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REPORT ASSESSES CONGRESSIONAL COMPLIANCE WITH WORKPLACE RIGHTS LAWS

REPORT HIGHLIGHTS:

- **6,300 safety and health hazards projected to be found in Congressional properties for 111th Congress, a substantial decrease of 30% from 110th Congress**
- **New workplace protections enacted for Congressional employees, while OOC continues to work with Congress to ensure approval of regulations to give eligible veterans preference rights in the Legislative Branch**
- **Baseline survey reveals that most Congressional employees need to know more about their workplace rights and how to seek redress for violations of their rights**
- **Most employment claims by Congressional employees relate to discrimination and/or harassment based on protected trait such as sex, race, disability, age**

Washington, DC - A newly released report assesses Congress's compliance with workplace rights laws and provides statistical information about the types of claims, such as unlawful discrimination and harassment, made by Congressional employees against their employers in the Legislative Branch. The report also assesses Congressional compliance with safety and health requirements under the Occupational Safety and Health Act (OSHA) and access to public accommodations and services requirements for the disabled under Titles II and III of the Americans with Disabilities Act (ADA).

The fiscal year 2009 annual report – “State of the Congressional Workplace: A Report on Safety & Health, Accessibility, and Workplace Rights Under the Congressional Accountability Act” – was issued by the Office of Compliance (OOC), an independent, non-partisan Legislative Branch agency. The report highlights new workplace rights laws that Congress extended to its employees in FY 2009 and which significant workplace rights Congressional employees still do not have compared to employees in the private sector and Executive Branch. The “Parity Gap Analysis” sections of the report recommend that Congress extend their additional protections to Congressional employees, applicants, former employees, and (with regard to access to public accommodations and services) the general public.

The OOC was established nearly 15 years ago by the Congressional Accountability Act of 1995 (CAA) as part of the statute created for the purpose of applying to Congress those employment, labor, and health and safety laws that apply to the private sector and the Federal Executive branch. Prior to the CAA's passage, Congress exempted itself – and its Members and employing offices -- from liability under these laws.

The OOC provides Congressional employees, including House and Senate staffers and most workers of Legislative Branch agencies, the venue to seek redress for alleged violations of employment, labor, and safety and health laws. Congress currently employs over 30,000 employees nationwide and is one of the largest employers in the Washington, DC metropolitan area. The General Counsel of the OOC also conducts inspections of over 17 million sq. ft. of Legislative Branch properties in the Washington, DC area to ensure safety and health compliance with the OSHA and access to public accommodations provisions of the Congressional Accountability Act and services under the ADA.

“Part of our statutory mandate is to keep Congress informed about the many facets of Congressional compliance with the CAA. We do this, in part, by issuing reports on OSHA and ADA compliance, compiling statistics about the use of the OOC by employees, and providing recommendations to Congress about the rights that Congressional employees should have that they currently don't,” said Tamara E. Chrisler, the Executive Director of the OOC. “This annual report summarizes that statutorily required information and contains additional information to provide a more holistic educational tool for Congressional Members, employees, and the American people to better understand Congressional accountability in the workplace. It explains what is going on, where there have been successes, and where there are opportunities for improvement.”

STATE OF SAFETY & HEALTH

6,300 Safety And Health Hazards Projected To Be Found In Congressional Properties For 111th Congress, A 30% Decline Compared To The 110th Congress

The OOC conducts inspections of Congressional properties once every Congress as required by the CAA. The most recent completed inspection was for the 110th Congress (2007-2008) and was reported to Congress in fiscal year 2009. The inspection covered over 96% of Legislative Branch properties in the Washington, DC Metropolitan area – over 17 million sq. ft. – the largest completed inspection to date. Inspections for the 111th Congress (2009-2010) – which will cover 17.5 million square feet once completed -- are in progress, but the report provides projections about the number of hazards expected to be found and actual findings based on information available at the time the report went to print.

The inspection for the 110th Congress (2007-2008) found approximately 9,250 OSHA hazards in Congressional properties, a decrease of almost 30% from the inspection for the 109th Congress (2005-2006), which found over 13,140 hazards in approximately 15.4 million square feet. For the inspections

for 111th Congress (2009-2010), the OOC projects that they will find 6,300 hazards, a further decrease of 30%. The actual hazards found during inspection for the 111th Congress could even be lower.

