

LEGAL

New York fashion model, creative agencies on hook for higher licensing, pay?

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If passed, the pending New York Fashion Workers Act ([S8638/A09762](#)) would pose significant compliance requirements on model and creative management companies.

The bill, which seeks to amend the New York Labor Law, requires model and creative management companies to register with the state within one year of the bill's effective date as well as pay a \$50,000 surety bond, subject to some limited exceptions.

"Model" or "creative" management company is defined as any person or entity that "(a) is in the business of managing models [or creatives] participating in entertainments, exhibitions, or performances; (b) procures or attempts to procure, for a fee, employment or engagements [] [for] models; or (c) renders vocational guidance or counseling services to models [or creatives] for a fee" in New York.



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The bill specifically applies to models, classified as employees and independent contractors, and creatives such as photographers, stylists, casting directors, makeup artists and hairdressers.

Construed broadly, this could have massive implications for not only traditional model or creative management companies using fee-based structures, but also retailers who directly hire models and creatives for studio

photoshoots and ad campaigns.

Registration must be renewed each year. The bill further lays out the duties and responsibilities the companies owe to their models and creatives. They include:

1. Fiduciary duty. The company owes a fiduciary duty to any model or creative the company "manages, procures, or attempts to procure or renders vocational guidance or counseling services to."
2. Health and safety. The company must conduct "reasonable inquiries" into clients, hiring parties and engagements to ensure the health, safety and welfare of models and creatives.
3. Reasonable efforts. The company must make "reasonable efforts" to procure employment for the model or creative.
4. Exclusive representation. The company cannot enforce exclusive representation clauses when the model or creative has not been provided a job or contracted a client through the company in the previous 60 days.
5. Explicit content. If the engagement requires nudity or other sexually explicit material, the company must comply with Section 52(c)(3) of the Civil Rights Law, which requires the individual to knowingly and voluntarily sign an agreement depicting the sexually explicit material requested, which may also be rescinded.
6. Contract copies and disclosures. All contracts and agreements involving the rate of pay and scope of work must be provided to the model or creative. The company must also provide a plain language summary and disclose "any relationship" between the company and the client or hiring party.
7. If the company receives any payment on behalf of a model or creative, they must be immediately deposited in escrow and disbursed less any commissions within 45 days from the date the services were completed.
8. To the extent there are disputes with the hiring party, the company must pay the model or creative and then keep the payment from the client when the dispute is resolved.
9. Posting requirement. The company must post its certificate of registration in a conspicuous place in the office and display a digital copy on its Web site.
10. Registration number. The company must include its registration number in any advertisements, including social media profiles.
11. The company must submit, and the state must approve, its hiring contract or form. The state will not withhold approval unless the form is "unfair, unjust and oppressive." The company must also provide all materials, including financial statements, agreements, and contracts to the model or creative in a language they sufficiently understand.
12. The company cannot require a fee as a condition for entering into a contract with the company, charge more than the daily fair market rate for accommodation for the model or creative, or deduct from the model's payment or commission any fees or expenses, including visas or visa-related costs, other than those previously agreed upon.
13. Contract length. The contract between the company and model or creative cannot be longer than two years and cannot be renewed without affirmative consent.
14. Commission fees. Commission fees may be no more than 20 percent.
15. No retaliation or discrimination. The company cannot take any retaliatory action or engage in discrimination or harassment.

Further, the bill includes additional duties for clients and hiring parties, including:

1. Any fees, payment, or compensation must be paid within 30 days of the employment or engagement.
2. The client must pay an hourly rate at least 50 percent higher than the contracted hourly rate for any employment or engagement that exceeds eight hours in any 24-hour period.
3. No discrimination or harassment. The client cannot engage in discrimination or harassment against the model or creative.

A model or creative management company or person purporting to be a model or creative management company who fails to comply with registration will be deemed to have violated the law.

Failure to timely comply, including with renewal, constitutes additional violation.

A client or hiring party can further violate the law by contracting with a company whom the client knows or should have known failed to register or renew registration or had its registration revoked.

Civil penalties include up to \$3,000 for the initial violation and up to \$5,000 for each additional violation.

Intentional failure to comply with registration constitutes a class B misdemeanor.

Lastly, a model or creative aggrieved by a violation of this law may file a complaint within two years with the commissioner.

The complaint will then be sent to the company for an opportunity to respond. The commissioner will review the response and may then inform the model or creative of their right bring an action in court.

What is next

The bill was introduced in the New York state legislature by Senator Brad Hoylman and Assembly member Karines Reyes in late March and has been referred to committee. The committee may schedule a hearing to discuss the bill and solicit additional public opinion.

While under consideration, the bill may be subject to amendment or rejected entirely by the committee.

The committee may then report the bill to the full senate or assembly for consideration where it may again be amended or rejected.

If passed and not vetoed by the governor, the bill will come into effect 19 days after it becomes a law.

If passed, the bill imposes significant compliance requirements for all businesses in the fashion and modeling industry, including the modeling and creatives agencies themselves and those who hire from these agencies.

Companies should review their existing policies and practices as well as conduct a risk assessment to determine whether they meet duties and responsibilities, particularly those related to payment and overtime.

WE EXPECT THE bill to be subject to at least some revisions and debate in the months to come.

Interestingly, failure to comply with the duties and responsibilities noted above does not constitute violation of the law in its current form. However, we would assume it could have implications on a company's ability to register in the future.

And if or when it does pass, we expect further guidance from the state, including the required forms to meet the registration and publication requirements.

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