

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, 2001- December 31, 2001



January 2002



January 31, 2002

Dear Speaker Hastert and President Pro Tempore Byrd:

Section 301(h) of the Congressional Accountability Act (CAA) requires that the Office of Compliance annually 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 2001.

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: Susan S. Robfogel, Chair, and Members of the Board of Directors
The Honorable Robert Ney
The Honorable Steny Hoyer
The Honorable Christopher Dodd
The Honorable Mitch McConnell
The Honorable Joseph Lieberman
The Honorable Fred Thompson

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SIXTH ANNUAL
REPORT TO
CONGRESS

OFFICE OF COMPLIANCE

JANUARY 1, 2001 - DECEMBER 31, 2001

Introduction

The Congressional Accountability Act (CAA) generally applies provisions of eleven federal labor and employment laws to over 20,000 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)(3) 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 sixth annual report, which provides information for the period from January 1, 2001 through December 31, 2001, begins with a summary of the authority and responsibilities of the Office of Compliance.

Office of Compliance Authority and Responsibilities

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).

The CAA established the Office of Compliance with a five member Board of Directors, 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 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 Congressional Accountability Act may, at any time, contact the Office of Compliance seeking informal advice and information on the procedures of the Office and the rights, protections, and responsibilities afforded under the CAA. For example, employees believing that they have been subject to employment discrimination in violation of the CAA may call the office and speak to a counselor concerning the matter. The office responds to all inquiries on a confidential basis.

Statistics for

January 1, 2001 – December 31, 2001

During calendar year 2001, the Office received 439 contacts requesting information from covered employees, employing offices, the public, unions, and the press. These contacts were made by phone and in person; the contacts were as follows:

Employees	258
Employing offices	53
Public	123
Unions	5
Total	439

During the past year our website received thousands of “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. In addition to those contacts, 162 calls were made to the Office of Compliance Recorded Information line.

Reasons for Employee Contacts:

Employees contact the Office to discuss matters they believe may violate a provision, or section, of the CAA. For example, an employee who believes that he or she has been discriminated against would call the Office to discuss a possible violation of section 201 of the CAA.

Two hundred fifty eight (258) 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	100
202	Rights and protections under the Family and Medical Leave Act of 1993	22
203	Rights and protections under the Fair Labor Standards Act of 1938	11
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	0
206	Rights and protections relating to veterans' employment and reemployment	1
207	Prohibition of intimidation or reprisal	32
210	Rights and protections under the Americans with Disabilities Act of 1990 relating to public services and accommodations procedures for remedy of violations	17
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	3
CAA	Questions regarding the general application of the CAA	28
N/A	Questions on matters which were not cognizable under the CAA	49

Issues Raised by Employees Contacting the Office

for Advice and Information:

Employees contact the Office to discuss many different employment issues. For example, an employee who has been demoted may call the Office because he or she believes that the demotion was in retaliation for having used Family and Medical Leave to care for a seriously ill child. The issues presented by callers in the calendar year 2001 are as follows:

The 258 employee contacts were for information regarding:

Assignments	16
Compensation	1
Demotion	3
Discharge	1
Discipline	12
Equal Pay	9
Exemptions Under Fair Labor Standards Act	1
General Questions regarding statutory requirements	56
Harassment	25
Hiring	6
Hours of work	3

**Issues Raised by Employees Contacting the Office
for Advice and Information (continued)**

Injury	1
Leave	23
Minimum Wage	3
Other	1
Overtime pay	5
Promotion	27
Reasonable Accommodation	19
Reinstatement	2
Termination	55
Terms and conditions of employment	36
Requests for written materials	8

II. Proceedings Initiated by Covered Employees

Pursuant to title IV of the CAA, the Office of Compliance provides dispute resolution in the form of counseling and mediation. Dispute resolution is designed to assist the parties in obtaining an early resolution to a dispute. To initiate a claim arising under the CAA, an employee must request counseling from the Office of Compliance.¹

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

Architect of the Capitol	103
Capitol Guide Service	2
Capitol Police	278
House of Representatives (not member or committee offices)	3
House of Representatives (member offices)	1
Senate (not member or committee offices)	4
Senate (member offices)	2
The Attending Physician	1
Other ²	<u>1</u>
Total	395

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

² This category represents Legislative Branch agencies not covered by the Administrative and Judicial Dispute-Resolution procedures of the Office of Compliance.

