

**LOCAL LAWS
OF
THE CITY OF NEW YORK
FOR THE YEAR 2021**

No. 77

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

A LOCAL LAW

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

Be it enacted by the Council as follows:

Section 1. Section 20-1201 of the administrative code of the city of New York, as amended by local law 80 of 2020, is amended to add new definitions of “underground facilities,” “utility safety employee” and “utility safety employer” in alphabetical order to read as follows:

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 by a utility safety employer to locate and mark underground facilities or inspect gas pipe fusions and joints.

Utility safety employer. The term “utility safety employer” means any person or entity that employs individuals to locate and mark underground facilities or inspect gas pipe fusions and joints. 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.

§2. Section 20-1251 of the administrative code of the city of New York, as added by local law 99 of 2017, is amended to read as follows:

§ 20-1251 On-call scheduling prohibited. a. Except as otherwise provided by law, *it shall be unlawful for a retail or utility safety employer* [shall not] *to:*

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

1. Grant a retail *or utility safety* employee time off pursuant to an employee’s request;

2. Allow a retail *or utility safety* employee to trade shifts with another retail *or utility safety* employee; [and]

3. Make changes to retail employees' work schedules with less than 72 hours' notice if the *retail* employer's operations cannot begin or continue due to:

(a) Threats to the retail employees or the retail employer's property;

(b) The failure of public utilities or the shutdown of public transportation;

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

(d) A state of emergency declared by the president of the United States, governor of the state of New York or mayor of the city[.]; *and*

4. *Make changes to utility safety employees' work schedules with less than 72 hours' notice if the utility safety employer is responding to or cannot begin or continue operations due to one of the following circumstances:*

(a) The 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.

§3. Section 20-1252 of the administrative code of the city of New York, as amended by local law 80 of 2020, is amended to read as follows:

§ 20-1252 Work schedules. a. A retail *or utility safety* employer shall provide a retail *or utility safety* employee with a written work schedule no later than 72 hours before the first shift on the work schedule.

b. A retail employer shall conspicuously post in a location that is accessible and visible to all retail employees at the work location the work schedule of all the retail 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 retail employees after making changes to the work schedule. Retail *and utility safety* employers shall also transmit the work schedule by electronic means, if such means are regularly used to communicate scheduling information. The department may by rule establish requirements or exceptions necessary to ensure the privacy and safety of employees.

c. Upon request by a retail *or utility safety* employee, a retail *or 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 retail *or utility safety* employees at that work location, whether or not changes to the work schedule have been posted.

§4. Section 20-1253 of the administrative code of the city of New York, as added by local law 99 of 2017, is amended to read as follows:

§ 20-1253 Collective bargaining agreements. The provisions of this subchapter do not apply to any retail *or utility safety* employee covered by a valid collective bargaining agreement, including an agreement that is open for negotiation, if (i) such provisions are expressly waived in such collective bargaining agreement and (ii) the agreement addresses employee scheduling.

§ 5. a. This local law takes effect 180 days after it becomes law, except that the department of consumer and worker protection shall not take any enforcement action against any utility safety employer for a violation of section 20-1251 or 20-1252 of the administrative code of the city of New York pursuant to section 20-1207 of the administrative code of the city of New York less than 365 days after this local law becomes law, and provided that the commissioner of the department

of consumer and worker protection may take such measures as are necessary for the implementation of this local law, including the promulgation of rules, before such dates.

b. Notwithstanding subdivision a of this section, in the case of utility safety employees covered by a valid collective bargaining agreement in effect 180 days after this local law becomes law, this local law takes effect on the stated date of the expiration of such agreement.

THE CITY OF NEW YORK, OFFICE OF THE CITY CLERK, s.s.:

I hereby certify that the foregoing is a true copy of a local law of The City of New York, passed by the Council on June 17, 2021 and returned unsigned by the Mayor on July 19, 2021.

MICHAEL M. McSWEENEY, City Clerk, Clerk of the Council.

CERTIFICATION OF CORPORATION COUNSEL

I hereby certify that the form of the enclosed local law (Local Law No. 77 of 2021, Council Int. No. 946-B of 2018 to be filed with the Secretary of State contains the correct text of the local law passed by the New York City Council, presented to the Mayor and neither approved nor disapproved within thirty days thereafter.

STEPHEN LOUIS, Acting Corporation Counsel.