

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

JANUARY 1, 1997 – DECEMBER 31, 1997

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 of government, was established in 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 second annual report provides information for the period from January 1, 1997 through December 31, 1997. The report begins with a summary of the authority and responsibilities of the Office of Compliance.

OFFICE OF COMPLIANCE AUTHORITY & 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, as well as 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 Board is required to adopt substantive regulations for implementation of certain provisions of the CAA. The Executive Director is required to adopt rules governing the procedures of the Office. 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.)

SECOND ANNUAL REPORT
JANUARY 1, 1997 – DECEMBER 31, 1997

NUMBER OF CONTACTS RECEIVED BY THE OFFICE OF COMPLIANCE: 1439

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.

1439 requests for information from covered employees, employing offices, the public, unions, and the press were made by phone and in person from January 1, 1997 through December 31, 1997. Contacts were as follows:

| | |
|---------------------------|-----|
| Employees | 501 |
| Employing offices | 263 |
| Public | 69 |
| Unions | 12 |
| Press | 11 |
| Recorded information line | 583 |

REASONS FOR EMPLOYEE CONTACTS

501 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 | 211 |

| | | |
|-----|--|-----|
| | Act of 1990 | |
| 202 | Rights and protections under the Family and Medical Leave Act of 1993 | 50 |
| 203 | Rights and protections under the Fair Labor Standards Act of 1938 | 105 |
| 204 | Rights and protections under the Employee Polygraph Protection Act of 1988 | 1 |
| 205 | Rights and protections under the Worker Adjustment and Retraining Notification Act | 1 |
| 206 | Rights and protections relating to veterans' employment and reemployment | 0 |
| 207 | Prohibition of intimidation or reprisal | 14 |
| 210 | Rights and protections under the Americans with Disabilities Act of 1990 relating to public services and accommodations; procedures for remedy of violations | 1 |
| 215 | Rights and protections under the Occupational Safety and Health Act of 1970; procedures for remedy of violations | 4 |
| 220 | Application of chapter 71 of title 5, United States Code, relating to federal service labor-management relations | 29 |
| N/A | Questions regarding the general application of the CAA | 87 |
| N/A | Questions on matters not cognizable under the CAA | 11 |

The 501 employee contacts were for information regarding:

| | | | |
|---|--|-----|---|
| • | Assignments | 11 | |
| • | Belo contracts | 4 | |
| • | Benefits | 1 | |
| • | Compensatory time off | 10 | |
| • | Compensation | 13 | |
| • | Demotion | 4 | |
| • | Discipline | 15 | |
| • | Evaluation | 3 | |
| • | Exemptions under the Fair Labor Standards Act | 23 | |
| • | General questions regarding statutory requirements | 120 | |
| • | Harassment | 37 | |
| • | Hiring | 28 | |
| • | Hours of work | | 9 |
| • | Interns | 2 | |
| • | Layoff | 1 | |
| • | Leave | 50 | |
| • | Leave eligibility | 4 | |

| | | |
|--------------------------------------|----|----|
| • Notice posting | | 1 |
| • Overtime pay | | 30 |
| • Promotion | | 13 |
| • Reasonable accommodations | | 15 |
| • Reassignment | | 5 |
| • Recordkeeping | | 3 |
| • Reinstatement | | 5 |
| • Rulemaking | | 1 |
| • Scheduling | | 10 |
| • Termination | | 44 |
| • Terms and conditions of employment | 38 | |
| • Requests for written materials | | 26 |

NUMBER OF PROCEEDINGS INITIATED BY COVERED EMPLOYEES: 152

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

152 formal requests for counseling were filed by employees from the following employing offices:

| | |
|---|----|
| The Architect of the Capitol | 77 |
| Capitol Guide Service | 0 |
| Capitol Police | 42 |
| Congressional Budget Office | 2 |
| House of Representatives (non-member or committee offices) | 8 |
| House of Representatives (member offices) | 8 |
| Senate (non-Senator or committee offices) | 11 |
| Senate (member offices) | 4 |

These 152 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> |
|----------------|--------------------|--------------|
|----------------|--------------------|--------------|

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

| | | |
|-----|--|-----|
| 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 | 134 |
| 202 | Rights and protections under the Family and Medical Leave Act of 1993 | 4 |
| 203 | Rights and protections under the Fair Labor Standards Act of 1938 | 30 |
| 207 | Prohibition of intimidation or reprisal | 24 |

