

January 17, 2018

Hon. Paul Ryan
Speaker, U.S. House of Representatives
1233 Longworth House Office Building
Washington, D.C. 20510

Hon. Nancy Pelosi
Democratic Leader, U.S. House of Representatives
233 Cannon House Office Building
Washington, D.C. 20510

Hon. Gregg Harper
Chairman
Committee on House Administration
1310 Longworth House Office Building
Washington, D.C. 20510

Hon. Robert Brady
Ranking Member
Committee on House Administration
1310 Longworth House Office Building
Washington, D.C. 20510

Dear Speaker Ryan, Leader Pelosi, Chairman Harper, and Ranking Member Brady:

As organizations committed to advancing and protecting civil and human rights, equality, access to justice, and transparency, we write to express our appreciation for your efforts to address the problem of sexual harassment in Congress, including holding hearings last fall and requiring all House members and their staff to participate in mandatory anti-harassment and anti-discrimination training.

We hope that these steps are only the first of many and urge you, as you move forward, to ensure that any reforms of the existing system look beyond the current crisis, and seek to implement broad, meaningful changes that will benefit the entire legislative workforce and set an example for the nation. Specifically, we encourage you to move quickly to consider H.R. 4396, the ME TOO Congress Act, currently before the House Administration Committee, or other similar legislation, and to ensure that any final legislation includes the recommendations below to prevent and remedy workplace harassment and discrimination and ensure a safe and fair workplace culture in Congress.

Moreover, while this current moment is focused on sexual harassment, no one employed by the legislative branch should be subjected to harassment on the basis of any protected characteristic—and Congress must ensure that any reforms also apply to claims of workplace discrimination based on sex (including sexual orientation, gender identity, pregnancy and childbirth), race, disability, age, ethnicity/national origin, color, religion, marital status, and status as a parent.

Background

Workplace harassment, including sexual harassment, is a pervasive problem in the United States. Despite the longstanding prohibitions against sexual harassment and sexual assault, these behaviors continue to infect our workplaces and deny workers equal employment opportunities, safety, and dignity. For too long, victims of harassment and assault have lived in silence because of fear of jeopardizing their safety, jobs, financial security, and career prospects, while too often perpetrators -- often powerful men -- have escaped accountability for their actions, enabled by

many who have turned a blind eye to these transgressions. As recent events have demonstrated, no workplace is immune from harassment, whether in the entertainment industry, restaurant kitchens, or the halls of Congress.

In 2017, it was reported that four in 10 women on congressional staff said that sexual harassment is a problem on Capitol Hill, and a whopping “one in six said they personally had been victimized.”¹ But in contrast to federal agencies and many private workplaces, the legislative branch workforce lacks a comprehensive system to enable employees and other staff who have been harassed to report safely; to respond to complaints; to assess culpability; and to impose appropriate penalties based on fair and transparent principles that are consistently applied. Moreover, the avenues for protection and redress that do currently exist through the under-resourced Office of Compliance are largely unknown to many employees, place many obstacles in the way of those bringing complaints of harassment, and do not serve as a deterrent to offenders.

Recommendations

1. Improve the Reporting and Dispute Resolution Process and Expand Coverage and Protections.

The Congressional Accountability Act (CAA) must be amended to ensure the legislative branch workforce enjoys robust protection from and appropriate remedies for harassment and other forms of discrimination. Any reforms should ensure that:

- Protections against harassment and employment discrimination are extended to those not currently covered, including interns, fellows, detailees, and pages;
- Participation in mediation and counseling is optional and not a prerequisite to initiating a complaint or lawsuit;
- Nondisclosure agreements are neither a prerequisite to initiating a complaint nor a mandatory condition of settlement;
- No 30-day “cooling off” period is imposed before a complainant can file an administrative complaint with the Office of Compliance or file a lawsuit in U.S. District Court;
- Harassment and discrimination complainants are given meaningful advice and support through, for example, a legal counsel program;
- The Office of Compliance is provided new investigative and subpoena authorities in order to evaluate complaints in a prompt and thorough manner;

¹ <https://www.rollcall.com/news/predatory-behavior-capitol-hill-sexual-harassment>

- Whistleblower protections are extended to all those covered by the CAA to include the rights and remedies enjoyed by most federal employees under the Whistleblower Protection Enhancement Act. Whistleblower protections should also provide the legislative workforce with access to a jury to challenge retaliation, rights against retaliatory investigations and prosecutions, and accountability for retaliators;
- If a retaliation claim should later arise, that retaliation claim relates back to the initial filing, meaning that complainants are not required to file a second formal complaint; and
- All notice-posting requirements regarding federal anti-discrimination, anti-harassment, and other workplace rights laws covered by the CAA are made applicable to the legislative branch, so that employing offices and staff are informed of their rights.

2. Ensure Greater Accountability and Increase Transparency.

Elected officials should be held to the highest ethical and professional standards and, as stewards of public trust, must be held accountable. Thus, it is critical that:

- Where taxpayer funds are used to settle a claim that a member of Congress has unlawfully harassed or discriminated against a legislative staff member, the member of Congress should personally reimburse the Treasury for funds expended on his/her behalf as expeditiously as possible; and
- Use of office funds to pay settlement amounts should be disallowed, and the number of settlements, settlement amounts, and the employing office should periodically be made public in a report that is transparent and accessible, while balancing the privacy and confidentiality of the complainants.

