

Workplace Investigations: Tips from the Trenches

TUESDAY, SEPT 17, 2024 | 12:00 PM – 1:00 PM

THANK YOU FOR JOINING US!



Host & Moderator

MELISSA KUEHNE
Senior Program Manager
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WEBINAR OVERVIEW

Welcome & Introductions

Presentation on Workplace Investigations

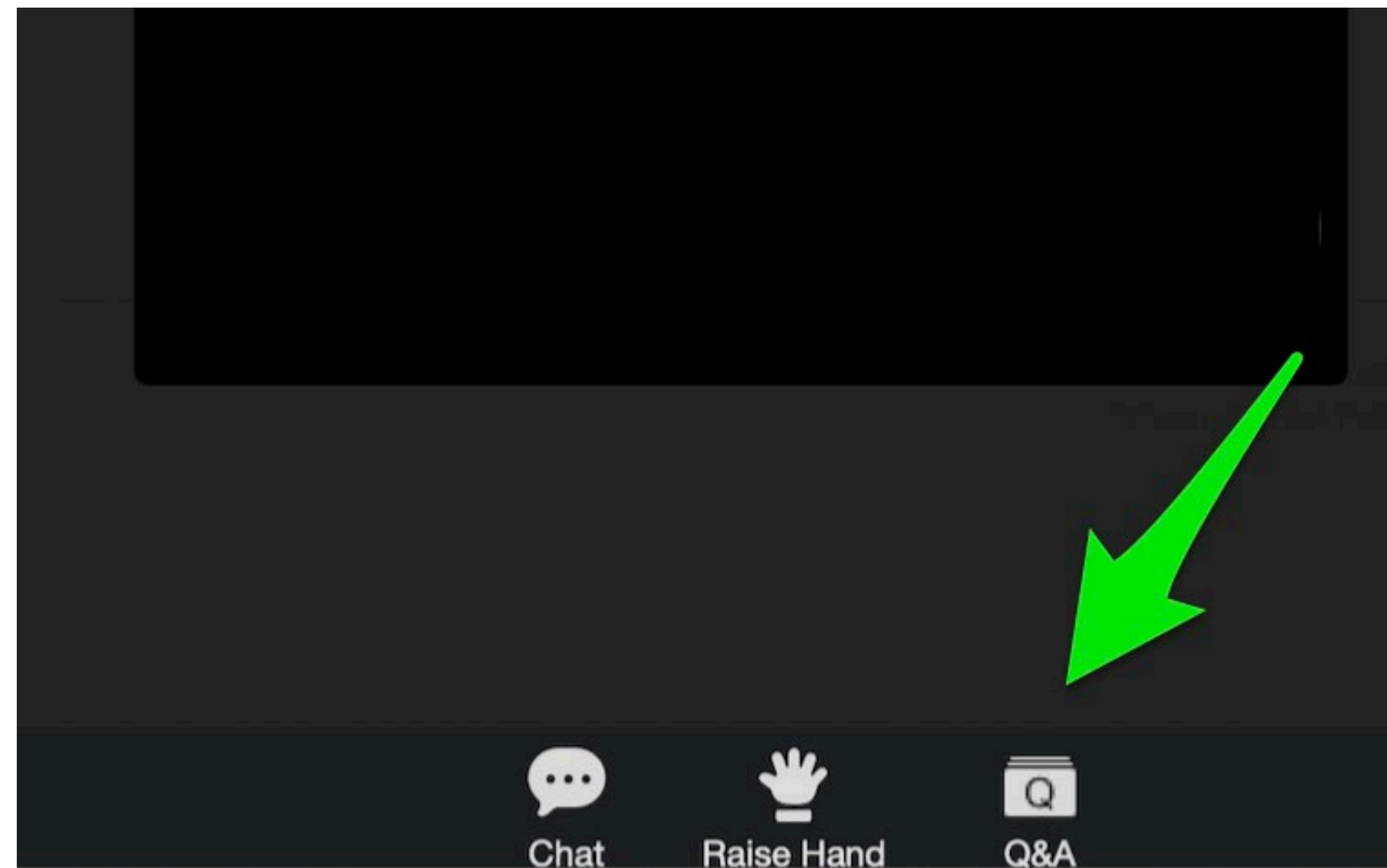
Audience Q&A

Wrap Up & Adjourn

We welcome your written questions and comments in the Q&A throughout the webinar

TECH OVERVIEW & HOUSEKEEPING

- All webinar participants will be on **MUTE** for the duration of the event.
- Please type any questions for into the **Q&A BOX** at any time during the session.



