

Fact Sheet

Fashion Workers Act (S.9832 Hoylman-Sigal/A.5631E Reyes)

The fashion industry is a \$2.5 trillion global industry, and New York is its center in the U.S. Boasting world-class creative talent, New York's fashion industry employs 180,000 people, accounting for 6 percent of the city's workforce and generating \$10.9 billion in total wages. New York Fashion Week draws more than 230,000 visitors to the city annually and has long been a major economic driver, generating close to \$600 million in income each year. That is more than the economic impact of Milan, Paris and London's fashion weeks combined.

And yet, fashion workers – in particular, the models who are literally the faces of the industry – are not afforded basic labor protections in New York. This discrepancy is due to the multi-level structure of hiring of these workers as independent contractors through management companies. Unlike talent agencies, modeling agencies are considered to be management companies under New York State General Business Law §171(8), known as the “incidental booking exception,” allowing them to escape licensing and regulation. With no legal standards for this aspirational industry, it is difficult for the many young people who are trying to break into the business to differentiate a legitimate management company from a dangerous scam.

Typically, model management companies are granted blanket “power of attorney” as part of their agreement to represent talent, giving them power to accept payments on behalf of the model, deposit checks and deduct expenses, as well as book jobs, negotiate the model's rate of pay, and give third parties permission to use the model's image, while having no obligation to show the model the contracts negotiated on their behalf or act in the model's best interests. This leaves models unprotected outside the terms of their individual contracts – which tend to be exploitative and one-sided in favor of the management company – and creates a lack of transparency and accountability when it comes to basic issues like health and safety and having insight into one's own finances. The power dynamic is even more stark for immigrant models, since management companies often double as the model's visa sponsor and landlord.

For example, models often don't know whether and how much they'll be paid for jobs booked through management companies, which deduct various unexplained fees from their earnings, in addition to a 20 percent commission from the model and a 20 percent service fee from the client. Models are also often left in the dark about how their images will be used, which is particularly concerning in light of the rise of generative artificial intelligence. Models are held to multi-year, auto-renewing contracts without any guarantee of actually being booked paid work, which ensnares them in cycles of debt and makes models highly vulnerable to other forms of abuse, including human trafficking. When models experience abuse, they do not have a safe channel to file work-related grievances without a risk of retaliation.

The Fashion Workers Act (S.9832 Hoylman-Sigal/A.5631E Reyes) would address these issues by closing the legal loophole by which model management companies escape accountability and create basic protections for the models who are the faces of New York's fashion industry. It would impose civil penalties on management companies that violate their responsibilities under the bill and empower the Attorney General to hold management companies accountable for repeated violations.

Key Provisions

The Fashion Workers Act would require management agencies to:

- Conduct due diligence to ensure castings and jobs don't pose unreasonable risk of danger to the model, allow a model to be accompanied by a chaperone, and establish a zero tolerance policy for abuse
- Allow models to file a complaint with the labor commissioner, and decline to participate in a casting or booking due to good faith concerns, without retaliation
- Establish a fiduciary duty to act in the best interests of their talent
- Provide models with copies of contracts and agreements, and deal memos memorializing such agreements, at least 24 hours in advance of a job
- Make handing over power of attorney optional and revocable at any time
- Charge a 20% commission maximum on earnings and notify formerly represented models if they collect royalties on their behalf
- Share in writing the rate charged to the model for accommodation in advance of the model's stay
- Register and deposit a surety bond of \$50,000 with the NYS Department of State
- Obtain clear written consent for the creation or use of a model's digital replica, detailing the scope, purpose, rate of pay, and duration of such use

And discontinue bad practices such as:

- Presenting power of attorney as a necessary condition for entering into a contract with the management company
- Collecting signing fees or deposits from models
- Deducting fees or expenses from the model's earnings other than the agreed upon commission (i.e. website fees, accommodation fees, delivery fees, interest on payment of the model's earnings)
- Renewing the contract without the model's affirmative consent
- Imposing a commission fee greater than twenty percent of the model's compensation
- Taking retaliatory action against a model for filing a complaint
- Engaging in discrimination or harassment of any kind against a model on the basis of race, ethnicity, and other legally permissible categories under Section 296(a) of the Executive Law
- Creating, altering, or manipulating a model's digital replica using artificial intelligence without clear written consent from the model.

The Fashion Workers Act would require clients to:

- Provide overtime pay for work that exceeds eight consecutive hours
- Provide a meal break for work that exceeds eight consecutive hours
- Allow the model to be accompanied by a chaperone
- Provide liability insurance to cover the health and safety of models
- Protect the health and safety of models, including by establishing a zero-tolerance policy for abuse
- Obtain clear written consent for the creation or use of a model's digital replica, detailing the scope, purpose, rate of pay, and duration of such use.