LEGISLATIVE BRANCH WHISTLEBLOWING

OFFICE OF THE WHISTLEBLOWER OMBUDS
COACHING THE HOUSE ON BEST PRACTICES

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OVERVIEW

The legislative branch workforce is comprised of congressional employees and the employees of several **legislative agencies**. Unlike the executive branch, the legislative branch does not have traditional whistleblower protections for employees who make disclosures evidencing waste, fraud, or other misconduct.[1] However, protections exist for legislative branch employees who exercise their rights under the Congressional Accountability Act (CAA). Individuals considering blowing the whistle should do so under advisement of knowledgeable counsel.

Congressional Accountability Act

The Congressional Accountability Act (CAA) applies 14 federal employment, labor, safety and health, and accessibility laws to the legislative branch. **Covered employees** include most legislative branch staff, former staff, applicants, interns (both paid and unpaid), detailees, and fellows. **Section 208** of the CAA prohibits retaliation against a covered employee for exercising their rights under the law.

The CAA is administered by the **Office of Congressional Workplace Rights** (OCWR), which is available to provide confidential consultations to covered employees. The **Office of Employee Advocacy** is available to provide confidential consultations and legal counsel to House employees. The **Office of House Employment Counsel** (OHEC) can provide similar services for House employers.

CONGRESSIONAL WHISTLEBLOWERS

House or Senate employees can disclose alleged misconduct to several offices that may investigate. However, staff are not explicitly protected by federal law for doing so outside of the Congressional Accountability Act protections as described above.

Congressional Offices for Disclosures

- The **House Ethics Committee** accepts and may investigate and adjudicate alleged violations of House rules and related statutes by House Members, officers, or employees. Anyone can report misconduct to the Committee and individuals may seek a confidential consultation before reporting an allegation for investigation.
- The **Office of Congressional Conduct** receives and reviews allegations of misconduct concerning House Members, officers, or employees. If the Office's Board determines that further review is warranted, it refers the matter to the House Committee on Ethics. In most situations, the Board's report and findings are publicly released.
- The **House Office of the Inspector General** receives and investigates allegations related to fraud, waste, or mismanagement within the administrative functions of the House.
- The **Senate Select Committee on Ethics** accepts, investigates, and conducts adjudicatory reviews of improper conduct or allegations that any Senator, or officer, or employee of the Senate has violated a law, the Senate Code of Official Conduct, or any rule or regulation of the Senate relating to the conduct of any individual in the performance of their duty.

Prohibiting Retaliation — House Code of Official Conduct

Clause 20 of the House Code of Official Conduct prohibits a House Member, Delegate, Resident Commissioner, officer, or employee from taking any actions to prevent an individual from, or to retaliate against an individual for, providing truthful information to the Committee on Ethics, the Office of Congressional Conduct, the Office of Congressional Workplace Rights, or any law enforcement official, provided that the disclosure of such information is not otherwise prohibited by law or House rules. Note that this is a House-specific provision and does not prohibit actions taken by those outside of the House.

Confidentiality — House Code of Official Conduct

Clause 21 of the Code of Official Conduct for the House prohibits a House Member, officer, or employee from publicly disclosing the identity of, or personally identifiable information about, any individual who has reported allegations of wrongdoing, including unlawful

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whistleblower retaliation, pursuant to any federal law that establishes a right to make protected disclosures to Congress. Exceptions, such as the whistleblower's prior written consent, are included in Clause 21.

LEGISLATIVE AGENCY WHISTLEBLOWERS

Some legislative branch agencies have formal or informal processes in place to review employee allegations of misconduct. These processes, sometimes administered by offices of inspectors general, may offer confidentiality.

Most legislative branch agencies are covered under the Congressional Accountability Act.

Government Accountability Office (GAO)

The GAO's Personnel Appeals Board (PAB) administers employment rights at GAO, including whistleblower protections. Under the GAO Personnel Act, whistleblower rights mirror those laid out in the Whistleblower Protection Act, but enforcement procedures differ. Affected individuals can contact the PAB for confidential guidance, and instructions on how to file a "Charge" are available on the **PAB website**.

Government Publishing Office (GPO)

Employees of the Government Publishing Office (GPO) are covered under the **Whistleblower Protection Act**. Disclosures of alleged misconduct may be made to the **GPO Office of Inspector General** (OIG) or other recipients authorized under the Act. The OIG may refer retaliation complaints to the Office of Special Counsel, the Merit Systems Protection Board, or GPO's Equal Employment Opportunity Office, depending on the claim.

United States Capitol Police (USCP)

United States Capitol Police employees may disclose alleged misconduct through several channels, in addition to OCWR.

The **Office of Professional Responsibility** (OPR) receives and investigates internal and external allegations of misconduct by USCP employees. Its internal policies prohibit retaliation against employees who make disclosures. The **Office of Inspector General** (OIG) conducts oversight of USCP programs and operations. Its **authorizing statute** requires that the IG maintain employee whistleblower confidentiality in most circumstances and prohibits retaliation against good faith disclosures.

The OIG may refer some disclosures to the OPR for investigation. Both offices offer confidential consultations and accept anonymous disclosures. Unionized employees may also make protected disclosures and file grievances through their respective union — the **USCP Labor Committee** or **Teamsters**.

Oversight of Legislative Branch OIGs

Where an employee alleges misconduct by officials in a legislative branch office of inspector general, the **Integrity Committee** (IC) of the Council of the Inspectors General on Integrity and Efficiency (CIGIE) may have jurisdiction to investigate.

Inspectors general of the Library of Congress, Capitol Police, Government Publishing Office, Government Accountability Office, and the Architect of the Capitol, as well as their direct reports and designated staff members, are Covered Persons under the IC's authority. The IC also has authority to review allegations of misconduct by an agent or special agent in a legislative branch OIG.

ANTI-GAG PROVISIONS

Congress includes several whistleblower anti-gag provisions in the annual federal government appropriations law.[2] The provisions prohibit the government from expending funds to unlawfully gag or retaliate against whistleblowers and include **accountability measures for violators**. Enforcement involves an investigation by the Government Accountability Office (GAO) as a potential violation of the Antideficiency Act. Further, the House prohibits House entities from requiring employees to sign non-disclosure agreements that do not inform employees of their right to make disclosures to certain audiences or that require notice of such disclosures to their employer.[2]

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[1] Employees of the Government Publishing Office, discussed herein, are an exception. They are covered under the Whistleblower Protection Act, as amended.

[2] H. Res. 5, 119th Cong. § 3(o).

ADDITIONAL RESOURCES

Congressional Research Service (CRS): **Legislative Whistleblowers and the First Amendment**

Office of Congressional Workplace Rights: **Know Your Rights in the Legislative Branch**

House Committee on Rules: **Rules of the House of Representatives**