

Employment & Labor Law Alert

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New York Fashion Workers Act May Change the Look of Labor Relations for Models and Creatives

The New York Legislature is considering the [New York Fashion Workers Act](#), an amendment to the state's Labor Law that would significantly expand labor protections for workers in the modeling, fashion and entertainment industry. The act would require "modeling management companies" and "creative management companies" to register with the state, pay a \$50,000 surety bond, and comply with certain requirements relating to the pay and treatment of certain workers. It would also impose duties on "clients" and "hiring parties" that benefit from modeling and creative services but may not directly engage these individuals. As written, the proposed legislation could be interpreted broadly to include entities beyond traditional modeling agencies, including designers and retailers that directly engage models or creatives if these entities are deemed "in the business of managing" models and creatives.

The amendment would greatly expand labor protections for models and creatives, bring the relationship between models/creatives, management companies and other entities in the modeling, fashion and entertainment industries closer to traditional employer-employee relationships, and could have far-reaching effects in the industry depending on the scope of any final legislation.

Scope and Intent of the Act

The stated intent of the New York Fashion Workers Act is to provide labor protections to the creative workforce behind the fashion industry—models, influencers, stylists, makeup artists, hair stylists and other creative professionals—who may be engaged as independent contractors through management companies or otherwise exempted from federal and state labor laws.



Models and creatives are often not afforded certain labor protections, such as requirements as to the timing and payment of wages and overtime and the provision of meal and rest breaks. The law would also impose certain contractual requirements that previously have been left to a model or creative to negotiate.

The act largely focuses on modeling and creative management companies.

- **"Modeling management company"** and **"creative management company"** are defined broadly and include any person or entity, other than an employment agency, that: (a) is in the business of managing models/creatives participating in entertainment, exhibitions or performances; (b) procures or attempts to procure, for a fee, employment or engagements for persons seeking employment or engagements as models or creative persons seeking employment or engagements related to the provision of modeling services; or (c) renders vocational guidance or counseling services to models/creatives for a fee.
- **"Model"** means any individual (whether an independent contractor or employee) who performs modeling services for a client or consents in writing to

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the transfer of their legal right to the use of their name, portrait, picture or image for advertising purposes or for the purpose of trade directly to a client, or who provides showroom, parts, or fit modeling services. The term model includes influencers, performing artists and other persons who perform modeling services.

- **“Creative”** means any individual who performs services directly related to the provision of modeling services, including photographers, stylists, casting directors, makeup artists, hairdressers and other vendors.

The draft legislation could be interpreted broadly to include other entities beyond traditional modeling agencies, such as designers and retailers that directly engage models or creatives, if these entities are considered “in the business of managing” models and creatives.

Registration and Financial Requirements

Modeling and creative management companies would need to register in New York within one year of the effective date of the act and renew registration each year. Registration would require providing information, including the company's name under which it does business, the address of the principal place of business and offices in New York state, the taxpayer or employer identification number, and a list by jurisdiction of each name under which the company has operated in the preceding five years. Private companies must provide a list of all persons or entities that beneficially own a 5% or greater interest in the company at the time of application, as well as any former owners in the preceding five years. Public companies must provide a list of persons or entities that beneficially own a 50% or greater interest at the time of application.

The act also would require modeling and creative management companies to deposit a surety bond of \$50,000 with the New York State Department of Labor.

Companies with common ownership can satisfy the reporting and financial requirements on a consolidated basis. Companies may submit a request for registration and exemption if they are domiciled outside New York state, are licensed or registered in another state with the same or greater requirements, and do not maintain

an office in New York state or solicit clients located or domiciled within the state.

Duties Imposed on Modeling and Creative Management Companies

As written, the proposed legislation would impose significant affirmative duties on modeling and creative management companies, including:

- Owing a fiduciary duty to any model or creative the company manages, procures or attempts to procure employment or engagement for, or renders vocational guidance or counseling services to.
- Conducting reasonable inquiries into clients, hiring parties, employment, engagements, entertainment, exhibitions and performances to ensure the health, safety and welfare of models and creatives.
- Using all reasonable efforts to procure employment or engagements for models and creatives signed to the company.
- Refraining from enforcing a requirement of exclusive representation should the model or creative not have been provided job opportunities booked or contracted through the company for a fee in the previous 60 days.
- Ensuring that any engagement that requires nudity or other sexually explicit material comply with state civil rights laws.
- Providing models and creatives with access to and copies (and plain language summaries) of all contracts the company has entered into involving rate of pay and scope of work, and disclosing any other relationship, contractual or otherwise, that may exist between the company and the client or hiring party.
- If receiving any payment of funds on behalf of a model or creative, immediately depositing the funds in escrow and disbursing the funds owed to the model/creative within 30 days of receipt, 45 days from the date the services were completed (except when the funds are the subject of an action before a court or other governmental body, in which case such funds must remain in escrow). In the case of a dispute with a client regarding late or nonpayment of services rendered, the company must pay the model or creative and then

keep the payment from the client when the dispute is resolved.

