

**OFFICE OF COMPLIANCE
SECTION 301(H) REPORT TO CONGRESS**

JANUARY 1, 1999 – DECEMBER 31, 1999

INTRODUCTION

The Congressional Accountability Act (CAA) generally applies provisions of eleven federal labor and employment laws to over 20,000 covered congressional employees and employing offices. The Office of Compliance (Office), an independent agency in the legislative branch, was established by the CAA to administer and enforce the Act and provide a process for the timely and confidential resolution of workplace disputes. Section 301(h) of the CAA requires that the Office of Compliance:

. . . compile and publish statistics on the use of the Office by covered employees, including the number and type of contacts made with the Office, on the reason for such contacts, on the number of covered employees who initiated proceedings with the Office under this Act and results of such proceedings, and on the number of covered employees who file a complaint, the basis for the complaint, and the action taken on the complaint.

This fourth annual report, which provides information for the period from January 1, 1999 through December 31, 1999, begins with a summary of the authority and responsibilities of the Office of Compliance.

OFFICE OF COMPLIANCE AUTHORITY AND RESPONSIBILITIES

The CAA establishes the Office of Compliance with a Board of five members, who serve on a part-time basis, and four statutory appointees: the Executive Director, Deputy Executive Director for the Senate, Deputy Executive Director for the House, and the General Counsel. The Office is charged with providing alternative dispute resolution procedures, and adjudicative hearings and appeals for covered legislative branch employees and education and information on the CAA to members of Congress, other employing offices, and employees of the legislative branch. The Office of the General Counsel enforces the provisions of sections 210 and 215, relating to health and safety and public access requirements, including investigation and prosecution of claims under these sections, and periodic inspections to ensure compliance. Additionally, the General Counsel investigates and prosecutes unfair labor practices under section 220 of the CAA.

The CAA applies the rights and protections of provisions of the following eleven labor and employment statutes to covered employees within the legislative branch: title VII of the Civil Rights Act of 1964; the Age Discrimination in Employment Act of 1967; title I of the Americans with Disabilities Act of 1990; the Rehabilitation Act of 1973; the Family and Medical Leave Act of 1993; the Fair Labor Standards Act of 1938; the Employee Polygraph Protection Act of 1988; the Worker Adjustment and Retraining Notification Act; chapter 43 of title 38 of the U.S. Code (relating to veterans' employment and reemployment); the Americans with Disabilities Act of 1990 relating to public services and accommodations; the Occupational Safety and Health Act of 1970; and chapter 71 of title 5 of the U.S. Code (relating to federal service labor-management relations).

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NUMBER OF CONTACTS RECEIVED BY THE OFFICE OF COMPLIANCE: 482

Employees and employing offices may, at any time, seek informal advice and information on the procedures of the Office and the rights, protections, and responsibilities afforded under the CAA. The office responds to all inquiries on a confidential basis.

482 requests for information from covered employees, employing offices, the public, unions, and the press were made by phone and in person from January 1, 1999 to December 31, 1999. Contacts were as follows:

Employees	296
Employing offices	102
Public	64
Unions	12
Press	<u>8</u>
	482

623 calls were made to the Office of Compliance Recorded Information line. In addition, the Office of Compliance website proved to be a frequent and efficient means for covered employees, covered employing offices and the general public to access information on the CAA.

REASONS FOR EMPLOYEE CONTACTS

296 covered employees contacted the Office asking questions under the following sections:

(note: Aggregate numbers will not necessarily match category totals as a single contact may involve more than one section or subsection of the CAA, and/or more than one issue or alleged violation.)

