

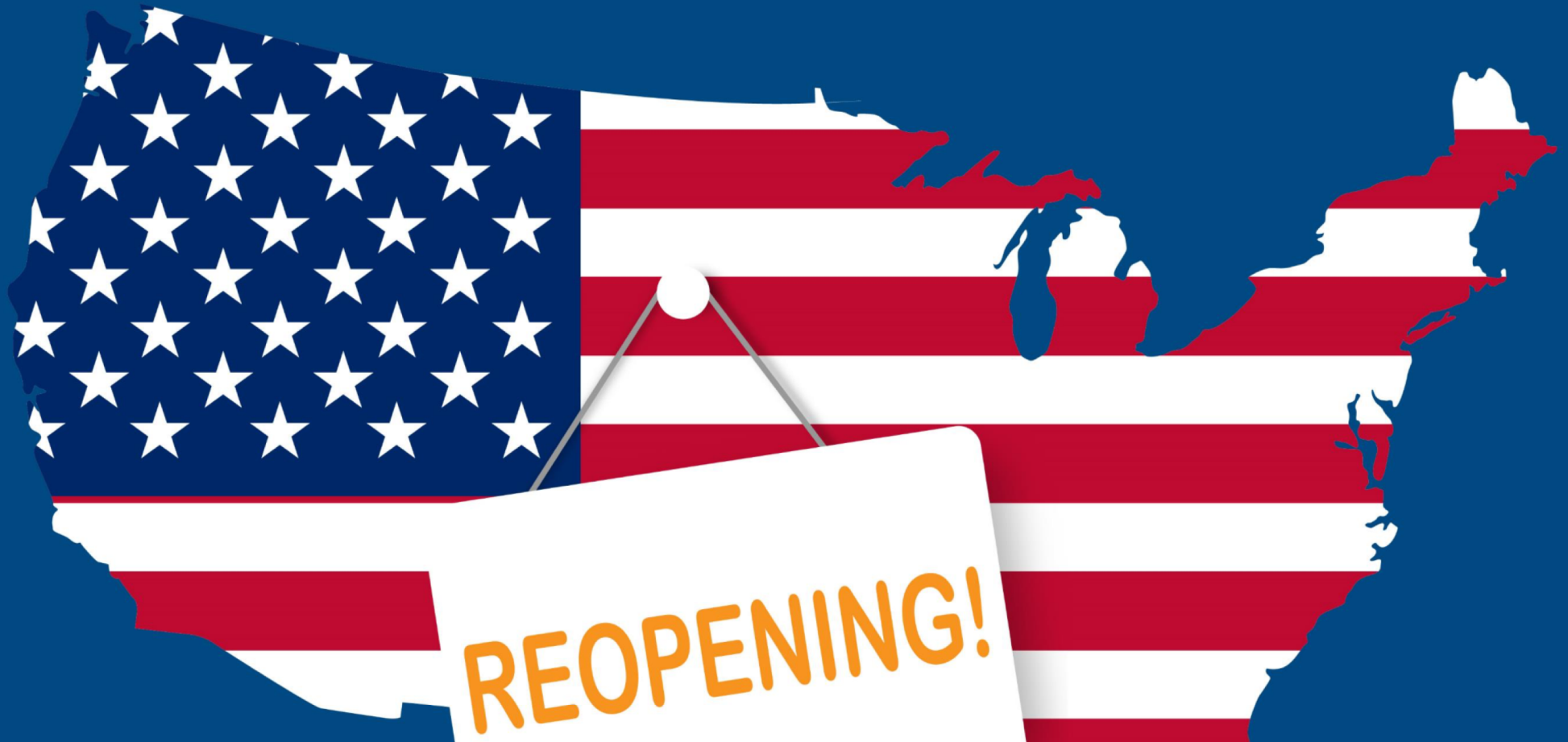


# Legal Risks Resulting from New OSHA Guidance

What All Employers Need to Know for Reopening Businesses

**THIS WEBINAR WILL  
BEGIN SHORTLY**

Wednesday, May 28, 2020



# Legal Risks Resulting from New OSHA Guidance

What All Employers Need to Know for Reopening Businesses

**WELCOME**

Wednesday, May 28, 2020

# Today's Panel



**Julia Judish**

Special Counsel | Washington, DC  
julia.judish@pillsburylaw.com  
+1.202.663.9266



**Stephanie Angkadjaja**

Associate | Los Angeles  
stephanie.angkadjaja@pillsburylaw.com  
+1.213.488.3623

**Moderated By**



**Amanda Halter**

Partner | Houston  
amanda.halter@pillsburylaw.com  
+1.713.276.7665



# Today's Topics



Julia  
Judish



Stephanie  
Angkadjaja



Amanda  
Halter  
Moderator

- When and how employers must investigate whether an employee's COVID-19 diagnosis resulted from workplace exposures.
- Implementing monitoring of employee illness outcomes, including recording and reporting requirements.
- Liability risks arising from the new guidance.



