



Legislation Text

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By Council Members Lander, Brannan, Reynoso, Powers, Menchaca, Levine, Levin, Kallos, Maisel, Cabrera, Rivera, Rosenthal, Ayala, Gibson, Grodenchik, Van Bramer, Cumbo, Perkins, Chin, Ampy-Samuel, Salamanca, Adams, Dromm, the Public Advocate (Mr. Williams), Moya, Treyger, Koslowitz, Eugene, Barron, Rose, Rodriguez and Louis

A Local Law to amend the administrative code of the city of New York, in relation to prohibiting on-call scheduling for utility safety workers and providing advance notice of work schedules to utility safety workers

Be it enacted by the Council as follows:

Section 1. Title 20 of the administrative code of the city of New York is amended by adding a new chapter 14 to read as follows:

CHAPTER 14

UTILITY SAFETY WORKERS

§ 20-1401 Definitions. For purposes of this chapter, the following terms have the following meanings:

Director. The term “director” means the director of the office of labor standards established pursuant to section 20-a of the charter.

Office. The term “office” means the office of labor standards established pursuant to section 20-a of the charter.

On-call shift. The term “on-call shift” means any time period other than a utility safety employee’s regular shift when the utility safety employer requires the utility safety employee to be available to work, regardless of whether the utility safety employee actually works and regardless of whether the utility safety employer requires the utility safety employee to report to a work location.

Regular shift. The term “regular shift” means a span of consecutive hours starting when a utility safety employer requires a utility safety employee to report to a work location and ending when the utility safety employee is free to leave a work location. Breaks totaling two hours or less are not an interruption of consecutive hours, provided that such breaks do not include time when the utility safety employee’s work location is closed. The term “regular shift” does not include the hours worked by a utility safety employee who is called into work while on an on-call shift.

Underground facilities. The term “underground facilities” means pipelines, conduits, ducts, cables, wires, manholes, vaults or other such facilities or their attachments, that have been installed underground to provide services or materials, including electricity, gas, water, steam liquid petroleum products, telephone communications, cable television, sewage removal or traffic control systems.

Utility safety employee. The term “utility safety employee” means any person who is employed within the city and who performs work on a full-time or part-time basis, and whose job duties include locating and marking underground facilities. The term “utility safety employee” does not include any person who is employed by (i) the United States government; (ii) the state of New York, including any office, department, independent agency, authority, institution, association, society or other body of the state, including the legislature and the judiciary; or (iii) the city or any local government, municipality or county or any entity governed by section 92 of the general municipal law or section 207 of the county law.

Utility safety employer. The term “utility safety employer” means any person or entity that employs a utility safety employee. The term “utility safety employer” does not include (i) the United States government; (ii) the state of New York, including any office, department, independent agency, authority, institution, association, society or other body of the state including the legislature and the judiciary; or (iii) the city or any local government, municipality or county or any entity governed by section 92 of the general municipal law or section 207 of the county law.

Work schedule. The term “work schedule” means the regular shifts and on-call shifts that a utility safety

employer assigns to a utility safety employee and includes the dates, times and locations where the utility safety employer requires the utility safety employee to work.

§ 20-1402 On-call scheduling prohibited. a. Except as otherwise provided by law, a utility safety employer shall not:

1. Schedule a utility safety employee for any on-call shift;
2. Cancel any regular shift for a utility safety employee within 72 hours of the scheduled start of such shift;
3. Require a utility safety employee to work with fewer than 72 hours' notice, unless the utility safety employee consents in writing; or
4. Require a utility safety employee to contact a utility safety employer to confirm whether or not the utility safety employee should report for a regular shift fewer than 72 hours before the start of such shift.

b. Notwithstanding subdivision a of this section, a utility safety employer may:

1. Grant a utility safety employee time off pursuant to a utility safety employee's request;
2. Allow a utility safety employee to trade shifts with another utility safety employee; and
3. Make changes to utility safety employees' work schedules with less than 72 hours' notice in the following circumstances:

(a) The disruption or failure of public utilities that poses an immediate danger to public safety or health;

(b) A fire, flood or other natural disaster; or

(c) A state of emergency declared by the president of the United States, governor of the state of New York or mayor of the city.

