



## What's New at the Office of Compliance

### Eveleth Joins Office of Compliance as New General Counsel



The Office of Compliance welcomed a new General Counsel to the office in June. Peter Ames Eveleth, who will serve as the third General Counsel, was appointed by Office

of Compliance Board of Directors Chair Susan S. Robfogel. Eveleth will serve a five year term, and replaces Gary Green, whose term expired in December of 2002.

The General Counsel is one of four statutory positions created within the Office of Compliance by the Congressional Accountability Act (CAA). The non-partisan General Counsel is chiefly responsible for enforcement in Congress and the Legislative Branch of applicable labor relations, occupational safety and health, and laws related to public services and accommodations for the disabled. The General Counsel also represents the Office of Compliance in any judicial proceeding arising under the Act.

In her announcement of the appointment, Chair Robfogel called Eveleth a scrupulously fair, non-partisan "lawyer's lawyer." "We at the Office of Compliance are excited to have an individual of Peter's caliber as our new General Counsel."

Prior to joining the Office of Compliance, Eveleth was Senior Special Counsel to the General Counsel of the National



Labor Relations Board (NLRB). Prior to his work with the NLRB, Eveleth was Of Counsel to the Washington office of Akin, Gump, Strauss, Hauer, and Feld where he practiced the full range of labor and employment law. Eveleth is a graduate of Cornell University's School of Industrial and Labor Relations, and earned a Juris Doctor (cum laude) from the University of Pennsylvania Law School.

### Office of Compliance Takes Part in Web Accessibility Day

The Second Annual Web Accessibility Day, hosted by the Bipartisan Disabilities Caucus on July 22, featured Deputy Executive Director of the Office of Compliance Alma Candelaria as moderator for the event's panel discussion and question and answer session. The discussion panel included representatives from House

Information Resources, the Congressional Management Foundation, Office of Management and Budget, and the General Services Administration. Congressman James Langevin (D-RI), co-chair of the Bipartisan Disabilities Caucus, spoke and offered his perspectives on disability and accessibility issues in Congress.

The Second Annual Web Accessibility Day highlighted the progress made to date in making Congressional web sites accessible to the disabled. The event also celebrated the two-year anniversary of the passage of Section 508 of the Rehabilitation Act of 1998 (see page 3 for a discussion of Section 508). In addition to the panel discussion, Microsoft Corporation and Adobe Systems offered technology demonstrations on accessible web site designs and accessibility standards.

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# Message from the Executive Director

## *The Congressional Accountability Act, a work in progress...*

The Congressional Accountability Act (CAA) was one of the first pieces of legislation passed by the 104<sup>th</sup> Congress, applying eleven civil rights, labor, and workplace safety laws to the U.S. Congress and to certain Legislative Branch employees. The CAA was—and remains—landmark legislation.

In the seven years since the passage of the Act, it is clear that the legislation has worked as advertised. The CAA helps protect the safety, health, and workplace rights of thousands of Congressional and Legislative Branch employees. It has also required Congress to experience first-hand the benefits *and* burdens of its own legislation.

“Congressional accountability,” by necessity, is a work in progress. The legislation’s authors foresaw the need to continually update the CAA, and provided a process for it to take place. Section 102(b)(1) of the Act requires the Board of Directors of the Office of Compliance to make recommendations to Congressional leadership in each Congress about what additional laws should be included under the CAA. Section 102(b)(3) requires that each House or Senate committee bill report that relates to terms and conditions of employment or disability access explain why the underlying legislation does or does not apply to the Legislative Branch.

Despite consistent recommendations from the Office of Compliance since 1995, there have been few significant additions to the law’s coverage. Many relevant laws, such as electronic information access rights for people with disabilities (Section 508 of the Rehabilitation Act), are still inapplicable to Congress and the Legislative Branch.

The Office of Compliance is working hard with the bipartisan leadership of our oversight committees in the House and Senate, as well as with other interested Members of Congress, to meet the goals and challenges of Congressional accountability. We are encouraged by their leadership in ensuring that the Congressional Accountability Act remains a critical barometer of the health of our representative democracy.

The overwhelming bipartisan support for the CAA’s passage in 1995 is a testament to the support for the principles the Act embodies, both in Congress and in the electorate as a whole. But without consistent updating, we risk undercutting the CAA’s effectiveness for the people it is meant to serve. Hanging in the balance is the continued assurance to the American people that Congress is not above the law.



