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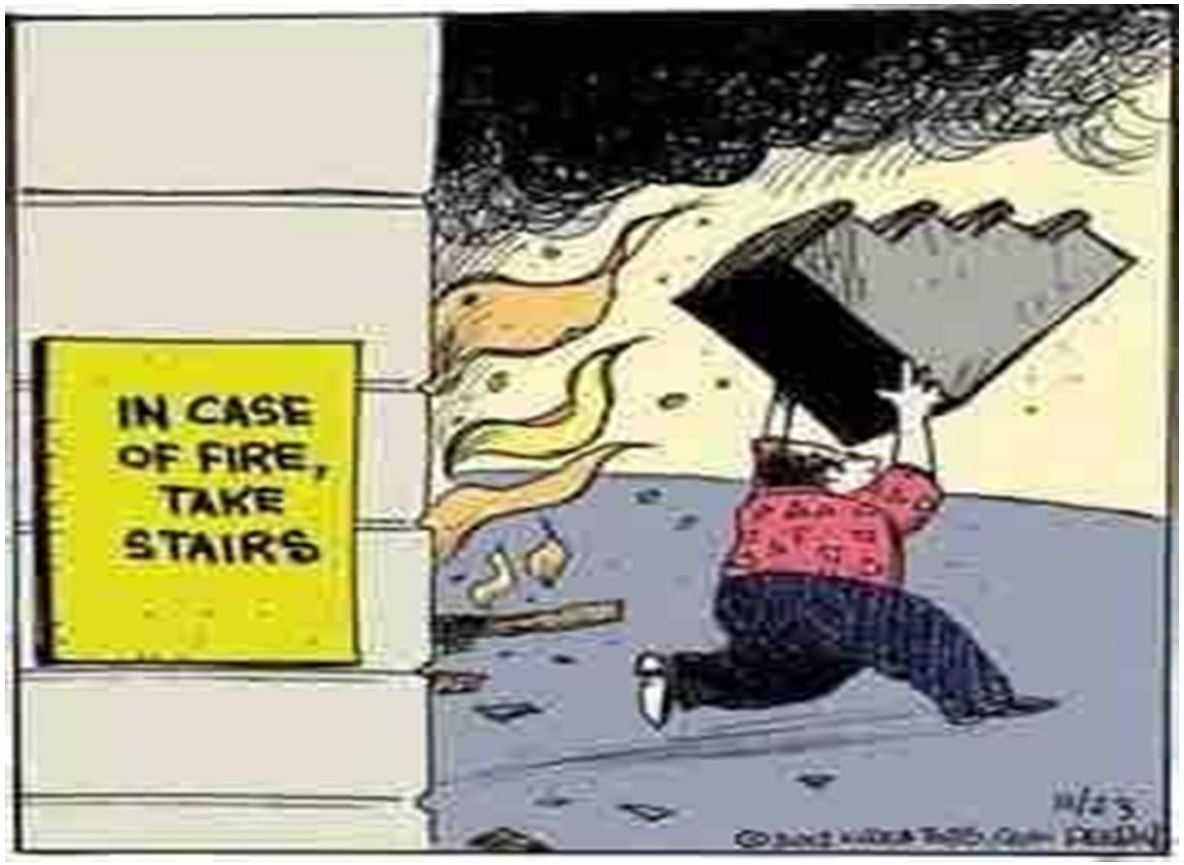
Fisher Phillips

JOINT TECHNICAL SYMPOSIUM

THURSDAY, OCTOBER 22, 2026

THE FIRST HOUR MATTERS: MANAGING A WORKPLACE FATALITY OR OTHER MAJOR SAFETY INCIDENT

Emergency Response and Risk Management



Emergency Response and Risk Management

Are you ready to handle a crisis?

Numerous safety precautions are taken on a day-to-day basis to ensure against the occurrence of safety or health mishaps at work sites. However, an extraordinary event may occur on a rare occasion, and then crisis management is needed.



Emergency Response Plan

- Evacuation, rescue, and recovery
- Notifications and compliance
- Secure scene and preserve evidence
- Family/survivor assistance
- Notification to insurance carriers
- Media interface
- Internal investigations and legal liability assessments
- External investigations
- Document control



Evacuation Plan and Rescue

- Rally points
- How to evacuate and account for employees
- How to report an emergency
- Procedures for those who remain for critical functions
- Procedures for rescue



Notification

- Company management
- Counsel
- Families of employee(s)
- Insurance Carriers
- Cal/OSHA District Office nearest to accident site (where reportable event)
- Other Government Agencies

Family Assistance

- Family notification and support should be a priority
- Should be part of Emergency Response Plan
- Be proactive when reaching out and understanding family wishes



Scene Preservation

- Securing and documenting the scene
- How do you preserve important evidence?
  - Photos
  - Videos
  - Measurements
  - Equipment
  - Witness names



Business Continuity

- What is your plan once the fire is out?
  - Regulatory agencies
  - Insurance
  - Worksite clean-up
  - Customers and other employers onsite



Media Coverage

- Local news coverage
- The Blame Game and other public fascination with tragedy
- Interaction with families
- Control the message
  - Should we issue a press statement preemptively or have one in the can?
- Social media
  - Does the company say anything on its account or respond to employees' social media posts?



