

## **Employment Practices, Not Just Politics, Behind Mounting Hostility on Capital Hill**

By Rachelle S. Young

To say Capital Hill is becoming an increasingly hostile place is now an understatement, with a new report showing a dramatic increase in harassment and discrimination claims made by legislative branch employees.

The number of legislative branch employees who made discrimination and harassment claims during mandatory alternative dispute resolution counseling rose by almost 24 percent in the 2010 fiscal year to 168, compared to the previous fiscal year, the Office of Compliance (OOC) noted in its 2010 fiscal year annual report

. Since the 2006 fiscal year, the number of those complaints has actually jumped 93 percent from 87.

The OOC, which administers and enforces the Congressional Accountability Act of 1995 (CAA), did not provide an explanation for the increase in harassment and discrimination complaints. It did note that race/color, age and gender/pregnancy were the leading factors in discrimination and harassment complaints, which accounted for 69 percent of 244 alleged violations to the CAA in the 2010 fiscal year.

These statistics reflect legislative employees' prevailing efforts to assert the employment rights that are relatively new to them but that have long protected executive branch and private sector workers. It was only through the enactment of the CAA that these protections were extended to the more than 30,000 legislative branch employees.

The CAA ended Congress' wild west approach toward employment rights and applied to the legislative branch the protections provided by laws such as Title VII of the Civil Rights Act, the Family Medical Leave Act (FMLA), the Fair Labor Standards Act (FLSA) and the Uniformed Services Employment and Reemployment Rights Act (USERRA)

. Most recently, Congress has added the Veterans Employment Opportunity Act (VEOA) to the list of laws applied to the congressional workplace.

Unlike executive branch employees, who can generally take their grievances over wrongful employment actions to the Office of Special Counsel (OSC), Merit Systems Protection Board (MSPB)

or Equal Employment Opportunity Commission (EEOC)

, legislative branch employees must follow alternative dispute resolution procedures. The employee can retain a private attorney at any time during this process.

Most CAA claims, excluding those generally pertaining to public access, workplace safety or labor organization, must first enter confidential counseling within 180 days of an alleged

violation. The employee then has 15 days after receiving notice of the conclusion of counseling to request mediation. If a resolution cannot be reached at this stage, the employee has between 30 and 90 days after receiving notice of the end of mediation to have his or her case heard at an OOC administrative hearing or to file a lawsuit at the appropriate federal district court.

Legislative branch employees need to remember that the anti-retaliation protections provided by the Whistleblower Protection Act. The OOC has recommended extending these protections to congressional employees. Texas Rep. Sheila Jackson Lee has even introduced legislation proposing to do that. Her Congressional Disclosures Protection Act of 2011 (H.R. 226), however, has seen little activity since February. In the meantime, legislative branch employees should consult with a federal labor lawyer to assert the rights under the CAA and hold lawmakers and their staffs accountable to the employment laws they impose on other Americans.

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