

Congressional Accountability Act News



What's New at the Office of Compliance

It has been an exciting year for the Office of Compliance ("OOC" or "Office") We have been busier than ever with our Education and Outreach opportunities, and promoting safety and health on Capitol Hill. We continue to find new ways to reach out to Congress and the legislative branch regarding the Office and how we can best meet the workplace needs of employers, employees and visitors on Capitol Hill.

Education and Outreach Opportunities

With the reigning in of the 111th Congress, the Office of Compliance reached out to all new Members. We provided informational packets, and our staff personally went by each office to welcome them to Capitol Hill and to answer any questions they might have had in those first few days. It has been exciting working with these new Members both within their personal offices and through the Committees. We hope that our personal visits will underscore our availability as a resource to the covered community.

The Office continues to work with the Congressional Research Service during their district and state training sessions. Several times a year, the OOC participates in informational presentations for those congressional employees located in district offices. These sessions have served as an important tool to reach not only those employees on Capitol Hill, but also those in the many regional offices across the country.

Throughout the year, the Office of Compliance worked to reach all employees of the legislative branch on workplace matters in general, and OOC's services in particular. Over this past year, the Office participated in the House Safety Fair and the Ford Services Fair. Both events gave the employees the chance to have their questions answered, receive our publications and information and other tools staff could take back to the workplace to ensure a fair, safe, and healthy work environment.

The OOC Takes to a Bigger Stage



The OOC Team on Fed Talk Radio

In March, the Office was able to reach a vast audience about our programs and initiatives. As a featured guest on FedTalk radio, Executive Director Tamara E. Chrisler, General Counsel Peter Ames Eveleth, and Deputy Executive Director Barbara J. Sapin spoke to William Bransford, of the Law Office of Shaw, Bransford, Veilleux and Roth, P.C., about the important efforts being made by the Office of Compliance. Among the topics discussed were our education and training efforts, the Safe Office Awards, and the different safety standards applicable to the Congressional community.

In mid-August, Deputy Executive Director Barbara J. Sapin and Director of Dispute Resolution Teresa M. James, presented a session on the Congressional Accountability Act "CAA" at the 24th Annual Federal Dispute Resolution Conference held in Phoenix, Arizona. This session was geared toward legislative branch practices and procedures and provided a wonderful chance for the participants to learn of the CAA's application of workplace rights and laws. It was the office's first presentation at the conference, and we are honored to have been invited!

For Your Information

The Office of Compliance is excited to announce the start of a new informational publication. Our "For Your Information" or "FYI" two-pager will replace the office's "Bulletin." "FYI" will present topics of importance to legislative branch employees, such as FMLA, USERRA and VEOA, and Paid Parental Leave. This new publication will be a helpful, fun way to receive information. You will be able to find these publications on our website at www.compliance.gov

Summer 2009

SPECIAL ISSUE ON GINA and FMLA MATTERS

- * The Honorable Gregg Harper
- * The Genetic Information Nondiscrimination Act
- * The Family and Medical Leave Act

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Message from the Executive Director



Welcome, once again, to the Office of Compliance's Annual Newsletter. This issue is packed with information that we hope you find useful, interesting, and timely. We trust that the format of the Newsletter provides an easy read for you, as the content we have included is applicable to both employing offices and employees alike.

We continue to support Congress in its efforts to ensure a safe and healthy workplace which is free from discrimination. As such, we have included in this Newsletter information on new legislation that may affect the working conditions of the legislative branch.

Genetic Information Non-discrimination Act, or GINA, as some refer to it, is a new law that provides protections for employees and guidelines for employers on the collection and use of employees' genetic information. We have been privileged to have The Honorable Greg Harper speak on this issue and the relevance this legislation has on his personal life.

In addition, the Family Medical Leave Act (FMLA), which provides leave options for employees dealing with an illness of self or a family member, has been amended, resulting in additional benefits/protections for workers.

Another change to applicable laws which are covered in this edition includes changes to the Americans with Disabilities Act ("ADA"). Please read further in the Newsletter to learn of changes to the ADA that effect the Congressional Complex.

