

STATE OF NEW YORK

8638

IN SENATE

March 23, 2022

Introduced by Sen. HOYLMAN -- read twice and ordered printed, and when printed to be committed to the Committee on Labor

AN ACT to amend the labor law, in relation to enacting the New York state fashion workers act

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

1 Section 1. The labor law is amended by adding a new article 34 to read
2 as follows:

ARTICLE 34

NEW YORK STATE FASHION WORKERS ACT

3
4
5 Section 958. Short title.

6 959. Definitions.

7 960. Registration required.

8 961. Registration process.

9 962. Duties of model management companies and creative manage-
10 ment companies.

11 963. Prohibitions on model management companies and creative
12 management companies.

13 964. Duties of clients and hiring parties.

14 965. Prohibitions on clients and hiring parties.

15 966. Violations, penalties and procedures.

16 § 958. Short title. This article shall be known and may be cited as
17 the "New York State Fashion Workers Act".

18 § 959. Definitions. As used in this article:

19 1. "Client" means a retail store, a manufacturer, a clothing designer,
20 an advertising agency, a photographer, a publishing company or any other
21 such person or entity that receives modeling services from a model or
22 other services related to the provision of modeling services from a
23 creative, directly or through intermediaries.

24 2. "Hiring party" means any person or entity who exercises any form of
25 control over a model's or creative's services, including modeling and
26 creative entities, brands, and other clients, other than:

27 (a) the United States government;

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

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1 (b) the state of New York, including any office, department, agency,
2 authority or other body of the state including the legislature and the
3 judiciary;

4 (c) a local government, including any office, department, agency or
5 other body of that local government; or

6 (d) any foreign government.

7 3. "Model" means an individual, regardless of the individual's status
8 as an independent contractor or employee, who performs modeling services
9 for a client or consents in writing to the transfer of their legal right
10 to the use of their name, portrait, picture or image, for advertising
11 purposes or for the purposes of trade, directly to a client or who
12 provides showroom, parts, or fit modeling services. The term "model"
13 shall include influencers, performing artists and other persons who
14 perform modeling services.

15 4. "Modeling management company" means any person or entity, other
16 than a person or entity licensed as an employment agency under article
17 eleven of the general business law, that:

18 (a) is in the business of managing models participating in enter-
19 tainments, exhibitions or performances;

20 (b) procures or attempts to procure, for a fee, employment or engage-
21 ments for persons seeking employment or engagements as models; or

22 (c) renders vocational guidance or counselling services to models for
23 a fee.

24 5. "Modeling services" means the appearance by a model in photographic
25 sessions or the engagement of a model in live runway, live, filmed, or
26 taped performances, including on social media platforms, requiring the
27 model to pose, provide an example or standard of artistic expression or
28 to be a representation to show the construction or appearance of some
29 thing or place for purposes of display or advertising, including the
30 provisions of castings, fittings, photoshoots, showroom, parts or fit
31 modeling services.

32 6. "Creatives" are all individuals who perform various tasks or
33 services directly related to the provision of "modeling services" by
34 "models," including but not limited to, photographers, stylists, casting
35 directors, make-up artists, hairdressers, and other vendors or persons
36 performing non-modeling creative work supporting the provision of
37 "modeling services."

38 7. "Creative management company" means a person or entity, other than
39 a person or entity licensed as an employment agency under article eleven
40 of the general business law, that:

41 (a) is in the business of managing creatives participating in enter-
42 tainments, exhibitions or performances;

43 (b) procures or attempts to procure, for a fee, employment or engage-
44 ments for persons seeking employment or engagements directly related to
45 the provision of "modeling services" by "models"; or

46 (c) renders vocational guidance or counseling services to creatives
47 for a fee.

48 8. "Exclusive representation" means an agreement, or a clause
49 contained in an agreement, which is entered into between a "modeling
50 management company" and a "model" or a "creative management company" and
51 a "creative" which restricts such model or creative from performing work
52 for another party not subject to such agreement for a specified period
53 of time or in a specified geographical area, that is similar to such
54 model or creative's work for the model management company or creative
55 management company.

1 § 960. Registration required. A model management company or creative
2 management company shall not engage in business from offices in this
3 state or enter into any arrangement with a person for the purpose of
4 providing model management company or creative management company
5 services to persons in this state unless the management company is
6 registered under this article. No person shall use the name or title
7 "modeling agency", "model management company", "creative agency", "crea-
8 tive management company", or otherwise represent that it is registered
9 under this article unless the entity or person is registered under this
10 article. A model management company or creative management company that
11 does not comply with the provisions of this article shall not be a
12 registered model management company or creative management company in
13 this state.

