

# Congress: Ready or not?

## Legislators learn to comply with workplace laws

By LEON RUBIS

Like college students cramming for final exams, the nation's lawmakers have been studying the employment laws they've imposed on others. Their test starts Jan. 23—when the laws apply to them, too.

### LEGISLATION

"We are having endless briefings" with office managers, administrative assistants, staff directors and individual members, said Secretary of the Senate Kelly Johnston, whose 230-employee office is coordinating the Senate's response to the compliance law. The secretary's office manages many of the legislative and administrative services for the Senate and its 7,400 employees.

"There's been quite an educational process to bring everybody up to speed here as we rapidly approach D-Day," Johnston said.

Still, many legislators and top staff officials are "in denial," said House of Representatives Chief Administrative Officer Scot Faulkner, whose office has a lead role in preparing the House to comply. The Chief Administrative Office's (CAO) 670 employees perform a variety of operational and financial functions.



Photo by David Hathcox

House of Representatives Chief Administrative Officer Scot Faulkner demonstrates his office's home page on the Internet's World Wide Web.

"A lot of people on the Hill still do not see the full ramifications of what it will be like," said Faulkner. "Even though there's been a lot of information put out there, it's going to take a couple of cases before people realize that we've crossed into a very different world."

The new world was created by the first law Congress passed in 1995—promise No. 1 on House Republicans' "Contract with America." The Congressional Accountability Act obliges Congress to obey 11 employment laws it

was previously exempt from—including the Fair Labor Standards Act, Civil Rights Act, Americans with Disabilities Act and Family and Medical Leave Act. Most provisions take effect Jan. 23, with others phasing in over the next year. While the new law establishes mediation procedures for Hill staffers with grievances, congressional employers can now be sued for civil penalties specified in each act.

The law expands protections to about  
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## Congress learns fine points of timesheets, overtime pay

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25,000 employees on senators' and representatives' staffs, congressional committees and support agencies such as the Congressional Budget Office and Capitol Police.

Faulkner anticipates that most compliance difficulties will be in basic record-keeping and in documenting hiring, firing and promotion decisions. "Many offices are run very informally," he noted. In a culture where many jobs are rewards for campaign workers, "a lot of personnel decisions are made fairly quickly and sometimes, frankly, very arbitrarily."

The CAO has been training House staffers on the law's requirements, and writing a model personnel manual for other House agencies. After being approved by the House Oversight Committee, the manual may be offered as a model to representatives and committees.

### Hitting the books

The Society for Human Resource Management (SHRM), which lobbied heavily for passage of the law, has not abandoned the legislative branch in its hour of need.

SHRM involvement has been "critical from the get-go ... to help bring modern personnel management to the Hill," said Lawrence Lorber, an SHRM member and one of five directors of the new Office of Compliance created by Congress to enforce the law. The office is "administrator, regulator and adjudicator, but we're not the personnel office," said Lorber, an employment lawyer with the Washington, D.C., law firm of Verner, Lipfert.

SHRM staff and members have participated in briefings on employment law on Capitol Hill and at the Society's headquarters in Alexandria, Va. SHRM also hosted

a survey for Faulkner during December on its World Wide Web site. The survey sought advice from SHRM members on compliance training, techniques and costs; record-keeping; and effective methods to change the culture of an organization to assure compliance.

"We know there are best practices out there for everything that we are about to embark on," said Faulkner. "There are companies and organizations that have operated under these laws for years and never been cited."

SHRM also provided the Office of Compliance with complimentary copies of its Learning System software, a self-study course on a broad range of HR knowledge. And congressional visitors to the SHRM Information Center have copied armfuls of sample time sheets, job descriptions and other forms and reference materials.

"When you've never really had formalized personnel systems, it's going to be hard," said Lorber. "Every good-faith effort is being made on the Hill to get in compliance. But the problem is they are starting far behind; there's no institutional experience, for the most part, with this stuff."

"You're not dealing with people who come to Washington to become detailed administrative types," said Faulkner. "They're here to do policy; they're here to do constituent work. And so [we need to] draw upon existing best practices" with off-the-shelf forms and procedures proven in the workplace.

### Reading the fine print

But in their effort to be law-abiding citizens, there are limits to the help legislators will receive. When the Office of Compliance sought advice on regulations it should impose, SHRM and others argued that Congress is entitled to no more



Photo by David Hathcox

**HR ON THE HILL**—House of Representatives Chief Administrative Officer Scot Faulkner, left, hired Kay Ford, right, to direct a new human resources department. Bernard Beidel, center, director of employee assistance programs, is one of several specialists consolidated in the new department from other offices.

flexibility than the private sector (*HR News*, December 1995, p. 7). The office largely accepted that view in a series of proposed regulations it issued from September through December. The rules generally parallel Labor Department regulations for private employers, except for "limited modifications: Technical changes in nomenclature and deletion of those sections clearly inapplicable to the legislative branch."

At *HR News* press time, the office had not issued its final regulations, which Congress must vote on. If Congress does not approve final rules by Jan. 23, the law requires the most relevant rules for the private-sector to be used.

Congress did grant itself an exemption in the law to notice-posting and record-keeping regulations under the Fair Labor Standards Act (FLSA). Noting the exemp-

tion, the Office of Compliance wrote that these practices "promote the full and effective enforcement of these incorporated rights and protections ... [and] may well be in employers' interests both as a sound personnel practice and in order to defend against subsequent litigation." The office warned that employees disputing their overtime pay could establish a "prima facie" case if their employing office lacked accurate time records.

