

STATE OF NEW YORK

2477--A

2023-2024 Regular Sessions

IN SENATE

January 20, 2023

Introduced by Sens. HOYLMAN-SIGAL, JACKSON -- read twice and ordered printed, and when printed to be committed to the Committee on Labor -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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:

Section 1. The labor law is amended by adding a new article 35 to read as follows:

ARTICLE 35

NEW YORK STATE FASHION WORKERS ACT

Section 1030. Short title.

1031. Definitions.

1032. Registration required.

1033. Registration process.

1034. Duties of model management companies.

1035. Prohibitions on model management companies.

1036. Power of attorney.

1037. Duties of clients.

1038. Prohibitions on clients.

1039. Violations, penalties and procedures.

§ 1030. Short title. This article shall be known and may be cited as the "New York State Fashion Workers Act".

§ 1031. Definitions. As used in this article:

1. "Client" means a retail store, a manufacturer, a clothing designer, an advertising agency, a photographer, a publishing company or any other such person or entity that receives modeling services from a model, directly or through intermediaries.

2. "Model" means an individual, regardless of the individual's status as an independent contractor or employee, who performs modeling services

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

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1 for a client or consents in writing to the transfer of their legal right
2 to the use of their name, portrait, picture or image, for advertising
3 purposes or for the purposes of trade, directly to a client or who
4 provides showroom, parts, or fit modeling services. The term "model"
5 shall include influencers, content creators, performing artists and
6 other persons who perform modeling services.

7 3. "Model management company" means any person or entity, other than a
8 person or entity licensed as an employment agency under article eleven
9 of the general business law, that:

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

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

14 (c) renders vocational guidance or counselling services to models for
15 a fee.

16 4. "Modeling services" means the appearance by a model in photographic
17 sessions or the engagement of a model in live runway, live, filmed, or
18 taped performances, including on social media platforms, requiring the
19 model to pose, provide an example or standard of artistic expression or
20 to be a representation to show the construction or appearance of some
21 thing or place for purposes of display or advertising, including the
22 provisions of castings, fittings, photoshoots, showroom, parts or fit
23 modeling services.

24 5. "Exclusive representation" means an agreement, or a clause
25 contained in an agreement, entered into between a model management
26 company and a model that restricts such model from performing work for
27 another party not subject to such agreement for a specified period of
28 time or in a specified geographical area, that is similar to such
29 model's work for the model management company.

30 6. "Department" means the department of labor and "commissioner" means
31 the commissioner of labor, except that a city with a population of one
32 million or more may, by local law, designate a city agency to enforce
33 the provisions of this article within the jurisdiction of such city, in
34 which case "department" shall refer to the agency designated by such
35 local law and "commissioner" shall refer to the head of such agency.

36 7. "Deal memo" means a plain language written summary in a language
37 the model sufficiently understands of the key terms of any employment,
38 engagement, entertainment, exhibition, or performance, including but not
39 limited to the scope of work, rate of pay, payment term, usages,
40 incurred expenses, and expectations of the model.

41 § 1032. Registration required. A model management company shall not
42 engage in business from offices in this state or enter into any arrange-
43 ment with a person for the purpose of providing model management company
44 services to persons in this state unless the model management company is
45 registered under this article. No person shall use the name or title
46 "modeling agency", "model management company", or otherwise represent
47 that it is registered under this article unless the entity or person is
48 registered under this article. A model management company that does not
49 comply with the provisions of this article shall not be a registered
50 model management company in this state.

51 § 1033. Registration process. 1. Except as otherwise provided in this
52 section, each model management company required to be registered under
53 this article shall provide the department with information required by
54 the department on forms that the department specifies. At a minimum,
55 model management companies and creative management companies shall
56 provide the following information:

(a) all names under which it conducts business;

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

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

(d) a list by jurisdiction of each name under which the model management company has operated in the preceding five years, including any alternative names, names of predecessors and, if known, successor business entities; and

(e) in the event the model management company or the ultimate parent of a model management group is a privately or closely held company, the model management company or model management group shall file a list of all persons or entities that beneficially own a five percent or greater interest in the model management company at the time of application and a list of persons who formerly beneficially owned a five percent or greater interest in the model management company or its predecessors in the preceding five years. In the event the model management company or the ultimate parent of a model management group is a publicly traded company, the model management company or model management group shall file a list of all persons or entities that beneficially own a fifty percent or greater interest in the model management company or the ultimate parent of the model management group at the time of application.

