

Lana Ros Quoted in Article on Nurse's Refusal to Take Scrubs Home to Launder during Pandemic

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Svetlana (Lana) Ros, chair of the Health Care practice at Pashman Stein Walder Hayden, was quoted in a *Relias Media* webpage article, "Nurse in Jeopardy for Refusing Hospital's COVID-19 Policy on Scrubs." The article discusses a Minnesota nurse's refusal to follow his hospital's policy on taking scrubs home and laundering them, due to the risk of spreading the coronavirus by taking scrubs home. The hospital fired the nurse, who is alleging whistleblower retaliation.

A pertinent question is whether the hospital used this policy before the pandemic or enacted it as a response, says Svetlana Ros, JD, partner with Pashman Stein Walder Hayden in Hackensack, NJ. Scrubs can be considered personal protective equipment (PPE), she says, and employers are responsible for providing and cleaning PPE.

"If they changed it because we were in the midst of a pandemic, I think that weakens their case," Ros says. "The question becomes whether they are considered PPE. OSHA generally says you can make your employees launder their scrubs, but there is a caveat that says 'unless the uniform or scrub has not been properly protected or become contaminated.'"

Ros says the nurse could reasonably argue the scrubs are contaminated and the employer is responsible for laundering. She wonders if the hospital provides disposable gowns to wear over the scrubs, or any other mitigating factor that would work in the hospital's favor to say the scrubs were not contaminated.

"In general, you can't leave [the facility] in your scrubs. Unless there's a way to claim they are not contaminated, the hospital has more exposure because they are shifting their own responsibility to the employee," Ros explains. "The nurse is facing a difficult situation

because even if he may have been in the right, the licensing board may focus more on his character and whether his behavior was appropriate, not necessarily whether he was right or wrong.”

The whistleblower retaliation is a serious allegation for the hospital, but it could defend itself by showing the firing was the result of multiple documented instances of refusal to follow hospital policy, Ros says.

“I would imagine a good labor and employment attorney might be successful and will definitely test the bounds of the whistleblowing statute,” Ros says.”

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