

New York expands legal protections to models in the fashion industry

By Dara S. Elpren, Esq., and Jana Slavina Farmer, Esq., Wilson Elser*

JULY 2, 2025

Effective June 2025, New York began implementing significant changes for the fashion industry with respect to the practices of model engagement under the provisions of the new Fashion Workers Act (FWA).¹ While the name of the new law suggests applicability to a broad range of creative talent and labor across the fashion supply chain, the scope of FWA focuses exclusively on models.

FWA is the first U.S. law to introduce transparency requirements for model contracts, impose fiduciary duties on model management companies, and establish new workplace protections for models working in New York State. This article discusses the history of fashion regulation and the main requirements under FWA, and makes recommendations for how fashion businesses should address compliance with FWA.

History of fashion regulation

Generally, the fashion industry does not have any significant industry-specific regulation, at least not when it comes to engaging models or other creative talent.

Fashion industry participants may instead be governed by a patchwork of more general laws pertaining to labor and employment, data privacy, advertising, environmental, trade and import/export, antitrust and competition, intellectual property (IP including those protecting trademarks, copyrights, and patents), and right of publicity, as well as emerging laws pertaining to generative AI technology that may be used to replicate models' likenesses (often referred to as "Deep Fakes").

Unlike talent agencies, modeling agencies have historically classified themselves as management companies under New York General Business Law § 171(8) and models as independent contractors instead of employees.

This classification exempted modeling agencies from following New York's labor protection requirements, such as minimum wage, overtime, or safety requirements. Individual model contracts would often include difficult to understand compensation and fee structures, unclear payment deadlines, and multi-year term durations that would tie the model to the agency.

At the same time, models — typically young people that may lack legal and business experience or support structures — working in New York City would have to deal with high rents and costs of living. While lacking clarity on when and how much they would be paid, models were frequently required to work long hours without adequate breaks or overtime pay.

This imbalance of power is further compounded by a possible requirement to pose nude and related safety issues; being asked to wear garments or pose in settings that may present a risk of physical injury; and the proliferation of the use of AI-generated portraits of models for which the model may not be compensated.

The fashion industry does not have any significant industry-specific regulation, at least not when it comes to engaging models or other creative talent.

Concerns about potential exploitation of young people working as models were increasingly brought to the attention of legislators by activists and consumers related to transparency and environmental, social, and governance (ESG) accountability in the fashion industry.

New York's new FWA, enacted in response to the concerns raised by members of the public, is a comprehensive novel framework in the fashion industry with which participants need to become familiar.

The Fashion Workers Act

The legislative justification memo accompanying FWA emphasizes New York's central role in the U.S. fashion industry: it is home to world-renowned creative talent, leading production companies, and top fashion and design schools. The memo states that New York's fashion industry employs 180,000 people, accounting for 6 percent of the New York

City's workforce, and generates a total of \$10.9 billion in wages. A prime example of its significant economic impact is New York Fashion Week, a semiannual series of events where designers showcase their collections to buyers, the press, and the general public. The enterprise brings in nearly \$600 million in income each year.

The legislative justification memo further states that despite the massive success of New York's fashion industry, the creative workforce behind the industry's success — specifically, models, influencers, and performing artists — are generally not afforded basic labor protections in New York.

The new Act aims to address the persistent inequity in New York's modeling sector, such as unfair contracts and payment practices, and create a system that imposes various requirements and prohibitions on model management companies and clients.

FWA defines the following terms:

"Client" means a retail store, a manufacturer, a clothing designer, an advertising agency, a photographer, a publishing company, or any other such person or entity that receives modeling services from a model, directly or through intermediaries.

"Model" means an individual, regardless of the individual's status as an independent contractor or employee, who performs modeling services for a client and/or model management company or who provides showroom, parts, or fit modeling services.

"Model management company" means any person or entity, other than a person or entity licensed as an employment agency under article 11 of the general business law, that:

- Is in the business of managing models participating in entertainments, exhibitions or performances
- Procures or attempts to procure, for a fee, employment or engagements for persons seeking employment or engagements as models
- Renders vocational guidance or counseling services to models for a fee.