2. Each model management company operating within this state shall complete its initial registration within one year after the effective date of this article.

3. Within one year of the initial registration or any renewal registration, each registrant shall renew its registration by notifying the department of any changes in the information previously provided pursuant to this section.

4. Upon application for registration, a model management company or model management group with more than five employees that either work from a location in this state or perform work relating to models in this state shall deposit with the department a surety bond in the sum of fifty thousand dollars.

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

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

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

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

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

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

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

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

3 § 1034. Duties of model management companies. A model management
4 company shall:

5 1. be deemed to have a fiduciary duty to the models they represent and
6 shall be required to act in good faith, with the utmost honesty and
7 integrity, in the best interests of the models. This fiduciary duty
8 shall encompass all aspects of the model management company's represen-
9 tation, including, but not limited to, negotiations, contracts, finan-
10 cial management, and the protection of the models' legal and financial
11 rights;

12 2. conduct due diligence to ensure that any employment or engagement
13 booked through the model management company does not pose an unreason-
14 able risk of danger to the model. An unreasonable risk of danger shall
15 include, but not be limited to, failing to establish and communicate a
16 zero tolerance policy for abuse, harassment, or any other form of inap-
17 propriate behavior;

18 3. use its best efforts to procure employment, engagements, enter-
19 tainments, exhibitions or performances for a fee for models signed to
20 the model management company;

21 4. ensure that any employment, engagement, entertainment, exhibition
22 or performance which requires nudity or other sexually explicit material
23 shall comply with the requirements of subdivision three of section
24 fifty-two-c of the civil rights law, as added by chapter three hundred
25 four of the laws of two thousand twenty;

26 5. provide models with physical or digital copies of the final agree-
27 ments the model management company has negotiated with clients and deal
28 memos memorializing such agreements, at least twenty-four hours prior to
29 the commencement of a model's services pertaining to each agreement, in
30 a language the model sufficiently understands;

31 6. clearly specify all items that may be initially paid for by the
32 model management company but will ultimately be deducted from the
33 compensation due to the model at the time of payment or settlement,
34 together with an itemized recitation as to how each item is to be
35 computed, provided such charges are not otherwise prohibited by this
36 article. On a quarterly basis, a model shall also be given copies of any
37 and all documentation held by or available to the model management
38 company necessary to determine the validity of each charge;

39 7. disclose any financial relationship, contractual or otherwise,
40 that may exist between the model management company and the client,
41 other than the agreement relating specifically to modeling services;

42 8. notify former models in writing, including email, if the model
43 management company collects royalties due to a model whom the management
44 company no longer represents;

45 9. post a physical copy of the model management company's certificate
46 of registration in a conspicuous place in the office of the model
47 management company and a digital copy on the model management company's
48 website;

49 10. include, in clear and legible type, the registration number of the
50 model management company in any advertisement, including social media
51 profiles for the model management company, for the purpose of the solici-
52 tation of models for the model management company and in any contract
53 with a model or client; and

54 11. submit to the department a form or forms of contract to be
55 utilized by such model management company in entering into written
56 contracts with models for the employment or engagement of the services

1 of such model management company by such models, and secure the approval
2 of the department thereof, provided the department shall not withhold
3 approval unless such proposed form of contract is unfair, unjust and
4 oppressive to the model.

5 § 1035. Prohibitions on model management companies. A model management
6 company shall not:

7 1. require or collect any fee or deposit from a model upon the signing
8 of, or as a condition to entering into, any contract or agreement
9 between the model management company and the model;

10 2. charge more than the daily fair market rate for accommodation for
11 the model;

12 3. book any accommodation, payment of which shall be provided or reim-
13 bursed by the model in any way, without providing a written disclosure
14 of the rate charged for the accommodation to the model in advance of
15 such model's stay at the accommodation;

16 4. deduct or offset from a model's payment or compensation any fee or
17 expense other than the agreed upon commission as set forth in the
18 contract and any items advanced pursuant to subdivision six of section
19 one thousand thirty-four of this article. Such prohibited fees and
20 expenses include but are not limited to website fees, accommodation
21 fees, delivery fees, and interest on payment of the model's earnings;