# Overview of Guidance



Julia  
Judish



Stephanie  
Angkadjaja



Amanda  
Halter  
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## Employer industry and size affects obligations:

**Non-exempt with more than  
10 employees:**

- **Recording and Reporting requirements**
- **Must investigate whether any employee COVID-19 diagnosis is work-related**

**Partially exempt or  
10 or fewer employees:**

- **Reporting requirement**
- **Must investigate whether COVID-19 diagnosis is work-related only for hospitalizations or deaths**

# Overview of Guidance



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- If COVID-diagnosed employee has been in workplace:
  - Employer must make “**reasonable and good faith inquiry**”
  - Record and/or report to OSHA if “**more likely than not** that exposure in the workplace **played a causal role**” in employee’s confirmed case of COVID-19 illness

# Investigation Protocols



Julia  
Judish



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- **Must monitor employee absences:** positive tests trigger investigation requirement
- **Investigate work-relatedness:**
  - Ask employee about possible causation, outside activities
    - Discussion most useful before employee hospitalized
  - Review work environment, other employee diagnoses

# Investigation Protocols



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- **ADA medical privacy** rules still apply
- **OSHA General Duty** also applies:
  - Notify co-workers of potential exposures
  - Cleaning and/or closure of workspace

# OSHA COVID Guidance Decision Tree



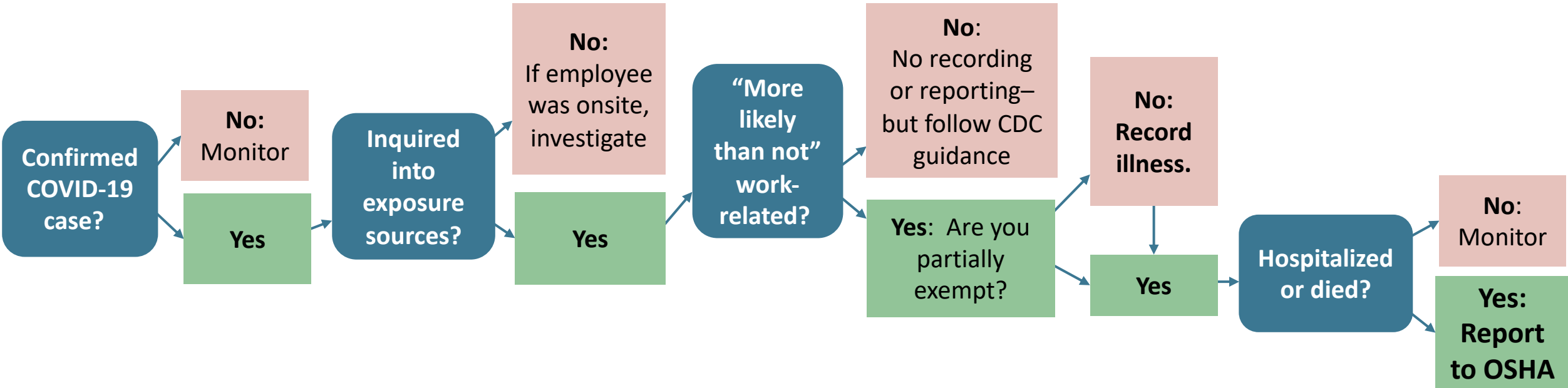
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# Liability Risks



Julia  
Judish



Stephanie  
Angkadjaja



Amanda  
Halter  
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- Civil penalties for *reporting and recording violations*
- OSHA inspections after 2 hospitalizations or 1 fatality: civil and criminal penalties for some *safety violations*
  - Challenges of enforcing employee compliance with protocols
  - Employer causation determination as evidence in lawsuits?