The 395 requests for counseling alleged violations under the following sections of the Congressional Accountability Act: *(note: a single proceeding 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 Rehabilitation Act of 1973, and title I of the Americans with Disabilities Act of 1990	667
202	Rights and protections under the Family and Medical Leave Act of 1993	2
203	Rights and protections under the Fair Labor Standards Act of 1938	2
207	Prohibition of intimidation or reprisal	302

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 section or subsection of the CAA, and/or more than one issue or alleged violation).*

Assignments	547
Demotion	6
Discipline	548
Equal pay	76
Harassment	565
Hiring	545
Hours of Work	1
Leave	4
Notice Posting	1
Overtime Pay	1
Promotion	557
Reasonable accommodations	9
Termination	562
Terms and conditions of employment	552

III. Results of the Proceedings

Nine cases (9) were pending in counseling on January 1, 2001 and 395 counseling requests were received between January 1, 2001 and December 31, 2001. Of these 404 matters in counseling:

13 cases were closed during or after counseling, but before mediation

- 0 settled
- 13 sought no further action;

381 requests for mediation were filed; and

10 cases were pending in counseling on December 31, 2001.

Mediation

Seventeen (17) cases were pending in Mediation and nine (9) cases which had completed mediation were in the open period for filing a complaint on January 1, 2001. Three hundred eighty one (381) mediation requests were received between January 1, 2001 and December 31, 2001. Of those 407 cases:

368 cases closed during or after mediation

- 7 cases were settled;
- in 17 cases, no further action was taken by the covered employee after mediation ended;
- 344 civil actions were filed in District Court;

12 cases were pending in mediation on December 31, 2001;

17 cases had completed mediation and were in the time period when a complaint could be filed;

10 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. If a complaint is filed with the Office, a Hearing Officer is appointed to hear the case and issue a decision.

Two complaints were pending on January 1, 2001. An additional ten complaints were filed with the Office between January 1, 2001 and December 31, 2001.

Bases of Complaints

The complaints filed during 2001 involved the following issues:

- alleged unfair discipline based on race and in retaliation for opposing practices made unlawful by the CAA
- alleged discrimination based on disability and in retaliation for opposing practices made unlawful by the CAA
- alleged failure to promote an employee based on race and discrimination based on disability and retaliation for opposing practices made unlawful by the CAA
- alleged termination based on race, sex and disability, violation of the family and Medical Leave Act and retaliation for opposing practices made unlawful by the CAA
- alleged discrimination based on sex and in retaliation for opposing practices made unlawful by the CAA.

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, 2001 – December 31, 2001:

Hearings

- 2 hearing officer decisions were issued;
- 7 cases were settled or otherwise resolved before the hearings concluded;
- 3 complaints were pending on December 31, 2001, awaiting a decision by the Hearing Officer.

Appeals

- 2 petitions for review of Hearing Officer decisions were filed with the Board.

Board Action

- 1 Board decision was issued in 2001;
- 1 petition for review of a Hearing Officer decision was pending on December 31, 2001.

Judicial Review

- No 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.

During January 1, 2001 – December 31, 2001:

- **No** new representation petitions were filed; and as of December 31, 2001, no representation matters were pending.
- **1** election was conducted pursuant to a labor organization's pending petition seeking to represent approximately 4 employees for purposes of collective bargaining. As a result of the election, the labor organization was certified as the exclusive representative.
- **1** clarification petition pending from the previous year was reviewed and granted in part by the Board. The Board clarified certain positions into the existing bargaining unit, while other positions found to fall within certain statutory exclusions were excluded from the certified unit.
- **3** negotiability petitions, one of which was pending from the previous year, were reviewed and decided by the Board. In the 2 cases filed in 2001, the Board ruled that the bargaining proposals offered by the labor organizations involved subjects over which the parties were required to bargain. However, in the matter pending from the previous year, the Board denied the petition, holding that the bargaining proposals were not negotiable.

V. 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.

Sixty-nine (69) requests for Information and Technical Assistance were made from January 1, 2001 through December 31, 2001 under the following sections:

<u>Section</u>	<u>Description</u>	<u>Cases</u>
Section 210	Public Services and Accommodations under the Americans with Disabilities Act of 1990	17
Section 215	Occupational Safety and Health Act of 1970	48
Section 220	Unfair Labor Practices under chapter 71, of title 5, United States Code	4

**From January 1, 2001 – December 31, 2001
the following actions occurred**

Section 210

- Charges filed 0
- Cases closed 0
- Cases pending as of December 31, 2001 0

Section 215

- Requests for inspections filed 18
- Cases closed 9
- Cases pending as of December 31, 2001 6

Section 220

■ Unfair Labor Practice charges filed	19
■ Complaints issued	2
■ Cases closed	12
■ Cases pending as of December 31, 2000	6

Office of Compliance Mission

The Office of Compliance was established in January 1996 to serve as the neutral and 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 administrative dispute resolution process—counseling, mediation, and adjudicative hearings and appeals—and with educating Members of Congress, employing offices and employees of the Legislative Branch concerning their rights and responsibilities under the Act.

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