Act (CAA) applies provisions of the Employee Polygraph Protection Act and generally prohibits an employing office from requiring that current and prospective employees take *lie detector tests*. This prohibition includes requiring or requesting that lie detector tests be taken; using, accepting, or inquiring about the results of a lie detector test; or firing, disciplining, denying employment or promotion, or discriminating against an employee or prospective employee based on the results of a lie detector test or the refusal to take a lie detector test. These prohibitions apply regardless of whether or not the covered employee works in the employing office that conducts the test.

There are some *limited exceptions* to the prohibition on lie detectors. For example, those who are involved in intelligence or counterintelligence activities and have access to top secret information may still be required to take lie detector tests. The Capitol Police may also require lie detector tests of its own employees or, as part of an ongoing investigation, of other covered employees. There are other specific exceptions to this prohibition regarding theft or access to controlled substances. Even when allowed, lie detector tests are subject to certain *restrictions* on their administration.

While the general prohibition against lie detector tests includes the use of electrical and mechanical detectors, it does not prohibit the use of *oral or written tests*. *Tests for drugs or alcohol* may also be required of current or prospective employees.

Summary

Key Terms and Definitions

Lie Detector Test: A polygraph, deceptograph, voice stress analyzer, psychological stress evaluator, or any other similar device (whether mechanical or electrical) that is used, or the results of which are used, for the purpose of giving a diagnostic opinion regarding the honesty or dishonesty of an individual.

Limited Exceptions: Law and Office of Compliance Regulations create several exemptions to the general prohibition on lie detector tests. In general, those exceptions on the prohibition apply to covered employees involved in national security work with access to top secret information; to covered employees who have access to controlled substances; to investigations regarding theft or economic harm to an employer; and to the Capitol Police. This is not an exhaustive list of the allowable exceptions to the prohibition. Consult Office of Compliance Regulations for a complete list of exceptions.

Restrictions on Lie Detector Test Administration: Where lie detector tests are allowed (other than in the intelligence context or by the Capitol Police), the CAA subjects such tests to strict standards concerning conduct and length of the test and use of results. Examinees also have a number of rights, including the right to notice before testing and the right to refuse or discontinue a test.

Oral or Written Tests: This term includes both oral and written "honesty tests" and hand writing (graphology) tests.

Tests for Drugs or Alcohol: The term "lie detector" does not include the use of tests of bodily fluids used to determine the presence of drugs or alcohol.

Frequently Asked Questions

May an employing office request an employee who does not work in that office to submit to a lie detector test?
No. The prohibitions on the use of lie detector tests by an employing office apply regardless of whether the covered employee works in the employing office requesting the test.

Are there any exceptions to the general prohibition against the use of lie detector tests?
Yes, the law and Office of Compliance Regulations create four exceptions to the general prohibition on the use of lie detector tests by employing offices. Those who are involved in intelligence or counterintelligence activities and have access to top secret information may still be required to take lie detector tests. The Capitol Police may also require lie detector tests of its own employees or, as part of an ongoing investigation, of other covered employees. Lie detectors may also be permitted in the course of an ongoing investigation into a specific incident that resulted in economic loss or injury to an employing office's operations. An employing office authorized to manufacture, distribute, or dispense controlled substances is also permitted to require that a lie detector test be administered to a prospective employee who will have access to such substances, or to a covered employee in connection with an investigation of misconduct involving controlled substances.

What are the rights of an employee who is requested to submit to a lie detector test under the ongoing investigation or controlled substances exceptions?
During all phases of polygraph testing the employee being examined has the following rights: the examinee may terminate the test at any time; the examinee may not be asked any questions designed to degrade or unnecessarily intrude on the examinee; the examinee may not be asked any questions regarding religious beliefs or affiliations, racial matters, political beliefs or affiliations, sexual behavior, or beliefs, affiliations, opinions, or lawful activities concerning unions or labor organizations; and the examinee may not be tested when there is sufficient written evidence from a physician that the examinee is suffering from any medical or psychological condition or undergoing treatment that might cause abnormal responses during the test.