- A recording of the session will be available shortly after the webinar.

ABOUT ILG

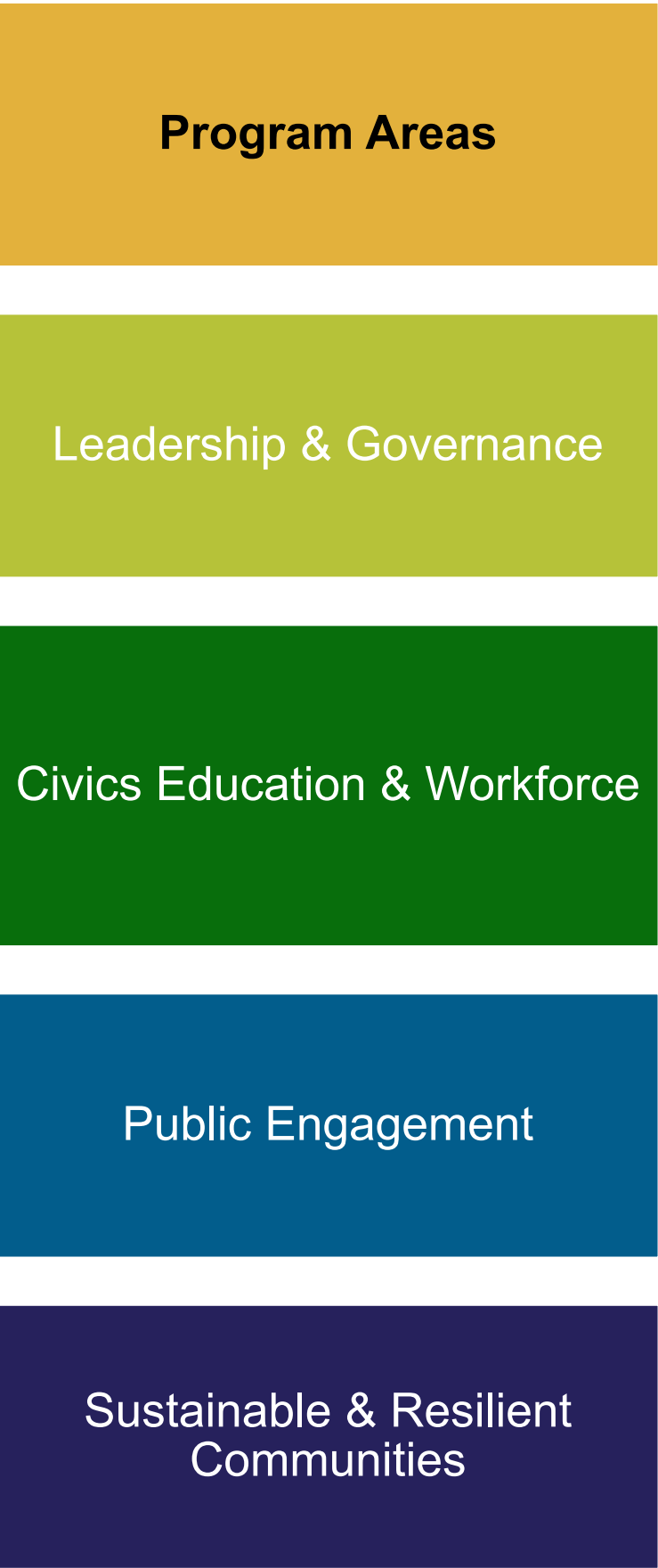
NON-PROFIT, NON-PARTISAN AND HERE TO HELP

- The Institute for Local Government is the non-profit training and education affiliate of three statewide local government associations
- Together with our affiliates, we serve over 2,500 local agencies – cities, counties and special districts
- We provide practical and easy-to-use resources so local agencies can effectively implement policies on the ground



