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## Legal experts offer guidance to managers on employment issues

By **BENNETT LOUDON**  
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If one of your employees shows up for work drunk, you can fire them. But if they tell you they're an alcoholic, you'll probably have to offer them a chance to get help for their addiction because alcoholism is a protected disability under the Americans with Disabilities Act of 1990.

If you ask an employee to work on short notice, even if you only need them for two hours, you have to pay them for at least four hours. But you can schedule an employee in advance to work less than four hours and you only have to pay them for the time worked.

And if unpaid interns do even the tiniest bit of work that benefits an employer, they must be paid.

Those are just a few examples of the expert advice offered by three lawyers from the Underberg & Kessler law firm Friday at the Greater Rochester Chamber of Commerce, 150 State St., during the hour-long presentation called Hot Topics in Labor and Employment Law.

The presenters were Underberg & Kessler partners Paul F. Keneally and Jennifer A. Shoemaker, and associate attorney Alina Nadir.

The audience of about 25 human resources professionals from businesses and organizations throughout the Rochester area got a quick review of more than a dozen topics.

**Transgendered employees:** Nadir pointed out that in January New York



Paul Keneally, a partner with Underberg & Kessler, speaks during the Hot Topics in Labor and Employment Law presentation at the Greater Rochester Chamber of Commerce on March 18.

state regulations went into effect to protect transgender employees from discrimination. And the protections extend to gender dysphoria --- a situation where a person feels they are not the gender they appear to be physically.

"The EEOC has actually been more active in pursuing sex orientation claims," Nadir said.

**ADA:** Nadir also explained that employees should be proactive when an employee has an obvious disability, even if the employee has not acknowledged it.

It's a sensitive topic that can be difficult to address. While employers have a duty to reasonably accommodate a disability, they should not ask an employee about it until there is an issue that caus-

es the disability to effect the employee's ability to do the work, Nadir said.

For example, Keneally said a client employer had an employee who was diagnosed with cancer and was undergoing chemotherapy and radiation treatment, but she never directly revealed her condition to her employer, she didn't miss work and her performance remained excellent.

But during a conference call, when the employee was working outside the office, her employer could hear background noise that clearly revealed she was in a hospital receiving treatment. Because of her location, the employee said she was unable to check her email as requested during the call, and that

limitation on her ability to perform her duties gave the employer an opening to discuss the problem and work out an accommodation, even though she tried to keep her medical condition to herself.

**Cyber security:** Shoemaker told the audience cyber security breaches are becoming common in workplaces and employees are the weakest link in the computer security system.

It's not unusual to find an employee's username and password on a Post-it note stuck to the edge of a computer screen in many offices. And many employees now use their personal cell phones, laptop computers and other electronic devices for work, which means their employer's data may be vulnerable if the security on those devices, which the company has little control over, is inadequate.

Shoemaker posed the question: "Do they know what to do if their device is lost or stolen?"

All electronic devices should be password protected and employees should change passwords frequently.

"It's so easy to look over someone's

shoulder and figure out what their password is," Shoemaker said.

But Keneally noted that it's virtually impossible to make your electronic systems 100 percent impenetrable. But your defenses should be at a level considered "consistent with your industry and your competition."

"You need to see where you fit on that range," he said.

Health care operations, for example, with lots of very personal information about clients, will likely require some of the highest-level protections, while a restaurant business usually won't need as much.

"Make sure you think about it. You can't just say I've got a 15-person business, I don't need to do that," Keneally said.

**On-call shifts:** Schoemaker reminded the audience that the New York State Attorney General's Office is "taking a close look at policies requiring workers to be ready to report to work if necessary."

Forcing employees to be ready to re-

port limits their ability to make plans in their personal life. Even answering work-related emails or phone calls after hours "are situations where employees need to be paid."

But employers can establish policies prohibiting workers from dealing with emails and calls after hours and discipline employees who do so, although the employee must still be paid for that time.

**Paid family leave:** New York state's proposed paid family leave law won't be limited to companies of a certain size.

"This one opens everybody up to paid leave," Shoemaker said.

The proposed law would start on April 15 with a weekly paycheck deduction of 60 cents. Leave would start in 2018 with a benefit of 35 percent of the average New York state wage, which is currently \$1,266. In 2021, the weekly deduction would increase to \$1.09 and the benefit would increase to half the state's average weekly wage.