May information obtained during a lie detector test be disclosed?

Unauthorized disclosure of any information obtained during a polygraph test by any person, other than the examinee, is prohibited, except as follows:

- a polygraph examiner or an employing office may disclose information acquired from a lie detector test only to the examinee or an individual specifically designated by the employee to receive such information; the employing office that requested the polygraph test; and any court, governmental agency, arbitrator, or mediator;
- an employing office may disclose information from the lie detector test at any time to a governmental agency, without a court order, where the information disclosed is an admission of criminal conduct; and,
- a polygraph examiner may disclose test charts, without identifying information, to other examiners for examination and analysis, under specific conditions.

protection

Section 206 – Uniformed Services Rights and Protections

What Does This Section of the Law Mean?

Employees cannot be discriminated against for past or present duty in the "uniformed services," and those who leave work to perform unformed service are entitled to be reemployed in their old job after a service obligation ends.

Key Provisions

- The law prohibits discrimination in employment, reemployment, retention in employment, promotion, or any benefit of employment against employees in the uniformed services
- The "uniformed services" includes the Armed Forces (active and reserve), the National Guard, the Public Health Service, or any other category designated by the President during time of war or emergency
- With certain stipulations and exceptions, employees who leave work for service in the uniformed services are entitled to be reemployed in the same position or in an equivalent position upon their return from duty
- Employees must give notice to employers, when possible, before they leave work for duty in the uniformed services

Uniformed

Who is Covered?

You are covered by this provision of the CAA if you are an employee of one of the following offices or one of its subunits (including all committees and state district offices):

- The House of Representatives
- The Senate
- The Capitol Guide Service
- The Capitol Police
- The Congressional Budget Office
- The Government Accountability Office (GAO)*
- The Library of Congress*
- The Office of the Architect of the Capitol
- The Office of the Attending Physician
- The Office of Compliance

* Because of differing legal interpretations, it remains uncertain whether employees of the GAO and the Library of Congress have the statutory right to use the administrative and judicial procedures provided under this provision of the CAA. The Office of Compliance will counsel any employee who initiates proceedings that a question has been raised as to the Office of Compliance's and the court's jurisdiction under the CAA and that the employee may wish to preserve his or her rights under any other procedural options.

Summary

Section 206 of the Congressional Accountability Act (CAA) applies certain rights and protections of the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) to covered employees performing service in the *"uniformed services."* The uniformed services includes the Armed Forces (active and reserve), the National Guard, the Public Health Service, or any other category designated by the President during time of war or emergency.

In general, USERRA protects employees performing service in the uniformed services from *discrimination* – such as in hiring, discharge, or promotion – and provides *rights to certain benefits* while performing service and upon the completion of service. These rights include retaining pension plan rights and continuing civilian health plan coverage.

Once an employee completes a service obligation, the employee is entitled to be reemployed in the same position or a similar position upon their return to work. To be *eligible for reemployment*, an employee must give adequate notice to his or her employer (if possible) before leaving work for duty in the uniformed service and must not have exceeded certain *time limits* for duty in the uniformed service. An employee must also not have left the uniformed service with less than an honorable discharge. There are certain other *limitations and conditions on reemployment* rights.

Summary

Key Terms and Definitions

Uniformed Services: Active and Reserve Armed Forces (Navy, Air Force, etc.), National Guard, Public Health Service, or any other category designated by the President during time of war or emergency.

Discrimination (Based on Uniformed Service): Denying initial employment, reemployment, retention in employment, promotion, or any benefit of employment to an eligible employee on the basis of the employee's service or application for service in the uniformed services is prohibited.

Rights to Benefits: Benefits protected include seniority and other seniority-based rights and benefits that the employee had on the date he or she began service in the uniformed services, plus any additional seniority and seniority-based rights and benefits for which the employee would have been eligible had he or she remained continuously employed; continued coverage under a health insurance plan while absent to perform service; and rights under pension plans.