A handwritten signature in blue ink that reads "William W. Thompson, II". The signature is fluid and cursive, with a long horizontal stroke at the end.

William W. Thompson, II

## Guest Feature Opening the Doors of Political Participation

*Representative Jim Langevin (D-RI) and  
Representative Jim Ramstad (R-MN),  
Co-Chairs of the Bipartisan Disabilities Caucus*

As co-chairs of the Bipartisan Disabilities Caucus, we were heartened by the recent turnout at the Second Annual Congressional Web Accessibility Day. The audience of dozens of systems administrators from the offices of our colleagues speaks volumes about their commitment to constituents with disabilities. We applaud our colleagues who have recognized that the value of what people with disabilities bring to the table is well worth the effort it takes to be inclusive.

The Bipartisan Disabilities Caucus serves as a forum to inform, educate, and raise awareness among Members and staff on issues affecting people with disabilities. The issue of accessibility and inclusion in all aspects of life for people with disabilities is gaining momentum. One in five Americans is living with a disability, and as people continue to live longer lives and survive once-fatal diseases, the likelihood of their developing a disability increases.

In recent years, electronic and information technology have become critical in communication between elected officials and our constituents. With 54 million Americans living with disabilities and growing numbers of elderly Americans with diminished vision, hearing, and other senses, accessible technology has opened doors for their voices to be heard in government.

Section 508 requires that federal agencies’ electronic and information technology be accessible to people with disabilities. While Section 508 does not apply to Congress, we believe strongly that voluntary compliance with these regulations is an important demonstration of our willingness to meet the needs of people with disabilities in all aspects of society. It is crucial that we continue our work to create a more accessible and inclusive society for people with disabilities.

## Access to Electronic Information for the Disabled

In 1998, Congress amended the Rehabilitation Act of 1973 (29 U.S.C. 794d) to ensure that all Federal agencies make their electronic information accessible to employees and members of the public with disabilities. These Rehabilitation Act amendments went a step further than the Americans with Disabilities Act (ADA), which also required the federal government to make electronic information available to the disabled.

The ADA's requirements for accessibility only mandated that electronic information be made available in an alternative format, such as in paper form. Section 508 of the 1998 amendments requires that individuals with disabilities be able to access information *in a way that is comparable to access available to others*. This requirement covers the full range of electronic and information technologies, including software, computing, presentation, and storage mediums.

Although Section 508 applies to a broad array of electronic mediums, web site compliance with its standards has generated some of the greatest uncertainty and confusion. Since web sites are inherently visual in nature, much concern has arisen over how to make them accessible to individuals with disabilities, including the visually impaired who cannot see elements such as graphs, tables, or drop-down menus.

As Section 508 has been implemented, web site compliance has proven to be less of a challenge than feared. Compliance with Section 508 does not prohibit images or certain types of format styles on web sites. Instead, it only requires that these elements be accessible in an alternative manner.

Most changes required by Section 508 are relatively simple to implement and do not detract from the overall web site design or its experience by unim-



paired viewers, but have a dramatic impact on accessibility and ease of use for the disabled. For example, to accommodate the blind or visually impaired, applying labels and descriptors to the code for pictures allows them to be read by electronic screen readers and turned into audible information or data for refreshable Braille displays. With these labels, the context of the image can be conveyed to the visually impaired, even if they cannot see the actual image on screen. Similar simple modifications are all that is required to accommodate other types of disabilities.

Although it is only voluntary for Congressional entities, great strides have been made in implementing Section 508 in the Legislative Branch. Many web sites are now accessible and in compliance with Section 508, and other sites are being modified to conform with the standards. With no binding requirement, however, there are still Legisla-

tive Branch web sites that lack the basic features needed to adequately accommodate users who are disabled.

The internet's convenience means it is one of the most likely electronic mediums to be used by individuals with disabilities. As the internet continues to assume an ever-greater role as a means of disseminating information and communicating with the public, sites that are not in compliance with Section 508 will become an increasingly large problem for the 54 million Americans with disabilities.

To find out if your site is Section 508 compliant, contact your web site manager. You may also contact the Office of Compliance if you have questions about Section 508 or Legislative Branch compliance with any of the rights applied by the Congressional Accountability Act (CAA).

# Cases Handled by the Office of Compliance in 2002

Each year, the Office of Compliance is required to report to Congress statistics on the use of the Office by covered employees. The following statistics are from our latest report covering the period January 1 through December 31, 2002.