Peter Ames Eveleth, the General Counsel for the OOC, attributed the rapid decline in the number of hazards to two factors. “The first factor was that we provide comprehensive, meaningful information to employing offices and members of Congress about each hazard. That’s a key value of our inspection process. We locate each hazard, categorize it by type of hazard, and assess its risk to the safety and health of building occupants. We also serve as technical advisors to employing offices and review abatement plans to determine their adequacy. It’s a collaborative process that involves sharing and discussing data so that everyone has the information they need to successfully abate hazards.”

The second factor identified by Eveleth was that employing offices implemented proactive programs to identify and abate hazards before inspection. “The dramatic reduction in hazards and its continuing trend downward is due, in large part, to intense, proactive efforts on the part of Congressional Members and employing offices in Congress. Members are asking us to help them identify and determine how to abate the hazards in their offices. Only 7 Congressional Members had hazard free offices in the 109th Congress. For the 110th, we had 37. For the 111th, we had 140,” said Eveleth.

The report also attributes the significant decline to House and Senate employment counsel, the Office of the Architect of the Capitol, and the Chief Administrative Officer of the House of Representatives for instituting pre-inspection processes that included accompanying safety and health professionals on visits to employing offices, notifying staff in those offices about the hazards, and encouraging staff to correct hazardous conditions prior to the OOC inspections.

While there was substantial reduction of the number of hazards found in the 110th Congress as compared to the 109th Congress, roughly 25% of the unabated hazards in the 110th Congress – or 2,300 – were classified as “high risk.” These risks have the potential to cause death or serious injury to occupants and/or have a very high likelihood of occurrence if not abated. For the 111th Congress, 25% of unabated hazards – or 1,575 -- are also projected to be high risk.

According to OOC’s procedures, each hazard is assigned a risk assessment code, or “RAC,” so that employing offices can understand the severity and probability of occurrence for an unabated hazard. RAC 1 and RAC 2 hazards are considered high risk hazards that have the potential to cause death and/or severe injury. For the inspections for the 110th Congress and the projections for the inspections of the 111th Congress, less than 1% of hazards were RAC 1, the most dangerous type of hazard, and approximately 25% of the hazards were RAC 2. All RAC 1 hazards currently in Congressional properties are related to some form of fire safety.

The House is not projected to have any RAC 1 hazards for the 111th Congress, and the Senate is projected to have 9. Some RAC 1 hazards have remained unabated years after they were reported by the OOC and/or citations were issued to the responsible employing office.

“We are very concerned that RAC 1 fire hazards remain unabated. The OOC is focused on ensuring a safe workplace for employees, visitors, and Members. At the same time we recognize that the RAC 1 hazards are costly to fix and some abatement options affect the architecture of historic buildings. We are currently working with our oversight committees and the Office of the Architect of the Capitol to address these important issues and achieve interim and long term solutions to abate these dangerous hazards,” said Chrisler.

OOO Recommends Key OSHA Protections For Congressional Employees

The report summarizes three major provisions of OSHA that the OOC recommends be incorporated into the CAA to give Congressional employees more safety and health protections. The OOC explains that in enacting the CAA, Congress granted the General Counsel of the OOC some, but not all, of the authorities provided to the Secretary of Labor under Section 8 of OSHA.

The first recommendation is to enact legislation to give investigative subpoena authority to the OOC. The Annual Report claims that one of the most significant authorities of the Secretary of Labor, which enforces OSHA in the private sector and the Executive Branch, is the ability to compel the attendance and testimony of witnesses and the production of evidence under oath in the course of conducting inspections and investigations. Absent such authority, a recalcitrant employer under investigation could easily delay or even disable a regulatory agency from conducting an adequate investigation. In enacting the CAA, Congress exempted employing offices from being subpoenaed in aid of such investigations.

“The lack of investigative subpoena authority has forced us to limit, delay, and sometimes abort an investigation when we cannot gain access to witnesses and evidence under the control of an employing office. We currently have to go through a litigation process to obtain discovery by order from a hearing officer. These delays are costly and time-consuming and, unfortunately, the effect can be that the employees are exposed to unabated hazards in the meantime, with potential risk of illness or injury,” said Evelth. “Inordinate delay can also lead to faulty witness recollection and loss of evidence.”

