

Office of Compliance

Report to Congress On the Use of the Office of Compliance By Covered Employees

Pursuant to Section 301(h) of the
Congressional Accountability Act

January 1, 2002- December 31, 2002



January 2003



January 31, 2003

Dear Speaker Hastert and President Pro Tempore Stevens:

Section 301(h) of the Congressional Accountability Act (CAA) requires the Office of Compliance to publish statistics on the use of the Office by covered employees.

I am pleased to provide you with a copy of the annual statistical report of the Office of Compliance for calendar year 2002.

We will be pleased to provide additional information about this report, or any other aspect of the Office of Compliance and the Congressional Accountability Act, upon request.

Sincerely,

William W. Thompson, II
Executive Director

cc: The Honorable Robert Ney
The Honorable John Larson
The Honorable Susan Collins
The Honorable Joseph Lieberman
The Honorable Trent Lott
The Honorable Christopher Dodd

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SEVENTH ANNUAL
REPORT TO
CONGRESS

OFFICE OF COMPLIANCE

JANUARY 1, 2002 - DECEMBER 31, 2002

INTRODUCTION

The Congressional Accountability Act (CAA) generally applies provisions of eleven federal labor and employment laws to over 30,000 covered Legislative Branch 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 filed a complaint, the basis for the complaint, and the action taken on the complaint."

This report provides a brief overview of the authority and responsibilities of the Office of Compliance and statistics concerning the contacts and proceedings initiated by covered employees. In accordance with the CAA's strict confidentiality requirements, the information provided in this report is of a statistical nature only.

OFFICE OF COMPLIANCE AUTHORITY AND RESPONSIBILITIES

The Office of Compliance protects the safety, health, and workplace rights of employees of the Congress and the Legislative Branch. Established by the Congressional Accountability Act of 1995, the Office is an independent and neutral agency which provides an impartial dispute resolution process and educates employees and employing offices about their rights and responsibilities under the Act.

The CAA applies rights and protections of 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 uniformed services 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).

The CAA established the Office of Compliance with a five member Board of Directors who serve on a part-time basis. The Office has four statutory appointees: the Executive Director, Deputy Executive Director for the Senate, Deputy Executive Director for the House, and the General Counsel.

The Office of the General Counsel enforces the provisions of CAA 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.

I. Initial Contacts Received by the Office of Compliance

Employees and employing offices covered under the CAA may contact the Office of Compliance in person to receive informal advice and information on the procedures of the Office and the rights, protections, and responsibilities afforded under the CAA.

Alternative means of contact are also available so that individuals can contact the Office anonymously to learn about the CAA. An automated telephone information line is provided to allow callers to listen to general information about the CAA and the Office of Compliance. One hundred forty-six (146) calls were made to the Information Line during the period covered by this report.

The Office's website (www.compliance.gov), newly redesigned, is another valuable resource to employees for information on the CAA and the Office. Reports issued by the Office, Board of Directors' decisions, and the Office's *Guide to the Congressional Accountability Act* are all posted on the site. The Office's website homepage received over 53,000 "hits" during the year, proving to be a useful and efficient means for covered employees, employing offices, and the general public to access information on the CAA without having to actually visit the Office.

SUMMARY OF INITIAL OFFICE CONTACTS IN 2002

During the covered period, January 1, 2002 through December 31, 2002, the Office received 392 contacts by covered employees, employing offices, unions, and the public requesting information. Contacts were both by phone and in person. These figures do not include contacts with the staff of the General Counsel's office.

Employees	287
Employing offices	27
Public	72
Unions	6
Total	392

CONTACTS BY SECTION OF THE LAW

Employees contact the Office for a variety of reasons. They may have questions concerning the application of particular provisions of the law, or they may wish to discuss matters they believe constitute a violation of the CAA. For example, an employee may call with a specific question, such as the current rate of the minimum wage, or they may contact the Office to discuss a situation that they believe may give rise to a discrimination complaint. In 2002, 287 covered employees contacted the Office to discuss the following sections of the law:

(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	122
202	Rights and protections under the Family and Medical Leave Act of 1993	18
203	Rights and protections under the Fair Labor Standards Act of 1938	19
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	0
206	Rights and protections relating to veterans' employment and reemployment	5
207	Prohibition of intimidation or reprisal	43
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	11
220	Application of chapter 71 of title 5, United States Code Relating to Federal service labor-management relations	1
CAA	Questions regarding the general application of the CAA	68
N/A	Questions on matters not cognizable under the CAA	46

CONTACTS BY ISSUE

Employees typically contact the Office with questions concerning the application of the CAA to specific work issues. The 287 employee contacts during the covered period raised the following issues:

(Note: aggregate numbers will not necessarily match category totals as a single contact may involve more than one issue or alleged violation.)