## Contacts and Cases with the Office of Compliance:

Initial Contacts Received by the Office . . . . .	392
Requests for Counseling. . . . .	82
Cases in Mediation . . . . .	102
Appeals to the Board . . . . .	5

### Case Notes:

- An employee requested counseling when he believed that he was demoted because of his national origin. The employee alleged that remarks were made concerning his accent and other cultural issues, leading him to believe that the decision to demote him was motivated by unlawful discrimination.
- An employee requested counseling when she was suspended without pay for excessive tardiness. She said that she is the only African American in her office, and despite rampant tardiness by fellow employees, believed that she was singled out for punishment because of her race.
- A man requested counseling when his office moved him to the night shift soon after he requested FMLA (Family and Medical Leave Act) leave for surgery. The employee also alleged that his employer suggested that since he was nearing retirement age, he should simply consider retiring. This employee believed that he was being retaliated against for invoking his FMLA rights and discriminated against because of his age.

## Contacts and Cases with the Office of the General Counsel:

Requests for Information and Technical Assistance. . . . .	53
Occupational Safety Inspection Requests . . . . .	24
Unfair Labor Practice Charges . . . . .	18

### Case Notes:

- The biennial health and safety inspections required by the Congressional Accountability Act (CAA) found most Legislative Branch offices to be in compliance with the requirements for emergency action and evacuation planning. Problems remain to be addressed to achieve full compliance with emergency action, emergency response, and evacuation planning requirements.
- Only one of the eighteen unfair labor practice charges filed against an employing office in fiscal year 2002 resulted in the issuance of a complaint by the General Counsel. The settlement of this complaint resulted in the employing office signing its very first collective bargaining agreement with a labor organization. The remainder of complaints were resolved informally.

## Office of Compliance Dispute Resolution Process

The CAA provides a mandatory alternative dispute resolution (ADR) process of counseling and mediation for the settling of disputes. If the parties involved are not able to resolve their dispute through counseling and mediation, an employee may either pursue a non-judicial administrative hearing with the Office of Compliance or file suit in Federal court. Administrative hearing decisions can be appealed to the Board of Directors of the Office of Compliance.

## General Counsel of the Office of Compliance

The General Counsel of the Office of Compliance is responsible for investigating and enforcing certain violations of the CAA. Labor/Management relations, occupational safety and health laws, and discrimination against the disabled in access and accommodations to public events and spaces are all under the General Counsel's jurisdiction.

Do you have a question about your rights under the CAA or wish to file a complaint? Contact the Office of Compliance at 202-724-9250. Concerns about health and safety, labor-management relations, or public services and accommodations for the disabled should be referred to the General Counsel's office at 202-724-9292. All contacts are strictly confidential.

## Know Your Rights

# Understanding the Family and Medical Leave Act

The Congressional Accountability Act (CAA) of 1995 applied eleven civil rights, labor, and workplace safety laws to Congress and Legislative Branch employees. Among these rights is the Family and Medical Leave Act of 1993 (FMLA). FMLA entitles eligible employees to take leave for certain family and medical reasons while still receiving health insurance benefits.

Under the provisions of the FMLA as applied to the Legislative Branch, an eligible employee is entitled to a total of twelve weeks of family and medical leave within any twelve month period. Leave may be taken for the birth or care of a newborn child, the adoption of a child, a "serious health condition," or to care for a family member with a serious health condition.

FMLA leave can be taken all at once, in separate blocks of time, or on a reduced leave schedule. Under certain conditions, either you or your employer may elect to substitute accrued paid sick or vacation leave for the unpaid FMLA leave.

To be eligible for FMLA benefits, you must have worked for an employing office of the Legislative Branch for a total of twelve months, and for at least 1,250 hours of employment during the previous twelve months. The twelve months of employment does not have to be for a single employing office. For example, if you have been employed in your current job for only six months but worked in the

previous job for at least six months (and have worked at least 1,250 hours total), you would be eligible for FMLA leave.

It is important to note that, if the need for family and medical leave is foreseeable (such as for the birth of a child), notice must be given to your employing office before you take leave. The law requires thirty days notice when leave is foreseeable, but employers can waive this notice requirement if they so choose. If you fail to meet proper notice requirements, your employer is entitled to delay your leave.

Employers are not required to pay you when you are on FMLA leave, but they must continue to provide you with health insurance coverage and to cover their same share of the premium. Once you return to work after taking leave, you are entitled to be restored to the same or an equivalent position as that held when leave commenced. There are limited exceptions to this right for "key employees."