14 § 961. Registration process. 1. Except as otherwise provided in this
15 section, each model management company or creative management company
16 required to be registered under this article shall provide the depart-
17 ment with information required by the department on forms that the
18 department specifies. At a minimum, model management companies and crea-
19 tive management companies shall provide the following information:

20 (a) all names under which it conducts business;

21 (b) the address of the principal place of business of the model
22 management company or creative management company and the address of
23 each office it maintains in New York state;

24 (c) the model management company's or creative management company's
25 taxpayer or employer identification number;

26 (d) a list by jurisdiction of each name under which the model manage-
27 ment company or creative management company has operated in the preced-
28 ing five years, including any alternative names, names of predecessors
29 and, if known, successor business entities; and

30 (e) in the event the model management company or creative management
31 company or the ultimate parent of a model management group or creative
32 management company group is a privately or closely held company, the
33 model management company or creative management company or model manage-
34 ment group or creative management group shall file a list of all persons
35 or entities that beneficially own a five percent or greater interest in
36 the model management company or creative management company at the time
37 of application and a list of persons who formerly beneficially owned a
38 five percent or greater interest in the model management company or
39 creative management company or its predecessors in the preceding five
40 years. In the event the model management company or creative management
41 company or the ultimate parent of a modeling agency group is a publicly
42 traded company, the model management company or creative management
43 company or model management group or creative management group shall
44 file a list of all persons or entities that beneficially own a fifty
45 percent or greater interest in the model management company or creative
46 management company or the ultimate parent of the model management group
47 or creative management group at the time of application.

48 2. Each model management company or creative management company oper-
49 ating within this state shall complete its initial registration within
50 one year after the effective date of this article.

51 3. Within one year of the initial registration or any renewal regis-
52 tration, each registrant shall renew its registration by notifying the
53 department of any changes in the information previously provided pursu-
54 ant to this section.

55 4. Upon application for registration, a model management company or
56 creative management company or model management group or creative

1 management group with more than five employees that either work from a
2 location in this state or perform work relating to models or creatives
3 in this state shall deposit with the department a surety bond in the sum
4 of fifty thousand dollars.

5 5. Two or more model management companies or creative management
6 companies that are majority owned by the same ultimate parent, entity or
7 persons may be registered as a model management group or creative
8 management group. A model management group or creative management group
9 may satisfy any reporting and financial requirements of this article on
10 a consolidated basis. As a condition of registration as a model manage-
11 ment group or creative management group, each company that is a member
12 of the group shall guarantee payment of all financial obligations of
13 each other member.

14 6. A model management company or creative management company shall be
15 exempt from the registration requirements specified in this section if
16 such model management company or creative management company:

17 (a) submits a properly executed request for registration and exemption
18 on a form provided by the department;

19 (b) is domiciled outside this state and is licensed or registered as a
20 model management company or creative management company in another state
21 that has the same or greater requirements as this article; and

22 (c) does not maintain an office in this state or solicit in any manner
23 clients located or domiciled within this state.

24 7. The registration and exemption of a model management company or
25 creative management company under subdivision six of this section shall
26 be valid for one year.

27 8. The department shall maintain a list of model management companies
28 and creative management companies registered under this article and
29 shall issue a certificate of registration to each model management
30 company or creative management company duly registered.

31 9. The department may prescribe forms necessary to promote the effi-
32 cient administration of this section.

33 § 962. Duties of model management companies and creative management
34 companies. A model management company or creative management company
35 shall:

36 1. have a fiduciary duty to any model or creative the model management
37 company or creative management company manages, procures or attempts to
38 procure employment or engagement for, or renders vocational guidance or
39 counselling services to;

40 2. conduct reasonable inquiries into clients, hiring parties, employ-
41 ment, engagements, entertainments, exhibitions and performances to
42 ensure the health, safety and welfare of models and creatives;

43 3. use all reasonable efforts to procure employment or engagements for
44 models and creatives signed to the model management company or creative
45 management company;

46 4. refrain from enforcing a requirement of exclusive representation
47 should the model or creative not have been provided job opportunities
48 booked or contracted by a client through the management company to
49 provide modeling services or creative services for a fee in the previous
50 sixty days;

