

# STATE OF NEW YORK

4144

2019-2020 Regular Sessions

## IN SENATE

March 1, 2019

Introduced by Sen. SAVINO -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations

AN ACT to amend the executive law and the labor law, in relation to establishing certain practices relating to models

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The executive law is amended by adding a new section 296-e  
2 to read as follows:

3 § 296-e. Unlawful discriminatory practices relating to models. 1. As  
4 used in this section, the following terms shall have the following mean-  
5 ings:

6 a. "client" means a retail store, a manufacturer, a clothing designer,  
7 an advertising agency, a photographer, a publishing company or any other  
8 such person or entity that receives modeling services from a model;

9 b. "hiring party" means any person or entity who exercises any form of  
10 control over a model's services, including modeling entities, brands,  
11 and other clients, other than (1) the United States government, (2) the  
12 state of New York, including any office, department, agency, authority  
13 or other body of the state including the legislature and the judiciary,  
14 (3) a city government, including any office, department, agency or other  
15 body of that city, (4) any other local government, municipality or coun-  
16 ty or (5) any foreign government.

17 c. "model" means an individual, regardless of his or her status as an  
18 independent contractor or employee, who performs modeling services for a  
19 client or consents in writing to the transfer of his or her legal right  
20 to the use of his or her name, portrait, picture or image, for advertis-  
21 ing purposes or for the purposes of trade, directly to a client or who  
22 provides showroom or fit modeling services;

23 d. "modeling entity" means a modeling agency, model management compa-  
24 ny, employment agency, and/or any person or entity that: (1) is in the

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

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1 business of managing entertainments, exhibitions or performances, or the  
2 models, artists or attractions constituting the same; (2) who, for a  
3 fee, procures or attempts to procure: (i) employment or engagements for  
4 persons seeking employment or engagements, or (ii) employees or inde-  
5 pendent contractors for employers or entities seeking the services of  
6 employees or independent contractors; and/or (3) renders vocational  
7 guidance or counselling services to models; and

8 e. "modeling services" means the appearance by a model in photographic  
9 sessions or the engagement of a model in runway, live, filmed, or taped  
10 performances requiring him or her to pose, provide an example or stand-  
11 ard of artistic expression or to be a representation to show the  
12 construction or appearance of some thing or place for purposes of  
13 display or advertising. Modeling services shall also include the  
14 provisions of showroom or fit modeling services.

15 2. It shall be an unlawful discriminatory practice for a hiring party  
16 to:

17 a. engage in unwelcome sexual advances, requests for sexual favors, or  
18 other verbal or physical conduct of a sexual nature to a model when:

19 (1) submission to such conduct is made either explicitly or implicitly  
20 a term or condition of a model's provision of modeling services;

21 (2) submission to or rejection of such conduct by a model is used  
22 either explicitly or implicitly as the basis for decisions concerning  
23 the individual's provision of modeling services; or

24 (3) such conduct has the purpose or effect of unreasonably interfering  
25 with a model's provision of modeling services by creating an intimidat-  
26 ing, hostile, or offensive environment; or

27 b. subject a model to harassment based on age, race, creed, color,  
28 national origin, sexual orientation, military status, sex, disability,  
29 predisposing genetic characteristics, familial status, marital status,  
30 or domestic violence victim status, where such harassment has the  
31 purpose or effect of unreasonably interfering with an individual's  
32 provision of modeling services by creating an intimidating, hostile, or  
33 offensive environment; or

34 c. threaten, intimidate, discipline, harass, deny a work opportunity  
35 to or discriminate against a model, or take any other action that penal-  
36 izes a model for, or is reasonably likely to deter a model from, exer-  
37 cising or attempting to exercise any right guaranteed under this arti-  
38 cle, or from obtaining future work opportunity because the model has  
39 done so.

40 3. a. Each client and modeling entity shall post, in a conspicuous  
41 place at their place of business and/or at the site of each job assign-  
42 ment, notices to the models hired, to be prepared or approved by the  
43 division, setting forth excerpts from, or summaries of, the pertinent  
44 provisions of this section and information related to filing a complaint  
45 under this article including pro bono and/or legal services contact  
46 information.

47 b. Each client shall provide to each model providing modeling  
48 services, in writing or electronically, the names and/or offices, and a  
49 reliable means of contacting such individuals or offices, to whom a  
50 complaint under this article may be made.

51 c. At the initial execution of the contract between the modeling enti-  
52 ty and the model, the model shall be informed in writing of the  
53 provisions of this article including the procedure for filing a  
54 complaint. The model shall demonstrate his or her understanding of the  
55 provisions of this article and that such information has been provided

1 to him or her by signing a form, to be prepared or approved by the divi-  
2 sion, to that effect.