**California Special
Districts Association**
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ILG'S PROGRAMS AND SERVICES



Our mission is to help local government leaders **navigate complexity, increase capacity & build trust** in their communities

TODAY'S PRESENTER



SCOTT TIEDEMANN
Managing Partner
Liebert Cassidy Whitmore

Agenda

- What to Investigate
- Selecting the Investigator
- Investigation Reports
- After the Investigation



What to Investigate



The Type of Allegations

- 1. Alleged or suspected harassment, discrimination, or retaliation must be PROMPTLY investigated**
- 2. Complaints or reasonable suspicion of employee misconduct or rule violations**
 - *The form of the complaint does not matter*
 - *Rumors and observations can place an employer on notice*
 - *Consequences of failing to investigate*

Scenario #1

- Employee Edward works for the City of XYZ and has received marginal performance evaluations the past 2 years
- Edward knows that another evaluation is coming up
- Manager Mike is planning on letting Edward go, but before he can begin the process, Edward goes to Mike's superior and tells them Mike has made racially insensitive remarks to him

Selecting an Investigator



Who Can Investigate in California?

- A licensed private investigator (Bus. & Prof. Code [BPC], sec. 7520-7539)
- An attorney at law “performing his or her duties as an attorney at-law” (BPC, sec. 7522)
- An internal investigator: a person engaged exclusively and regularly by any employer who does not provide contract security services (BPC, sec. 7522); examples include HR, Management

Selection Guidelines for Investigators

- Employment level of investigator
- Credibility of investigator
- Training/experience
- Time constraints
- Political concerns (e.g. public visibility of accused)
- Personality/strengths of investigator
- Impartiality
- Report-writing ability
- Video interview experience and comfort level
- Location and hourly rates (if outside)

Scenario #2

- Manager Mark has overheard rumors of a petty squabble between employees Rita and Larry
- Larry and Rita are co-workers and have the same job duties, but Rita believes Larry gets more praise and better assignments than her
- In response, Rita has singled out Larry and has started making inappropriate comments about Larry's national origin to other employees
- When Larry heard about this, he started calling her "Retaliation Rita"
- Months later, Employee Fred went to Mark and complained about Rita's inappropriate discussions about Larry with him and other employees

Scenario #2 – Question

- **Should Mark hire an outside investigator?**

Keys to an Effective Investigation



Where Should You Start?

Basic Steps:

1. Interim Measures?
2. Interview the parties:
 - a) The complaining party
 - b) The accused
 - c) Relevant witnesses (not necessarily in that order!)

Where Should You Start? (Cont'd)

3. Do the other work to collect relevant facts, including:
 - a) Reviewing relevant documents
 - b) Reviewing surveillance footage

What Does a Fair Investigation Look Like?

1. Confidentiality: Cannot Promise or Require Complete Confidentiality
2. Promptly Start & Conclude Investigation Balanced by Fairness to Parties & Need to be Thorough
3. Type of Questioning
 - Open-ended
 - No interrogation/cross-examination

What Does a Fair Investigation Look Like?

4. Making Credibility Determinations – Nine Credibility Factors
5. Burden of Proof: Preponderance of the Evidence
6. Documentation of Witness Interviews, Investigation Steps and Findings
7. The California Department of Civil Rights Harassment Prevention Guide

Conducting Witness Interviews

- Inform interviewee that interview is being recorded
- Ask open-ended questions (understand, don't just confirm)
- Give opportunity to fully explain answers, and follow up
- Don't forget "wrap-up" questions
- Avoid commentary on evidence, discipline, etc.
- Avoid legal or conclusory language (e.g. "harassment" or "victim")
- Maximize confidentiality, but don't guarantee it
- Do not promise specific results or involve yourself in the case

Scenario #3

- Employee alleged that Caltrans did nothing to prevent and even allowed a Caucasian employee to taunt Hispanic employees with a “White Privilege” card
- When the Employee complained, he was told “Deal with it. This is the way Caltrans is and always will be.”

