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ONE HUNDRED FIFTEENTH CONGRESS

U.S. House of Representatives

COMMITTEE ON ETHICS

December 22, 2017

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MEMORANDUM FOR ALL MEMBERS, OFFICERS, AND EMPLOYEES

FROM: Committee on Ethics
Susan W. Brooks, Chairwoman
Theodore E. Deutch, Ranking Member

SUBJECT: Current Guidance on Sexual Harassment and Employment Discrimination in the
Congressional Workplace

Sexual harassment and employment discrimination violate a guiding principle for Members of the House of Representatives set forth in the Code of Official Conduct: “[a] Member, Delegate, Resident Commissioner, officer, or employee of the House shall behave at all times in a manner that shall reflect creditably on the House.” The Committee takes allegations of sexual harassment and employment discrimination in the workplace very seriously. The purpose of this memorandum is to remind House Members and staff of the *current* federal statutes, House rules, Committee guidance, and available House resources regarding sexual harassment and employment discrimination in the Congressional workplace. Please be advised, this guidance is subject to change. As you are aware, reforms on how Congress handles sexual harassment and employment discrimination matters are currently being considered by the entire Congress.

Any House Member or employee who believes that he or she has witnessed or experienced sexual harassment in the Congressional workplace is encouraged to contact the Committee’s Advice and Education Office to discuss his or her particular circumstance and receive guidance about the options available to them. If you would like to file a complaint involving sexual harassment or employment discrimination, please contact the Committee’s Investigation Office. If you have any questions or would like to meet with Committee staff, please contact the Committee at (202) 225-7103.

HOUSE RULES, LAWS, REGULATIONS, OR OTHER STANDARDS OF CONDUCT

Sexual harassment and employment discrimination are prohibited in the House, both by statute and by House rules.¹ Section 201 of the Congressional Accountability Act (CAA), prohibits harassment and discrimination based on race, color, national origin, sex, religion, age, or

¹ 2 U.S.C. §§ 1311 *et seq.*; House Rule 23, clause 9.

disability.² The law also prohibits actions that cause a “disparate impact” on an employee on the basis of race, color, national origin, sex, or religion, despite appearing neutral in practice.³

Discrimination on the basis of sex includes different treatment or disparate impact due to pregnancy, childbirth, or related medical conditions, as well as sexual harassment.⁴ The Office of Compliance defines sexual harassment as “unwelcome conduct of a sexual nature or based on gender that would offend a reasonable person in the employee’s position and actually offends the victim resulting in an adverse employment action or creates a hostile work environment.”⁵

In addition to federal law, House Rules have long prohibited discriminatory conduct in employment. House rules state that “[a] Member . . . may not discharge and may not refuse to hire an individual, or otherwise discriminate against an individual with respect to compensation, terms, conditions, or privileges of employment, because of the race, color, religion, sex (including marital or parental status), disability, age, or national origin of such individual”⁶

Sexual harassment and employment discrimination also violate House Rule 23, clauses 1 and 2, which state that “[a] Member, Delegate, Resident Commissioner, officer, or employee of the House shall behave at all times in a manner that shall reflect creditably on the House,” and that “[a] Member, Delegate, Resident Commissioner, officer, or employee of the House shall adhere to the spirit and the letter of the Rules of the House.”⁷ As discussed further below, the Committee on Ethics has jurisdiction to investigate violations of House Rules.

REPORTING SEXUAL HARASSMENT IN THE CONGRESSIONAL WORKPLACE TO THE COMMITTEE ON ETHICS

The Committee’s Advice and Education Office is a resource to the entire House community to help Members and staff carry out their duties in compliance with all the ethics rules, laws, and regulations. Committee staff are non-partisan and serve all Members and staff equally. All requests for advice and the Committee’s responses are confidential unless disclosed by the requestor. Further, discussing a matter with Advice and Education staff does not constitute filing a complaint or commence an ethics investigation. Accordingly, any Member or staff who would like to discuss sexual harassment or employment discrimination should contact the Committee’s Advice and Education Office for guidance of options available to them.

² Office of Compliance, “Harassment and Discrimination Prohibited,” *available at* <https://www.compliance.gov/act/under-cao/harassment-and-discrimination-prohibited>; *see generally* 2 U.S.C. §§ 1311 *et seq.*

³ *Id.*

⁴ 2 U.S.C. §§ 1311 *et seq.*

⁵ Office of Compliance, “Compliance @ Work” (March 2017).

⁶ House Rule 23, clause 9.

⁷ House Rule 23, clauses 1 and 2.