22 5. advance the cost of travel without informed written consent from
23 the model;

24 6. require a model to sign a model management company contract that
25 contains a term greater than three years;

26 7. require a model to sign a model management company contract that
27 renews without the model's affirmative written consent;

28 8. impose a commission fee greater than twenty percent of the model's
29 payment or compensation;

30 9. take any retaliatory action against any model who files or attempts
31 to file a complaint pursuant to this article or declines or discontinues
32 participation in any casting or booking on account of reasonable, good
33 faith concerns regarding an actual or potential violation of this arti-
34 cle; or

35 10. engage in discrimination or harassment of any kind against a model
36 because of any protected status covered under subdivision (a) of section
37 two hundred ninety-six of the executive law.

38 § 1036. Power of attorney. 1. Any power of attorney agreement between
39 a model management company and a model shall:

40 (a) be presented as an optional component of the model management
41 company's representation agreement to which the model can opt in or out;

42 (b) not be presented as a necessary condition of entering into an
43 agreement with the model management company;

44 (c) be subject to termination by the model at any time and for any
45 reason;

46 (d) not violate the provisions of subdivision one of section one thou-
47 sand thirty-four of this article; and extend only to matters directly
48 related to the provision of modeling services.

49 2. Any power of attorney agreement that violates this section shall be
50 considered void as a matter of public policy.

51 § 1037. Duties of clients. A client shall:

52 1. compensate models at an hourly rate at least fifty percent higher
53 than the contracted hourly rate for any employment, engagement, enter-
54 tainment, exhibition or performance that exceeds eight hours in any
55 twenty-four hour period;

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

4 3. only offer an employment or engagement to a model that does not
5 pose an unreasonable risk of danger to the model. An unreasonable risk
6 of danger shall include, but not be limited to, failure to establish and
7 communicate a zero tolerance policy for abuse, harassment, or any other
8 form of inappropriate behavior;

9 4. ensure that any employment, engagement, entertainment, exhibition
10 or performance which requires nudity or other sexually explicit material
11 shall comply with the requirements of subdivision three of section
12 fifty-two-c of the civil rights law, as added by chapter three hundred
13 four of the laws of two thousand twenty;

14 5. allow the model to be accompanied by their agent, manager, chapter-
15 one, or other representative to any employment, engagement, enter-
16 tainment, exhibition or performance; and

17 6. provide adequate levels of liability insurance to cover and safe-
18 guard the health and safety of models.

19 § 1038. Prohibitions on clients. A client shall not engage in discrim-
20 ination or harassment of any kind against a model because of any
21 protected status covered under subdivision (a) of section two hundred
22 ninety-six of the executive law.

23 § 1039. Violations, penalties and procedures. 1. Any model management
24 company or person purporting to be a model management company who has
25 failed to comply with the registration requirements of section one thou-
26 sand thirty-two of this article shall be deemed to have violated this
27 article.

28 2. Any model management company or person purporting to be a model
29 management company who has failed to comply within the time specified by
30 law with an order issued by the commissioner to comply with the regis-
31 tration requirements of section one thousand thirty-two of this article
32 shall be deemed to have violated this article.

33 3. Any client who enters into an agreement with a model management
34 company or person purporting to be a model management company, who is
35 required to register, but whom the client knows or should have known has
36 failed to register, failed to renew its registration or had its regis-
37 tration revoked by the commissioner shall be deemed to have violated
38 this article.

39 4. (a) The commissioner may impose a civil penalty upon a model
40 management company, a person purporting to be a model management compa-
41 ny, and all persons or entities that own a five percent or greater
42 interest in the model management company, that have been deemed to have
43 violated this article, for no more than three thousand dollars for the
44 initial violation, and for no more than five thousand dollars for a
45 second or subsequent violation.

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

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

1 5. An order issued under this section shall be final and not subject
2 to review by any court or agency unless a review is had pursuant to
3 section one hundred one of this chapter. Provided that no proceeding for
4 administrative or judicial review as provided in this chapter shall then
5 be pending and the time for initiation of such proceeding shall have
6 expired, the commissioner may file with the county clerk of the county
7 where the person against whom the penalty has been imposed has a place
8 of business the order of the commissioner or the decision of the indus-
9 trial board of appeals containing the amount of the civil penalty. The
10 filing of such order or decision shall have the full force and effect of
11 a judgment duly docketed in the office of such clerk. The order or deci-
12 sion may be enforced by and in the name of the commissioner in the same
13 manner, and with like effect, as that prescribed by the civil practice
14 law and rules for the enforcement of a money judgment.