<u>Issue</u>	<u>Contacts</u>
Assignments	9
Benefits	3
Classification	2
Comp Time	4
Compensation	26
Demotion	10
Discharge	10
Discipline	9
Equal Pay	6
Evaluation	7
General questions regarding statutory requirements	55
Harassment	107
Health	66
Hiring	1
Hours of work	12
Injury	7
Leave	22
Office operations	4

CONTACTS BY ISSUE (continued)

Other	34
Overtime pay	10
Promotion	17
Reasonable accommodation	7
Reassignment	7
Retirement	1
Termination	49
Terms and conditions of employment	46
Requests for written materials	10

II. Proceedings Initiated by Covered Employees

Rather than legal action in Federal court, the CAA first provides a mandatory process of non-judicial counseling and mediation for complainants. If mediation is not effective and the parties involved are not able to resolve their disputes, the employee may then either pursue a non-judicial administrative hearing process with the Office of Compliance or file suit in Federal court. The administrative hearing process offers speedier resolution and greater confidentiality than a Federal civil suit, while still offering the same remedies a court can provide. Where appropriate, the Office of Compliance makes every effort to assist a complainant in informally resolving an issue before filing a formal request for counseling.

In 2002, the Office experienced a significant decrease in the total number of requests for counseling filed. This was due in large part to the fact that, unlike in previous years, no large group of employees brought simultaneous requests for counseling regarding the same issue.

TOTAL REQUESTS FOR COUNSELING BY OFFICE/ORGANIZATION

Architect of the Capitol	27
Capitol Guide Service	1
Capitol Police	34
Congressional Budget Office	1
House of Representatives (<i>not Member or committee offices</i>)	0
House of Representative (<i>Member offices</i>)	6
Senate (<i>not Member or committee offices</i>)	6
Senate (<i>Member offices</i>)	5

TOTAL REQUESTS FOR COUNSELING (continued)

Office of Compliance	1
Other ¹	<u>1</u>
Total	82

REQUESTS FOR COUNSELING BY SECTION OF THE LAW

The 82 requests for counseling alleged violations under the following sections of the Congressional Accountability Act:

(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>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 Age Discrimination in Employment Act of 1967, the Rehabilitation Act of 1973, and title I of the Americans with Disabilities Act of 1990	77
202	Rights and protections under the Family and Medical Leave Act of 1993	8
203	Rights and Protections under the Fair Labor Standards Act of 1938	4
207	Prohibition of intimidation or reprisal	53

¹ This category represents Legislative Branch agencies not covered by the Administrative and Judicial Dispute-Resolution procedures of the Office of Compliance.

ISSUES RAISED BY EMPLOYEES SEEKING COUNSELING

Workplace issues raised by employees requesting counseling under the CAA fell into the following categories:

(Note: aggregate numbers will not necessarily match category totals as a single contact may involve more than one issue or alleged violation.)

Assignments	9
Benefits	3
Compensation	13
Discipline	9
Harassment	29
Hiring	2
Leave	21
Overtime Pay	3
Promotion	5
Reasonable accommodations	8
Termination	10
Terms and conditions of employment	46

III. Results of the Proceedings

COUNSELING

A total of 87 cases were in counseling during the report period. This figure includes 82 requests for counseling and 5 cases pending in counseling from the previous year.

Results:

4 cases were closed during or after counseling, but before mediation. Of these:

- 1 Case was settled
- 3 Sought no further action after counseling

81 Requests for mediation were filed
2 Cases remain in counseling and will continue into 2003

MEDIATION

A total of 102 cases reached mediation during the report period. This figure includes 81 new requests for mediation filed during the report period, 1 case from 2000 and 17 cases from 2001 still pending at the beginning of this report period, and 3 cases that had completed mediation but were still within the time period for filing a complaint on January 1, 2002.

Results:

66 Cases closed during or after mediation. Of these:

- 36 Cases were settled
- 25 Cases no further action was taken by the employee after the mediation period ended
- 5 Cases resulted in the employee electing to file suit in District Court

5 Cases were pending in mediation at the end of this report period and will continue into 2003
18 Cases completed mediation and are still within the time period to file a complaint at the end of the 2002 report period
13 Complaints were filed after mediation ended

COMPLAINTS

If a 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. The decision to file suit in district court is purely at the employee's discretion and largely depends on the individual circumstances of the case and the employee's expectations for its resolution.

There were a total of 16 complaints in process during this report period, including 13 new complaints filed and 3 complaints pending at the beginning of the reporting period from 2001.