<u>Section</u>	<u>Description</u>	<u>Contacts</u>
201	Rights and protections under title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, the Rehabilitation Act of 1973, and title I of the Americans with Disabilities Act of 1990	168
202	Rights and protections under the Family and Medical Leave Act of 1993	33
203	Rights and protections under the Fair Labor Standards Act of 1938	68
204	Rights and protections under the Employee Polygraph Protection Act of 1988	0
205	Rights and protections under the Worker Adjustment and Retraining Notification Act	2
206	Rights and protections relating to veterans' employment and reemployment	4
207	Prohibition of intimidation or reprisal	29
210	Rights and protections under the Americans with Disabilities Act of 1990 relating to public services and accommodations; procedures for remedy of violations	0
215	Rights and protections under the Occupational Safety and Health Act of 1970; procedures for remedy of violations	6
220	Application of chapter 71 of title 5, United States Code, Relating to Federal service labor-management relations	12
N/A	Questions regarding the general application of the CAA	110
N/A	Questions on matters which were not cognizable under the CAA	45

The 296 employee contacts were for information regarding:

•	Assignments	12
•	Compensatory time off	4
•	Compensation	16
•	Demotion	1
•	Discipline	1
•	Equal pay	1
•	Evaluation	3
•	Exemptions under the Fair Labor Standards Act	3
•	General questions regarding statutory requirements	85

- Harassment 12
- Hiring 16
- Hours of work 6
- Injury 1
- Leave 18
- Leave eligibility 1
- Overtime pay 19
- Promotion 4
- Reasonable accommodations 8
- Recordkeeping 1
- Termination 68
- Terms and conditions of employment 32
- Requests for written materials 11

NUMBER OF PROCEEDINGS INITIATED BY COVERED EMPLOYEES: 330

Pursuant to title IV of the CAA, the Office of Compliance provides dispute resolution in the form of counseling and mediation. A proceeding under the CAA is initiated by an individual employee's request for counseling alleging a violation of the CAA.¹

330 employees from the following employing offices filed formal requests for counseling:

The Architect of the Capitol	311
Capitol Guide Service	0
Capitol Police	3
Congressional Budget Office	1
House of Representatives (not member or committee offices)	3
House of Representatives (member offices)	6
House of Representatives (committee office)	1
Senate (not Senator or committee offices)	0
Senator	4
Senate (committee office)	0
Library of Congress	<u>1</u>
	330

¹It should be noted that the alleged unlawful application of a single policy of an employing office may involve multiple individual claims.

These 330 requests for counseling alleged violations under the following sections of the Congressional Accountability Act: (Please see note above regarding aggregate numbers.)

<u>Section</u>	<u>Description</u>	<u>Cases</u>
201	Rights and protections under title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, the Rehabilitation Act of 1973, and title I of the Americans with Disabilities Act of 1990	334
202	Rights and protections under the Family and Medical Leave Act of 1993	1
203	Rights and protections under the Fair Labor Standards Act of 1938	2
207	Prohibition of intimidation or reprisal	18

Workplace issues raised by employees requesting counseling under the CAA fell into the following categories: (Please see note above regarding aggregate numbers.)

Assignments	1
Compensation	13
Discipline	12
Equal pay	287
Harassment	11
Hiring	2
Leave	1
Overtime Pay	2
Promotion	3
Reasonable accommodations	3
Retirement	1
Termination	24
Terms and conditions of employment	5

RESULTS OF THE PROCEEDINGS

COUNSELING

Of the 330 counseling requests received between January 1, 1999 and December 31, 1999, and the 2 pending on January 1, 1999:

- **7** cases closed during or after counseling, but before mediation
 - **0** settled
 - **7** sought no further action;
- **7** cases were pending at the end of 1999;
- **318** requests for mediation were filed.

MEDIATION

318 mediation requests were received between January 1, 1999 and December 31, 1999. In addition, on January 1, 1999 there were 13 cases pending in mediation, and 10 cases which had completed mediation and were in the open period for filing a complaint. Of those 341 cases:

- **41** cases closed during or after mediation
 - 16** cases were settled
 - in **20** cases, no further action was taken by the covered employee after mediation ended
 - 5** civil actions were filed in District Court;
- **9** cases were pending in mediation on December 31, 1999;
- **282** cases had completed mediation and were in the time period when a complaint could be filed;
- **9** complaints were filed after mediation ended.

COMPLAINTS

If the dispute remains unresolved after counseling and mediation, an employee may elect to file a civil action in the district courts of the United States or to file a complaint with the Office. If a complaint is filed with the Office, a Hearing Officer is appointed to hear the case and issue a decision.

