

# Fair Workweek Law in Utility Safety: Frequently Asked Questions

The Department of Consumer and Worker Protection (DCWP) enforces NYC's Fair Workweek Law. This document answers many common questions about the law and how DCWP enforces it.

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## I. Overview of Fair Workweek Law: Utility Safety Provisions

### a. General

#### ***What are the protections available to utility safety workers?***

Under NYC's Fair Workweek Law, utility safety workers in NYC have a right to predictable work schedules. The law covers:

- **72 Hours' Advance Notice of Work Schedules:** Utility safety employers must both post at the workplace AND provide workers with a written work schedule at least 72 hours before the first shift on the schedule. If the employer regularly uses electronic means to communicate with employees—for example, text, email, or an app—the employer must provide the work schedule electronically to employees 72 hours before the first shift on the schedule. If the schedule changes, the employer must repost the new schedule and resend it to all affected workers.
- **No On-Call or Call-In Shifts:** Utility safety employers cannot schedule workers for on-call shifts. Employers also cannot require employees to “check in” within 72 hours of a scheduled shift to find out if they should report for the shift.
- **Additions of Time:** Workers can say no to working additional time less than 72 hours before the start of a shift. If the employee consents, consent must be in writing before the employee works additional time.
- **Shift Shortenings or Cancellations:** Employers generally cannot cancel or reduce the hours in a shift by more than 15 minutes less than 72 hours before the start of a shift, with certain exceptions.

#### ***When did utility safety employers have to start complying with the law?***

The law's protections for utility safety employees took effect on January 14, 2022. DCWP has enforcement authority over the utility safety provisions of the law beginning July 18, 2022.

*Exception:* If a utility safety worker is covered by a collective bargaining agreement (CBA) that was in effect on January 14, 2022, that worker is covered under NYC's Fair Workweek Law on the day after the CBA expires.

## **b. Who are Covered Employees?**

### ***Who is a utility safety employee?***

A utility safety employee is any person employed by a utility safety employer to locate and mark underground facilities, such as those that provide electricity, gas, and water, or to inspect gas pipe fusions and joints.

*Exception:* The law does not apply to any utility safety employee covered by a CBA in which the rights under the law are expressly waived and employee scheduling is addressed.

### ***Does immigration status limit or change a worker's rights under the law?***

No. Utility safety workers have the same rights and protections under NYC's Fair Workweek Law regardless of immigration status. DCWP does not collect any information about a worker's immigration status to pursue a complaint.

### ***Are employees who work in NYC but live outside of NYC covered by the law?***

Yes. It does not matter where an employee lives, as long as the employee works at a location in NYC.

## **c. Utility Safety Employers**

### ***What is a utility safety employer?***

A utility safety employer is one who employs workers who locate and mark underground facilities or inspect gas pipe fusions and joints. A utility safety employer can be a person or a company.

*Exception:* The term "utility safety employer" does *not* include the federal, state, or local government.

### ***What are underground facilities?***

Underground facilities include pipelines, conduits, ducts, cables, wires, manholes, vaults, and other similar facilities that provide services or materials such as electricity, gas, water, telephone, cable, sewage removal, and traffic control.

### ***Must a utility safety employer have a certain number of employees in order to be covered by NYC's Fair Workweek Law?***

No. NYC's Fair Workweek Law applies to all utility safety employers regardless of the number of employees.

### ***If a utility safety employer employs other workers in addition to utility safety employees, are those other workers covered by NYC's Fair Workweek Law?***

No. The provisions of NYC's Fair Workweek Law that pertain to utility safety employers only apply to utility safety employees.

## **d. Additional Employer Information**

### ***Does the law apply to employers that are not based in NYC?***

Yes.

The utility safety provisions of the law apply to all employers that fit the definition of utility safety employer and that employ utility safety workers in NYC, regardless of where the employer is based.

### ***How do employees know who their employer is if more than one company is involved in the management of their job?***

Multiple individuals or businesses may be treated as a single employer based on how interrelated the businesses are and how much they share management and control of their workforce. A worker may also be jointly employed by more than one individual or business at the same time.

All non-governmental employers involved in the management of utility safety workers may have obligations under NYC's Fair Workweek Law.

### **Scenario:**

Dwayne was hired by P&L Gas, Inc. to inspect gas pipe fusions. P&L Gas has a contract with the City of New York to perform this work, and a City representative manages and controls this work.

*Is P&L Gas a utility safety employer covered under NYC's Fair Workweek Law?*

Yes. P&L Gas employs Dwayne to perform utility safety work, and though the company has a contract with the City, P&L Gas is not a government entity. Therefore, it is covered by NYC's Fair Workweek Law.

