Committee on Civil Service and Labor

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The Council of the City of New York

COMMITTEE REPORT OF THE HUMAN SERVICES DIVISION

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COMMITTEE ON CIVIL SERVICE AND LABOR

Hon. I. Daneek Miller, *Chair*

January 27, 2021

**INT. NO. 2161-A:** By Council Members Miller, Rosenthal and Louis

**TITLE:** A Local Law in relation to establishing a board to review workplace health and safety guidance during the COVID-19 pandemic

**INT. NO. 2162-A:** By Council Members Miller, Ampry-Samuel, Kallos, Rosenthal, Adams and Louis

**TITLE:** A Local Law to amend the administrative code of the city of New York, in relation to the dissemination of occupational safety and health information to city employees during a public health emergency

**ADMINISTRATIVE CODE:** Amends Chapter 2 of title 12

**I. INTRODUCTION**

 On January 27, 2021, the Committee on Civil Service and Labor, chaired by Council Member I. Daneek Miller, held a vote on two pieces of legislation related to workplace safety during public health emergencies such as the COVID-19 pandemic. *Int. No. 2161-A*, sponsored by Council Member I. Daneek Miller, is a Local Law in relation to establishing a board to review workplace health and safety guidance during the COVID-19 pandemic, and *Int. No. 2162-A*, also sponsored by Council Member I. Daneek Miller, is a Local Law in relation to disseminating occupational safety and health information to city employees during a public health emergency.

 The Committee passed the package of legislation by a vote of six in the affirmative, zero in the negative, with zero abstentions.

This legislation was originally heard at a hearing of this Committee on November 20, 2020, at which the Committee received testimony from representatives from the New York City (NYC) Department of Consumer and Worker Protection (DCWP), the NYC Department of Citywide Administrative Services (DCAS), various labor unions, labor organizations, chambers of commerce, public and private places of employment, and other interested parties.

**II. BACKGROUND**

*COVID-19 and Workplaces in New York City*

In late 2019 and early 2020, a novel coronavirus called SARS-CoV-2 began to spread rapidly worldwide, causing over eleven million reported cases of COVID-19, the disease caused by SARS-CoV-2, and nearly 250,000 deaths by November 2020 in the U.S. alone.[[1]](#footnote-1) Because of the virus’s extremely contagious nature, pervasive health effects, and high death toll, efforts to limit and stop the virus’s spread have necessitated closures for the majority of workplaces.[[2]](#footnote-2)

On March 20, 2020, Governor Andrew M. Cuomo issued the “New York State on PAUSE” executive order (Executive Order 202.6) in the state of New York.[[3]](#footnote-3) The Order closed most businesses, but delineated twelve categories of essential business that were allowed to stay open under limited circumstances and with proper safety precautions in place.[[4]](#footnote-4) This list included hospitals, certain forms of retail such as grocery stores and pharmacies, and essential public services such as the postal service.[[5]](#footnote-5) Throughout the duration of the pandemic so far, these essential businesses have stayed open, utilizing social distancing measures and safety precautions.[[6]](#footnote-6) All other businesses in industries not specifically named in the Executive Order were ordered to shut down in-office personnel functions until the State issued orders directing otherwise.[[7]](#footnote-7)

While New York initially suffered disproportionately high rates of COVID cases and deaths in spring 2020, the state also saw a reduction in reported viral spread sooner than other areas in the United States, and began to make small moves towards reopening in June 2020.[[8]](#footnote-8) Through a series of successive “phases,” different industries and business types were gradually allowed to reopen, so long as COVID-19 rates remained sufficiently low. [[9]](#footnote-9) New York City entered Phase One of reopening on June 8, 2020, Phase Two on June 22, Phase Three on July 6, 2020, and Phase Four on July 19, 2020.[[10]](#footnote-10) By September 2020, all workplaces in the City included in the final stage of the COVID reopening process, including gyms, malls, and public schools, were allowed to reopen to some extent.[[11]](#footnote-11) Establishments were allowed to operate indoor dining, considered to be a major test for whether the city can return to pre-pandemic life, at 25 percent capacity beginning on September 30th.[[12]](#footnote-12)