Eligibile for Reemployment: Employees' rights to reemployment are conditioned on certain factors, including having given adequate notice to an employer prior to leaving for service; not being discharged with less than an honorable discharge; properly applying for reemployment (when required); and not exceeding the maximum allowable length of service (see Time Limits).

Time Limits: Covered employees whose absence for service in the uniformed services exceeds a cumulative total of five years with any one employing office may not be eligible for reemployment. Certain forms of uniformed service do not count in this cumulative total.

Limitations and Conditions on Reemployment: Reemployment may not be required under certain conditions, such as if the reemployment would create financial hardship for the employing office or if the employee was not a full-time employee and there was never any expectation that his or her employment was permanent.

Frequently Asked Questions

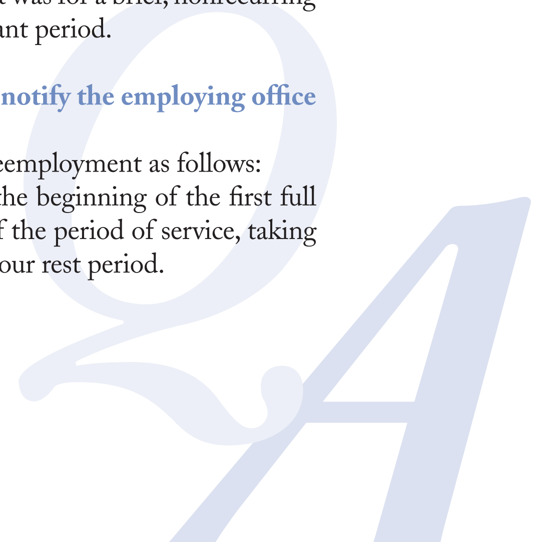
What does "service in the uniformed services" mean?
"Service in the uniformed services" means voluntary or involuntary duty under competent authority and includes inactive duty training, active duty, full-time National Guard duty, and time absent for examination for fitness for such duty.

May an employing office treat an employee who serves in the uniformed services unfavorably?
It is unlawful for an employing office to discriminate against an eligible employee, to deny reemployment rights to an eligible employee, or to deny benefits to an eligible employee on the basis of the employee's service in a uniformed service.

Are there exceptions to the general rule that an employing office must reinstate an employee returning from duty in the uniformed services?
Yes. The employing office is not required to rehire the employee if the circumstances of the employing office have changed so as to make such reemployment impossible or unreasonable; if employment would impose an undue hardship on the employer; or if the employment was entered into with the understanding that it was for a brief, nonrecurring period with no reasonable expectation that it would continue indefinitely or for a significant period.

Must an employee who has completed a period of service in the uniformed services notify the employing office of his or her intent to return to work?
Yes. Unless an employee is injured or disabled during service, employees must apply for reemployment as follows:

- If service was less than 31 days: The employee must report for work no later than the beginning of the first full regularly scheduled work period on the first full calendar day after the completion of the period of service, taking into account safe travel from the place of service to the employee's home plus an 8-hour rest period.



- If service was for more than 30 days, but less than 181 days: The employee must apply no later than 14 days following completion of the period of service, or if reporting is impossible or unreasonable through no fault of the employee, the next first full calendar day when reporting becomes possible.
- If service was for more than 180 days: The employee must apply no later than 90 days following completion of the period of service.

Does an eligible employee have to prove that he or she is entitled to reinstatement?

No. The burden of proving the impossibility or unreasonableness, undue hardship, brief or nonrecurring nature, or lack of reasonable expectation of reemployment of an eligible employee lies with the employer.

Notes

Notes

Office of Compliance
110 2nd Street, SE Room LA–200
Washington, D.C. 20540–1999
t/ 202–724–9250
f/ 202–426–1913
tdd/ 202–426–1912
Recorded Information Line/ 202–724–9260
www.compliance.gov

The Office of Compliance advances safety, health, and workplace rights in the U.S. Congress and the Legislative Branch. Established as an independent agency by the Congressional Accountability Act of 1995, the Office educates employees and employing offices about their rights and responsibilities under the Act, provides an impartial dispute resolution process, and investigates and remedies violations of the Act.

www.compliance.gov