FWA applies to model management companies that engage in business in New York or enter into any arrangement with a client or model for the purpose of providing services in New York.

In other words, this Act applies to any entity using a fee-based structure to hire models in New York, including model management companies and fashion businesses working with them, as well those who engage models directly for photoshoots and other ad campaigns in New York.

Key requirements and prohibitions on model management companies (or agencies):

Starting December 21, 2025, and no later than June 19, 2026, agencies representing models and creatives will be required

to register with the New York Department of Labor (NYDOL). The registration must be renewed every two years. Agencies with five or fewer employees must pay a \$500 registration fee, and agencies with more than five employees must pay a \$700 registration fee.

Agencies shall:

- Be deemed to have fiduciary duties to act in good faith, with utmost honesty and in their models' best interests. This fiduciary duty includes all aspects of the agency's representation, such as negotiations, contracts, financial management, and the protection of the models' legal and financial rights
- Conduct due diligence to ensure that models are not at risk of unreasonable danger
- Use best efforts to procure paid employment and other opportunities for their signed models
- Ensure any work requiring nudity or sexually explicit material is voluntarily consented to by the model, in accordance with section 52-C (3) of the Civil Rights Law (which sets forth requirements for consent to the creation, disclosure, dissemination, or publication of sexually explicit material)
- Prior to the start of a model's engagement, provide the model with copies of a deal memo as well as the final agreement outlining terms of employment the agency negotiated for the model, which must include compensation terms
- Specify any items that will be initially paid for by the agency, but ultimately deducted from the model's compensation, itemizing how each charge shall be computed, as well as provide supporting documentation validating all charges on a quarterly basis
- Disclose any financial relationship that may exist between the agency and the client
- Notify models no longer represented by the agency if the agency is collecting any royalties that may be due to the model
- Post a physical copy of the agency's certificate of registration in the agency's physical office and a digital copy on its website
- Include the agency's registration number in any advertisement for the purpose of soliciting models as well as in any contract with a model or a client
- Obtain clear written consent, separate from the representation agreement, before agencies can use, license, or sell a model's digital replica.²

Agencies shall not:

- Require or collect any fee or deposit from a model for entering into an agency agreement
- Procure an accommodation for which the model will have

to pay without providing a written disclosure of the rate charged in advance of the model's stay

- Deduct or offset any fee or expense other than the agreed upon commission laid out in the contract or any other items advanced by the agency that were previously disclosed to and approved by the model
- Advance the cost of travel or visa-related costs without the model's informed consent
- Require a model to sign an agency contract for a term greater than three years
- Require a model to sign an agency contract that renews without the model's affirmative written consent
- Impose a commission fee greater than 20 percent of the model's compensation
- Engage in discrimination or harassment against a model because of any protected status
- Retaliate against models filing complaints or declining to participate in castings or bookings based on reasonable, good faith concerns over ongoing FWA violations
- Create, alter, or manipulate a model's digital replica using artificial intelligence without clear written consent from the model.

Outside New York, no other U.S. state has adopted a fashion industry-specific law regulating agencies or protecting models in a similarly comprehensive way.

Key requirements and prohibitions for clients:

Clients shall:

- Pay models for overtime hours for any engagement exceeding 8 hours in a 24-hour period, at an hourly rate at least 50 percent higher than the contracted hourly rate
- Provide at least one 30-minute meal break for any engagement exceeding 8 hours in a 24-hour period
- Only offer employment to a model that does not pose an unreasonable risk of danger to the model
- Ensure any employment involving nudity or sexually explicit material complies with Section 52-C (3) of the Civil Rights Law
- Permit the model to be accompanied by their agent, manager, chaperone, or other representative to any engagement
- Provide liability insurance to cover and safeguard the health and safety of models

- Obtain clear, prior written consent for any creation or use of a model's digital replica.

