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New York State Amends Labor Law To Protect Child Models

November 20, 2013

On October 21, 2013, Governor Andrew M. Cuomo signed amendments to the New York Labor Law, Art. 4-A, §§ 150-154, the laws governing employment of child performers. The new law is effective on November 20, 2013, thirty (30) days after it was signed into law. [1] The amendments expand coverage of the law to include runway and print models under the age of 18. These amendments are significant because now child models are entitled to the same protections under the New York Labor Law as other young entertainers, including child actors. Prior to the amendment, the employment of child models was under the purview of the Department of Education. Now, the New York Department of Labor has oversight and responsibility.

As a result of the new law, employers of child models (as well as their parents or guardians) will have additional responsibilities and obligations.

Key Requirements

New York's Child Performer Law has multiple and complex requirements. Some of the most notable include:

- Employers must notify and obtain a certificate of eligibility from the Department of Labor, and the child must provide the employer with a Child Performer Permit before commencing work.
- Employers are required to provide teachers to child models if their modeling schedule prohibits them from receiving adequate and regular schooling.
- Employers must designate a "responsible person" as a chaperone for all child models under the age of sixteen (16); and for infants, employers must have a nurse accompany the infant at all times (in addition to the responsible person).

The manner in which employers compensate child models also is regulated in that employers must transfer at least fifteen (15) percent of a child model's gross earnings into a trust account.

- The new law imposes additional health and safety requirements, as well as restrictions on the hours and mandatory rest periods provided to child models. Many of the work hour restrictions vary based on the age of the child model.

Enforcement

Should the Department of Labor find "that a child performer's employer has violated any provision of this article [4-A]," the Department is entitled to assess civil penalties of up to $3,000 per violation. The money collected for these violations subsequently is placed in the Child Performer Trust Account.

Takeaways

New York's law, as amended, is similar to laws in other states (such as California) which treat child models the same as child performers. For instance, in California, the law makes no distinction between models and other child entertainment performers – minors, including models aged 15 days to 18 years, must obtain an entertainment work permit from the California Division of Labor Standards Enforcement, and an employer wishing to hire models must obtain a permit to employ the minor from the agency. Furthermore, all employers employing child actors or models must deposit fifteen percent of the child's earnings into a blocked trust account, known as a "Coogan account."

Employers that use child models should familiarize themselves with the detailed regulations governing child performers to ensure that their employment of these individuals is in compliance with the new law. Employers should also closely monitor the Department of Labor's activity regarding any amendments to existing regulations as well as the implementation of any additional requirements.

Employers also should note that we anticipate, based on public statements made by the Department of Labor, the Agency will review how the new rule plays out during Fashion Week and may, thereafter, issue new regulations to address the particular circumstances of child models. For example, unlike other child performers during Fashion Week, a child model may work for more than three consecutive days, but for different employers and, therefore, will not be provided with a teacher. Accordingly, based on this potential concern regarding educational requirements as well as any others that may come up, the Department of Labor may seek to adjust the regulations after Fashion Week so they are more tailored to accommodate the needs of child models.

For more information on the new law, please contact Katharine Parker or Sandra Crawshaw-Sparks or your Proskauer relationship lawyer.

[1] The Department of Labor has taken the position that the detailed regulations in place for child performers apply to child models. It is also possible that the Department of Labor will implement additional regulations governing child models.

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