§ 20-1403 Work schedules. a. A utility safety employer shall provide a utility safety employee with a written work schedule no later than 72 hours before the first shift on the work schedule.

b. A utility safety employer shall conspicuously post in a location that is accessible and visible to all utility safety employees at the work location the work schedule of all the utility safety employees at that work location at least 72 hours before the beginning of the scheduled hours of work and shall update the schedule and directly notify affected utility safety employees after making changes to the work schedule. Utility safety employers shall also transmit the work schedule by electronic means, if such means are regularly used to communicate scheduling information. The office may by rule establish requirements or exceptions necessary to ensure the privacy and safety of utility safety employees.

c. Upon request by a utility safety employee, a utility safety employer shall provide the employee with such employee's work schedule in writing for any week worked within the prior three years and the most current version of the work schedule for all utility safety employees at that work location, whether or not changes to the work schedule have been posted.

§ 20-1404 Collective bargaining agreements. The provisions of this chapter do not apply to any utility safety employee covered by a valid collective bargaining agreement if (i) such provisions are expressly waived in such collective bargaining agreement and (ii) the agreement addresses employee scheduling.

§ 20-1405 Retaliation. a. No person shall take any adverse action against a utility safety employee that penalizes such employee for, or is reasonably likely to deter such employee from, exercising or attempting to exercise any right protected under this chapter. Taking an adverse action includes threatening, intimidating, disciplining, discharging, demoting, suspending or harassing an employee, reducing the hours or pay of a utility safety employee, informing another employer that a utility safety employee has engaged in activities protected by this chapter, and discriminating against the utility safety employee, including actions related to perceived immigration status or work authorization. A utility safety employee need not explicitly refer to this chapter or the rights enumerated herein to be protected from retaliation.

§ 20-1406 Administrative enforcement; jurisdiction and complaint procedures. a. Jurisdiction. The

director shall enforce the provisions of this chapter.

b. Complaints and investigations. 1. Any person, including any organization, alleging a violation of this chapter may file a complaint with the office within two years of the date the person knew or should have known of the alleged violation.

2. Upon receiving such a complaint, the office shall investigate it.

3. The office may open an investigation on its own initiative.

4. A person or entity under investigation shall, in accordance with applicable law, provide the office with information or evidence that the office requests pursuant to the investigation. If, as a result of an investigation of a complaint or an investigation conducted upon its own initiative, the office believes that a violation of this chapter has occurred, the office may attempt to resolve it through any action authorized by section 20-a of the charter. Adjudicatory powers pursuant to this subchapter may be exercised by the director or by the office of administrative trials and hearings pursuant to section 20-a of the charter.

§ 20-1407 Specific administrative remedies for utility safety employees or former utility safety employees. a. For violations of this chapter, the office may grant the following relief to utility safety employees or former utility safety employees:

1. All compensatory damages and other relief required to make the utility safety employee or former utility safety employee whole;

2. For each violation of subdivision a of section 20-1402, the greater of \$500 or such employee's actual damages;

3. For each violation of subdivisions a and b of section 20-1403, \$300;

4. For each violation of section 20-1405:

(a) Rescission of any discipline issued, reinstatement of any employee terminated and payment of back pay for any loss of pay or benefits resulting from discipline or other action taken in violation of section 20-

1405;

(b) \$500 for each violation not involving termination; and

(c) \$2,500 for each violation involving termination.

b. The relief authorized by this section shall be imposed on a per employee and per instance basis for each violation.

§ 20-1408 Specific civil penalties payable to the city. a. For each violation of this chapter, a utility safety employer is liable for a penalty of \$500 for the first violation and, for subsequent violations that occur within two years of any previous violation of this chapter, up to \$750 for the second violation and up to \$1,000 for each succeeding violation.

b. The penalties imposed pursuant to this section shall be imposed on a per employee and per instance basis for each violation.

§ 20-1409 Enforcement by the corporation counsel. The corporation counsel or such other persons designated by the corporation counsel on behalf of the office may initiate in any court of competent jurisdiction any action or proceeding that may be appropriate or necessary for correction of any violation issued pursuant to sections 20-1406 through 20-1408, including actions to secure permanent injunctions, enjoining any acts or practices that constitute such violation, mandating compliance with the provisions of this chapter or such other relief as may be appropriate.

§ 2. a. This local law takes effect 180 days after it becomes law, except that the director of the office of labor standards shall take such measures as are necessary for the implementation of section one of this local law, including the promulgation of rules, before such date.

b. Notwithstanding the preceding subdivision a, in the case of utility safety employees covered by a valid collective bargaining agreement in effect on the effective date prescribed by such preceding subdivision, this local law takes effect on the stated date of the expiration of such agreement.

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