S T A T E O F N E W Y O R K

1498

2009-2010 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 7, 2009

Introduced by M. of A. WRIGHT -- read once and referred to the Committee on Labor

AN ACT to amend the labor law and the workers' compensation law, in relation to the definition of employment as it concerns professional models and the individuals and entities which engage them; and to repeal certain provisions of the labor law and the workers' compensation law relating thereto

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Subparagraph 3 of paragraph (b) of subdivision 1 of section 511 of the labor law is REPEALED.

S 2. Subdivision 1 of section 511 of the labor law is amended by adding a new paragraph (c) to read as follows:

(C) THE TERM "EMPLOYMENT" DOES NOT INCLUDE THE SERVICES OF A PROFESSIONAL MODEL NOR IS A MODEL MANAGER, ADVERTISER, PERSON, CORPORATION OR OTHER ENTITY AN "EMPLOYER" OF A PROFESSIONAL MODEL FOR THE PURPOSES OF THIS ARTICLE, WHERE THE PROFESSIONAL MODEL MEETS ALL OF THE FOLLOWING CRITERIA:

(1) HAS THE RIGHT TO NEGOTIATE HIS OR HER RATE OF COMPENSATION AND THE BASIS FOR REIMBURSEMENT FOR EXPENSES;

(2) HAS THE RIGHT TO ACCEPT OR REJECT JOB ASSIGNMENTS, HOURS OF WORK AND PERFORMANCE LOCATIONS;

(3) HAS THE RIGHT TO PERFORM SERVICES FOR OTHER ADVERTISERS, PERSONS OR ENTITIES;

(4) INCURS HIS OR HER OWN EXPENSES, INCLUDING EXPENSES FOR PORTFOLIOS;

(5) BEARS HIS OR HER OWN RISK OF LOSS IF A CLIENT FAILS TO PAY ITS BILL; AND

(6) RECEIVES NO FRINGE BENEFITS.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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AS USED IN THIS PARAGRAPH, (I) "PROFESSIONAL MODEL" MEANS A PERSON WHO, IN THE COURSE OF HIS OR HER TRADE, OCCUPATION OR PROFESSION, PERFORMS MODELING SERVICES;

(II) "MODELING SERVICES" MEANS THE APPEARANCE BY A PROFESSIONAL MODEL IN PHOTOGRAPHIC SESSIONS OR THE ENGAGEMENT OF SUCH MODEL IN LIVE, FILMED OR TAPED MODELING PERFORMANCES FOR REMUNERATION;

(III) "MODEL MANAGER" MEANS A PERSON OR ENTITY WHICH REPRESENTS PROFESSIONAL MODELS WITH RESPECT TO THEIR MODELING CAREERS.

S 3. The fifth undesignated paragraph of subdivision 4 of section 2 of the workers' compensation law is REPEALED.

S 4. Section 2 of the workers' compensation law is amended by adding a new subdivision 4-a to read as follows:

4-A. THE TERM "EMPLOYEE" DOES NOT INCLUDE THE SERVICES OF A PROFESSIONAL MODEL NOR IS A MODEL MANAGER, ADVERTISER, PERSON, CORPORATION OR OTHER ENTITY AN "EMPLOYER" OF A PROFESSIONAL MODEL FOR THE PURPOSES OF THIS ARTICLE, WHERE THE PROFESSIONAL MODEL MEETS ALL OF THE FOLLOWING CRITERIA:

(A) HAS THE RIGHT TO NEGOTIATE HIS OR HER RATE OF COMPENSATION AND THE BASIS FOR REIMBURSEMENT FOR EXPENSES;

(B) HAS THE RIGHT TO ACCEPT OR REJECT JOB ASSIGNMENTS, HOURS OF WORK AND PERFORMANCE LOCATIONS;

(C) HAS THE RIGHT TO PERFORM SERVICES FOR OTHER ADVERTISERS, PERSONS OR ENTITIES;

(D) INCURS HIS OR HER OWN EXPENSES, INCLUDING EXPENSES FOR PORTFOLIOS;

(E) BEARS HIS OR HER OWN RISK OF LOSS IF A CLIENT FAILS TO PAY ITS BILL; AND

(F) RECEIVES NO FRINGE BENEFITS.

AS USED IN THIS SECTION, (I) "PROFESSIONAL MODEL" MEANS A PERSON WHO, IN THE COURSE OF HIS OR HER TRADE, OCCUPATION OR PROFESSION, PERFORMS MODELING SERVICES;

(II) "MODELING SERVICES" MEANS THE APPEARANCE BY A PROFESSIONAL MODEL IN PHOTOGRAPHIC SESSIONS OR THE ENGAGEMENT OF SUCH MODEL IN LIVE, FILMED OR TAPED MODELING PERFORMANCES FOR REMUNERATION;

(III) "MODEL MANAGER" MEANS A PERSON OR ENTITY WHICH REPRESENTS PROFESSIONAL MODELS WITH RESPECT TO THEIR MODELING CAREERS.

S 5. The closing paragraph of subdivision 5 of section 201 of the workers' compensation law is REPEALED.

S 6. Section 201 of the workers' compensation law is amended by adding a new subdivision 5-a to read as follows:

5-A. THE TERM "EMPLOYEE" DOES NOT INCLUDE THE SERVICES OF A PROFESSIONAL MODEL NOR IS A MODEL MANAGER, ADVERTISER, PERSON, CORPORATION OR OTHER ENTITY AN "EMPLOYER" OF A PROFESSIONAL MODEL FOR THE PURPOSES OF THIS ARTICLE, WHERE THE PROFESSIONAL MODEL MEETS ALL OF THE FOLLOWING CRITERIA:

(A) HAS THE RIGHT TO NEGOTIATE HIS OR HER RATE OF COMPENSATION AND THE BASIS FOR REIMBURSEMENT FOR EXPENSES;

(B) HAS THE RIGHT TO ACCEPT OR REJECT JOB ASSIGNMENTS, HOURS OF WORK AND PERFORMANCE LOCATIONS;

(C) HAS THE RIGHT TO PERFORM SERVICES FOR OTHER ADVERTISERS, PERSONS OR ENTITIES;

(D) INCURS HIS OR HER OWN EXPENSES, INCLUDING EXPENSES FOR PORTFOLIOS;

(E) BEARS HIS OR HER OWN RISK OF LOSS IF A CLIENT FAILS TO PAY ITS BILL; AND

(F) RECEIVES NO FRINGE BENEFITS.

AS USED IN THIS SECTION, (I) "PROFESSIONAL MODEL" MEANS A PERSON WHO, IN THE COURSE OF HIS OR HER TRADE, OCCUPATION OR PROFESSION, PERFORMS MODELING SERVICES;

(II) "MODELING SERVICES" MEANS THE APPEARANCE BY A PROFESSIONAL MODEL IN PHOTOGRAPHIC SESSIONS OR THE ENGAGEMENT OF SUCH MODEL IN LIVE, FILMED OR TAPED MODELING PERFORMANCES FOR REMUNERATION;

(III) "MODEL MANAGER" MEANS A PERSON OR ENTITY WHICH REPRESENTS PROFESSIONAL MODELS WITH RESPECT TO THEIR MODELING CAREERS.

S 7. This act shall take effect immediately.