However, for many businesses forced to suspend in-person work, the process of reopening worksites in New York City has been far from linear.[[13]](#footnote-13) The financial services company JPMorgan, for example, set a target date of September 21, 2020 for bringing its trading floor back to in-person work, but was forced to cancel these plans after a number of traders tested positive for COVID-19.[[14]](#footnote-14) Additionally, approaches have varied starkly among different large employers in the New York City area. While some, such as JPMorgan, have sought to return to on-site work as soon as possible, other employers, such as American Express and Google, have declared that employees can work remotely until summer 2021.[[15]](#footnote-15)

The recent spikes in cases, beginning roughly in the last week of September 2020, have caused a fresh set of concerns that the city is about to enter a so-called “second wave” of COVID-19 cases.[[16]](#footnote-16) On September 29, 2020, the City reported that its daily positivity rate of coronavirus tests passed 3% for the first time since June.[[17]](#footnote-17) This led Mayor Bill de Blasio to reinstitute various restrictions in roughly twenty neighborhoods around New York City on October 4th, including the closure of all non-essential businesses in nine particularly affected areas in Queens and Brooklyn.[[18]](#footnote-18) Governor Cuomo chose not to approve Mayor de Blasio’s specific actions on closures, but did enact a “Cluster Action Initiative,” which also closed all non-essential businesses, limited restaurant dining to takeout-only, closed schools, and allowed houses of worship to continue operating under drastically reduced capacity.[[19]](#footnote-19) On November 18, 2020, the mayor announced that public schools would be closed once more in response to the new increase in COVID cases.[[20]](#footnote-20)

*Workplace Safety Standards During the Pandemic*

 The Centers for Disease Control’s (CDC) guidance to prevent viral transmission has largely revolved around: (i) minimizing interpersonal contact and (ii) where interpersonal contact cannot be prevented, utilizing appropriate safety precautions, such as facial coverings and maintaining a distance of six to ten feet from other individuals.[[21]](#footnote-21) Additionally, measures to kill the virus, such as hand-washing and sanitation of common spaces, may be effective at removing the virus from surfaces if proper sanitation materials are used.[[22]](#footnote-22) Finally, research has strongly suggested that gatherings of multiple people indoors may be far more conducive to viral transmission than gatherings outdoors.[[23]](#footnote-23)

 Such guidance poses significant challenges to workplaces, which are frequently indoors, have multiple shared areas and items of common use, and tend to place employees in close quarters.[[24]](#footnote-24) For retail workers, restaurant staff, and other employees who interact with customers as part of their job, an additional hurdle of ensuring safe personal interactions arises.[[25]](#footnote-25) Businesses that open are supposed to mandate that customers wear masks, as well as provide access to hand sanitizer for public and employee use.[[26]](#footnote-26) Where possible, employers must keep at least six feet of distance between individuals, and ensure that masks are being worn for any closer encounter.[[27]](#footnote-27) .

 However, the novel nature of this virus has caused great uncertainty as to what exactly the best practices are to combat its spread.[[28]](#footnote-28) While a thorough body of scientific research backs the above measures, the body of knowledge surrounding COVID-19 is constantly shifting, and multiple unanswered questions still remain.[[29]](#footnote-29) For example, it is still largely unknown the extent to which people who have previously contracted the virus can be re-infected, why certain people experience much more severe symptoms, and whether specific measures such as upgrading ventilation systems can make indoor spaces safer.[[30]](#footnote-30)

*City Guidance During COVID-19*

 The bulk of the city’s COVID-19-related guidance and information can be found on the city’s dedicated COVID-19 Citywide Information Portal, as well as on the New York City Department of Health and Mental Hygiene (DOHMH)’s COVID webpage.[[31]](#footnote-31)[[32]](#footnote-32) Each page can be broken down into roughly two sections: a section offering safety information and resources for individuals, and a section for business owners and employers, including industry-specific guidance on opening safely.[[33]](#footnote-33)[[34]](#footnote-34) The employer-oriented section “Guidance for Businesses and Schools” on the DOHMH’s page also contains templates businesses can follow to ensure they are meeting all necessary safety requirements.[[35]](#footnote-35)

By contrast, the New York City Department of Consumer and Worker Protection (DCWP) Office of Labor Policy & Standards hosts a webpage with COVID-19 related guidance and resources primarily aimed at workers’ rights.[[36]](#footnote-36) Aspects of their outreach include:

* a best practices document for domestic workers, advocating for employees and employers to jointly develop safety plans and sanitation protocols;
* a hotline specifically for COVID-related worker information and complaints;
* clarification surrounding the September and January changes to the Earned Safe and Sick Time Act, which will place additional requirements on large employers; and
* a summary of existing New York City labor laws.[[37]](#footnote-37)

The New York City Department of Small Business Services (SBS) also hosts a webpage consisting primarily of guidance for businesses, including information on the Open Storefronts program and specific guidelines surrounding indoor dining.[[38]](#footnote-38) Indoor dining establishments must take temperatures and contact information for all patrons that enter, and also must close bar areas to seating, in addition to staying under 25% capacity and following general distancing and PPE protocols.[[39]](#footnote-39) Finally, the Department of Citywide Administrative Services (DCAS) has posted a lengthy document with reopening guidance for city agencies, consisting of a four-step preparation plan.[[40]](#footnote-40)

**III. WORKPLACE ISSUES AND CONCERNS DURING COVID-19**

 The concern over work and employment in the era of COVID-19 is twofold.[[41]](#footnote-41) Without the necessary income to pay their bills and support themselves, millions of workers face economic hardship under continued closures.[[42]](#footnote-42) Similarly, employers face financial constraints such as rent and sharply decreased revenue.[[43]](#footnote-43) However, as many workplaces tend to be sites of regular, frequent interactions at close quarters, they could serve as incubators for viral spread.[[44]](#footnote-44) Employers and employees alike have thus been forced to balance these competing concerns of physical and economic livelihood.[[45]](#footnote-45)

 A primary concern for employers and employees is the implementation of safety precautions and provision of materials necessary to keep the workplace safe.[[46]](#footnote-46) The Occupational Health and Safety Act of 1970 requires employers to create a workplace free of known dangers to their workers’ safety.[[47]](#footnote-47) Additionally, Governor Cuomo’s executive orders have directed employers to provide all necessary personal protective equipment (PPE) at no cost to the employee, as well as institute social-distancing measures to reduce the chances of viral transmission as much as possible.[[48]](#footnote-48)

However, as researchers from the University of Miami and Rutgers University have noted, the current structure surrounding health and safety precautions has the potential to pit the interests of employers seeking to minimize costs against the interests of workers seeking to ensure their safety.[[49]](#footnote-49) Employers may incur steep additional costs by providing PPE to employees and customers, creating an incentive to underprovide these items or not provide them at all.[[50]](#footnote-50) This incentive is even stronger given the recession caused by the pandemic, which has made it even more difficult for businesses to survive.[[51]](#footnote-51) Similarly, employers may observe a reduction in revenue or business traffic caused by contact-reducing measures such as social distancing and mandatory reduced capacity, and may subsequently fail to enforce these measures.[[52]](#footnote-52)

Finally, a separate issue concerns the unequal nature of the employer-employee relationship.[[53]](#footnote-53) Workers may feel pressured to work in person if their job demands that they resume on-site operations, and also may be unable to voice concerns over safety without fear of losing their employment.[[54]](#footnote-54) Given that roughly half of all Americans have employer-sponsored health insurance, maintaining employment for these workers becomes even more important during a pandemic, should they or their families contract COVID-19 and need medical care.[[55]](#footnote-55)

*Employee Concerns over Workplace Safety in New York City*

 Since the beginning of the pandemic, numerous reports have surfaced of employees working in unsafe environments, not receiving adequate PPE or safety materials, and/or being forced to work in-person in an unsafe environment.[[56]](#footnote-56) Below are selected examples of worker groups who have reported safety concerns about their employer or workplace environment during COVID-19:

* *Doctors, Nurses, and other Hospital Staff*: Several reports and testimonies from hospital workers have reported a lack of adequate safety protections, and have also alleged that employees voicing concerns over the safety environment have been terminated. Nurses in the Bronx led a protest in March after being told to reuse N95 masks in what they felt were unsafe and unscientific ways.[[57]](#footnote-57) A local nurses’ union president was terminated following his decision to defend a fellow nurse who raised concerns over worker safety at a disciplinary hearing, which he alleges was the reason for his firing.[[58]](#footnote-58) The Montefiore and NYU Langone medical centers have informed their employees of potential professional repercussions for those who speak to the media without authorization, which was seen by many as an attempt to prevent hospital workers from voicing any safety concerns to the public.[[59]](#footnote-59)
* *Home Health Care Workers:* An August 2020 study surveyed 33 home health care workers in New York City on their experiences during the first two months of the pandemic, and nearly all respondents indicated feeling inadequately supported and not receiving appropriate levels of safety protection.[[60]](#footnote-60) A separate survey, conducted earlier in the pandemic, found that two-thirds of home care and hospice agencies in New York state lack adequate PPE.[[61]](#footnote-61)
* *City Workers*: A March 19, 2020 *New York Daily News* article outlined reports from Henry Garrido, President of union District Council 37, that the City took multiple weeks to meet the state’s mandate that 75 percent of municipal workers telecommute, and saw delays in providing necessary support or infrastructure for working from home.[[62]](#footnote-62)
* *Warehouse Workers*: In March, a group of warehouse workers at an Amazon warehouse in Staten Island walked out over concerns about the level of PPE they were receiving.[[63]](#footnote-63)
* *Transportation Workers*: A study by the NYU School of Global Health found that over 90% of Metropolitan Transit Authority (MTA) workers in New York City were fearful of getting sick at work, due primarily to concerns over passengers not wearing masks and having to personally enforce the mask mandate on subways.[[64]](#footnote-64) The same study found that while PPE was not readily available at the beginning of the pandemic, by July and August, its provision had become much more consistent.[[65]](#footnote-65)
* *Laundry Workers*: Six employees of FDR Services, a business that cleans hospital linens, reported being fired and not receiving state-mandated COVID-19 paid sick leave after testing positive in March and April.[[66]](#footnote-66)
* *Teachers, Educators, and School Staff*: As schools in New York City reopen, many teachers have described reporting to work without proper PPE or sanitation protocols in place.[[67]](#footnote-67) In August, news reports found that some New York City teachers were having to spend their own income on PPE in preparation for the upcoming school year.[[68]](#footnote-68)
* *EMS Workers:* In March, the New York City Fire Department (FDNY) pulled firefighters from answering medical calls that described symptoms associated with coronavirus, but did not do so for EMTs and paramedics.[[69]](#footnote-69) Additionally, an April article from the *New York Post* cites EMS Local 2507 President Oren Barzilay’s claim that the FDNY was limiting usage of N95 masks by EMTs and paramedics.[[70]](#footnote-70)

While the COVID-19 pandemic continues, it will be essential for the City to help ensure that employees are safe and protected in their workplaces—this means ensuring adequate PPE to all essential and other workers, enforcing sanitation and social distancing regimes, and ensuring employers are following federal, state, and local guidance as they reopen their businesses and continue to stay open.[[71]](#footnote-71) The intention here is twofold: protecting employees will help save lives, and protecting the workforce will help limit and stop the spread the virus within the City.[[72]](#footnote-72)

**IV. LEGISLATIVE ANALYSIS**

**ANALYSIS OF INT. NO. 2161-A**

Int. No. 2161-A would create an independent board to review workplace health and safety guidance that agencies and private employers have issued to employees during the COVID-19 pandemic. The board would hold two public hearings a year to solicit testimony from employees, relevant experts, and stakeholders and make recommendations on protocols for future public health emergencies based on an assessment of the testimony and any submitted guidance. The board would consist of nine members, including the Commissioners of DOHMH, DCAS, DCWP, and the Office of Labor Relations, two Mayoral appointees, two appointees by the Speaker of the Council, and one appointee by the Public Advocate.

The bill would require the board to submit a preliminary report after the first hearing and, by December 15, 2021, a final report to the Mayor and the Speaker of the Council. The final report would include an assessment of the submitted testimony regarding how employers and agencies have advised and helped protect employees during the COVID-19 pandemic and issue recommendations on health and safety protocols for future public health emergencies. The board would dissolve 180 days after the submission of the final report.

This bill would take effect immediately.

Since introduction, Int. No. 2161-A was amended to require the board to hold and staff two public hearings to solicit testimony and submitted guidance from stakeholders, experts, and private and public employees. The new language requires both hearings to be recorded and documented and for the board members to also include a representative from organized labor. In the revised bill, agencies no longer need to reply to the submitted recommendations, and the final report issued by the board must be submitted by December 15, 2021.

