



The Latest Word in Workplace Investigations

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Hot Topics in Workplace Investigations

- ❖ Who Investigates?
- ❖ Black Lives Matter-race/color/national origin investigations—Sensitivity for Investigators
- ❖ LGBTQ+-Sensitivity for Investigators
- ❖ Culture Investigations
- ❖ Respectful Workplace/Bullying
- ❖ Sham Investigations
- ❖ Defamation Claims
- ❖ Digital Evidence
- ❖ Elimination of Bias



High Profile/High Level Investigations

- ❖ External Investigators
- ❖ Board Oversight
- ❖ Public Statements

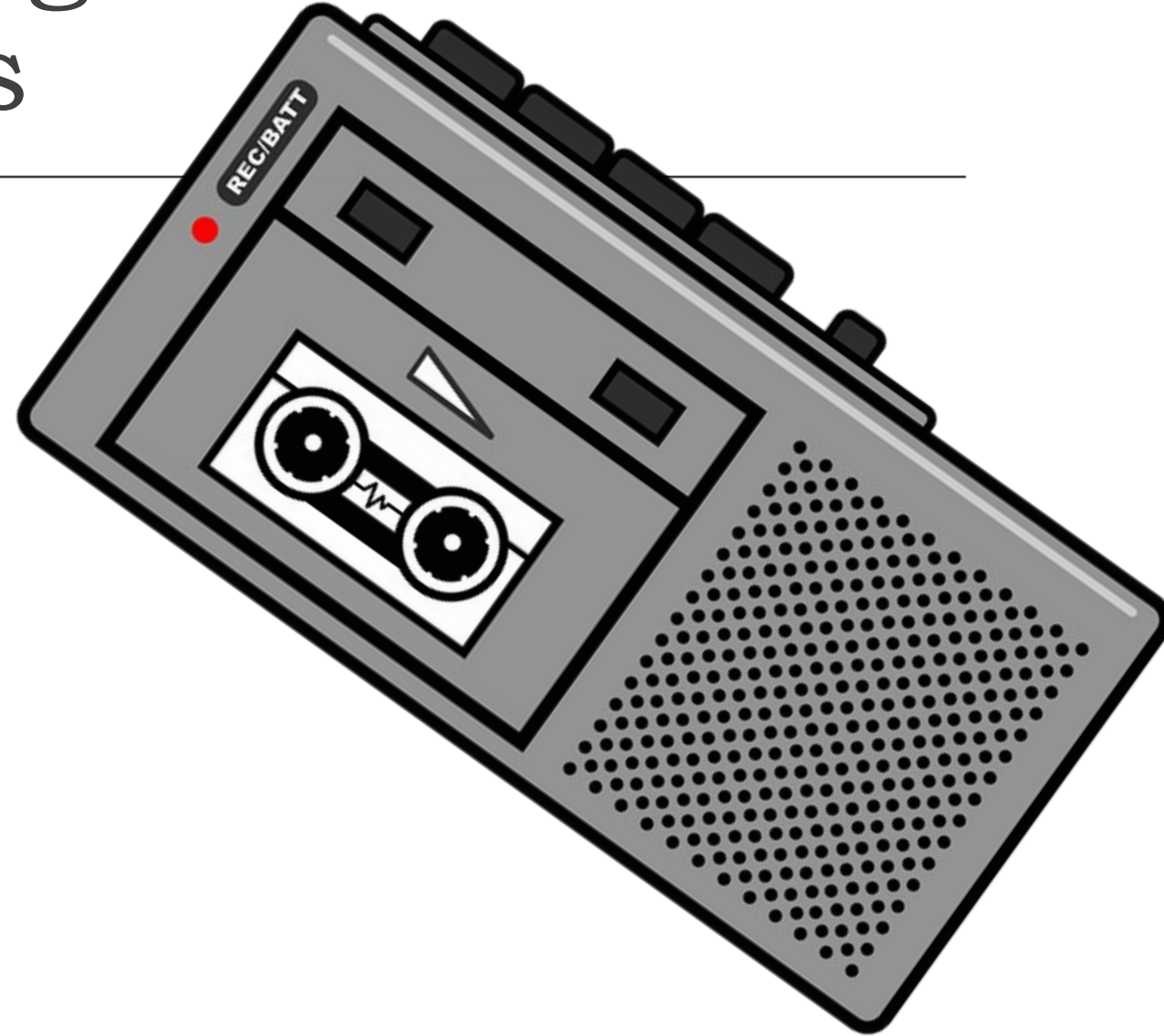
A black and white photograph of a woman with dark hair, wearing a white surgical face mask and a dark lace top. She is looking slightly to the right. The background is blurred.

Workplace Investigations & COVID-19

- ❖ Process-Video Interviews
- ❖ Location/confidentiality
- ❖ Documents-advance copy or screen sharing
- ❖ Respect and encouragement
- ❖ Technology is your friend, until it is not
- ❖ A word about body language

Workplace Investigations & Ethical Dilemmas

- ❖ Conflicts of Interest
- ❖ Interstate Investigations
- ❖ Recording of Interviews