The second recommendation is that Congress enact safety and health record-keeping requirements of OSHA. Congress is exempt from the statutory requirement that employers make, keep, preserve, and provide records that are necessary and appropriate for the enforcement of OSHA or for developing information regarding the causes and prevention of occupational accidents and illnesses; records on work-related deaths, injuries, and illnesses; and records of employee exposure to toxic materials and harmful physical agents.

The third recommendation is that Congress amend the CAA to allow the additional protections against retaliation for reporting OSHA violations. Currently, an employee who believes that an employer retaliated against him or her for reporting an OSHA violation, must bring a claim of retaliation against the employer and shoulder the financial and logistical burdens of litigating a charge of retaliation. The OOC recommends that the General Counsel be given the authority, similar to that of the DOL, to investigate and bring an action with respect to reprisal because an employee exercised his OSHA rights.

STATE OF ACCESS TO PUBLIC SERVICES AND ACCOMMODATIONS

Using U.S. Census Bureau statistics, the report explains that almost one-fifth of Americans live with disabilities and that most Americans will be permanently or temporarily disabled at some point during their lifetime.

During the 110th Congress (2007-2008), the OOC's ADA inspections focused on improving access to facilities and programs affecting safety and emergency preparedness. The report explains that the OOC found much improvement in emergency action and evacuation plans for all Congressional employees, including those with disabilities. Emergency-preparedness measures have been implemented to address all potential emergencies on the Capitol grounds, whether they are man-made, accidental, or natural. Both building evacuation and shelter-in-place procedures for each major campus building have been established.

During the 111th Congress, the inspections will focus on improving access to all Congressional facilities.

The OOC recommends public services and accommodations access rights under Titles II and III of the Civil Rights Act of 1964 be made applicable to Congress. Congress is currently exempt from these civil rights laws which provide protections on the basis of race, color, religion, or national origin.

STATE OF WORKPLACE RIGHTS

The report explains that the genetic information nondiscrimination protections and extended family leave enacted by Congress in fiscal year 2009 to apply to the private sector and the Executive Branch were extended to cover Congressional employees. The Genetic Information Nondiscrimination Act offers protections to Congressional employees, should discrimination occur due to their genetic information, including an employing office's knowledge of the employee's family medical history.

As the report explains, veterans still do not have preference rights in hiring and other employment matters in the Legislative Branch. The Veterans' Employment Opportunities Act of 1998 (VEOA) provides for veterans' preferences in hiring and other employment matters in the Federal government.

Although Congress enacted the VEOA and made it applicable to eligible veterans in the Legislative Branch, the statute contains a provision that the rights and protections of the VEOA will not take effect in the Legislative Branch until VEOA regulations specific to Congress are issued.

VEOA regulations were drafted by the Board of Directors of the OOC and, after receiving comments from Congress and employing offices, the Board adopted the regulations in March 2008 and sent them to Congress for final approval. Under the CAA, the adopted regulations have no legal effect until Congress approves the regulations. Although various Congressional offices have expressed interest in seeing final approval, it has not yet occurred. Therefore, certain veterans do not have the preference rights in Congress that are enjoyed in the Executive Branch of the Federal Government.

“We have been working diligently with our oversight committees and also with Members of Congress to garner their support for Congressional approval of the VEOA regulations. So many Members of Congress are staunch advocates of veterans’ employment rights and opportunities that implementing these rights for veterans would send a clear message of Congressional support,” said Chrisler.

STATE OF THE OFFICE OF COMPLIANCE

Baseline Survey Reveals That Congressional Employees Need To Know More About Their Workplace Rights

Several years ago, the OOC contracted with the Congressional Management Foundation (CMF) to conduct a survey of Congressional employees to determine whether the employees were aware of their workplace rights and the services of the OOC. The report describes the challenges faced by the OOC in obtaining responses to the survey and the lack of access to Congressional employees’ email addresses, which the CMF discovered was the preferred means of communication for employees.

After years of trying to obtain responses to the survey from Legislative Branch employees, the survey was finally completed in September 2009 with almost 900 responses, mostly from House and Senate staffers.