With their high staff turnover and frequent transfers, congressional offices especially need consistent practices for documenting time and attendance, believes Faulkner. The House will issue 22,000 W-2 forms for 1995, double the current total of 10,150 employees. Each month, about 500 employees go on and off the payroll, said Kay Ford, CAO associate administrator for human resources.

### Overtime costs

Revising payroll systems to track and pay hourly workers for overtime—as well as finding the funds for time-and-a-half wages—are major concerns on the Hill.

Johnston estimated overtime will cost the secretary's office \$400,000 this year, although its budget is 12.5 percent less than last year. The Congressional Budget Office previously estimated total congressional overtime costs at \$4 million to \$5 million a year.

Congressional staffs, who are paid monthly, work notoriously long hours when Congress is in session, but take off much of August and during other legislative recesses. However, the FLSA prohibits non-exempt employees from taking compensatory time, except during the week that overtime is worked.

"Obviously other companies have unique up-and-down work patterns," said Faulkner. "How do they do this within the law and how can we then take some of those as models?"

In December, most congressional offices were still pondering which employees to designate as executive, professional or administrative, and thus

## Congress turns to modern HR techniques

BY LEON RUBIS

In addition to meeting statutory requirements of the new Congressional Accountability Act, officials say they are professionalizing and modernizing human resources and administration in Congress.

The secretary of the Senate's office has hired the Hay Group consultants to evaluate its positions and compensation system and develop a compensation plan and philosophy, said HR Director Bud Grimm, a longtime SHRM member hired in 1995 as the secretary's first director of human resources. The office is also analyzing the demographic makeup of its workforce, and doing organizational development work such as training managers on effective one-on-one counseling for performance and disciplinary issues.

On the House side, Chief Administrative Officer Scot Faulkner rolled out a "Contract with Congress" soon after being hired on Jan. 4, 1995, by House Speaker Newt Gingrich. A former quality and change management consultant with Philip Crosby Associates Inc., Faulkner

has downsized the CAO from 1,100 to 670 employees by outsourcing, privatizing or abolishing some services and has updated some procedures and structures unchanged since the Continental Congress of 1776.

"We were given an expansive portfolio by the House leadership" to rethink operations and reinvent them using the best private-sector practices, Faulkner said.

### Card-carrying employees

To encourage a customer service focus, Faulkner held orientation sessions for his staff and distributed wallet cards with their new credo: "We are serving our country by serving our Congress. ... The House of Representatives deserves the best service in the world."

The CAO assembled a human resource department in 1995 with benefits, payroll, employee assistance and other specialists drawn from various House offices.

Bernard Beidel, director of the CAO Office of Employee Assistance, notes that his office serves a diverse workforce in a stressful environment with a lot of visibility and accountability. "They work in the ultimate fishbowl. That in and of itself

brings a stress level to working here that is very unique," the SHRM member said.

Another challenge is to link House offices with computer-age communication tools. Representatives have 3,000 employees in 1,500 district offices, and the top administrator for some representatives is in the home district, not in Washington.

To overcome the distances and provide timely information, the CAO is developing a home page on the World Wide Web (<http://www.house.gov/cao/welcome.html>). The office will also "seed" each representative's office with a computer equipped with a Web browser and communications software. Offices can then add other computers. The CAO also provides technical computer support for offices, which vary widely in their computer expertise.

The House Oversight Committee has provided policy guidance and approved the reorganizations, Faulkner said. "Almost every major action we've taken in the last 12 months has received bipartisan support by the Oversight Committee and—where its gone before the House—by members of the whole House."

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## Congressional compliance could hasten reforms

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exempt from overtime pay. One common job—legislative aides who track pending legislation—could be classified differently by different legislators. Some have more negotiating authority, post-graduate degrees in arcane specialties, or supervisory duties.

Lorber said an Office of Compliance handbook to be distributed to all employees will illustrate classifications for four or five common job functions, but the loose guidelines will not have the weight of a formal opinion or provide a safe harbor.

After final regulations are issued, Johnston said his office will likely help Senate offices decide which employees are exempt from overtime regulations. To help the Senate track hours worked, the secretary's disbursing office has created time and attendance software that is compatible with its existing financial management software. The secretary's legal counsel for employment was also drafting sample job descriptions for senators.

Although many people are "terrified of making a mistake," Johnston said, "everybody is extremely eager to cooperate with this law." Many hope it leads to reforms of employment laws.

"As we see what we have to comply with, it will force us to make a real-life evaluation of these laws," he said.

Already, FLSA reforms could be picking up steam. On Dec. 13, the House Workforce Protections Subcommittee passed a bill, H.R. 2391, that

would allow private-sector employers to offer compensatory time-and-a-half in lieu of overtime pay. (Other public-sector employees covered by FLSA now have this option.) The bill would let either the employer or employee opt for the monetary payment. Similar legislation is pending in the Senate.

#### Encouraging compliance

Come Jan. 23, Lorber expects an initial flurry of FLSA complaints, which could be expected to diminish as congressional employers gain experience. He also believes the law's new complaint procedures will effectively deal with alleged violations of employment laws. Eventually, the Office of Compliance will have a staff of 15-20, with counselors guiding employees and employers through mediation and arbitration with retired federal judges and other outside consultants.

The fact that many employees have personal and professional ties with members in their home districts might inhibit them from pursuing grievances, Faulkner acknowledged. But the routine scrutiny of legislators by voters and news media may be a heavy stick encouraging compliance. Disgruntled staff members could be a source of embarrassing news stories during reelection campaigns, he noted.

Longer term, Faulker foresees greater awareness of compensation issues as workers with similar jobs learn of pay disparities. A potential result is adoption of formal pay grades for Congress similar to those for civil service workers.

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*Leon Rubis is managing editor of HR News.*