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

| | |
|------------------------------------|----|
| Assignments | 23 |
| Classification | 2 |
| Compensatory time off | 1 |
| Compensation | 63 |
| Demotion | 1 |
| Discipline | 10 |
| Harassment | 19 |
| Hiring | 11 |
| Hours of Work | 27 |
| Layoff | 1 |
| Leave | 5 |
| Overtime Pay | 28 |
| Promotion | 16 |
| Reasonable accommodations | 13 |
| Reinstatement | 1 |
| Retirement | 1 |
| Termination | 27 |
| Terms and conditions of employment | 7 |

RESULTS OF THE PROCEEDINGS

Counseling

Of the **152 counseling requests** received between January 1, 1997 and December 31, 1997, and the **29 counseling requests pending** on January 1, 1997,

- **13 cases** closed during or after counseling, but before mediation

- **1** was settled
- **12** sought no further action
- **11 cases** were pending at the end of 1997
- **157 requests for mediation** were filed

Mediation

157 mediation requests were received between January 1, 1997 and December 31, 1997. In addition, on January 1, 1997 there were **5 cases pending in mediation**, and **8 cases** which had **completed mediation** and were in the open period for filing a complaint. Of those **170 cases**,

- **139 cases** closed during or after mediation:
 - 62 cases** were settled
 - in **20 cases**, no further action was taken by the covered employee after mediation ended
 - 57 civil actions** were filed in District Court
- **11 cases** were pending in mediation on December 31, 1997
- **14 cases** had completed mediation and were in the time period when a complaint could be filed
- **6 complaints** were filed after mediation ended

Complaints and Hearings

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.

Complaints

6 complaints were filed between January 1, 1997 and December 31, 1997 and **2 complaints** were pending on January 1, 1997

Basis of Complaints

The complaints filed during 1997 involved the following issues:

- alleged harassment and discrimination in terms and conditions of employment based upon race and religion and in reprisal for opposition to practices made unlawful by the CAA: **2 complaints**
- alleged retaliation against an employee for having initiated a proceeding under the CAA: **2 complaints**
- alleged discriminatory discharge based on race: **1 complaint**
- alleged discriminatory discipline and termination based upon age and race and in reprisal for having taken family and medical leave: **1 complaint**

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.

HEARINGS

- **3 Hearing Officer decisions** were issued
- **4 cases** were settled before the hearings concluded
- **1 complaint** was pending with a hearing scheduled for early 1998

APPEALS

- **4 petitions** for review of Hearing Officer decisions covering **11 cases** were filed with the Board (in addition, **2 petitions** were pending on January 1, 1997)
- **1 Hearing Officer decision** was not appealed and became the final decision of the Office

BOARD ACTION

- **3 Board decisions** were issued in 1997 covering 10 cases
- **3 petitions** for review of Hearing Officer decisions were pending on December 31, 1997

JUDICIAL REVIEW

- **1 petition** for review was filed
- **no court decision** was issued

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.

January 1, 1997 – December 31, 1997

- **3 representation petitions** were filed
- **1 pre-election investigatory hearing** was held
- **2 Board decisions and Directions of Election** were issued
- **1 election agreement** was entered into by the parties and approved by the Executive Director on behalf of the Board
- **3 elections** were conducted and one case required a run-off election. As a result of the elections, **3 different labor organizations** were certified as the bargaining representatives of employees in the three units in which the elections were conducted
- **2 petitions** were pending on December 31, 1997: a representation petition filed by a labor organization seeking to represent a unit of approximately 35 employees, and a unit clarification petition seeking to include additional 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.*

JANUARY 1, 1997 – DECEMBER 31, 1997

REQUESTS FOR INFORMATION AND TECHNICAL ASSISTANCE

| | | |
|-------------|--|----|
| Section 210 | Public Services and Accommodations under the Americans with Disabilities Act of 1990 | 60 |
|-------------|--|----|

| | | |
|-------------|--|------------|
| Section 215 | Occupational Safety and Health Act of 1970 | 89 |
| Section 220 | Unfair labor practices under chapter 71, of title 5, United States Code | 23 |
| | Total requests | 172 |

REQUESTS FOR INSPECTION, CHARGES FILED WITH THE GENERAL COUNSEL

| | | |
|-------------|---|-----------|
| Section 210 | Cases filed | 0 |
| | • Cases closed | 0 |
| | • Cases pending as of December 31, 1997 | 0 |
| Section 215 | Requests for inspection filed | 22 |
| | • Cases closed | 10 |
| | • Cases pending as of December 31, 1997 | 12 |
| Section 220 | Unfair labor practices charges filed | 18 |
| | • Cases closed | 10 |
| | • Cases pending as of December 31, 1997 | 8 |