Internal Investigations

Types

- Non-privileged and fully discoverable
- Privileged at the direction of in-house or outside counsel (attorney-client privilege/attorney work product)
- Dual-track investigations?



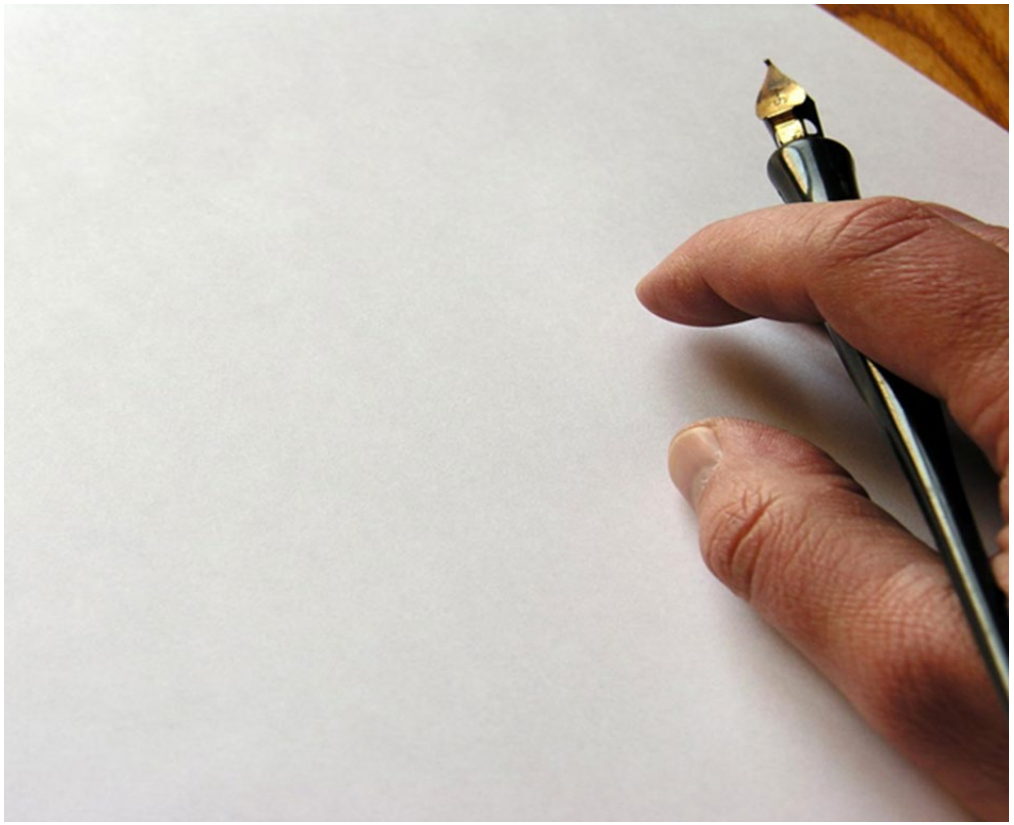
Objectives of Witness Interviews

- Determine cause
- Evaluate inconsistencies
- Prevent future accidents



Witness Statements vs. Interviews

- When?
- Who?
- What?
- How?
- Assess witness credibility?



Handling Documents in Investigations

- Documents that may result from an internal investigation:
  - Notes and minutes from meetings
  - Internal memoranda
  - Draft reports
  - Diagrams and drawings
  - Photographs and video
  - Expert and consultant correspondence and/or reports
  - Emails and texts



