

**Written Testimony Of**  
**Gloria J. Lett (Counsel, Office of House Employment Counsel)**  
**Before the**  
**Committee on House Administration**

**November 14, 2017**

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Good morning Chairman Harper, Vice Chairman Davis, Ranking Member Brady, and members of the Committee on House Administration.

My name is Gloria Lett and I am the Counsel for the Office of House Employment Counsel.

Thank you for inviting me to speak and answer questions regarding the services and resources my office provides to House employing entities with respect to preventing and responding to sexual harassment in the workplace.

I understand from the Chairman's November 7 letter, and my conversations with the Committee's staff, that the Committee requests that I address several specific topics. I will start by first describing the history and structure of the Office of House Employment Counsel (colloquially referred to as "OHEC"). I will describe in detail OHEC's three core functions. In addition, I will describe how OHEC differs from the Office of Compliance and our separate roles in addressing sexual harassment in the workplace. Finally, I will describe the services and resources OHEC provides regarding sexual harassment training and prevention.

### **I. OHEC's History and Structure**

In 1995, Congress passed the Congressional Accountability Act (the "CAA") which, for the first time, mandated that Congressional employing offices comply with a multitude of employment and labor laws that already applied to the private sector and the Executive Branch. The CAA established that each individual Member office, each Committee, and each of the House Officers and the Office of the Inspector General, constitutes a separate employer for purposes of compliance with these laws. Moreover, the CAA gave Congressional employees the right to bring claims for a violation of the newly-applied employment and labor laws, and established that such claims could be brought only against the employee's specific employing office. The CAA has been amended over time to incorporate additional employment laws and requirements for individual Congressional employing offices. These laws can be found at 2 U.S.C. § 1301, et. seq.

Shortly after the CAA was enacted, this Committee (then the Committee on House Oversight) recognized the need for House offices to receive legal advice to comply with these new laws, as well as legal representation in claims and lawsuits brought under the CAA. Because the House as an entity is not an employer under the CAA, the Committee recognized that it could pose a conflict of interest if the Office of General Counsel were to provide legal advice and counsel under the CAA to individual employing offices. Therefore, to ensure that each House employing office receives individual, confidential, attorney-client protected advice regarding CAA matters, on April 30, 1996, this Committee created OHEC. In 2001, the CAA was amended to provide a statutory basis for OHEC attorneys to

directly represent House employing offices named as defendants in CAA litigation in federal courts nationwide.<sup>1</sup>

OHEC is currently staffed by six attorneys with extensive private and public-sector experience advising, training, and representing clients in employment law matters, including those involving sexual harassment. (OHEC is also supported by two administrative employees). OHEC's attorneys collectively have well over 100 years of experience representing and advising employers regarding CAA employment and labor law matters, including sexual harassment training, advice, and investigations.

OHEC is operated on a strictly non-partisan basis and is administrated by the Office of the Clerk under the bipartisan direction of the Chairman and Ranking Member of this Committee. Because OHEC has a separate confidential attorney-client relationship with each House employing office, our client contacts are not discussed with anyone outside of OHEC. In view of that limitation, my testimony today will cover only non-privileged matters.

## II. OHEC's Three Core Functions

OHEC's three core functions consist of counseling, training and legal representation.

*Counseling.* OHEC provides advice to House employing offices on each of the laws applicable under the CAA. This includes, but is not limited to, advice regarding the following matters:

- Employee handbook creation, revision, and review
- Development and drafting of employment-related policies and procedures
- Compliance with the Family and Medical Leave Act (FMLA)
- Employee hiring, retention, and discipline (including development of individual Performance Improvement Plans )
- Overtime pay, eligibility, and compliance
- Annual, sick, vacation, military and other leave accrual and usage
- Interviewing and employing individuals with disabilities (and related issues concerning providing reasonable accommodations)
- Compliance with OSHA and the public access provisions of the Americans with Disabilities Act (ADA)
- Investigations of employment-related misconduct and complaints (including sexual harassment complaints)
- Compliance with the Genetic Information Nondiscrimination Act of 2008 (GINA)
- Labor relations issues (including collective bargaining)
- Any other issue under the CAA

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<sup>1</sup> Prior to this amendment OHEC would handle federal cases after notifying the local U.S. Attorney's Office, and obtaining the court's permission to be admitted *pro hac vice*.

OHEC initially provides Members and their Chiefs of Staff an introduction to its services at the beginning of each Congress during New Member Orientation. Offices can then obtain advice from an OHEC attorney by contacting OHEC by phone, email, or in person.

*Training.* When requested by an employing office, OHEC provides training to management and to staff, both in Washington, D.C. and in district offices, at no cost to employing offices. All of OHEC's training is conducted in-person by one or more OHEC attorneys, and is interactive. Training sessions that OHEC attorneys regularly provide include:

**For managerial employees**

- Overview of the CAA
- Preventing sexual harassment and responding to complaints of sexual harassment
- Avoiding litigation landmines (i.e., guidance to managers regarding proper evaluation and interaction with staff to avoid litigation)
- Conducting effective investigations of workplace misconduct and complaints
- Best practices for developing and conducting performance evaluations
- Compliance with the FMLA

**For all staff**

- Prevention of sexual harassment in the workplace
- Sensitivity in the workplace
- Appropriate use of email and social media in the workplace

All of these training options are provided when requested by an employing office. In addition, OHEC holds regularly scheduled training sessions in the House Learning Center located in the Longworth Building. Since the beginning of the 115<sup>th</sup> Congress, OHEC has scheduled 54 training sessions which discuss the topics of preventing sexual harassment and responding to complaints of sexual harassment.