*Is the City of New York a joint employer?*

No. The City of New York may exercise joint control over utility safety workers in this scenario, but the City cannot be a joint employer because the definition of utility safety employer excludes the government.

## **II. Predicable Scheduling**

### **a. Schedules**

#### ***When do utility safety employers need to provide employees with their work schedules?***

Utility safety employers must provide employees with each written work schedule, including dates, times, and locations of all shifts, no later than 72 hours (3 days) before the start of the schedule; schedules should cover at least seven (7) days.

#### ***How should utility safety employers provide schedules to employees?***

No later than 72 hours before the first shift on the work schedule, a utility safety employer must:

- physically post the schedule at the workplace where all workers can see it; and
- transmit the schedule to each employee individually.

The employer must transmit the individual schedule electronically—for example, by text, email, push notification in an app—if that is how the employer usually communicates with workers.

If the employer does not use electronic communication, then the employer must give each employee a paper copy of the schedule.

In the event of updates to the work schedule, the employer must conspicuously post and transmit individually to affected employees the written updated work schedule.

#### ***What happens if a utility safety employer does not give employees their schedule 72 hours before the start of the work schedule?***

The employer is violating the law and may be required to pay \$300 to all affected workers, as well as any other damages or relief required to remedy the harm to the affected workers. The employer may also be liable for a fine of \$500, and possibly more if it is not the first time the employer violated the law.

#### ***Are utility safety employers required to give employees copies of previous schedules?***

Yes. If a worker requests previous schedules, the employer must provide written work schedules for any week worked within the last three (3) years. The employer must provide the schedules within 14 days of the worker's request.

***Are utility safety employers required to give employees copies of other workers' schedules?***

Yes. If a worker requests other workers' schedules, the employer must provide the most current version of the work schedule for all utility safety workers at the work location. The employer must provide the schedules within one (1) week of the worker's request.

**b. On-call Scheduling**

***What is an on-call shift?***

An **on-call shift** occurs when a worker is required to be ready and available to work at the employer's call for a period of time, regardless of whether the worker actually works or is required to report to a work location.

***What is the difference between a regular shift and an on-call shift?***

A **regular shift** is a span of consecutive hours at a work location (not including breaks that are less than two hours). Workers are paid to work regular shifts.

In practice, unless workers report to a work location, workers are typically not paid for on-call shifts although they are required to be available to work.

***Can utility safety employers schedule employees for on-call shifts?***

No. Under NYC's Fair Workweek Law, utility safety employers may not schedule workers for any on-call shifts.

***What happens if utility safety employers schedule on-call shifts?***

The employer is violating the law and may be required to pay \$500 or damages and relief required to remedy the harm to the affected worker, whichever is greater. Employers may also be liable for a fine of \$500 for each on-call shift, and more if they violate the law again.

**c. Advance Notice**

***Can a utility safety employer cancel a worker's shift?***

Yes, but only if the employer provides notice of the cancellation at least 72 hours before the start of the shift.

***Can shortening or removing hours from a worker's shift count as a cancellation?***

Yes. Canceling a shift includes when an employer subtracts more than 15 minutes from a worker's shift without at least 72 hours' notice before the start of the shift.

***Can a utility safety employer require an employee to work extra time with less than 72 hours' notice?***

No. A utility safety employer cannot require an employee to work more than 15 minutes of extra time unless the employee has at least 72 hours' advance notice. Extra time includes adding a new shift or requiring an employee to report to work more than 15 minutes earlier or to end their shift more than 15 minutes after the scheduled end time.

If an employer asks an employee to work extra time, the employer must explain that the employee has a right to say no. The employer cannot impose any negative consequences if the employee declines to work extra time. If the employee agrees to work extra time, the employer must obtain the employee's advance written consent.

*Note:* A utility safety employer *may* require an employee to work extra time if the employer gives the employee notice at least 72 hours before the start of the shift.

***What does "consent" mean?***

"Consent" means an employee's agreement after 1) being given the opportunity to decline and 2) being free from any interference, coercion, or risk of adverse action from the employer.

**What must a utility safety employer do to document an employee's consent to work extra time?**

An employer must obtain a written record of an employee's advance written request or consent to work extra time. The written record must:

- contain the date and time the employee gave consent; and
- reference the specific schedule change or shift change. (*Note: General or ongoing consent to work extra time does not meet this requirement.*)

If an employer cannot obtain an employee's written consent before the extra time begins—for example, unscheduled addition of time at the end of a shift—the employer must get the employee's written consent to work the extra time no later than 15 minutes after the employee begins to work the extra time.