15 6. If any model management company or person purporting to be a model
16 management company shall have failed to comply within twenty days of an
17 order by the commissioner to register or renew registration, the commis-
18 sioner may seek to enjoin such unlawful activity, pursuant to the civil
19 practice law and rules.

20 7. The intentional failure of a model management company or person
21 purporting to be a model management company to comply with the registra-
22 tion requirements of section one thousand thirty-two of this article
23 shall be a class B misdemeanor. The officers and agents of a model
24 management company or person purporting to be a model management company
25 who knowingly permit such model management company to violate the regis-
26 tration requirements of section one thousand thirty-two of this article
27 shall be guilty of a class B misdemeanor.

28 8. A model may bring and maintain an action in a court of competent
29 jurisdiction to enforce the provisions of this article. A model manage-
30 ment company, person purporting to be a model management company, or
31 client that violates this article shall be liable for actual damages to
32 any model that has suffered damages due to such violation, reasonable
33 attorneys' fees and costs, and, unless the employer proves a good faith
34 basis to believe that its actions were in compliance with the law, an
35 additional amount as liquidated damages in an amount of no more than one
36 hundred percent of the total amount of actual damages, except such
37 liquidated damages may be up to three hundred percent if found that the
38 actions were willful.

39 9. The attorney general may bring and maintain an action in a court of
40 competent jurisdiction to enforce the provisions of this article when
41 the attorney general has determined there is reasonable cause to believe
42 that a model management company, person purporting to be a model manage-
43 ment company, or client has engaged in repeated fraudulent or illegal
44 acts or otherwise demonstrates persistent fraud or illegality in the
45 carrying on, conducting, or transacting of business.

46 10. (a) A model who is aggrieved by a violation of this article may
47 file a complaint with the commissioner within six years after the acts
48 alleged to have violated this article occurred. The commissioner shall
49 prescribe the form of the complaint, which shall include, at a minimum:

50 (i) the name and mailing address of the model and of the person or
51 entity alleged to have violated this article;

52 (ii) a statement detailing the terms of the model's contract, includ-
53 ing a copy of such contract if available;

54 (iii) the model's occupation;

55 (iv) a statement detailing the alleged violations of this article; and

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

3 (b) (i) Within twenty days of receiving a complaint alleging a
4 violation of this article, the commissioner shall send the person or
5 entity named in the complaint a written notice of complaint. The
6 commissioner shall send such notice by certified mail and shall bear the
7 cost of sending such notice.

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

9 (1) inform the person or entity named in the complaint that a
10 complaint has been filed alleging violations of this article;

11 (2) detail the remedies available to a model for violations of said
12 article by the person or entity named in the complaint;

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

14 (4) inform the person or entity named in the complaint that failure to
15 respond to the complaint will create a rebuttable presumption in any
16 civil action commenced pursuant to this article that such person or
17 entity committed the violations alleged in the complaint.

18 (c) Within twenty days of receiving the notice of complaint, the
19 person or entity identified in the complaint shall send the commissioner
20 one of the following:

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

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

25 (d) (i) Within twenty days of receiving the written response, the
26 commissioner shall send the model a copy of:

27 (1) the response;

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

29 (3) materials informing the model that the model may bring an action
30 in a court of competent jurisdiction; and

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

32 (ii) If the commissioner receives no response from the person or enti-
33 ty alleged to have violated this article to the notice of complaint
34 within the time provided by this subdivision, the commissioner shall
35 mail a notice of non-response to both the model and the person or entity
36 named in the complaint by regular mail and shall include with such
37 notice proof that the commissioner previously mailed the notice of
38 complaint to the person or entity named in the complaint by certified
39 mail. Upon satisfying the requirements of this paragraph, the commis-
40 sioner may close the case.

41 § 2. This act shall take effect on the one hundred eightieth day after
42 it shall have become a law. Effective immediately, the addition, amend-
43 ment and/or repeal of any rule or regulation necessary for the implemen-
44 tation of this act on its effective date are authorized to be made and
45 completed on or before such effective date.