As always, we have included a summary of our most noteworthy accomplishments since the last Newsletter, as well as tidbits of information that may be helpful to you. For all additional information, please visit our website at www.compliance.gov, or phone us at 202-724-9250. Our information line is available 24-7: 202-724-9260.

We remain available to help with your workplace needs.

A handwritten signature in black ink that reads "Tamara E. Chrisler".

Tamara E. Chrisler

Guest Feature: The Honorable Gregg Harper Discusses the Genetic Information Nondiscrimination Act of 2008



As the only member of Congress with a child who has Fragile X Syndrome, I understand the importance of proper diagnosis and research regarding genetic diseases. Families with histories of these often complex conditions, or who find themselves facing an unknown diagnosis, should be provided with the most up-to-date research and information for proper care and education. It is important that parents and individuals alike are able to focus on treatment instead of being overwhelmed with the implications a genetic disorder may have on their future.

This is why I appreciate the hard work the Office of Compliance is doing to promote the protections of legislative branch employees under the Genetic Information Nondiscrimination Act of 2008 (GINA). Effective November 21, 2009, GINA will protect genetic information and tests of an individual employee as well as tests of an employee's family members. This will include family medical history and information concerning the manifestation of any disease or disorder and will also protect individuals from being denied health insurance based on their genetic information.

By enacting GINA, Congress has taken an important preventive measure in calming the fears of those that may be reluctant to seek out genetic tests. This critical testing may provide individuals with vital information regarding health risk and treatments which are essential in preventing and living with various genetic conditions. In addition, without this legislation, individuals might be hesitant to take advantage of genetic research that could not only enhance their quality of life, but also promote medical advances for generations to come.

With the efforts made by the Office of Compliance under the Congressional Accountability Act, this legislation will work to ensure that those with genetic disorders will have the opportunity to achieve the same career advancements as others. Additionally, these individuals may benefit from the security of health insurance coverage necessary for treatment and improvement in their quality of life. Science is making great strides in its ability to map, decode, and discover the human genome. Many individuals, including my son, Livingston, will benefit from this important progress.

In conjunction with the medical community, Congress is committed to see that if diagnosed with a genetic syndrome, individuals can look forward to all the rights and protections as any other employee in the workplace and should not fear adverse implications for such diagnosis or testing. I personally applaud the Genetic Information Nondiscrimination Act of 2008.

Congress Establishes Privacy Under the Genetic Information Nondiscrimination Act

The Genetic Information Nondiscrimination Act “GINA” of 2008 protects employees from employment discrimination and denial of health insurance based on that employee’s genetic information. Title II of this Act applies to employees covered by the Congressional Accountability Act (CAA).

In recent years, science has discerned new ways to map, decode, and discover the human genome. This discovery has opened up a broader understanding of medicine and how genetics can create or affect medical conditions. These advances, however, could also give rise to the potential misuse of genetic information for the purpose of employment discrimination. Recent cases concerning genetic discrimination in the workplace show a compelling public interest to act in the area before more discrimination can take place.

GINA, as applied by the CAA, offers protections for employees, should any discrimination occur due to their genetic information, including an employing office’s knowledge of the employee’s family medical history. It also limits the employing office’s right to acquire genetic information about employees and places confidentiality requirements on any information that can be acquired. GINA will become effective on November 21, 2009.

WHO IS PROTECTED?

Current, former, and potential employees of employing offices of Congress:

- U.S. House of Representatives
- U.S. Senate
- Office of Congressional Accessibility Services
- U.S. Capitol Police
- Congressional Budget Office
- Office of the Architect of the Capitol
- Office of the Attending Physician
- Office of Compliance

WHAT INFORMATION IS PROTECTED BY GINA?

- Genetic information and testing of an individual employee or an employee’s family member.

WHAT INFORMATION IS NOT PROTECTED BY GINA?

- Information that is publicly available, such as stories published in newspapers, magazines, and on the internet.
- Information that is inadvertently requested or required information unwittingly received through casual conversation.
- Information about the sex or age of an individual.