**ANALYSIS OF INT. NO. 2162-A**

 Int. No. 2162-A would require the Citywide Office of Occupational Safety and Health (COSH), an office within DCAS, to disseminate occupational safety and health information to city employees during a public health emergency. The bill would specifically have COSH monitor federal, state, and city agencies that provide information about occupational safety and health. If any such agency issues guidance about occupational safety and health related to the public health emergency, COSH would be required to email such guidance to the safety and health coordinator at each city agency within 24 hours.

Within 24 hours of receipt of such guidance, the safety and health coordinator would then be required to post the guidance in the workplace, email it to each employee within the agency, and send a summary to each employee that is tailored to the employee’s position to highlight the most relevant information to them from the guidance. The safety and health coordinator would also be required to provide each employee with any education or training required to ensure proper compliance with the most recent guidance.

 The bill would take effect 90 days after it becomes law.

Since introduction, Int. No. 2162-A was amended to clarify the definition of “city agency,” to require the coordinator to educate or train employees to properly comply with the most recent health and safety guidance, and to extend the enactment date of the bill from 60 to 90 days after it becomes law.

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Int. No. 2161-A

By Council Members Miller, Rosenthal and Louis

..Title

A LOCAL LAW

In relation to establishing a board to review workplace health and safety guidance during the COVID-19 pandemic

..Body

Be it enacted by the Council as follows:

Section 1. Definitions. For the purposes of this local law, the following terms have the following meanings:

Agency. The term “agency” means: (i) any agency as such term is defined in section 1150 of the New York city charter, the head of which is appointed by the mayor; and (ii) any agency as such term is defined in section 1150 of the New York city charter headed by a board, commission or other multi-member body, where a majority of such body’s members are appointed by the mayor.

Board. The term “board” means the workplace health and safety guidance review board.

City. The term “city” means the city of New York.

COVID-19. The term “COVID-19” means disease caused by the severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2).

Guidance. The term “guidance” means the workplace health and safety guidance that agencies have issued to municipal officers and employees and that private employers have issued to private employees during the pendency COVID-19 pandemic.

Private employee. The term “private employee” means a person who is employed by a private employer and works:

1. Remotely during the COVID-19 pandemic; or

2. At or for an essential business, as defined by the New York state department of economic development in accordance with executive order number 202.6 as issued by the governor of New York on March 18, 2020 and extended or amended thereafter.

Private employer. The term “private employer” means any person, company, corporation, labor organization or association that employs 10 or more persons.

§ 2. Workplace health and safety guidance review board. a. There shall be a workplace health and safety guidance review board. The board shall conduct two public hearings to hear testimony from employees and employers in the public and private sectors about policies and related health and safety protocols that have been implemented to address employee safety during the COVID-19 pandemic, how effectively the policies and protocols have been communicated to employees, how effectively employees have been trained in any mandatory protocols and any recommendations for improvements.

b. The board shall consist of the following 9 members, each of whom shall have demonstrated expertise relevant to the purpose and duties of the board:

1. The commissioners of health and mental hygiene, citywide administrative services, consumer and worker protection, and labor relations, or the designees thereof;

2. Two members appointed by the mayor;

3. Two members appointed by the speaker of the council, one of whom is a member of organized labor; and

4. One member appointed by the public advocate.

c. The mayor shall designate a chair from among the members of the board and an agency to provide administrative support.

d. The board may invite relevant experts and stakeholders, including, but not limited to, those representing public employers, uniformed and non-uniformed municipal employees, organized labor and private employers and employees in the construction, human services, nonprofit, healthcare, hospitality, retail and other industries, to attend its meetings and to otherwise provide testimony and information relevant to its duties.

e. All members shall be appointed no later than 30 days after the effective date of this local law. Vacancies in membership shall be filled in the same manner as the original appointment.

f. Each member of the board shall serve at the pleasure of the officer who appointed the member. In the event of a vacancy, a successor shall be appointed in the same manner as the original appointment for the remainder of the unexpired term. All members shall serve without compensation.

g. The first meeting of the board shall be convened no later than 60 days after the effective date of this local law. At such meeting, the board shall determine the dates for the two public hearings.

h. The board shall publicly notice each hearing at least 30 days prior to it being held and shall conduct such public outreach as necessary to make relevant experts and stakeholders aware of the upcoming hearing.