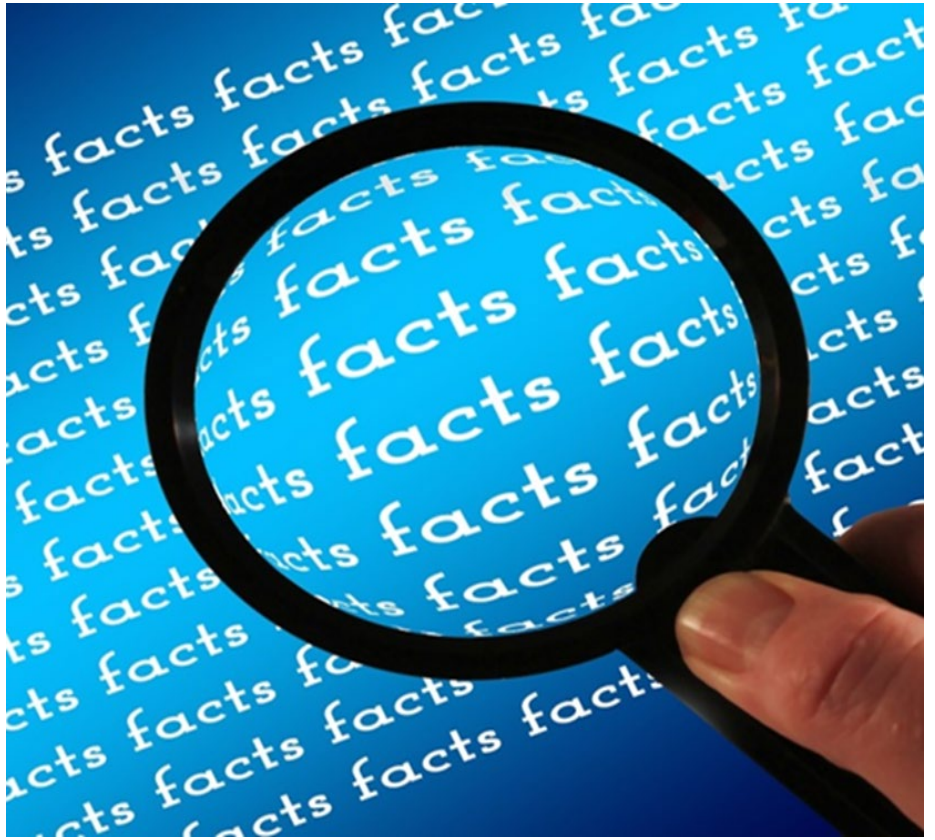
Rule of Thumb for Documents

- Anticipate litigation
- Consistency
- Avoid speculation



Internal Reports

- Think about the words being used
- Fact vs. opinion
- Beware of root cause trap



Internal Investigation Pitfalls

- Meetings
- Notes
- Assigning fault
- Reports/conclusions
- Incomplete statements
- Reenactments, equipment testing, etc.
- Consultation with equipment manufacturers



External Investigations

- Cal/OSHA enforcement
- Cal/OSHA Bureau of Investigations (BOI)
- Other Agencies such as DOL, Labor Commissioner, local fire dept, or CDPH/FACE
- Attorneys for deceased worker's heirs
- Manufacturer Representative



Cal/OSHA Employees Interviews

1. Voluntary
2. Private
3. Company management rep (attorney) should participate in interviews of managers, supervisors and leads
4. On rare occasion, may consider separate attorney(s) for non-management employees involved in the incident
5. Early on consider whether criminal defense counsel is needed



BOI Now Has More Prominent Role: AB 231 (Eff. 1/1/27)

- Expands Triggers for Mandatory BOI Investigations
  - BOI shall promptly investigate a worker fatality or serious injury/exposure affecting 5+ employees
  - BOI must review inspection reports involving a serious violation and serious illnesses of 1 to 4 employees (in addition to serious injuries and exposures), and **“shall promptly investigate”** those cases where BOI finds criminal violations
  - BOI “shall” investigate any accident involving a serious injury, illness, or exposure where Cal/OSHA issues a willful violation

BOI Now Has More Prominent Role: AB 231 (Eff. 1/1/27)

- Strengthens collaboration with local prosecutors
  - BOI must notify the "appropriate prosecuting authority" (i.e., local DA) as soon as it learns of a death, or serious injury, illness, or exposure to 5+ employees
- Makes resisting requests in a Cal/OSHA investigation a misdemeanor offense

Inspection of Records

- Agency requests
- Voluntary production to carrier or third parties
- BOI subpoenas



Establish a Document Control System

- Designate document control associate
- Keep required documents in a central location
- Number and index all documents
- Maintain originals
- Limit the number of copies for distribution of privileged materials



Site Inspections

- Scheduled Agency Visits
- Other Employers
- Agencies
- Insurance companies
- Third Parties



Avoiding Spoliation of Evidence

- Maintain chain of custody records
- Preserve incident videos
- Inspection of machinery
  - Develop protocols for inspecting machinery
  - Make sure employer expert is present
  - Require inspection agreement with ground rules



Liability Assessment

- Liability issues:
  - Employer’s general protection under the state workers’ compensation exclusivity provision
  - WC Serious and Willful claims
  - Tort liability for non-employees
  - Product liability claims
  - Contractual agreements
  - Criminal exposure



Attorney Work Product Privilege

- Designed to protect an attorneys' "work product" prepared in anticipation of litigation
- Does not apply to documents prepared in the routine course of business



Key Points

- Have Emergency Response Plan in place
- Ensure personnel understand their roles under the Plan
- Access to notification numbers
- Involve legal counsel early on
- Be aware of media attention
- Communicate with employees and others involved in the incident and its aftermath



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QUESTIONS?

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THANK YOU