

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

JANUARY 1, 1998 – DECEMBER 31, 1998

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 in the CAA to administer and enforce the Act and provide a process for the timely and confidential resolution of workplace disputes. Section 310(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 third annual report, which provides information for the period from January 1, 1998 through December 31, 1998, 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, 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 and the Executive Director 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 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).

**THIRD ANNUAL REPORT
JANUARY 1, 1998 – DECEMBER 31, 1998**

NUMBER OF CONTACTS RECEIVED BY THE OFFICE OF COMPLIANCE: 544

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.

544 requests for information from covered employees, employing offices, the public, unions, and the press were made by phone and in person from January 1, 1998 to December 31, 1998. Contacts were as follows:

Employees	302
Employing offices	159
Public	66
Unions	14
Press	3
Recorded Information line	141

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

302 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	74

	Employment Act of 1967, the Rehabilitation Act of 1973, and title I of the Americans with Disabilities Act of 1990	
202	Rights and protections under the Family and Medical Leave Act of 1993	36
203	Rights and protections under the Fair Labor Standards Act of 1938	27
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	0
207	Prohibition of intimidation or reprisal	7
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	2
220	Application of chapter 71 of title 5, United States Code, Relating to Federal service labor-management relations	11
N/A	Questions regarding the general application of the CAA	33
N/A	Questions on matters which were not cognizable under the CAA	136

The 302 employee contacts were for information regarding:

•	Assignments	9
•	Benefits	1
•	Compensatory time off	4
•	Compensation	7
•	Demotion	2
•	Discharge	1
•	Discipline	8
•	Equal pay	2
•	Evaluation	6
•	Exemptions under the Fair Labor Standards Act	4
•	General questions regarding statutory requirements	39
•	Harassment	28
•	Hiring	5
•	Hours of work	4
•	Leave	37
•	Leave eligibility	3
•	Overtime pay	11

• Promotion	25
• Reasonable accommodations	5
• Reassignment	1
• Recordkeeping	2
• Scheduling	4
• Termination	18
• Terms and conditions of employment	11
• Time off	1
• Requests for written materials	5

NUMBER OF PROCEEDINGS INITIATED BY COVERED EMPLOYEES: 60

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

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

The Architect of the Capitol	30
Capitol Guide Service	0
Capitol Police	6
Congressional Budget Office	0
House of Representatives (non-member or committee offices)	4
House of Representatives (member offices)	9
House of Representatives (committee office)	1
Senate (non-Senator or committee offices)	6
Senator	3
Senate (committee office)	1
Total employee counseling requests	

These 60 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	61
202	Rights and protections under the Family and Medical Leave Act of 1993	5

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

203	Rights and protections under the Fair Labor Standards Act of 1938	2
207	Prohibition of intimidation or reprisal	27

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

Assignments	3
Benefits	1
Compensation	2
Demotion	2
Discharge	3
Discipline	2
Equal pay	1
Harassment	14
Hiring	3
Layoff	1
Leave	7
Overtime Pay	2
Promotion	20
Reasonable accommodations	1
Reassignment	4
Scheduling	1
Selection	3
Suspension	1
Termination	21
Terms and conditions of employment	3

RESULTS OF THE PROCEEDINGS

COUNSELING

Of the 60 counseling requests received between January 1, 1998 and December 31, 1998, and the 11 pending on January 1, 1998:

- **11** cases closed during or after counseling, but before mediation
 - **0** settled
 - **11** sought no further action;
- **2** cases were pending at the end of 1998;
- **58** requests for mediation were filed.

MEDIATION

58 mediation requests received between January 1, 1998 and December 31, 1998. In addition, on January 1, 1998 there were 12 cases pending in mediation, and 13 cases which had completed mediation and were in the open period for filing a complaint. Of those 83 cases:

- **49 cases closed during or after mediation**
 - 18 cases** were settled (including one case that settled after District Court suit)
 - in **28 cases**, no further action was taken by the covered employee after mediation ended
 - 4 civil actions** were filed in District Court (one of which was settled);
- **13 cases** were pending in mediation on December 31, 1998;
- **10 cases** had completed mediation and were in the time period when a complaint could be filed;
- **12 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.

Twelve complaints were filed with the Office between January 1, 1998 and December 31, 1998 and one complaint was pending on January 1, 1998.

BASIS OF COMPLAINTS

The complaints filed during 1998 involved the following issues:

- alleged discrimination in assignments based on race and gender
- alleged failure to provide a reasonable accommodation for an employee with a disability (2 cases)
- alleged retaliatory discipline
- alleged termination based on age
- alleged termination based on national origin, race and color
- alleged discrimination based on race and disability
- alleged termination based on age and disability
- alleged termination based on age and gender
- alleged failure to promote based on gender
- alleged failure to promote based on gender and race
- alleged harassment and termination based on race 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, 1998 – December 31, 1998:

HEARINGS

- **2** hearing officer decisions were issued;
- **6** cases were settled or otherwise resolved before the hearings concluded;
- **5** complaints were pending either with hearings scheduled for early 1999 or awaiting Hearing Officer decisions.

APPEALS

- **No** petitions for review of Hearing Officer decisions were filed with the Board;
- **3** petitions were pending on January 1, 1998;
- **2** Hearing Officer decisions were not appealed and became the final decisions of the Office.

BOARD ACTION

- **3** Board decisions were issued in 1998;
- **No** petitions for review of Hearing Officer decisions were pending on December 31, 1998.

JUDICIAL REVIEW

- **1** Petition for review was filed;
- **One** court decision was issued on a petition for review filed in 1997. 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, 1998 – December 31, 1998:

- **2** representation petitions were filed;
- **1** Board decision was issued clarifying that several newly encumbered positions were included in a previously certified unit;
- **2** Board Decisions and Directions of Election were issued, one of which set aside the results of the initial election because of objectionable conduct and ordered a second

election (prior to the holding of the second election, the labor organization withdrew its representation petition);

- 2 election agreements were entered into by the parties and approved by the Executive Director on behalf of the Board;
- 2 elections were conducted. As a result of the elections, one labor organization was certified as the bargaining representative of employees;
- 2 petitions were pending on December 31, 1998: a representation petition filed by a labor organization seeking to represent a unit of approximately 19 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.*

58 requests for Information and Technical Assistance were made from January 1998 through December 1998 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 | 41 |
| • | Section 220 | Unfair Labor Practices under chapter 71, of title 5, United States Code | 3 |

From January 1998 through December 1998, the following actions occurred:

- | | | | |
|---|-------------|---------------------------------------|----|
| • | Section 210 | Charges filed | 1 |
| | | Cases closed | 1 |
| | | Cases pending as of December 31, 1998 | 0 |
| • | Section 215 | Requests for inspections filed | 21 |
| | | Cases closed | 18 |
| | | Cases pending as of December 31, 1998 | 3 |
| • | Section 220 | Unfair Labor Practice charges filed | 14 |
| | | Complaints issued | 1 |
| | | Cases closed | 9 |
| | | Cases pending as of December 31, 1998 | 5 |