51 5. ensure that any employment, engagement, entertainment, exhibition
52 or performance which requires nudity or other sexually explicit material
53 shall comply with the requirements of subdivision three of section
54 fifty-two-c of the civil rights law;

55 6. provide models and creatives with access to and copies, which may
56 consist of digital copies, of all contracts and agreements the model

1 management company or creative management company has entered into with
2 a client or hiring party involving rate of pay and scope of work,
3 provide plain language summaries of such contracts and agreements, and
4 disclose any relationship, contractual or otherwise, that may exist
5 between the model management company or creative management company and
6 the client or hiring party other than the agreement relating specif-
7 ically to modeling services or creative services;

8 7. if receiving any payment of funds on behalf of a model or creative,
9 immediately deposit the funds in escrow and disburse such funds, less
10 the model management company or creative management company's commis-
11 sion, within thirty days of receipt, within no more than forty-five days
12 from the date the modeling services or creative services were completed
13 except when the funds are the subject of an action, proceeding or
14 controversy before a court or other governmental body, in which case
15 such funds shall remain in escrow;

16 8. in the case of a dispute with a client regarding late or non-pay-
17 ment of modeling services or creative services rendered, the management
18 company shall pay the model or creative and then keep the payment from
19 the client when the dispute is resolved;

20 9. notify former models and creatives in writing, including email, if
21 the management company collects royalties due to a model whom the
22 management company no longer represents;

23 10. post a physical copy of the model management company or creative
24 management company's certificate of registration in a conspicuous place
25 in the office of the model management company or creative management
26 company and a digital copy on the model management company or creative
27 management company website;

28 11. include, in clear and legible type, the registration number of the
29 model management company or creative management company in any adver-
30 tisement, including social media profiles for the management company,
31 for the purpose of the solicitation of models or creatives for the model
32 management company or creative management company and in any contract
33 with a model, creative, hiring party, or client;

34 12. submit to the department a form or forms of contract to be
35 utilized by such model management company or creative management company
36 in entering into written contracts with models or creatives for the
37 employment or engagement of the services of such model management compa-
38 ny or creative management company by such models or creatives, and
39 secure the approval of the department thereof, provided the department
40 shall not withhold approval unless such proposed form of contract is
41 unfair, unjust and oppressive to the model or creative; and

42 13. provide all materials, including financial statements, agreements,
43 and contracts pertaining to the model or creative, in a language the
44 model or creative sufficiently understands.

45 § 963. Prohibitions on model management companies and creative manage-
46 ment companies. A model management company or creative management compa-
47 ny shall not:

48 1. require or collect any fee or deposit from a model or creative upon
49 the signing of, or as a condition to entering into, any contract or
50 agreement between the model management company or creative management
51 company and the model or creative;

52 2. charge more than the daily fair market rate for accommodation for
53 the model or creative;

54 3. deduct or offset from a model or creative's payment or compensation
55 any fee or expense other than the agreed upon commission. Such prohibit-

1 ed fees and expenses include but are not limited to website fees, travel
2 fees, accommodation fees, and delivery fees;

3 4. require a model or creative to sign a model management company or
4 creative management company contract that contains either a term greater
5 than two years or a term allowing the model management company or crea-
6 tive management company to renew the contract without the model or crea-
7 tive's affirmative consent;

8 5. impose a commission fee greater than twenty percent of the model or
9 creative's payment or compensation;

10 6. take any retaliatory action against any model or creative who files
11 or attempts to file a complaint pursuant to this article or declines or
12 discontinues participation in any casting or booking on account of
13 reasonable, good faith concerns regarding an actual or potential
14 violation of this article;

15 7. engage in discrimination or harassment of any kind against a model
16 or creative based on any legally protected categories as prohibited by
17 title VII of the federal Civil Rights Act of 1964, as amended; or

18 8. management companies acting as visa employer-sponsors shall not
19 deduct visa-related costs and fees from the pay of a model or creative
20 if the applicable federal regulations/statutes governing the visa cate-
21 gory under which the model or creative entered the United States for the
22 purposes of engaging in modeling services or creative services requires
23 that the management company cover all of those visa-related costs and
24 fees.

25 § 964. Duties of clients and hiring parties. A client or hiring party
26 shall:

27 1. provide fees, payment and compensation due to a model or creative,
28 including compensation required by subdivision two of this section,
29 within thirty days of the end of any employment, engagement, enter-
30 tainment, exhibition or performance;

31 2. compensate models and creatives at an hourly rate at least fifty
32 percent higher than the contracted hourly rate for any employment,
33 engagement, entertainment, exhibition or performance that exceeds eight
34 hours in any twenty-four hour period; and

35 3. provide at least one thirty-minute meal break for any employment,
36 engagement, entertainment, exhibition or performance that exceeds eight
37 hours in any twenty-four hour period.