Basis of Complaints During 2002:

- Alleged failure to promote based on age
- Alleged denial of promotion based on age and retaliation for opposing practices made unlawful by the CAA
- Alleged discrimination and harassment for invoking Family and Medical Leave Rights and retaliation for opposing practices made unlawful by the CAA
- Alleged denial of promotion and unfair terms and conditions of employment based on sex, and retaliation for opposing practices made unlawful by the CAA
- Alleged denial of reasonable accommodation based on disability, and retaliation for opposing practices made unlawful by the CAA
- Alleged failure to promote based on race, sex, and age
- Alleged harassment and unfair discipline based on race, and retaliation for opposing practices made unlawful by the CAA
- Alleged harassment in retaliation for opposing practices made unlawful by the CAA
- Alleged termination based on race and sex, and retaliation for opposing practices made unlawful by the CAA
- Alleged termination in retaliation for opposing practices made unlawful by the CAA
- Alleged unfair discipline and assignments in retaliation for opposing practices made unlawful by the CAA
- Alleged failure to promote; constructive discharge; discrimination in compensation based on race, age, disability; violation of the Family and Medical Leave Act; and retaliation for opposing practices made unlawful by the CAA
- Alleged denial of reasonable accommodation based on disability, unfair discipline, harassment, and retaliation for opposing practices made unlawful by the CAA

ACTION TAKEN ON COMPLAINTS

If a complaint is filed with the Office, a Hearing Officer is appointed to hear the case and issue a decision. Any party aggrieved by a Hearing Officer's decision may file a petition for review of the decision by the Office of Compliance Board of Directors. Decisions by the Board can be appealed to the U.S. Federal Court of Appeals.

The 16 complaints active during this report period had the following outcomes:

Hearings:

7 Hearing officer decisions were issued
1 Cases were settled or otherwise resolved before the hearings concluded
8 Complaints were pending on December 31, 2002, awaiting a decision by the Hearing Officer

Appeals:

5 Petitions for review of Hearing Officer decisions were filed with the Board

Board Action:

1 Board decision was issued
5 Petitions for review of a Hearing Officer decision were pending on December 31, 2002

Judicial Review:

0 Petitions for review were filed

IV. 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. The Board exercises adjudicatory authority over those matters, as well as unfair labor practice complaints at the appellate stage.

DURING JANUARY 1, 2002 – DECEMBER 31, 2002

- 1 New representation petition was filed. As of December, 31, 2002, no representation matters were pending.
- 1 Election was conducted pursuant to a labor organization's petition seeking to represent approximately 40 employees for purposes of collective bargaining. As a result of the election, the labor organization was certified as the exclusive representative.
- 2 Related negotiability petitions were reviewed and decided by the Board of Directors. In those cases, the Board decided that portions of the bargaining proposals offered by the labor organizations conflicted with controlling legal authorities.
- 1 Exception to an arbitrator's award under a negotiated grievance procedure was reviewed and decided by the Board. The Board denied that exception and ordered the employing office to comply with the arbitrator's award.
- 1 Request for review of a hearing officer's decision in an unfair labor practice proceeding was reviewed and decided by the Board. The Board remanded the matter to the hearing officer with instructions to adduce additional evidence and render supplemental findings based upon the Board's decision. The parties settled the case during the remand process.

V. 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.

REQUESTS FOR INFORMATION AND ASSISTANCE

Fifty-three (53) requests for information and technical assistance were made under the following sections of the law:

<u>Section</u>	<u>Description</u>	<u>Requests</u>
Section 210	Public Services and Accommodations under the Americans with Disabilities Act of 1990	7
Section 215	Occupational Safety and Health Act of 1970	41
Section 220	Unfair Labor Practices under chapter 71, of title 5, United States Code	5

ACTION TAKEN BY SECTION OF THE LAW

Section 210	
- Charges filed	1
- Cases closed	0
- Cases pending as of December 31, 2002	1
Section 215	
- Requests for inspections filed	24

ACTION TAKEN BY SECTION OF THE LAW (continued)

- Citations issued	9
- Cases closed	2
- Cases pending as of December 31, 2002	20
Section 220	
- Unfair labor practice charges filed	18
- Complaints issued	1
- Board decisions issued	1
- Cases closed	10
- Cases pending as of December 31, 2002	8

OFFICE OF COMPLIANCE MISSION

The Office of Compliance was established in January 1996 to serve as the neutral independent agency within the Legislative Branch to administer and enforce the Congressional Accountability Act (CAA). The CAA applies eleven labor and employment laws to Legislative Branch employees and employing offices. The Office is charged with administering an alternative dispute resolution process -- counseling, mediation, and adjudicative hearings and appeals -- and educating Members of Congress, employing offices and employees of the Legislative Branch of their rights and responsibilities under the Act.

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