

November 2013

### EMPLOYER ALERT

#### **NEW YORK LAW AMENDED TO PROTECT CHILD MODELS' CONDITIONS OF EMPLOYMENT AND EDUCATION REQUIREMENTS**

On October 21, 2013, Governor Cuomo signed into law an act to amend the New York State Labor Law and the New York State Arts and Cultural Affairs Law to include models within the broad protections already afforded to other child performers.

The law, which takes effect on November 20, 2013, expands Section 150 of New York's Labor Law to include "runway and print models" within the definition of "artistic and creative services" as it pertains to child performers, and repeals the provision of New York's Arts and Cultural Affairs law that treats child models distinctly from other child performers.

The enhanced protections for child models under New York Labor Law will create significant additional responsibilities for those employers who seek the services of models under 18 years of age, including:

- obtaining an Employer Certificate of Eligibility to Employ Child Performers from the NYS Department of Labor (DOL Form LS 550);
- submitting a Notice of Use of Child Performers to the New York State Department of Labor (DOL Form LS 556);
- obtaining proof of a valid Child Performer Permit or temporary permit;
- transferring at least 15% of the child model's gross earnings to a trust account for the child;
- allowing a designated "responsible person" at least 18 years of age to be within sight or sound of a child model under 16 years of age at all times during the workday;
- enabling the child model to fulfill his or her educational requirements, which in certain circumstances may include providing time, work space and tutors;
- adhering to hours of work, meal period and rest break requirements;
- providing health and safety orientation training, and information to protect the health and safety of the child model; and

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- maintaining records of compliance with such requirements for at least 6 years after the termination of employment of the child model.

These obligations arise pursuant to the existing New York State Department of Labor regulations applicable to Child Performers, effective April 1, 2013 (12 NYCRR Part 186). In light of the amendment, the agency may also create new regulations specifically applicable to the modeling industry.

An employer's violation of the law or regulations may result in the suspension or revocation of an Employer Certificate of Eligibility to Employ Child Performers, in addition to civil penalties of up to \$1,000 for a first violation, \$2,000 for a second violation and \$3,000 for each subsequent violation. A non-complying employer also risks negative treatment in the press on this well-publicized topic. Accordingly, the new rules likely will have a significant impact on February's New York Fashion Week for employers seeking the services of covered child models, and more broadly, as to whether to employ child models at all.

We are available to provide counsel and guidance concerning these issues, as well as other management labor and employment law concerns. For additional information, please contact one of the attorneys named below or the attorney with whom you have a primary relationship.

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