

Addressing Sexual Harassment by Modifying the Congressional Accountability Act of 1995: A Look at Key Provisions in H.R. 4924

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On February 6, 2018, H.R. 4924 *passed the House* by a voice vote. This Sidebar was originally written in reference to H.R. 4924's predecessor bill, H.R. 4822. The two bills are nearly identical, with much of H.R. 4822, including the bill's section numbers and titles, having been incorporated verbatim into H.R. 4924. The primary difference between the two bills is that on the same day the House passed H.R. 4924, the House passed (via H. Res. 724) the House-specific portions of H.R. 4822 (previously Sections 401 - 409), resulting in an immediate *change to the House Rules* and obviating the need for those portions to be included in H.R. 4924. Other differences between H.R. 4924 and H.R. 4822 include:

- H.R. 4924's addition of violations by senior staff as those that must be referred to the ethics committee under [Section 112](#);
- Additional requirements in H.R. 4924 relating to the semiannual reports required by [Section 201](#); and
- H.R. 4924's inclusion of special notification procedures in [Section 102](#) for when initiated claims involve Members of the House or Senators.

Putting to the side these relatively minor differences between the two bills, the analysis below of the major provisions of H.R. 4822 is equally applicable to H.R. 4924.

Recently, some Members of the House announced H.R. 4822 (the Congressional Accountability Act of 1995 Reform Act), one of the most recent bills to propose potentially significant amendments to the Congressional Accountability Act of 1995 (CAA), including to how harassment claims would be addressed and resolved in the legislative branch. On [February 5, 2018](#), the bill is scheduled for markup by the House Administration Committee. For most of its history, Congress had *exempted itself*, and the United States as a whole, from workplace discrimination laws. The legal landscape changed in 1995 when Congress passed the CAA, which extended antidiscrimination laws, including the [Civil Rights Act of 1964](#) and the [Americans with Disabilities Act of 1990](#), among others, to legislative branch employees. While these federal laws have been interpreted to prohibit much harassment in the workplace, in recent months, many commentators have pointed to the possible *inadequacy* of the CAA's procedures concerning how claims of harassment are handled and resolved. In particular, criticism has been raised about the CAA's allowance for *confidential settlements with victims*, payments for those settlements with *taxpayer funds*, and the CAA's provision for mandatory counseling and mediation in response to a complaint.

Though a number of other measures have been introduced in the House to amend the CAA, particularly as it relates to settlements, H.R. 4822, a 58-page bill, proposes changes that would affect many aspects of the CAA. This Sidebar highlights and considers some of the major differences between the current process provided under the CAA and the process that would exist if H.R. 4822 were enacted, as well as other

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changes proposed by the bill that could affect both legislative branch employees and Members of Congress.

Investigation Process. One major modification introduced by H.R. 4822 to the current CAA process is the addition of a mandatory investigation in response to alleged harassment. Under the [existing regime](#), which applies to all harassment complaints under the CAA, a covered employee initiates a CAA proceeding by requesting counseling with the Office of Compliance (OOC). That request then prompts a mandatory [30-day counseling period](#) managed by the OOC, which is followed by a mandatory [30-day mediation period](#) in front of an OOC-appointed mediator. After that, the aggrieved employee [may either](#) file a lawsuit in federal district court or may file a formal complaint with the OOC, which is required to hold a hearing in front of a hearing officer, with the power to award relief similar to that available under applicable discrimination law. The CAA does not currently require any investigation into violations alleged by an accuser.

The CAA Reform Act would make a number of changes to the dispute resolution process. First, the bill would, in [Section 305](#), change the name of OOC to the “Office of Congressional Workplace Rights.” More significantly, [Section 102](#) of the new bill would eliminate the mandatory counseling provision and would instead provide that any covered employee may file a claim with the Office of Congressional Workplace Rights, in writing under oath or affirmation, which would trigger an investigation by the General Counsel. The bill would require the General Counsel to conduct an investigation and make a report concerning the investigation within 90 days. At any time during those 90 days, the General Counsel may recommend to the employee and the employing office that they pursue mediation. Upon either a finding of “reasonable cause to believe” that there was a violation of the CAA or an inconclusive finding, a hearing with the power to issue relief under the CAA would follow. Upon a finding of “no reasonable cause,” however, the employee may elect to bring a lawsuit in federal district court.

Settlement Payments and Reporting. Another set of changes contemplated by H.R. 4822 concerns settlements resolving discrimination claims made under the CAA, including harassment claims. Currently, the CAA has few provisions concerning settlements, [providing](#) that payments of awards or settlements must be made from funds appropriated to an account of the OOC in the Department of the Treasury.