38 § 965. Prohibitions on clients and hiring parties. A client or hiring
39 party shall not engage in discrimination or harassment of any kind
40 against a model or creative based on any legally protected categories as
41 prohibited by title VII of the federal Civil Rights Act of 1964, as
42 amended.

43 § 966. Violations, penalties and procedures. 1. Any model management
44 company or creative management company or person purporting to be a
45 model management company or creative management company who has failed
46 to comply with the registration requirements of section nine hundred
47 sixty of this article shall be deemed to have violated this article.

48 2. Any model management company or creative management company or
49 person purporting to be a professional employer organization who has
50 failed to comply within the time specified by law with an order issued
51 by the commissioner to comply with the registration requirements of
52 section nine hundred sixty of this article shall be deemed to have
53 violated this article.

54 3. Any client who enters into an agreement with a model management
55 company or creative management company or person purporting to be a
56 model management company or creative management company, who is required

1 to register, but whom the client knows or should have known has failed
2 to register, failed to renew its registration or had its registration
3 revoked by the commissioner shall be deemed to have violated this arti-
4 cle.

5 4. (a) The commissioner may impose a civil penalty upon a model
6 management company or creative management company, a person purporting
7 to be a model management company or creative management company, and all
8 persons or entities that own a five percent or greater interest in the
9 model management company or creative management company, that have been
10 deemed to have violated this article, for no more than three thousand
11 dollars for the initial violation, and for no more than five thousand
12 dollars for a second or subsequent violation.

13 (b) The commissioner may impose a civil penalty upon any client
14 described in subdivision three of this section that has been deemed to
15 have violated this article, for no more than one thousand dollars for
16 the initial violation, and for no more than five thousand dollars for a
17 second or subsequent violation.

18 (c) The order imposing such civil penalty may be served personally or
19 by certified mail at the last known mailing address of the person being
20 served. Such order shall be in writing and shall describe the nature of
21 the violation, including reference to the provisions of subdivisions
22 one, two and three of this section alleged to have been violated.

23 5. An order issued under this section shall be final and not subject
24 to review by any court or agency unless review is had pursuant to
25 section one hundred one of this chapter. Provided that no proceeding for
26 administrative or judicial review as provided in this chapter shall then
27 be pending and the time for initiation of such proceeding shall have
28 expired, the commissioner may file with the county clerk of the county
29 where the person against whom the penalty has been imposed has a place
30 of business the order of the commissioner or the decision of the indus-
31 trial board of appeals containing the amount of the civil penalty. The
32 filing of such order or decision shall have the full force and effect of
33 a judgment duly docketed in the office of such clerk. The order or deci-
34 sion may be enforced by and in the name of the commissioner in the same
35 manner, and with like effect, as that prescribed by the civil practice
36 law and rules for the enforcement of a money judgment.

37 6. If any model management company or creative management company or
38 person purporting to be a model management company or creative manage-
39 ment company shall have failed to comply within twenty days of an order
40 by the commissioner to register or renew registration, the commissioner
41 may seek to enjoin such unlawful activity, pursuant to the civil prac-
42 tice law and rules.

43 7. The intentional failure of a model management company or creative
44 management company or person purporting to be a model management company
45 or creative management company to comply with the registration require-
46 ments of section nine hundred sixty of this article shall be a class B
47 misdemeanor. The officers and agents of a model management company or
48 creative management company or person purporting to be a model manage-
49 ment company or creative management company who knowingly permit such
50 model management company or creative management company to violate the
51 registration requirements of section nine hundred sixty of this article
52 shall be guilty of a class B misdemeanor.

53 8. A model management company or creative management company, person
54 purporting to be a model management company or creative management
55 company, hiring party or client that otherwise violates this article
56 shall be liable for actual damages to any model or creative that has

1 suffered damages due to such violation, and the court may, in its
2 discretion, award punitive damages.