EMPLOYEE’S RIGHTS

- An employee’s genetic information cannot be the basis of any hiring, discharge, payment, promotion, or any other employment decisions.
- An employee’s genetic information cannot be used to segregate, or classify in a way that could deprive an employee of employment opportunities.
- An employee must have equal access to apprentice ships and training programs without discrimination or segregation on account of an employee’s genetic information.
- Employees have the right to bring complaints about violations of GINA without fear of reprisal.

EMPLOYING OFFICE’S RESPONSIBILITIES

An employing office may not request, require, or purchase genetic information from an employee, except:

- Health or genetic services can be provided by the employer as part of a wellness program, but only with the employee’s prior written knowledge;
- Certifications of family medical history and ailments are allowed if an employee requests leave under the Family and Medical Leave Act of 1993;
- An employing office is allowed to participate in genetic monitoring of the biological effects of toxic substances in the workplace, but only with the employee’s prior written knowledge and the employing office’s compliance with federal standards for monitoring;
- An employing office which conducts DNA analysis for forensic purposes can request or require limited genetic information from employees for the sole purpose of DNA identification markers for quality control to detect sample contamination; and
- Any genetic information an employing office does maintain under one of the exceptions above must be treated with the same confidentiality as other medical information on an employee.

Bringing Claims Under GINA

Employees who feel they were discriminated against due to their genetic information, or their rights under GINA were otherwise violated, may bring claims under the Congressional Accountability Act. The Office of Compliance sets the procedure by which those claims can be brought. For more information, please visit our website at www.compliance.gov.

New Family Medical Leave Act Rules Apply to Servicemembers in Congress

Section 202 of the Congressional Accountability Act extends certain rights and protections of the Family and Medical Leave Act (FMLA) to covered employees who satisfy specified eligibility requirements.

In general, the FMLA provides eligible employees the right to take unpaid leave for specified family and medical reasons, and for specified circumstances relating to a family member's military service. In addition, the FMLA requires covered employers to preserve the employment benefits of employees who take FMLA leave, and to restore employees to their original job, or an equivalent job, upon conclusion of the leave.

The FMLA also prohibits employers from interfering with or denying the exercise of FMLA rights, and from discriminating against any person who either opposes a practice made unlawful by the Act or participates in a proceeding relating to the FMLA.

WHO IS COVERED?

"Eligible Employees" who are employed by:

- U.S. House of Representatives
- U.S. Senate
- Office of Congressional Accessibility Services
- U.S. Capitol Police
- Congressional Budget Office
- Office of the Architect of the Capitol
- Office of the Attending Physician
- Office of Compliance

WHO IS AN "ELIGIBLE EMPLOYEE?"

A "covered employee" who has been employed by any of the above employing offices:

- for 12 months, and
- for at least 1250 hours during the previous 12 months



BASIC LEAVE ENTITLEMENT

Employing offices must provide eligible employees with up to 12 weeks of unpaid leave for the following reasons:

- For the birth of a child and subsequent care for the child
- For the placement of a child with the employee for adoption or foster care
- To care for the employee's spouse, son or daughter, or parent who has a serious health condition
- For a serious health condition that makes the employee unable to perform his or her job

MILITARY FAMILY LEAVE ENTITLEMENTS

Eligible employees who have a spouse, son or daughter, or parent who is on active duty or call to active duty status in the National Guard or Reserves (or has been called from retirement in the Armed Services or Reserves) in support of a contingency operation are entitled to up to 12 weeks of unpaid leave for certain "qualifying exigencies."

Eligible employees are entitled to take up to 26 weeks of unpaid leave to care for a "covered servicemember" during a single 12-month period.



EMPLOYMENT AND BENEFITS PROTECTION

Job Restoration: Upon return from FMLA leave, an employee is entitled to be restored to his or her original job, or to an equivalent position with equivalent benefits, pay, and other terms and conditions of employment.

Health Insurance Benefits: An employing office is required to maintain group health insurance coverage for an employee on FMLA leave at the level and under the same conditions that coverage would have been provided if the employee had continued working.

BRINGING CLAIMS UNDER FMLA

Eligible employees may pursue claims for denial of or interference with FMLA rights, or for retaliation under the FMLA, pursuant to the CAA, through the Office of Compliance. For more information on other benefits, please visit our website at www.compliance.gov, and click on Your Rights.