Nine complaints were filed with the Office between January 1, 1999 and December 31, 1999 and one complaint was pending on January 1, 1999.

BASIS OF COMPLAINTS

The complaints filed during 1999 involved the following issues:

- alleged termination based on national origin
- alleged harassment based on gender
- alleged discrimination in assignments and other terms and conditions of employment based on national origin and in retaliation for opposing practices made unlawful by the CAA
- alleged termination in retaliation for opposing practices made unlawful by the CAA (2 cases)
- alleged discrimination in terms and conditions of employment based on gender and in retaliation for having used family and medical leave
- alleged discriminatory treatment in retaliation for initiating proceedings under the CAA
- alleged termination based on gender and in retaliation for opposing practices made unlawful by the CAA
- alleged suspension and failure to properly pay an employee in retaliation for opposing practices made unlawful by the CAA

In addition, one complaint alleging a breach of the CAA's confidentiality requirements was heard and decided by a hearing officer. That decision was not appealed.

ACTION TAKEN ON COMPLAINTS

Any party aggrieved by a Hearing Officer's decision may file a petition for review of the decision by the Board of Directors of the Office.

During January 1, 1999 – December 31, 1999:

HEARINGS

- **9** hearing officer decisions were issued;
- **4** cases were settled or otherwise resolved before the hearings concluded;
- **1** complaint was pending, awaiting a decision by the Hearing Officer.

APPEALS

- **2** petitions for review of Hearing Officer decisions were filed with the Board;
- **7** Hearing Officer decisions were not appealed and became the final decisions of the Office.

BOARD ACTION

- **2** Board decisions were issued in 1999;
- **No** petitions for review of Hearing Officer decisions were pending on December 31, 1999.

JUDICIAL REVIEW

- **1** Petition for review was filed;
- **One** court decision was issued on a petition for review filed in 1998. The U.S. Court of Appeals for the Federal Circuit upheld the Board's decision.

LABOR-MANAGEMENT RELATIONS

The Office carries out the Board's investigative authorities under section 220 of the CAA, involving issues concerning the appropriateness of bargaining units for labor organization representation, the duty to bargain, and exceptions to arbitrators' awards.

During January 1, 1999 – December 31, 1999:

- **11** representation petitions were filed;
- **4** election agreements were entered into by the parties and approved by the Executive Director on behalf of the Board;
- **5** elections were conducted. As a result of the elections, five labor organization were certified as bargaining representatives of employees;
- **6** petitions were pending on December 31, 1999: four representation petitions filed by four labor organizations seeking to represent four separate units, totaling approximately 90 employees of an employing office; a representation petition filed by a labor organization seeking to represent a unit of approximately 16 employees, and a unit clarification petition seeking to resolve the unit status of certain employees in a bargaining unit certified in 1997.

THE OFFICE OF THE GENERAL COUNSEL

*The Office of the General Counsel is responsible for matters arising under three sections of the CAA: **section 210** – Public Services and Accommodations under the Americans with Disabilities Act of 1990; **section 215** – Occupational Safety and Health Act of 1970; and **section 220** – unfair labor practices under chapter 71, of title 5, United States Code.*

76 requests for Information and Technical Assistance were made from January 1999 through December 1999 under the following sections:

- Section 210 Public Services and Accommodations under the Americans with Disabilities Act of 1990 13
- Section 215 Occupational Safety and Health Act of 1970 57
- Section 220 Unfair Labor Practices under chapter 71, of title 5, United States Code 6

From January 1999 through December 1999, the following actions occurred:

- Section 210 Charges filed 1
Cases closed 1
Cases pending as of December 31, 1999 0
- Section 215 Requests for inspections filed 19
Cases closed 8
Cases pending as of December 31, 1999 11
- Section 220 Unfair Labor Practice charges filed 12
Complaints issued 1
Cases closed 6
Cases pending as of December 31, 1998 6

Disposition of Complaint(s):

Hearing Officer issued an opinion granting the General Counsel’s motion for summary judgment; the opinion was not appealed and became a final decision of the Board on December 22, 1999.