H.R. 4822, by contrast, would [require](#) that certain individuals reimburse the Treasury for settlement or award payments. Concerning mandatory reimbursement, [Section 111](#) provides that Senators and Members of the House (including Delegates or Resident Commissioners, but not including staffers) who allegedly committed violations of the CAA’s antidiscrimination or antiretaliation provisions, must repay the Treasury for any settlement amounts arising from those claims. Such repayment to the Treasury can be compelled by withholding from the individual’s salary or by amounts in the individual’s thrift savings fund. Relatedly, this section also gives an individual subject to the reimbursement requirement a right to intervene in CAA proceedings. Under that provision, such individual could intervene in a mediation, hearing, or civil action to participate in the determination of whether an award or settlement should be reached and the settlement amount.

H.R. 4822 would also add reporting and publication procedures for settlements, neither of which are currently provided for by the CAA. [Section 201](#) of the bill would require the Office of Congressional Workplace Rights to publish a report every six months on its public website listing each award or settlement that was paid during the previous year, including the employing office involved, the amount of the award or settlement, and, if the alleged violation personally involved a Member of Congress, whether that Member has reimbursed the amount.

In the context of settlements resolving sexual harassment claims, the use of non-disclosure or confidentiality agreements has attracted significant [attention](#). H.R. 4822 does not contain a provision expressly addressing their use, though other [bills](#) in the House focus on that issue.

Other Provisions Affecting Legislative Branch Employees. The bill also contains several other provisions that would affect legislative branch employees, including expanding who constitutes a covered employee under the CAA, adding training requirements, creating of an “Office of Employee Advocacy,” and providing for remote work assignments during the pendency of harassment investigations.

[Section 301](#), for example, would extend coverage of all of the CAA’s non-discrimination law beyond paid employees to expressly include, for the first time, interns and any other staff “who carry out official duties of the employing office but who are not paid by the employing office.” In addition, in [Section 402](#), the new bill would provide for the creation of an “Office of Employee Advocacy”, under the Office of the Chief Administrative Officer of the House of Representatives. The Office of Employee Advocacy would provide legal assistance, consultation and representation to employees who bring claims under the CAA. The bill also would provide in [Section 304](#) that each employing office “shall develop and implement” a program to train and educate covered employees of the rights and protections available to them under the law.

Finally, a new provision in [Section 417](#) would allow covered employees to request remote work assignments or paid leave during the pendency of any procedure under the CAA. The bill would leave the determination of whether to permit any remote work or paid leave solely to the office employing the covered employee.

Other Provisions Affecting Members of the House and Ethics Committees. Several other provisions of the bill have direct implications for Members of the House. For instance, [Section 405](#) of the bill would make sexual harassment a violation of the House Code of Official Conduct. [Section 406](#) would also make it a violation of the House Code for Members of the House to have any sexual relationship with any employee of the House working under their supervision or to engage in any “unwelcome sexual advances” toward any officer, fellow Member, or employee of the House.

Other provisions would increase mandatory communications between the new Office of Congressional Workplace Rights and the Ethics Committees of the House and Senate. For example, currently, hearings before the OOC are [confidential](#) and can be released only in the event of judicial review or at the discretion of the OOC’s Executive Director to the Committees on Ethics. While [Section 114](#) of the bill would maintain confidentiality during investigations, mediation, and hearings, [Section 103](#) of the bill would require the General Counsel to submit all investigation reports to the respective ethics committees, where the claim involves an alleged violation by a Member. In addition, [Section 112](#) would mandate the Executive Director of the Office of Congressional Workplace Rights to refer final disposition of such claims to the respective Committee on Ethics for that Member of Congress. Concerning the Office of Congressional Ethics, the bill would limit that Office’s investigative functions, as the bill states that the Office may not initiate or continue any investigation of a claim once an employee has brought a claim under the CAA, leaving such investigations exclusively to the new Office of Congressional Workplace Rights.

Conclusion. H.R. 4822 is not the first bill that has been introduced to propose amendments to the CAA. Some bills have suggested similarly [extensive changes](#), while others have focused on more narrow “[fixes](#)” to the settlement reimbursement issue or on [mandatory sexual harassment](#)

[training](#). H.R. 4822 has already received some attention in the [press](#); given the public and congressional [attention](#) to sexual harassment issues in the past months, the issues raised by H.R. 4822 and other such bills are likely to be in the spotlight for some time.

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