The Committee is also authorized to “investigate potential violations of the Code of Official Conduct or of any applicable rules, laws, or regulations, governing the performance of official duties or the discharge of official responsibilities.”⁸ When the Committee finds a violation, it may issue a letter of reproof on its own authority, or take other remedial action. For a violation by a Member, it may also recommend that the full House consider other sanctions, including denial or limitation of any right, power, privilege, or immunity of the Member; reprimand; censure; expulsion; or any other sanction determined by the Committee to be appropriate. For a violation by an officer or employee, the Committee may recommend that the full House consider fine; reprimand; dismissal from employment; or any other sanction determined by the Committee to be appropriate. Individuals who wish to file a sexual harassment or employment discrimination complaint involving a House Member or staff should contact the Committee’s Investigation Office.

SEXUAL HARASSMENT AND EMPLOYMENT DISCRIMINATION TRAINING REQUIREMENT FOR HOUSE MEMBERS AND EMPLOYEES

On November 29, 2017, the House passed a resolution requiring House Members, officers, and employees to complete training in “the workplace rights and responsibilities applicable to offices and employees of the House ... including anti-discrimination and anti-harassment training” during each session of Congress.⁹ As discussed further below, all Members, officers, and employees will also be required to certify that they have completed this training. House employees for purposes of this resolution include an individual serving in an office of the House of Representatives as an intern (including an unpaid intern), a participant in a fellowship program, or a detailee from another office of the federal government. The resolution directed the Committee on House Administration (CHA) to issue regulations implementing this new requirement and to consider additional mechanisms to ensure compliance with the training requirement. On December 19, 2017, CHA issued regulations, but intends to provide more detailed guidance on the mandatory training. Until the mandatory training is available, there are several offices within the House that offer training on workplace rights and responsibilities, including anti-discrimination and anti-harassment training. More information on these training options is below.

New House Members and Employees

All new employees must complete sexual harassment and employment discrimination training within 90 days of beginning House employment.¹⁰ A “new” House Member and employee for purposes of this training requirement is an individual who begins employment with the House after the session of Congress begins.

⁸ House Rule 11, clause 3(b).

⁹ H. Res. 630, 115th Cong., 1st Sess. (2017).

¹⁰ H. Res. 630, Sec. 1(b)(1)(B).

Existing House Members and Employees

Existing House Members and employees must complete the sexual harassment and employment discrimination training no later than 90 days after the session of Congress begins.¹¹ An “existing” House Member and employee is an individual who is serving as a Member, officer, or employee of the House as of the first day of a session of Congress.¹²

Special Rule for the One Hundred and Fifteenth Congress

Existing House Members and employees must complete mandatory sexual harassment and employment discrimination training **no later than July 2, 2018**.¹³

HOUSE RESOURCES FOR TRAINING AND GUIDANCE ON SEXUAL HARASSMENT IN THE CONGRESSIONAL WORKPLACE

Employing Offices. In addition to mandating training for all Members, officers, and employees in workplace rights and responsibilities, H. Res. 630 directs CHA to issue regulations requiring each employing office in the House to post in a prominent place a statement of the rights and protections provided to House employees under the CAA.¹⁴ CHA issued such regulations on December 19, 2017. These notices must include information about the procedures available to House employees under the CAA for responding to and adjudicating allegations of violations of such rights and protections.

Office of Compliance (OOC). The OOC is the forum created by the CAA for resolving claims of harassment and discrimination by legislative branch employees. The OOC has published a guide to the CAA, which is available on its website <https://www.compliance.gov>. In addition to the mandatory sexual harassment training, the OOC is also available to provide training and workshops for House Members and officers through their Education and Outreach program. If you have questions about OOC’s Education and Outreach program, please contact OOC at (202) 724-9250.

Office of House Employment Counsel (OHEC). OHEC is available to provide advice and guidance to House Members and employing authorities on employment matters and on the establishment of office policies consistent with House rules and federal law. In addition, OHEC provides sexual harassment awareness training for Members and Chiefs of Staff, as well as sensitivity awareness training for all House Members and staff. If you have questions about OHEC’s training program, please contact OHEC at (202) 225-7075.

¹¹ H. Res. 630, Sec. 1(b)(1)(A).

¹² *Id.*

¹³ H. Res. 630, Sec. 1(b)(2).

¹⁴ H. Res. 630, Sec. 2.

The Office of the Chief Administrative Officer (CAO). In consultation with OHEC, the CAO offers the following online training on workplace sexual harassment.

For employees: <https://houseconnect.house.gov/p5dwac0y1ma/>

For supervisors: <https://houseconnect.house.gov/p73xg82lgc4/>

Committee on House Administration. CHA has published a *Model Employee Handbook*, available on its website at <https://cha.house.gov>. In addition, H. Res. 630 directs CHA to issue regulations to provide that each employing office of the House must post in a prominent location in each of their offices a statement of the rights and protections provided to House employees under the CAA, including the procedures and protections available to House employees for responding to and adjudicating allegations of violations of the CAA.¹⁵ CHA issued such regulations on December 19, 2017.

If you have any questions regarding this guidance, please feel free to contact the Committee's Advice and Education Office at (202) 225-7103.

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¹⁵ H. Res. 630, Sec. 2.