**Are utility safety employers required to get a written record of an employee's choice to decline to work extra time?**

No.

**Are there any circumstances when utility safety employers do not need to provide 72 hours' notice before making changes to a worker's shift?**

Yes. A utility safety employer may make changes to an employee's schedule less than 72 hours before the start of a shift if:

- the employee requests time off, for example to use sick leave;
- employees trade shifts with one another; or
- the employer is responding, or closes, due to:
  - public utility failure that endangers health and safety
  - fire, flood, or other natural disaster
  - federal, state, or local state of emergency

**Scenario:**

*A building in midtown Manhattan is experiencing a gas leak. Jose, a supervisor at the gas company, asks Abdul and Candace to report to work immediately to inspect the gas pipes. Has the gas company violated NYC's Fair Workweek Law?*

No. A gas leak presents an imminent danger to public health and safety. Because the gas company is responding to the threat, this is an exception in which the employer may make changes to utility safety employees' schedules without 72 hours' notice.

**What must a utility safety employer do if the schedule changes?**

If the schedule changes, the utility safety employer must update the posted schedule and transmit the updated schedule to all affected workers directly.

**Can utility safety employers require workers to check in to confirm whether or not they need to report to a shift?**

Under the law, an employer cannot require workers to check in within 72 hours of a scheduled shift to find out if they should report for the shift.

**Can utility safety employers allow workers to take time off?**

Yes. Employers can grant a worker's request for time off, even if the request occurs within 72 hours of the worker's scheduled shift. Providing time may be required under federal, state, or local law, including under NYC's Paid Safe and Sick Leave Law.

***What happens if utility safety workers trade shifts with one another less than 72 hours before those shifts start?***

Utility safety employers can allow workers to trade shifts with one another, even if they trade less than 72 hours before the start of the affected shift. Since the schedule change is initiated by employees—and not the employer—the employer does not violate the law by permitting the last-minute schedule change. The employer must maintain written records with the names of the employees and the shifts they traded.

***What if a utility safety employer cancels a worker's shift or part of a shift with less than 72 hours' notice?***

It is illegal to cancel a shift or part of a shift with less than 72 hours' notice. Employers may be liable for paying damages to the worker and fines to the City.

***What if a utility safety employer cancels or shortens a worker's shift after the employee arrived at work?***

Cancelling or cutting a shift after a worker arrives at work is a violation of NYC's Fair Workweek Law. The practice may also be a violation of the "call-in pay" provision of the New York State Labor Law, which requires employers to pay workers a minimum amount of call-in pay. Contact the New York State Department of Labor at [labor.ny.gov](http://labor.ny.gov) for more information.

***What happens if a utility safety employer changes a schedule without providing the proper notice?***

Utility safety employers may be held responsible for \$500 or damages and relief to remedy the harm to affected workers, whichever is greater. The employer may also be liable for a fine of \$500 for each on-call shift, or more if the employer violated the law before.

### **III. Retaliation**

***What is retaliation?***

Retaliation is any action by an employer—or on an employer's behalf—that could penalize or deter a worker or group of workers from exercising or attempting to exercise any right protected by the law. Retaliation includes:

- threats
- intimidation
- discipline
- discharge
- demotion
- suspension
- harassment
- cutting hours
- informing other employers about a worker's actions under the law
- discrimination
- actions related to immigration status

Retaliation is illegal under the law. Employers may not retaliate against workers exercising their rights under the law, even if workers do not explicitly refer to any specific law.

Retaliation exists when the protected activity was a motivating factor for a retaliatory act, even if other factors also motivated the retaliatory act.

### **Scenario:**

*Stanley works for BQE Contracting, Inc. supervising workers who locate and mark underground electric cables. Stanley tells Jack that he must work a 12-hour shift the next day. When Jack refuses, Stanley fires Jack and tells him he better leave before Stanley “clocks him one.” Jack’s co-workers, Janet and Peggy, witness Jack’s firing. Which workers experienced retaliation?*

Jack, Peggy, and Janet all have experienced retaliation. Stanley penalized Jack by firing him and threatening him with physical harm. Janet and Peggy could have been reasonably deterred from exercising their rights after witnessing the incident between Stanley and Jack.