Criminal Complaints

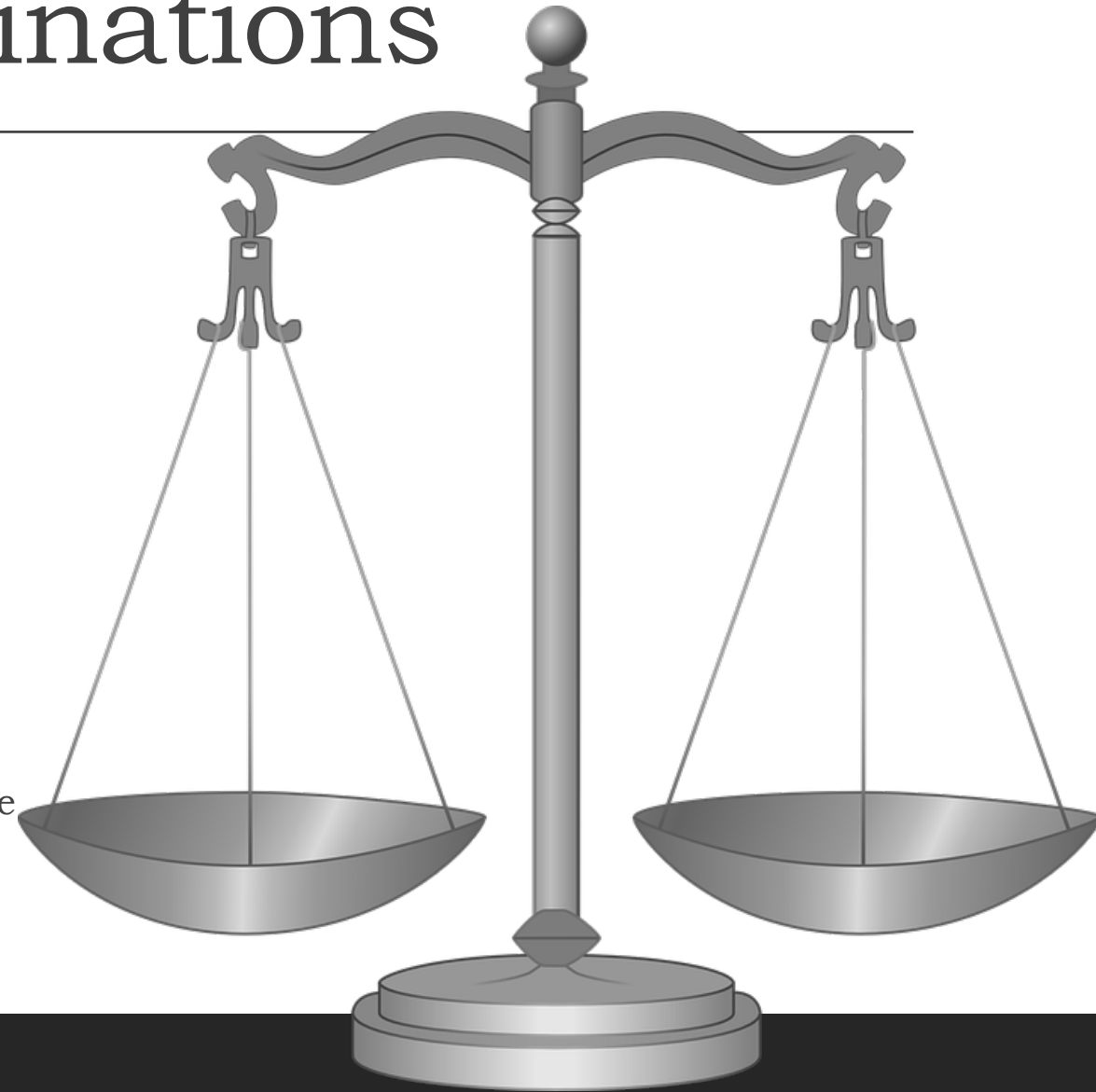
- Know the types of cases where criminal charges might arise (sexual touching to assault; voyeurism, porn, fraud & theft, workplace violence, stalking, public corruption)
- Public sector admonitions that might be required
- Know reporting requirements-mandated reporters
- Each case is different (status of criminal action; intersection of issues; existing policy; safety issues; potential for harm with delay; statutory obligations)
- Law enforcement may have a suggestion on whether to continue or stop
- Consider timing (law enforcement moves slowly) and cost (administrative leave)

Debriefing the Complainant

- ✓ **Inform the complaining party of the investigation and time frame**
- ✓ **Regular contact throughout the investigation**
- ✓ **After investigation, contact the complaining party on completion (done by appropriate leader, showing sensitivity, NOT by outside investigator)**
- ✓ **Inform the complainant, in general terms, of the results of the investigation (differing perspectives—not accusing complainant of lying)**
- ✓ **Inform the complainant what steps, if any, the organization will be taking as a result of the investigation (confidentiality of personnel actions)**
- ✓ **Thank the person who complained and, if necessary or appropriate, apologize for what happened**
- ✓ **Take appropriate steps to make complainant whole again (also consider offering counseling regardless of outcome)**
- ✓ **Reminder about retaliation and right of appeal**

Credibility Determinations

- Corroboration or Lack Thereof
- Opportunity & Capacity to Observe
- Consistent or Inconsistent Statements
- Past History
- Plausibility
- Bias
- Motive to Lie
- Reputation for Veracity or Deceit
- Demeanor—Controversial Factor that May Not be Reliable
- Manner of Responding to Questions





Report Writing

- ☐ Scope
- ☐ Process Used/Witnesses Interviewed/Timeline/Admonitions
- ☐ Executive Summary
- ☐ Facts For/Against
- ☐ Conclusion—Standard of Preponderance/More Likely Than Not
- ☐ Credibility
- ☐ Separate Witness Statements/docs reviewed
- ☐ Policies Considered
- ☐ What is Not Addressed—Beyond the Scope—Witnesses Not Interviewed

No man can hope to find out the
truth without investigation.

— *George F. Richards* —