For more information about the Family and Medical Leave Act as applied to Congress

by the CAA, check out our web site at [www.compliance.gov](http://www.compliance.gov), or contact the Office directly. All contacts with the Office of Compliance are confidential.



## CAA news

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The Office of Compliance protects the safety, health, and workplace rights of employees of the U.S. Congress and the Legislative Branch. Established by the Congressional Accountability Act of 1995, the Office is an independent agency that provides an impartial dispute resolution process and educates employees and employing offices about their rights and responsibilities under the Act.

This information does not constitute advice or an official ruling of the Office of Compliance or the Board of Directors and is intended for educational purposes only. For further information, please refer to the Congressional Accountability Act (2 U.S.C 1301 et seq.) and the regulations issued by the Board, or you may contact the Office of Compliance.

# Your Rights and Protections Under the Congressional Accountability Act

*The Congressional Accountability Act (CAA) applies eleven civil rights, labor, and workplace safety laws to the U.S. Congress and Legislative Branch employees*

## Access to Public Services and Accommodations

Section 210 of the CAA protects qualified individuals with disabilities from discrimination with regard to access to public services, programs, activities, or places of public accommodation in covered locations and offices. These protections extend to both employees and members of the public.

## Age Discrimination

Section 201 of the CAA provides that all personnel actions affecting covered employees shall be free from age discrimination for those forty years old or older. This includes hiring, discharge, promotion, pay, benefits, reassignment, and other personnel actions affecting the terms and conditions of employment.

## Collective Bargaining and Unionization

Section 220 of the CAA permits certain Legislative Branch employees to form, join, and assist a labor organization. Once a labor organization becomes the exclusive bargaining representative of employees, an employer is obligated to negotiate the terms and conditions of employment with that organization.

## Disability Discrimination

Section 201 of the CAA provides protection against discrimination in all personnel actions of qualified individuals with disabilities. Personnel actions include hiring, discharge, promotion, pay, benefits, reassignment, and other actions affecting the terms, conditions, and privileges of employment. Employing offices may be required to make a "reasonable accommodation" for an otherwise qualified individual with a disability.

## Equal Opportunity Employment

Section 201 of the CAA requires that all personnel actions involving covered employees must be free from discrimination based on race, color, religion, sex, or national origin. Personnel actions include hiring, discharge, promotion, pay, and benefits.

## Fair Labor Standards and the Minimum Wage

Section 203 of the CAA applies the Fair Labor Standards Act of 1938 (FLSA) to covered employees. These rights and protections require payment of the minimum wage and overtime compensation to non-exempt employees, restrict child labor, and prohibit sex discrimination in wages paid to men and women.

## Family and Medical Leave Act

Section 202 of the CAA applies the benefits of the Family and Medical Leave Act of 1993 (FMLA) to covered employees. Eligible employees are entitled to take up to twelve weeks of leave in a twelve month period for certain family and medical reasons. Employees on leave continue to receive health insurance benefits and should be restored to their former position at the conclusion of leave.

## Notification of Office Closings or Mass Layoffs

Section 205 of the CAA applies the rights and protections of the Worker Adjustment and Retraining Notification Act (WARN Act) to covered employees, and requires that employees must be notified of an office closing or of a mass layoff at least sixty days in advance of the event.

## Occupational Safety and Health

Section 215 of the CAA requires that all workplaces be free of recognized hazards that might cause death or serious injury. Both employing offices and employees must comply with these workplace safety requirements.

## Prohibition on the Use of Lie Detector Tests

Section 204 of the CAA applies provisions of the Polygraph Protection Act to the Legislative Branch. Requiring or requesting that lie detector tests be taken; using, accepting, or inquiring about the results of a lie detector test; or firing or discriminating against an employee based on the results of a lie detector test or for refusing to take a test are all prohibited.

## Reprisal and Intimidation

An employer may not intimidate, retaliate, or discriminate against employees who exercise their rights applied by the CAA. This includes opposing practices made unlawful by the CAA; initiating proceedings; making a charge; providing testimony; or participating in a proceeding brought under the CAA. Those who assist others in these activities are also protected.

## Uniformed Services Rights and Protections

Section 206 of the CAA applies the rights and protections of the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) to covered employees. USERRA protects employees performing service in the uniformed services from discrimination and provides certain rights to benefits and reemployment upon the completion of service.



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