Moreover, because workplace harassment and discrimination encompass a range of actions, the Office of Compliance and leaders in Congress should develop guidelines that identify harassing and discriminatory conduct, the proportionate corrective actions and sanctions that may be assessed when violations are substantiated, and the process for doing so. These guidelines should be made available to the entire legislative workforce and the general public and should be consistently applied, thereby establishing expectations for behavior and promoting accountability for members of Congress and legislative branch staff.

3. Implement Comprehensive Prevention Practices.

Preventing workplace harassment and discrimination must be a top priority and goal of every member of Congress and leader in the legislative workforce. Those prevention practices should include the following:

- Every office should be required to have strong anti-discrimination and anti-harassment policies in place that help employees understand what prohibited conduct looks like; explain how to report harassment or discrimination within the office or to the Office of Compliance and provide multiple avenues for reporting; outline the process for investigating and

responding to complaints; assure confidentiality; detail the consequences for harassment, discrimination and retaliation; and provide internal and external resources for support, including information about the role of the Office of Compliance.

- While codification of the annual mandatory sexual harassment training should be included in any CAA reform package, the training itself must do more than merely seek to ensure compliance with the law, and instead should help instill a culture of respect within the congressional workplace; enable members of the legislative workforce to understand their rights and responsibilities; empower them to intervene in a situation or to report safely without retaliation; and most importantly, set out standards that will ensure that members of Congress and their staff do not engage in conduct that leads to a workplace culture that increases the likelihood of unlawful behavior.
- The creation and implementation of a regular, anonymous climate survey of the legislative workforce will help offices understand the true nature and scope of harassment and discrimination in Congress and any failures in the policies and procedures designed to prevent and address harassment and discrimination.

Finally, in order to ensure the changes outlined in this letter can achieve the stated goals of preventing and remedying harassment and discrimination in the legislative workforce, the Office of Compliance must have the additional resources, authorities, and access to staff and members of Congress needed to do its job effectively.

Conclusion

The above recommendations reflect some of the changes that are needed to the legislative workforce's reporting and dispute resolution process and are not exhaustive. Our organizations have a wealth of expertise and stand ready to assist you in any way that we can and look forward to working with you on this critical issue.

For questions or to contact the coalition, please contact Vania Leveille at the American Civil Liberties Union (vleveille@aclu.org), Joi Chaney at Equal Pay Today (jchaney@tidescenter.org), June Zeitlin at The Leadership Conference on Civil and Human Rights (zeitlin@civilrights.org), Maya Raghu at the National Women's Law Center (mraghu@nwlc.org), and Remington A. Gregg at Public Citizen (rgregg@citizen.org).

Sincerely,

9to5, National Association of Working Women
Access Now
Advocates for Youth
Alianza Nacional de Campesinas
Alliance for Justice
American Association of University Women (AAUW)

American Atheists
American Association for Access, Equity and Diversity
American Association of People with Disabilities
American Civil Liberties Union
American Federation of Government Employees
Americans for Democratic Action (ADA)
American Federation of Teachers
American Islamic Conference
American-Arab Anti-Discrimination Committee
Asian Pacific American Labor Alliance, AFL-CIO
Autistic Self Advocacy Network
Center for Justice & Democracy
CenterLink: The Community of LGBT Centers
Coalition of Labor Union Women
Congregation of Our Lady of Charity of the Good Shepherd, US Provinces
Consumers for Auto Reliability and Safety
Council on American-Islamic Relations
Demand Progress Action
Economic Policy Institute Policy Center
Equal Pay Today
Equal Rights Advocates
Equality California
Faith in Public Life
Federally Employed Women
FORGE, Inc.
Futures Without Violence
GLMA: Health Professionals Advancing LGBT Equality
Government Accountability Project
Government Information Watch
GovTrack.us
Hadassah, The Women's Zionist Organization of America, Inc.
Hip Hop Caucus
Human Rights Campaign
Impact Fund
Interfaith Worker Justice
Labor Council for Latin American Advancement (LCLAA)
Lambda Legal
The Leadership Conference on Civil and Human Rights
Legal Momentum, The Women's Legal Defense and Education Fund
Mazzoni Center

MomsRising
Multicultural Efforts to end Sexual Assault
NAACP
NAACP Legal Defense and Educational Fund, Inc.
National Advocacy Center of the Sisters of the Good Shepherd
National Alliance to End Sexual Violence
National Asian Pacific American Women's Forum (NAPAWF)
National Association of Human Rights Workers
National Association of Social Workers
National Black Justice Coalition
National Center for Lesbian Rights
National Center for Transgender Equality
National Congress of American Indians
National COSH
National Council of Jewish Women
National Education Association
National Employment Law Project
National Employment Lawyers Association
National Equality Action Team (NEAT)
National LGBTQ Task Force Action Fund
National Organization for Women
National Partnership for Women & Families
National Resource Center on Domestic Violence
National Women's Law Center
Open the Government
Organizacion en California de Lideres Campesinas, Inc.
Oxfam
Outserve - SLDN
People For the American Way
Planned Parenthood Federation of America
Project On Government Oversight
Pride at Work
Public Citizen
Senior Executives Association
Service Employees International Union (SEIU)
Society of American Archivists
Southwest Women's Law Center
State Innovation Exchange (SiX)
Stop Street Harassment
Sunlight Foundation

United Auto Workers
The United State of Women
Union for Reform Judaism
URGE: Unite for Reproductive & Gender Equity
Women Employed
Women of Reform Judaism
Woodhull Freedom Foundation
Worker Justice Center of NY
Voices for Progress