- Notifying former models and creatives in writing if the company collects royalties due to a model/creative whom the company no longer represents.
- Posting a physical copy of the company's certificate of registration in a conspicuous place in the office and a digital copy on the company's website, and providing the registration number of the company in any advertisement, including social media profiles, for the purpose of the solicitation of models or creatives and in any contract with a model, creative, hiring party or client.
- Submitting to the Department of Labor a form of contract to be utilized by the company when entering into written contracts with models or creatives and securing the approval of the form by the department.
- Providing all materials, including financial statements, agreements and contracts pertaining to the model or creative, in a language the model or creative sufficiently understands.

Modeling and creative management companies would be prohibited from:

- Requiring or collecting any fee or deposit from a model or creative upon the signing of, or as a condition to entering into, any contract or agreement, or imposing a commission fee greater than 20%.
- Charging more than the daily fair market rate for accommodation for the model or creative, or deducting or offsetting from a model's or creative's payment any fee or expense other than the agreed-upon commission (such as website fees, travel fees, accommodation fees and delivery fees).
- Requiring a model or creative to sign a contract that contains either a term greater than two years or a term allowing the company to renew the contract without the model's or creative's affirmative consent.
- Taking any retaliatory action against any model or creative who files or attempts to file a complaint under the act, or declines or discontinues work on account of reasonable, good faith concerns regarding an actual or potential violation of the law.

- Engaging in discrimination or harassment of any kind against a model or creative.
- Deducting visa-related costs and fees from the pay of a model or creative if the applicable federal regulations/statutes governing the relevant visa category require that the company cover those fees.

Separate Duties Imposed on Clients and Hiring Parties

The current draft of the act could be construed broadly to include parties such as retailers and clothing designers that directly engage models. The proposed legislation also explicitly imposes duties upon those entities if they are clients or hiring parties, regardless of whether they directly engage models/creatives.

- "Client" is defined to include retail stores, manufacturers, clothing designers, advertising agencies, photographers, publishing companies "or any other such person or entity that receives modeling services from a model or other services related to the provision of modeling services from a creative, directly or through intermediaries."
- "Hiring party" means any person or entity that exercises any form of control over a model's or creative's services, including modeling and creative entities, brands and other clients.

Under the act, clients and hiring parties would be required to:

- Provide fees, payments and other compensation due to a model or creative within 30 days of the end of any engagement
- Compensate models and creatives at a rate at least 50% higher than the contracted hourly rate for work that exceeds eight hours in any 24-hour period
- Provide one 30-minute meal break for any employment, engagement, entertainment, exhibition or performance that exceeds eight hours in any 24-hour period
- Refrain from engaging in discrimination or harassment of any kind against a model or creative

Complaint Process and Penalties

The act would create a complaint process within the Department of Labor for alleged violations that would allow models and creatives to bring their complaint to the department first, within two years of the alleged violation, and then potentially in court following the department’s investigation.

As written, the law provides for penalties against modeling and creative management companies up to \$3,000 for the first violation and \$5,000 for a subsequent violation. The company and all persons or entities that own a 5% or greater interest in the company would be liable for the penalties.

Clients could be liable for up to \$1,000 for an initial violation and \$5,000 for a subsequent violation. Modeling and creative management companies, clients and hiring parties that violate the act may also be liable for actual damages suffered by a model or creative, as well as punitive damages.

What’s Next?

The legislation was introduced on March 25 and has now been referred to committee in both the State Assembly and State Senate, where it may be amended or rejected. If the bill is not rejected, it will then be sent to the full Assembly and Senate for consideration.

It is difficult to predict how long this process will take— while some bills are passed relatively quickly, the *Fashion Sustainability and Social Accountability Act* (which would, among other things, require fashion companies to disclose environmental and social due diligence policies, processes and outcomes), for example, was introduced in the state Legislature in October and remains in committee. It is likely that the legislation will undergo changes as it moves through the Legislature. While the proposed legislation remains in a relatively nascent stage, entities that would fall within the scope of the act as currently drafted may consider assessing their hiring/ engagement processes, payment practices and other policies to determine what changes would need to be made if the act becomes law.

Related Professionals

Ian Carleton Schaefer ischaefer@loeb.com
Mark Goldberg mgoldberg@loeb.com
Lauren Richards lrichards@loeb.com

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