ACCESSIBILITY IS TOPIC FOR EDUCATIONAL MEETING ON NOVEMBER 18, 2009

The OOC has announced that its quarterly educational meeting for employing offices on November 18, 2009 will feature speakers and presentations concerning the Americans with Disabilities Act (ADA) accessibility issues on Capitol Hill and other properties of the legislative branch. The meeting will examine the progress made in providing access to individuals with disabilities and will explore how to further improve accessibility for those who work in, visit, and obtain services from legislative offices. Look for a more detailed announcement regarding featured speakers and events. Save the date!

The ADA was enacted by Congress in 1990. In 1995, Congress extended ADA protections, via the Congressional Accountability Act, to individuals with disabilities who are employed by, visitors to, or receive services or accommodations from legislative branch offices.

The ADA essentially guarantees access to individuals with disabilities. Briefly stated:



Access MEANS eligibility. A person with a disability cannot be deemed ineligible for a service or accommodation because of the disability. For example, if an office usually provides a service to constituents, that service cannot be denied to a constituent with a disability because of the disability.



Access MEANS providing meaningful participation. A person with a communication impairment (such as limited hearing, seeing, or speaking abilities) must be furnished with an auxiliary aid if needed to provide meaningful participation by and interaction with the person. For example, furnishing constituent services to a deaf individual whose principal language is American Sign Language (ASL) will often require that an ASL interpreter be provided to facilitate face-to-face communication.



Access MEANS physical access. Physical access to an accommodation or a service will often require removal of structural barriers. Structural barriers can include manually operated doors, narrow doorways, stairs without ramps, sidewalks without curb cuts, and other obstacles to physical access. The regulations regarding removal of structural barriers are different depending upon whether the barrier exists in an existing building or in new construction. For the distinction, see the following section on structural barriers.



Access DOES NOT MEAN that the nature of a service must be changed for a person with a disability. For instance, if an office provides services to constituents residing within a particular voting district, the office need not provide those services to a person with a disability not residing in the voting district merely because he or she has a disability.

A primary focus of the ADA is to remove structural barriers. In existing buildings, removal of structural barriers is required if such removal is “readily achievable.” In new construction and when making alterations, facilities must comply with the requirements promulgated by the United States Access Board (<http://www.access-board.gov>).

For more information regarding this educational program or to find out how your office can participate, contact John D. Uelmen at 202-724-9247 or juel@loc.gov.

Your Rights and Protections Under the Congressional Accountability Act

The Congressional Accountability Act applies thirteen civil rights, labor, and workplace safety laws to the U.S. Congress and Legislative Branch employees and protects covered employees from reprisal and intimidation.

Access to Public Health

Section 210 of the CAA protects qualified individuals with disabilities from discrimination with regard to access to public services, programs, activities, or place 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 a disability. 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 Employment Opportunities

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 nonexempt employees, restrict child labor, and prohibit sex discrimination in wages paid to men and women.

Family and Medical Leave

Section 202 of the CAA applies certain rights and protections 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 certain rights and protections of the Worker Adjustment and Retraining Notification (WARN) Act to covered employees. This section of the CAA requires that employees must be given prior notice of an office closing or of a mass layoff. With limited exceptions, notice must be timed to reach the required parties at least 60 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.

Protection from Polygraph Testing

Section 204 of the CAA applies provisions of the Employee 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.

Uniformed Services Rights and Protections

Section 206 of the CAA applies certain 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.

Veterans' Employment Opportunities Act

Section 4(c) of the Veterans Employment Opportunities Act of 1998 (VEOA) applies some of the same rights and protections that are currently enjoyed by veterans in the executive branch to preference eligible employees in the legislative branch. As discussed previously in this Newsletter, implementing regulations await Congressional approval.

Genetic Information and Nondiscrimination Act

Section 207(c) of The Genetic Information Nondiscrimination Act (GINA) protects employees from employment discrimination and denial of health insurance based on that employee's genetic information.

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.



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 at 202-724-9292. All contacts are strictly confidential.



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