NYDOL will be the primary enforcer of the FWA. Violators may be subject to a civil penalty for up to \$3,000 for a first violation and \$5,000 for a second or subsequent violation. Models have the right to file an action in court or a complaint with the NYDOL within six years of the alleged violations.

The New York State Attorney General also will have a right to file an action to enforce FWA if there is a reasonable cause to believe that a model management company, a model management group, or a client has repeatedly engaged in illegal or fraudulent business practices.³

Impact of the act

This Act will be a big change for models and modeling agencies in New York, holding agencies accountable and providing models with basic labor rights.

Outside New York, no other U.S. state has adopted a fashion industry-specific law regulating agencies or protecting models in a similarly comprehensive way. Because New York is so influential in the fashion industry, it is likely that it will be a trailblazer for other states, such as California, to introduce similar protections for fashion workers in their states.

Conclusion

Agencies and fashion businesses should start preparing now in order to comply with the new law.

Some key points of the law and issues to consider may include:

- Agencies must register with the NYDOL starting December 21, 2025 (and must be registered by June 19, 2026).
- Clients should consider confirming for themselves that agencies are properly registered before entering contracts.
- Both agencies and clients should assess their existing policies and practices, and maintain ongoing compliance checks.
- Agencies should review their standard agreements with models for compliance with the FWA framework, as many terms of existing contracts may violate FWA.
- Agencies should itemize all deductions and fees that are going to be charged to the model up front.
- Agencies should provide models with (1) deal memos listing total compensation and (2) final agreements negotiated with clients at least 24 hours before the model begins the engagement.
- Agencies should establish and/or assess existing antiharassment policies and safe reporting mechanisms.
- Clients should extend these protections to their sets and events, including training staff on workplace safety.

This is not an exhaustive list, nor does failing to comply with each point render the agency or client noncompliant with FWA. Every situation is different and action should be taken after consultation with a lawyer familiar with the industry.

Notes:

¹ FWA is available at <https://bit.ly/4eulCyn>.

² The term “digital replica” is defined in FWA as “a significant, computer-generated or artificial intelligence-enhanced representation of a model’s likeness, including but not limited to, their face, body or voice, which substantially replicates or replaces the model’s appearance or performance, excluding routine photographic edits such as color correction, minor retouching, or other standard post-production modifications.” Notably, if the AI enforcement moratorium that is currently part of the pending federal budget reconciliation bill ultimately passes — and it is poised to pass — enforcement of state law requirements pertaining to generative AI may be suspended for ten (10) years.

³ New York State Fashion Workers Act FAQ, available at <https://bit.ly/3lnWApY>.

About the authors



Dara S. Elpren (L) is an associate in **Wilson Elser’s** intellectual property and technology practice. She represents clients, including some in the fashion industry, in transactional and litigation matters such as brand protection and anti-counterfeiting, trademarks and copyrights, right of publicity, false advertising, licensing, defamation and libel, and related matters. She is based in New York City and can be reached at dara.elpren@wilsonelser.com. **Jana Slavina Farmer (R)** is a partner at the firm, chair of its art law practice and a member of the IP and technology practice. She provides counsel on copyright, trademark and licensing matters, helping clients navigate

the legal landscape that shapes creative expression and brand protection. She is based in White Plains, New York, and can be reached at jana.farmer@wilsonelser.com. This article was originally published June 26, 2025, on the firm’s website. Republished with permission.

This article was published on Westlaw Today on July 2, 2025.

* © 2025 Dara S. Elpren, Esq., and Jana Slavina Farmer, Esq., Wilson Elser

This publication was created to provide you with accurate and authoritative information concerning the subject matter covered, however it may not necessarily have been prepared by persons licensed to practice law in a particular jurisdiction. The publisher is not engaged in rendering legal or other professional advice, and this publication is not a substitute for the advice of an attorney. If you require legal or other expert advice, you should seek the services of a competent attorney or other professional. For subscription information, please visit legalsolutions.thomsonreuters.com.