3 § 2. Section 196-a of the labor law, as amended by chapter 564 of the
4 laws of 2010, is amended to read as follows:

5 § 196-a. Complaints by employees to commissioner. [~~(a)~~] 1. Any
6 employee; person or organization acting on the employee's behalf; or the
7 recognized and certified collective bargaining agent acting on the
8 employee's behalf, may file with the commissioner a complaint regarding
9 a violation of this article, article five, seven, nineteen, or nine-
10 teen-A of this chapter for an investigation of such complaint and state-
11 ment setting the appropriate remedy, if any. The commissioner shall keep
12 the names of employees that are the subject of an investigation confi-
13 dential until such time that disclosure is necessary for resolution of
14 an investigation or a complaint. Failure of an employer to keep adequate
15 records or provide statements of wages to employees as required under
16 this chapter, in addition to exposing such employer to penalties author-
17 ized under subdivision one of section two hundred eighteen of this chap-
18 ter, shall not operate as a bar to filing of a complaint by an employee.
19 In such a case the employer in violation shall bear the burden of prov-
20 ing that the complaining employee was paid wages, benefits and wage
21 supplements.

22 [~~(b)~~] 2. Any employee, or the recognized and certified collective
23 bargaining agent acting on the employee's behalf, contractor, or the
24 recognized and certified labor organization with which the contractor
25 has executed a collective bargaining agreement covering wages, benefits
26 and supplements, may file with the commissioner a complaint regarding an
27 alleged violation of this article or article nineteen of this chapter
28 occasioned by another person, corporation, employer or entities in
29 violation of article thirty-five-E of the general business law for an
30 investigation of such complaint and statement setting the appropriate
31 remedy, if any.

32 3. (a) A model or creative who is aggrieved by a violation of article
33 thirty-four of this chapter may file a complaint with the commissioner
34 within two years after the acts alleged to have violated said article
35 occurred. The commissioner shall prescribe the form of the complaint,
36 which shall include, at a minimum:

37 (i) the name and mailing address of the model or creative and of the
38 hiring party alleged to have violated article thirty-four of this chap-
39 ter;

40 (ii) a statement detailing the terms of the model or creative's
41 contract, including a copy of such contract if available;

42 (iii) the model or creative's occupation;

43 (iv) a statement detailing the alleged violations of article thirty-
44 four of this chapter; and

45 (v) a signed affirmation that all facts alleged in the complaint are
46 true.

47 (b) (i) Within twenty days of receiving a complaint alleging a
48 violation of article thirty-four of this chapter, the commissioner shall
49 send the hiring party named in the complaint a written notice of
50 complaint. The commissioner shall send such notice by certified mail
51 and shall bear the cost of sending such notice.

52 (ii) The notice required by this paragraph shall:

53 (1) inform the hiring party that a complaint has been filed alleging
54 violations of article thirty-four of this chapter;

55 (2) detail the remedies available to a model or creative for
56 violations of said article by a hiring party;

1 (3) include a copy of the complaint; and

2 (4) inform the hiring party that failure to respond to the complaint
3 will create a rebuttable presumption in any civil action commenced
4 pursuant to article thirty-four of this chapter that the hiring party
5 committed the violations alleged in the complaint.

6 (c) Within twenty days of receiving the notice of complaint, the
7 hiring party identified in the complaint shall send the commissioner one
8 of the following:

9 (i) a written statement that the model or creative has been paid in
10 full and proof of such payment; or

11 (ii) a written statement that the model or creative has not been paid
12 in full and the reasons for the failure to provide such payment.

13 (d) (i) Within twenty days of receiving the written response, the
14 commissioner shall send the model or creative a copy of:

15 (1) the response;

16 (2) any enclosures submitted to the commissioner with the response;

17 (3) materials informing the model or creative that he or she may bring
18 an action in a court of competent jurisdiction; and

19 (4) any other information about the status of the complaint.

20 (ii) If the commissioner receives no response from the hiring party to
21 the notice of complaint within the time provided by this subdivision,
22 the commissioner shall mail a notice of non-response to both the model
23 or creative and the hiring party by regular mail and shall include with
24 such notice proof that the commissioner previously mailed the notice of
25 complaint to the hiring party by certified mail. Upon satisfying the
26 requirements of this paragraph, the commissioner may close the case.

27 (e) As used in this subdivision, "model" and "creative" shall have the
28 meanings defined in section nine hundred fifty-nine of this chapter.

29 § 3. This act shall take effect on the ninetieth day after it shall
30 have become a law. Effective immediately, the addition, amendment and/or
31 repeal of any rule or regulation necessary for the implementation of
32 this act on its effective date are authorized to be made and completed
33 on or before such effective date.