Scenario #3 – Question

- *If you were a manager and this employee came to you, who else would you want to speak with?*
- *Do these allegations require an outside investigator?*
- *What should witnesses know before being interviewed?*

What Happens When the Investigation Is Over?



Investigation Results

- If the allegation(s) are sustained
 - Who needs to know and when?
 - Report to complaining party?
- Remedial actions should reflect the type, severity, and prevalence of the misconduct
 - Discipline, Training, Verbal/Written Counseling, Last Chance Agreements
- Investigation Disclosure
 - Unions, Media, Advocacy Groups
 - Consider the privacy rights of individuals involved

Thank You!

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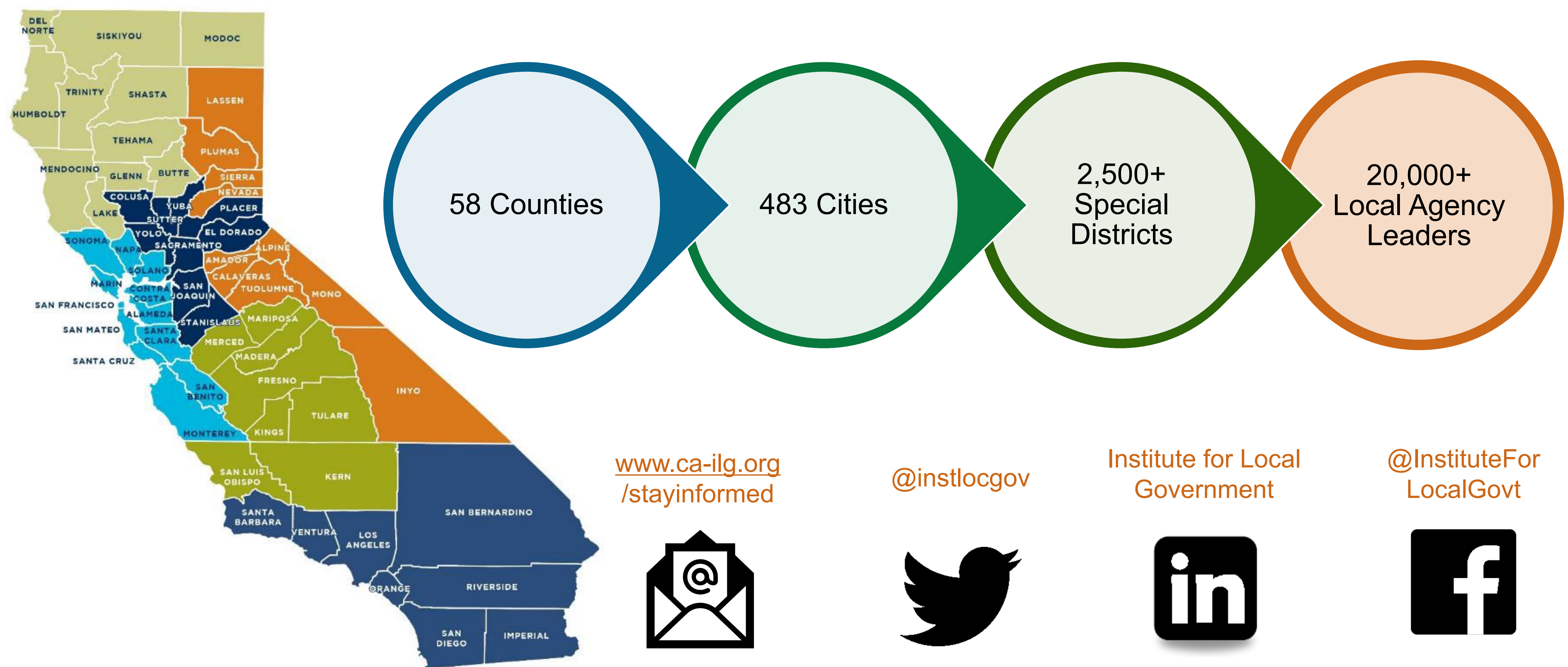
LIEBERT CASSIDY WHITMORE

AUDIENCE Q&A

What questions or comments do you have for us?



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RECORDING AVAILABLE SOON



The recorded presentation and materials will be shared electronically with all attendees a few days after the webinar.



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