i. All testimony from both public hearings shall be recorded and documented and its transcript made available to the mayor and the speaker of the council.

j. The board shall meet monthly to discuss the testimony given at each public hearing until it submits the final report required by subdivision k. Such meetings shall be open to the public. The board shall keep a record of its deliberations and determine its rules of procedure.

k. Within 60 days of the first public hearing, the board shall submit a preliminary report to the mayor and the speaker of the council on findings from its public hearings as well as any preliminary recommendations to help public and private employers more effectively protect and inform employees during the COVID-19 pandemic. By December 15, 2021, the board shall submit a final report to the mayor and speaker of the council on final findings from both public hearings, as well as final and updated recommendations pertaining to the COVID-19 pandemic and recommendations on health and safety protocols for future public health emergencies.

 l. The board shall terminate 180 days after the date on which it submits its final report, as required by subdivision k.

§ 3. This local law takes effect immediately.

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Int. No. 2162-A

By Council Members Miller, Ampry-Samuel, Kallos, Rosenthal, Adams and Louis

A LOCAL LAW

..Title

To amend the administrative code of the city of New York, in relation to the dissemination of occupational safety and health information to city employees during a public health emergency

..Body

Be it enacted by the Council as follows:

Section 1.  Section 12-208 of the administrative code of the city of New York, as added by local law number 182 for the year 2018, is renumbered section 12-209.

§ 2. Chapter 2 of title 12 of the administrative code of the city of New York is amended by adding a new section 12-210 to read as follows:

§ 12-210 Dissemination of occupational safety and health information during a public health emergency. a. Definitions. For purposes of this section, the following terms have the following meanings:

City agency. The term “city agency” means: (i) any agency as such term is defined in section 1150 of the New York city charter, the head of which is appointed by the mayor; and (ii) any agency as such term is defined in section 1150 of the New York city charter headed by a board, commission or other multi-member body, where a majority of such body’s members are appointed by the mayor.

Citywide office of occupational safety and health. The term “citywide office of occupational safety and health” means the office within the department of citywide administrative services responsible for providing oversight to city agencies in environmental and occupational safety and health to ensure compliance with federal, state and local regulations or any successor office that carries out the same or substantially similar functions.

Occupational safety and health agency. The term “occupational safety and health agency” means any federal, state or city agency or office that issues guidance related to occupational safety and health, including the federal occupational safety and health administration, the public employee safety and health bureau, the federal centers for disease control and prevention, the national institute for occupational safety and health and the department of health and mental hygiene.

Public health emergency. The term “public health emergency” means any time during which, due to a threat to public health, a state of emergency has been declared by the governor pursuant to section 28 of the executive law or by the mayor pursuant to section 24 of the executive law or a public health emergency has been declared by the commissioner of health and mental hygiene pursuant to subdivision d of section 3.01 of the New York city health code.

Safety and health coordinator. The term “safety and health coordinator” means the person at a city agency who is primarily responsible for occupational safety and health within the city agency.

b. During any public health emergency, the citywide office of occupational safety and health shall monitor all occupational safety and health agencies for the issuance of guidance regarding occupational safety and health related to the public health emergency. This guidance shall include, without limitation, any guidance on hazard assessment, hygiene, social distancing, identification and isolation of sick employees, return to work after illness or exposure, physical and administrative controls, workplace flexibility, training and anti-retaliation practices. Within 24 hours of the issuance of any such guidance, the citywide office of occupational safety and health shall deliver said guidance by electronic mail to the safety and health coordinator at each city agency.

c. Within 24 hours of receipt of any occupational safety and health guidance from the citywide office of occupational safety and health during a public health emergency, each safety and health coordinator shall:

1. Post such guidance in the workplace next to the poster required pursuant to section 801.47 of title 12 of the New York codes, rules and regulations;

2. Deliver such guidance by electronic mail to each employee of the city agency;

3. Prepare and deliver by electronic mail a summary of the guidance to each employee of the city agency. Such summary shall be tailored so as to highlight the guidance that is most relevant to employees holding a particular position, or a category of positions, within the city agency; and

4. Provide to each employee any education or training necessary to ensure the proper application of the latest guidance issued by the citywide office of occupational safety and health.

§ 3. This local law takes effect 90 days after it becomes law.

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