

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

JANUARY 1, 2000 – DECEMBER 31, 2000

January, 2001

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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 fifth annual report, which provides information for the period from January 1, 2000 through December 31, 2000, 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: 426

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.

426 requests for information from covered employees, employing offices, the public, unions, and the press were made by phone and in person from January 1, 2000 to December 31, 2000. Contacts were as follows:

Employees	235
Employing offices	65
Public	113
Unions	10
Press	<u>3</u>
	426

176 calls were made to the Office of Compliance Recorded Information line. In addition, the Office of Compliance website received approximately 30,000 “hits,” proving 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

235 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	96
202	Rights and protections under the Family and Medical Leave Act of 1993	16
203	Rights and protections under the Fair Labor Standards Act of 1938	14
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	1
206	Rights and protections relating to veterans' employment and reemployment	5
207	Prohibition of intimidation or reprisal	16
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	5
220	Application of chapter 71 of title 5, United States Code, Relating to Federal service labor-management relations	7
CAA	Questions regarding the general application of the CAA	35
N/A	Questions on matters which were not cognizable under the CAA	76

The 235 employee contacts were for information regarding:

•	Assignments	2
•	Compensatory time off	1
•	Compensation	19
•	Demotion	2
•	Discharge	16
•	Discipline	22
•	Equal pay	1
•	Evaluation of performance	

• Exemptions under the Fair Labor Standards Act	1
• General questions regarding statutory requirements	46
• Harassment	32
• Hiring	10
• Hours of work	3
• Layoff	4
• Leave	10
• Overtime pay	6
• Promotion	12
• Reasonable accommodations	14
• Reassignment	4
• Recordkeeping	1
• Recruitment	2
• Reinstatement	2
• Scheduling	1
• Termination	32
• Terms and conditions of employment	18
• Requests for written materials	8

NUMBER OF PROCEEDINGS INITIATED BY COVERED EMPLOYEES: 105

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

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

The Architect of the Capitol	35
Capitol Police	52
General Accounting Office	1
House of Representatives (not member or committee offices)	3
House of Representatives (member offices)	4
Joint Committees	1
Senate (not member or committee offices)	6
Senate (member offices)	2
Library of Congress	<u>1</u>
	105

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

These 105 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	212
202	Rights and protections under the Family and Medical Leave Act of 1993	6
203	Rights and protections under the Fair Labor Standards Act of 1938	3
206	Rights and protections relating to veterans' employment and reemployment	2
207	Prohibition of intimidation or reprisal	136

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

Assignments	4
Compensation	1
Discipline	26
Equal pay	6
Harassment	15
Hiring	2
Layoff	2
Overtime Pay	3
Promotion	15
Reasonable accommodations	41
Reassignment	2
Reinstatement	1
Termination	21
Terms and conditions of employment	38

RESULTS OF THE PROCEEDINGS

COUNSELING

Of the 105 counseling requests received between January 1, 2000 and December 31, 2000, and the 7 pending on January 1, 2000:

- 42 cases closed during or after counseling, but before mediation
 - 0 settled
 - 42 sought no further action;
- 10 cases were pending at the end of 2000;
- 60 requests for mediation were filed.

MEDIATION

60 mediation requests were received between January 1, 2000 and December 31, 2000. In addition, on January 1, 2000 there were 9 cases pending in mediation, and 282 cases which had completed mediation and were in the open period for filing a complaint. Of those 351 cases:

- 321 cases closed during or after mediation
 - 9 cases were settled (one additional case in which a District Court suit was filed in 1999 was also settled)
 - in 18 cases, no further action was taken by the covered employee after mediation ended
 - 294 civil actions were filed in District Court;
- 16 cases were pending in mediation on December 31, 2000;
- 9 cases had completed mediation and were in the time period when a complaint could be filed;
- 5 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.

Five complaints were filed with the Office between January 1, 2000 and December 31, 2000 and one complaint was pending on January 1, 2000.

BASIS OF COMPLAINTS

The complaints filed during 2000 involved the following issues:

- alleged discipline in retaliation for opposing practices made unlawful by the CAA
- alleged discrimination based on race and gender and in retaliation for opposing practices made unlawful by the CAA

- alleged discrimination in terms and conditions of employment and failure to evaluate an employee's performance properly in retaliation for the employee's participation in a proceeding under the CAA
- alleged failure to promote an employee based on race
- alleged failure to provide reasonable accommodation to an employee with a disability

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, 2000 – December 31, 2000:

HEARINGS

- **1** hearing officer decision was issued;
- **3** cases were settled or otherwise resolved before the hearings concluded;
- **2** complaints were pending, awaiting a decision by the Hearing Officer.

APPEALS

- **No** petitions for review of Hearing Officer decisions were filed with the Board.

BOARD ACTION

- **No** Board decisions were issued in 2000;
- **No** petitions for review of Hearing Officer decisions were pending on December 31, 2000.

JUDICIAL REVIEW

- **1** Petition for Review was filed;
- **1** court decision was issued on a petition for review docketed in January 2000. 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, 2000 – December 31, 2000:

- **2** representation petitions were filed: a representation petition seeking to represent a unit of approximately 4 employees for purposes of collective bargaining; and a unit clarification petition seeking to clarify the placement of certain employees in a certified unit.
- **1** clarification petition pending from the previous year was settled and withdrawn.
- **1** petition for impasse assistance was filed and eventually withdrawn following a

settlement by the parties.

- 1 petition seeking a Board determination on the negotiability of a collective bargaining proposal was filed by a labor organization.
- 2 election agreements were entered into by the parties and approved by the Executive Director involving two petitions that were filed in 1999.
- 2 elections were conducted pursuant to the election agreements. As a result of the elections, two labor organizations were certified as bargaining representatives of two units of employees.
- 3 matters were pending on December 31, 2000: the representation petition seeking to represent a unit of approximately 4 employees for purposes of collective bargaining; the unit clarification petition seeking to clarify the placement of certain employees in a certified unit; and the negotiability petition.

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.*

96 requests for Information and Technical Assistance were made from January 1, 2000 through December 31, 2000 under the following sections:

•	Section 210	Public Services and Accommodations under the Americans with Disabilities Act of 1990	14
•	Section 215	Occupational Safety and Health Act of 1970	74
•	Section 220	Unfair Labor Practices under chapter 71, of title 5, United States Code	8

From January 1, 2000 through December 31, 2000 the following actions occurred:

•	Section 210	Charges filed	1
		Cases closed	1
		Cases pending as of December 31, 2000	0
•	Section 215	Requests for inspections filed	14
		Cases closed	6
		Cases pending as of December 31, 2000	13
•	Section 220	Unfair Labor Practice charges filed	38
		Complaints issued	2
		Cases closed	35
		Cases pending as of December 31, 2000	3

Disposition of Complaint(s):

A February 2000 complaint alleging discriminatory discharge of a pro-union employee was withdrawn when, after a pre-hearing conference, the employing office consented to a settlement providing full relief. A December 2000 complaint alleging refusal to bargain in good faith is still pending; a trial date has been set for February 12, 2001.