

ANNUAL REPORT OF
THE OFFICE OF COMPLIANCE

COMMUNICATION

FROM

THE EXECUTIVE DIRECTOR,
THE OFFICE OF COMPLIANCE

TRANSMITTING

THE FIRST ANNUAL REPORT ON THE USE OF THE OFFICE OF
COMPLIANCE BY COVERED EMPLOYEES, PURSUANT TO SECTION
301(h) OF THE CONGRESSIONAL ACCOUNTABILITY ACT



OCTOBER 21, 1997.—Referred jointly to the Committees on House
Oversight and Education and the Workforce, and ordered to be printed

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October 3, 1997

The Honorable Newt Gingrich
Speaker of the House
United States House of Representatives
Washington, D.C. 20515

The Honorable Strom Thurmond
President pro tempore of the Senate
United States Senate
Washington, D.C. 20510

Dear Messrs. Speaker and President:

I am enclosing the first annual report on the use of the Office of Compliance by covered employees. Pursuant to section 301(h) of the Congressional Accountability Act, the statistics cover: the number and type of contacts made with the Office; the reason for such contacts; the number of covered employees who initiated proceedings with the Office under the CAA; the result of such proceedings; the number of covered employees who filed a complaint; the basis for the complaint; and the action taken on the complaint.

Copies of this report are also being submitted to the Committee on Rules and Administration and the Committee on Governmental Affairs of the Senate and the Committee on House Oversight of the House of Representatives, which have oversight responsibilities as provided by section 301(i) of the Congressional Accountability Act.

If you have questions regarding the report, or would like further information, I would be pleased to discuss our findings with you.

Sincerely,



R. Gaull Silberman
Executive Director

Enclosure



OFFICE OF COMPLIANCE
SECTION 301(H) REPORT TO CONGRESS
JANUARY 23, 1996 -- DECEMBER 31, 1996

OCTOBER 1, 1997

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

January 23, 1996 -- December 31, 1996

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 CAA establishes the Office of Compliance (Office), an independent agency in the legislative branch of government, to administer and enforce the CAA and provide a process for speedy, 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 the result 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 first report provides the information for the period from January 23, 1996 through December 31, 1996. Future reports will be issued soon after the end of each calendar year, beginning in January 1998. 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).

On January 23, 1996, key provisions of the law took effect covering the House of Representatives, the Senate, the Capitol Guide Service, the Capitol Police, the Congressional Budget Office, the Office of the Architect of the Capitol, the Office of the Attending Physician, the Office of Compliance, and their employees. On October 1, 1996, section 220, the labor management section of the CAA took effect, as did the OSHA and ADA sections on January 1, 1997.

USE OF THE OFFICE OF COMPLIANCE

Section 301(h) of the Congressional Accountability Act mandates 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 the **result 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**.”*

The following statistics provide this data on the use of the Office by covered employees from January 23, 1996, when the CAA generally took effect, to December 31, 1996. (Given the statutory time frames, proceedings initiated in 1996 may still be in the dispute resolution process as of December 31, 1996.)

Number and Types of Contacts Received: 1677

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.

1677 requests for information from covered employees, employing offices, the public, unions, and the press were made by phone and in person from January 23, 1996 to December 31, 1996. Contacts were made by:

Employees	652
Employing offices	603
Public	107
Unions	36
Press	44
Recorded Information line	<u>235</u>
Total requests for information	1677

Reasons for Employee Contacts

652 covered employees contacted the Office asking questions under the following sections:¹

<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	112
202	Rights and protections under the Family and Medical Leave Act of 1993	26
203	Rights and protections under the Fair Labor Standards Act of 1938	155
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	73
206	Rights and protections relating to veterans' employment and reemployment	3
207	Prohibition of intimidation or reprisal	8
210	Rights and protections under the Americans with Disabilities Act of 1990 relating to public services and accommodations;	1

¹Aggregate numbers will not necessarily match 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.

	procedures for remedy of violations	
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	13
230	Study and recommendations regarding General Accounting Office, Government Printing Office, and Library of Congress	9
CAA	Questions regarding the general application of the CAA	128

Additionally, the office received 150 questions from employees on matters which were not cognizable under the CAA.