# Thank You

Review Pillsbury's [Client Alert](#) for more information.

For questions about today's content, please contact:

**Julia Judish**

*judia.judish@pillsburylaw.com*

**Stephanie Angkadjaja**

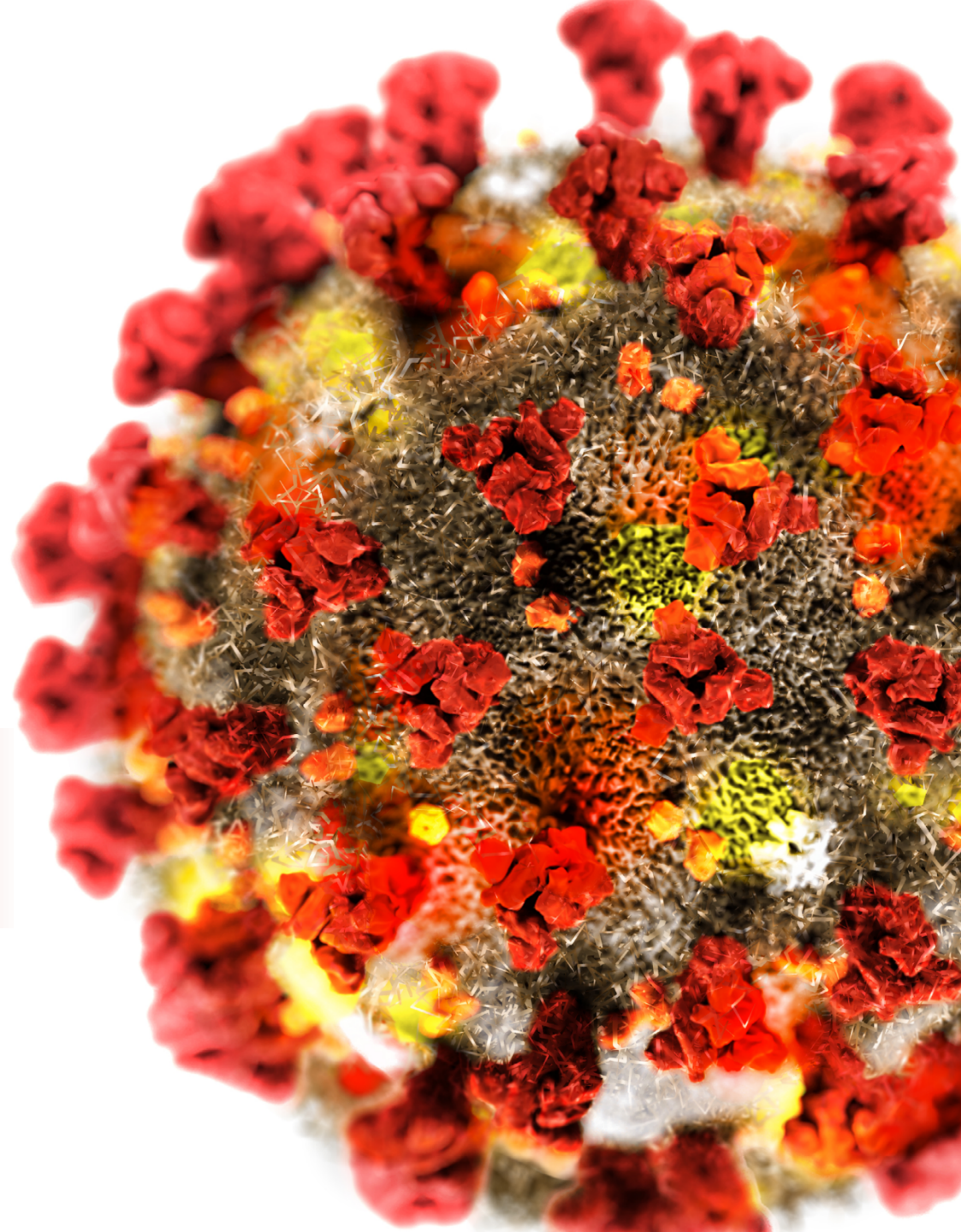
*stephanie.angkadjaja@pillsburylaw.com*

**Amanda Halter**

*amanda.halter@pillsburylaw.com*

Or visit our COVID-19 Resource Center:

[pillsburylaw.com/covid19](https://pillsburylaw.com/covid19)



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