### **What does it mean for utility safety workers to “exercise their rights”?**

Workers may exercise their rights in a variety of ways. This list gives some examples but is not exhaustive:

- Refusing to work a shift that was scheduled in violation of the law, such as:
  - an on-call shift
  - a shift they did not consent to work or for which they were not given 72 hours’ advance notice
- Requesting a copy of their schedule or a current version of all workers’ schedules at the utility safety establishment where they work
- Saying NO to a lawful request to pick up a shift with less than 72 hours’ notice
- Asking where the current written schedule is posted
- Asking the employer to pay them for all scheduled hours after a shift was shortened or cancelled
- Pointing out that the required notice of rights isn’t posted
- Filing a complaint with DCWP for alleged violations of the law
- Communicating with any person, including coworkers, about any violation of the law
- Participating in a court or administrative proceeding about an alleged violation of the law
- Informing another person of that person’s potential rights under the law

### **What should employees do if an employer retaliates or the employee fears retaliation?**

Workers should contact DCWP or an attorney if they fear retaliation or have experienced retaliation recently. DCWP takes reports of employer retaliation very seriously. Depending on the circumstances, DCWP’s response may include directing an employer to cease retaliatory action, to reinstate a worker, and to comply with the law going forward. Workers may also receive payments of back wages, premium pay, and other relief.

### **Does the law protect workers from retaliation if they believe they are asserting a protected right but are mistaken?**

Yes, as long as workers genuinely believe that the right they are asserting is protected by NYC’s Fair Workweek Law.

## **IV. Notice and Recordkeeping**

### **a. Notice of Rights**

#### **How must covered employers inform workers about NYC’s Fair Workweek Law?**

DCWP created a notice for the utility safety industry. Employers must post the “YOU HAVE A RIGHT TO A PREDICTABLE WORK SCHEDULE” notice where employees can easily see it at each NYC workplace. The notice is available on the DCWP website at [nyc.gov/workers](https://nyc.gov/workers). Employers should print the notice on, and scale it to fill, 11” x 17” paper.

### ***In which language must an employer post the notice?***

Employers must post the notice in English and in any other language that is the primary language of at least 5 percent of the workers at a workplace (1 out of 20, 5 out of 100, 10 out of 200, etc.), if the notice is available in that other language on the DCWP website.

### ***Where can covered employers find the required notice of rights?***

The notice is available online at [nyc.gov/workers](https://nyc.gov/workers).

DCWP will update the notice if there are any changes to the law. Monitor the DCWP website for updates.

## **b. Recordkeeping**

### ***What records must employers keep under the law?***

Covered employers must retain electronic records documenting their compliance with the requirements of NYC's Fair Workweek Law. Utility safety employers must retain records that show:

- Employees' dates of employment and contact information, including the last known phone number, email address, and mailing address for each worker
- Employees' **hours worked each week**, including date, time, and location
- **Each work schedule** provided to employees, including the dates, times, and methods by which each work schedule was provided to the employee
- Each **agreement among workers** to trade shifts, including the shifts traded and the names of the employees involved
- **Each written request by a worker for time off**, including the date, time, and method by which the employee transmitted the request or consent to the employer
- Workers' **written consent** to work with fewer than 72 hours' notice
- Any exception to the requirements of NYC's Fair Workweek Law
- Documents reflecting compliance with the notice posting requirement

### ***How long must employers maintain records under the law?***

Covered employers must retain records for a period of three (3) years.

### ***Must an employer provide its records to DCWP?***

Yes. If DCWP requests records as part of an investigation into compliance with or violations of NYC's Fair Workweek Law, employers must provide the records.

### ***What happens if a covered employer does not maintain records as required by the law?***

An employer's failure to maintain or produce records to DCWP may result in a "rebuttable presumption" against the employer in the event of a lawsuit or enforcement action. This means that the burden will be on the employer to show that the employer did not violate the law.

### ***May employers maintain required records electronically?***

Yes. Employers may create or maintain any of the required records in a scheduling application or other electronic recordkeeping system. Employers must ensure that:

- electronically stored records are maintained in their original format for three (3) years;
- records can be exported to a non-proprietary, machine-readable data format;
- there are no restrictions in the recordkeeping system that would limit the employer's ability to produce required records to DCWP; and
- the electronic recordkeeping system does not overwrite or destroy any of the records an employer is required by law to maintain.

For example, scheduling applications must be configured so that when an employer makes updates to a work schedule, the system retains and does not overwrite the original version of the work schedule and the date it was provided to employees.

## V. Enforcement

### **Who enforces NYC's Fair Workweek Law?**

DCWP enforces the law. Workers can contact DCWP to:

- File a complaint.
- Find out more about NYC's Fair Workweek Law and other workplace laws.
- Get a referral for other resources to protect and enforce their rights under NYC's Fair Workweek Law.