The 652 employee contacts were for information regarding:

•	Assignments	4
•	Belo contracts	14
•	Benefits	1
•	Compensatory time off	9
•	Compensation	29
•	Demotion	8
•	Discipline	2
•	Equal pay	1
•	Evaluation	2
•	Exemptions under the Fair Labor Standards Act	42
•	General questions regarding statutory requirements	102
•	Harassment	14
•	Hiring	3
•	Hours of work	28
•	Inspections	1
•	Interns	1
•	Leave	14
•	Leave eligibility	4
•	Office operations	1
•	Overtime pay	32

• Promotion	12
• Reasonable accommodations	12
• Record keeping	4
• Recruitment	1
• Reinstatement	6
• Rulemaking	3
• Scheduling	34
• Severance	1
• Termination	119
• Terms and conditions of employment	14
• Time-off	1
• Requests for written materials	58

Number of Proceedings Initiated by Covered Employees: 95

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 a request for counseling alleging a violation of the CAA.

95 employees from the following offices filed requests for counseling:

The Architect of the Capitol	34
Capitol Guide Service	6
Capitol Police	2
Congressional Budget Office	1
House of Representatives (non-member or committee offices)	39
House of Representatives (member offices)	7
Senate Committee	1
Senate (non-Senator offices)	2
Senator	<u>3</u>
Total employee counseling requests	95

These 95 requests for counseling alleged violations under the following sections of the Congressional Accountability Act:²

Section	Description	Cases
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	82
202	Rights and protections under the Family and Medical Leave Act of 1993	8
203	Rights and protections under the Fair Labor Standards Act of 1938	12
205	Rights and protections under the Worker Adjustment and Retraining Notification Act	35
207	Prohibition of intimidation or reprisal	22

Workplace issues raised by the 95 employees requesting counseling fell into the following categories:³

•	Assignments	7
•	Compensatory time off	1
•	Compensation	24
•	Discipline	13
•	Fair Labor Standards Act exemptions	2
•	Harassment	20
•	Hiring	4
•	Hours of work	5

²See note 1, page 4.

³See note 1, page 4.

• Leave	2
• Overtime pay	3
• Promotion	11
• Reasonable accommodation	1
• Reassignment	1
• Reinstatement	1
• Termination	47
• Terms and conditions of employment	17

Results of the Proceedings

Counseling

Of the *ninety-five (95) counseling requests* received between Jan. 23 and Dec. 31, 1996,

- *twenty-six (26) cases closed during or after counseling with no request for mediation*
- *twenty-nine (29) cases were pending at various stages in the counseling process at the end of 1996*
- *forty (40) requests for mediation were filed*

Mediation

Of the *forty (40) mediation requests* received between Jan. 23 and Dec. 31, 1996,

- *fourteen (14) cases closed during or after mediation:*
 - eight (8) cases were formally settled*
 - in six cases (6), no further action was taken by the covered employee after mediation ended*
- *five (5) cases were in mediation on December 31, 1996*
- *eight (8) cases had completed mediation and were in the time period when a complaint could be filed*
- *thirteen (13) complaints were filed after mediation*

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.

Of the **thirteen (13) complaints filed after mediation** (between Jan. 23 and Dec. 31, 1996),

- **five (5) hearings were scheduled for twelve (12) cases (8 cases being consolidated for one hearing)**
- **one (1) complaint was pending**

Of the **five (5) hearings**,

- **four (4) hearings were completed, covering eleven (11) cases, and Hearing Officer decisions were issued in those four (4) hearings**
- **one (1) hearing was scheduled but not completed as of December 31, 1996**

Basis of Complaints

The **thirteen (13) complaints filed** involved the following issues:

- **Worker Adjustment and Retraining Notification Act: *eleven (11)* complaints**
- **Alleged sexual harassment, reprisal, and hostile work environment: *one (1)* complaint**
- **Alleged denial of promotion because of color and religion and discrimination based on gender: *one (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.

As of December 31, 1996, of the ***four (4) Hearing Officer decisions*** issued,

- ***two(2) petitions for review had been filed with the Board***
- ***the appeal period for the other two(2) decisions was still open***

No Board decisions were issued in 1996; to our knowledge, no civil actions were filed in Federal Court in 1996 by covered employees.