“Although the survey results were statistically insignificant, the results confirmed what we suspected -- -- that most employees have limited knowledge of their workplace rights in Congress and about the services offered by OOC. We were pleased to discover that the employees who used the OOC’s services found our staff and educational materials to be helpful,” said Chrisler. “Now it is a matter of bridging the gap between our services and Congressional employees.”

The survey results will be used by the OOC to plan for future education and outreach initiatives. “It’s clear from responses to the survey that employees want us to communicate with them about their workplace rights primarily through their work email. A key area of focus of our future outreach efforts

will be our continued and long-standing effort to improve direct communication between the OOC and employees, including access to work email addresses,” said Chrisler. (The report also recommends that all employing offices in Congress be statutorily required to post a notice of rights, see below).

Most Common Employment Claims by Employees Relate to Discrimination and/or Harassment Based on a Protected Trait Such as Sex, Age, Race, or Disability

The OOC administers a dispute resolution system where employees can seek redress, including damages, for violations of most of their employment rights. The system requires that the employee go through confidential counseling and mediation with the OOC prior to filing an administrative complaint with the OOC or a lawsuit in Federal court. If the employee files a complaint with the OOC, an independent hearing officer is assigned to hear the case and make a ruling. The hearing officer can order the same remedies as a court, but the advantage is that the hearing process is usually faster, less expensive, and generally confidential. If the employee files a complaint in Federal court, the case becomes part of the public record.

While protecting confidential information, as mandated by the CAA, the OOC tracks the types of general inquiries made by employees about their rights, the types of claims made during the counseling process, and the types of claims made when employees prosecute their cases in administrative hearings.

Of the general contacts made with the OOC, 43% relate to questions about discrimination and/or harassment under civil rights laws such as 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; 15% relate to questions about intimidation and reprisal for exercising workplace rights; and 8% relate to questions about family and medical leave.

Of the counseling cases filed by Congressional employees, 65% of the claims relate to claims of discrimination and/or harassment and 25% of the claims relate to intimidation and reprisal for exercising workplace rights. Of the requests for counseling, 44% of them came from employees, former employees, or applicants in the U.S. Capitol Police; 28% from the Office of the Architect of the Capitol; 20% from the House of Representatives; and 6% from the Senate.

In FY 2009, there were 108 new requests for counseling and 72 new cases for mediation. During the counseling process, employees confidentially discuss their claims with experienced employment counselors and, if the claims are not resolved, the employee has the option of mediating their claims with their employer before an impartial, independent mediator who attempts to resolve and settle claims, but does not impose settlement.

Claims that are not successfully mediated may proceed to an administrative hearing before an independent hearing officer or litigated in Federal court. During FY 2009, employees filed 10

complaints with the OOC to have their cases heard by a hearing officer. As the OOC is not involved in cases that are filed in Federal court, the OOC does not keep statistics on those cases.

The General Counsel for the OOC tracks requests for information and assistance by employees about potential violations of OSHA, ADA access, and unfair labor practices. The General Counsel received 793 requests in FY 2009, 740 related to OSHA, 35 related to the ADA, and 18 related unfair labor practices.

Altogether, the OOC fielded more than 1,000 contacts for information about the thirteen workplace rights that currently fall under the CAA.

The OOC Recommends Posting Of Employee Rights And Record-Keeping In All Employing Offices

The report explains that the OOC believes that part of the reason that employees remain unaware of their workplace rights is because notice-posting of workplace rights is not required in employing offices. Although the CAA requires the OOC to produce education materials informing employees about their workplace rights and employing offices about their obligations, the CAA does not require that employing offices post notices of employee rights or provide educational materials.

“Notice-posting is an effective tool in communicating information to employees about their rights. It is standard practice in the private sector and required by law, and it is reasonable to apply the practice to the Legislative Branch,” said Chrisler.

The OOC also recommends that uniform record-keeping of employment records be mandated throughout the Congressional workplace. Currently, employing offices are not required by the CAA to maintain records.

“There are benefits to both employing offices and employees with regard to uniform record-keeping of employment records. Where the law has not been violated, employing offices can more readily demonstrate they have complied with the law if adequate records are made and preserved,” said Chrisler. “For employees, such records may be necessary to effectively demonstrate that their rights were violated.”