DCWP is committed to maintaining the confidentiality of complainants.

### **Who can file a complaint about a potential violation of NYC's Fair Workweek Law?**

Any person, including utility safety workers and their representatives, or related organizations, may file a complaint about a possible violation of NYC's Fair Workweek Law.

### **Where can I file a complaint?**

You can file a complaint with DCWP. To reach DCWP:

- Call 311 (212-NEW-YORK outside NYC). Ask for "Fair Workweek Law."
- Email [OLPS@dcwp.nyc.gov](mailto:OLPS@dcwp.nyc.gov)
- Visit [nyc.gov/workers](http://nyc.gov/workers)

DCWP can also give complainants information about employee rights or how to bring a private legal action in court against an employer.

### **How long do I have to file a complaint?**

You must file a complaint within two (2) years of when you learned (or should have learned) of the violation of the law.

### **What happens after I file a complaint?**

DCWP investigates the complaint. DCWP may request information or documents from a utility safety employer under investigation and interview witnesses. If DCWP determines that an employer violated the law, the employer may be responsible for money damages and other forms of relief to affected workers, as well as fines to the City.

### **Are complainants' identities kept confidential?**

DCWP will keep the identity of complainants confidential unless disclosure is required by law. DCWP will notify complainants before disclosing their identity whenever possible and generally attempts to keep identities of workers confidential unless the worker consents.

### **Does my immigration status affect my ability to file a complaint?**

No. All workers have the same rights and protections under NYC's Fair Workweek Law, regardless of immigration status. DCWP does not collect any information about a worker's immigration status to pursue a complaint.

### **Must DCWP receive a complaint in order to investigate an employer?**

No. DCWP can also investigate employers on its own initiative.

### **What does DCWP do to ensure that employers comply with the law?**

DCWP conducts investigations that may include document requests, interviews with witnesses, and visits to worksites. If, as a result of an investigation, DCWP determines that an employer has violated one or more provisions of NYC's Fair Workweek Law, DCWP may seek monetary relief for workers, civil penalties, and/or commitments to future compliance through settlement or through litigation at the Office of Administrative Trials and Hearings (OATH).

DCWP also regularly conducts outreach and education to employers, workers, and the public about NYC's Fair Workweek Law.

***What happens if an employer violates the law?***

Utility safety workers may be entitled to monetary relief for an employer's violations. Employees whose hours were cut or who were terminated in retaliation for asserting their protected rights may be entitled to back pay and/or reinstatement. In addition to payments owed to an employee, an employer may be liable for fines payable to the City for violations of the law.

An employer might receive a court order requiring it to comply with the requirements of the law.

***What types of fines could covered employers have to pay for violating the law?***

Utility safety employers may also be subject to the following fines:

- \$500 for a first violation
- up to \$750 for a second violation within a two-year period
- up to \$1,000 for subsequent violations within a two-year period

***If an employer had a worker sign a document saying that the worker gave up the right to relief under NYC's Fair Workweek Law, can the worker still file a complaint with DCWP against the employer?***

Yes. Any agreement to limit utility safety workers' rights under NYC's Fair Workweek Law is invalid. Also, DCWP might investigate the employer on its own initiative whether or not workers file a complaint.

*Exception:* The law does not apply to an employee covered by a CBA in which the rights under the law are expressly waived and employee scheduling is addressed.

***What if an employer repeatedly violates the law?***

When there is reason to believe that an employer is engaged in a pattern or practice of violations, the NYC Law Department may file an action in court against that employer seeking relief for workers, fines (including an additional fine of up to \$15,000), and injunctive relief.

## **VI. Private Right of Action**

***Can individuals bring their own action in court against an employer?***

Yes.

Any person or organization alleging a violation of NYC's Fair Workweek Law may bring a civil action in court to seek damages and other relief.

Individuals must bring an action under NYC's Fair Workweek Law within two (2) years of the date that the individual learned, or should have learned, of the violation.

***Can an individual file a complaint with DCWP and bring a civil action at the same time?***

No.

If individuals file a complaint with DCWP first, they cannot bring their own lawsuit unless they withdraw the complaint in writing or DCWP dismisses the complaint "without prejudice," generally meaning that the complaint was neither decided nor settled.

If individuals file a civil action in court first, they cannot file a complaint with DCWP unless the civil action is withdrawn or dismissed without prejudice. When a party files suit in court, the party must give notice of the lawsuit to DCWP.

DCWP may still investigate and pursue a case against an employer of its own initiative, even when a worker has a case pending against that employer in court.