*Litigation.* OHEC provides legal representation to employing offices when an employee initiates a claim under the CAA. Typically, this process begins when OHEC is notified that an employee has requested mediation at the Office of Compliance. OHEC contacts the employing office and advises management of the existence of the claim, investigates the claim asserted, provides advice to the employing office regarding legal exposure and possible methods of resolution, and represents the employing office at mediation. Much of the time, the employee is represented by private counsel at the mediation. If the parties reach an agreement in principle at mediation, any financial payment must be approved by the Chairman and Ranking Member of this Committee. OHEC obtains that approval without identifying the employing office by explaining why we believe the settlement is in the best interests of the employing office and the taxpayers. Once approved by the Committee, the settlement must also be approved and processed by the OOC. Financial settlements are paid out of the judgment fund.

The CAA expressly mandates that the mediation process is strictly confidential. Additionally, most settlements contain confidentiality and non-disparagement clauses. Significantly, these clauses are often mutual. It is standard practice for these types of contractual provisions to be requested by both the employing office and the employee.

If a matter is not resolved at mediation, the employee may choose to litigate his or her claim either through an expedited confidential administrative trial at the Office of Compliance, or through a public federal court complaint. It is entirely the employee's choice whether to proceed through the confidential administrative trial or the public federal court route. The potential remedies are the same in both forums. For DC-based employees, the confidential administrative process or the federal court litigation occurs in the District of Columbia. For district employees, the administrative trial or federal court litigation occurs in the district. In both Washington, D.C. and throughout the country, OHEC represents the employing office from the beginning of the litigation, starting with discovery through trial and, if applicable, any appeal.

### **III. How OHEC differs from the Office of Compliance**

OHEC attorneys are House employees. As noted above, OHEC provides legal advice to House offices, similar to the way a private law firm might provide legal advice to a private company regarding employment law issues. OHEC attorneys endeavor to assist House employing offices comply with the CAA and maintain positive and safe workplace environments. However, OHEC attorneys do not represent employees and we have an ethical obligation to zealously represent the interests of our client – the employing office.

The Office of Compliance was created by the CAA and is an independent entity within the Legislative Branch. Its Board of Directors and higher ranking managerial officials are appointed by the House and Senate. The OOC promulgates rules and regulations applicable to Congressional employing offices. It is also the entity where employees go when they wish to initiate CAA claims against their employing office. The OOC appoints mediators to handle disputes between Congressional employees and their employers. If mediation fails and an employee chooses to litigate his or her claim in the confidential administrative trial venue (as opposed to federal court), the OOC appoints a hearing officer to conduct the administrative trial. The hearing officer's decision can be appealed to the OOC's Board of Directors. The OOC does not have an attorney client relationship with employees, or with employing offices. Indeed, some of the OOC Board decisions rule against employing offices, approve the imposition of penalties against legislative branch employing offices, and affirm the award of monetary damages to employees.

### **IV. Services and resources OHEC provides regarding sexual harassment training and prevention.**

In conjunction with this Committee, OHEC worked on the model employee handbook (which is available on the Committee's website). The model handbook contains, among other provisions, an Equal Employment Opportunity (EEO) policy, an anti-harassment and anti-discrimination policy, and an open-door policy. OHEC provides the model handbook, and/or the individual policies to employing offices upon request. Moreover, if an employing office contacts OHEC for advice and OHEC learns the

office has not adopted the model handbook and/or these policies, OHEC advises those offices to do so. OHEC also reviews and revises these policies, assisting employing offices who wish to tailor the policies specifically to their individual offices. Copies of the model EEO, anti-harassment and anti-discrimination, and the open-door policies are available on this Committee's website.

As noted above, upon request by any employing office, OHEC provides in-person, interactive sexual harassment prevention classes for both staff and managers. The typical class lasts for approximately 1.5 – 2 hours and is led by one or two OHEC attorneys. OHEC has been conducting this type of training since 1996. With the passage of time, the training has been routinely updated. For example, when OHEC began the training in 1996, social media was not an avenue where potential sexual harassment issues would arise. That, of course, has changed. The law in this area is also constantly evolving and OHEC routinely updates our training to reflect these changes.

For the sexual harassment prevention training OHEC attorneys utilize visual presentation tools and video vignettes which highlight different sexual harassment scenarios. The class includes a discussion of the legal requirements, as well as the requirements of the code of conduct of House Rule XXIII with respect to sexual harassment, and is tailored to each office's individual anti-harassment policies. OHEC regularly conducts these classes in the House Learning Center in the Longworth Building, in conference rooms in the O'Neill Building, in Committee rooms, in Member DC office spaces, and in district offices.

Additionally, when an employing office contacts OHEC after becoming aware of an allegation of sexual harassment involving its employees, OHEC provides detailed step-by-step guidance on how to conduct an effective investigation. OHEC continuously advises employing offices throughout the investigation process and provides advice regarding appropriate and legally defensible corrective action once the investigation is completed. OHEC's advice typically includes meeting with the employing office's management, development and revision of written materials, review of notes or summaries of investigation interviews, and counseling regarding legal risks and options for corrective action.

When an office determines that an employee engaged in inappropriate behavior, and that individual remains employed, OHEC will advise the office to require the employee to take anti-harassment training. In addition, OHEC will advise the office on how to impose appropriate discipline designed to stop the offending behavior. OHEC will also work with the office going forward to develop strategies to further the goal of maintaining a safe and productive work environment.