3 4. a. Each modeling entity or client shall implement a system or  
4 procedure for receiving complaints under this section and section two  
5 hundred ninety-six-d of this article. Such procedures shall provide a  
6 written or electronic receipt to the complainant acknowledging that the  
7 complaint has been received and catalogued. Registration of complaints  
8 via these systems or procedures, or failure on the part of the modeling  
9 entity or client to implement such system or procedure, shall be consid-  
10 ered as evidence of knowledge or notice of the alleged sexual harass-  
11 ment.

12 b. Modeling entities shall be considered employers and models shall be  
13 considered employees for purposes of section two hundred one-g of the  
14 labor law. Clients shall be considered employers for purposes of subdi-  
15 vision one of section two hundred one-g of the labor law.

16 5. Modeling entities and clients may be held jointly and severally  
17 liable for claims of sexual harassment brought under this section and  
18 section two hundred ninety-six-d of this article.

19 6. Nothing in this section shall be construed or interpreted to limit  
20 the rights of models provided under this chapter or any other provisions  
21 of law.

22 § 2. Subdivision 4 of section 292 of the executive law, as amended by  
23 section 2 of subpart F of part KK of chapter 57 of the laws of 2018, is  
24 amended to read as follows:

25 4. The term "unlawful discriminatory practice" includes only those  
26 practices specified in sections two hundred ninety-six, two hundred  
27 ninety-six-a [and], two hundred ninety-six-c, and two hundred ninety-  
28 six-e of this article.

29 § 3. The labor law is amended by adding a new section 202-n to read as  
30 follows:

31 § 202-n. Provision of educational materials regarding nutrition and  
32 eating disorders to adult models. 1. For the purposes of this section,  
33 the following terms shall have the following meanings:

34 a. "adult model" means an individual over the age of eighteen, regard-  
35 less of his or her status as an independent contractor or employee, who  
36 performs modeling services for a client or consents in writing to the  
37 transfer of his or her legal right to the use of his or her name,  
38 portrait, picture or image, for advertising purposes or for the purposes  
39 of trade, directly to a client or who provides showroom or fit modeling  
40 services;

41 b. "client" means a retail store, a manufacturer, a clothing designer,  
42 an advertising agency, a photographer, a publishing company or any other  
43 such person or entity that receives modeling services from a model;

44 c. "modeling entity" means a modeling agency, model management compa-  
45 ny, employment agency, and/or any person or entity that: (1) is in the  
46 business of managing entertainments, exhibitions or performances, or the  
47 models, artists or attractions constituting the same; (2) who, for a  
48 fee, procures or attempts to procure: (i) employment or engagements for  
49 persons seeking employment or engagements, or (ii) employees or inde-  
50 pendent contractors for employers or entities seeking the services of  
51 employees or independent contractors; and/or

52 (3) renders vocational guidance or counselling services to models; and

53 d. "modeling services" means the appearance by a model in photographic  
54 sessions or the engagement of a model in runway, live, filmed, or taped  
55 performances requiring him or her to pose, provide an example or stand-  
56 ard of artistic expression or to be a representation to show the

1 construction or appearance of some thing or place for purposes of  
2 display or advertising. Modeling services shall also include the  
3 provisions of showroom or fit modeling services.

4 2. a. A modeling entity shall make available educational materials  
5 regarding nutrition and eating disorders to an adult model within ninety  
6 days of the date of agreeing to representation by the modeling entity or  
7 procurement by a modeling entity of an engagement, meeting, or inter-  
8 view, whichever comes first.

9 b. Educational materials regarding nutrition and eating disorders  
10 shall include, at a minimum, the components specified in the National  
11 Institute of Health's Eating Disorders internet website or a successor  
12 internet website.

13 c. Educational materials regarding nutrition and eating disorders for  
14 each adult model shall be in the language understood by such adult  
15 model. The modeling entity may comply with this language requirement  
16 either by making the educational materials available in the adult  
17 model's native language or by having the educational materials presented  
18 for such adult model in the language that he or she understands.

19 d. The modeling entity shall keep a record for three years confirming  
20 that it has made available educational materials regarding nutrition and  
21 eating disorders to all adult models who have been signed for represen-  
22 tation after the effective date of this section.

23 § 4. This act shall take effect on the ninetieth day after it shall  
24 have become a law; provided, however, that effective immediately, the  
25 addition, amendment and/or repeal of any rule or regulation necessary  
26 for the implementation of this act on its effective date are authorized  
27 and directed to be made and completed on or before such effective date.