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## Analysis of Legal Protection of Child Models in the USA

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**Abstract:** Child modeling in the modeling industry is a serious phenomenon, which poses a challenge to the protection of the rights of minors. The lack of legal protection for child models in the U.S. at the federal level and varying state laws make child model protection a federal issue. New York State and California are leaders in the cultural and entertainment industry, but their child model protection laws are incomplete and the revised laws are still poorly enforced. U.S. child model legislation either includes child models as child performers or includes them in the entertainment industry so that they are protected by labor benchmark systems under the labor law system regarding hours, minimum wage, workplace protections, etc., at different ages, while protecting their right to education.

**Keywords:** Child Model; Rights of Minors; Child Labor

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### I. Introduction

Fashion modeling is a cultural landscape in the United States. Unbeknownst to them, behind the glamour of modeling are often unpleasant encounters: long hours of constant work, irregular and forced diets, financial exploitation, forced nude photo shoots, and sexual harassment. According to statistics, most models start their careers between the ages of 13 and 16. In 2007, the Council of Fashion Designers of America (the Council) issued initiative guidelines recommending that only models over the age of 16 be hired for runway shows and calling for stricter enforcement of child labor laws (Marc, 2007). In 2011, a former model who started her career at the age of 14 established the Model Alliance to fight for the rights of models. In the United States, some believe that child models under the age of 16 should be banned from the runway, and there is a voice that advocates a total ban on child models. Opponents argue that banning child models ignores the characteristics of the fashion industry and market demand and that a sensible approach would be to strengthen industry self-regulation and legal protection. Child model protection involves the physical and mental health of minors, the right to education, and other major rights and interests, obviously can not rely entirely on industry self-regulation. And the power of private organizations is after all limited child models need legal protection. For a long time, the U.S. legal system did not provide child models with the protection they deserve, and even after the relevant laws were improved, they still faced weak enforcement and inadequate protection.

#### 1. Federal Legislation for the Protection of Child Models in the USA

As a federal country, the United States has legislative authority to regulate labor-employment relations and protect children, both at the federal level and the state level. At the federal level, the Fair Labor Standards Act

(FLSA) regulates employment standards for minors but excludes child performers and models. The Child Abuse Prevention and Treatment Act (CAPTA) primarily regulates child abuse and neglect by parents or caregivers but does not address the lack of on-site supervisors for child modeling jobs.

### **1.1 Relevant legislation at the federal level and its limitations**

The Fair Labor Standards Act (FLSA) of 1938 regulates four main areas: minimum wage, overtime, the prohibition of child labor, and equal pay for equal work. However, the Act's applicability and exemptions exclude models from its protection. In terms of the object of application, the law only applies to employees employed by the employer and does not apply to independent contractors. The legal status of a model as an employee or an independent contractor is not clearly defined by the law, making this issue a focal point of legal protection for models. In practice, models are often considered independent contractors and therefore do not receive the maximum hours, minimum wage, and workplace protection from sexual harassment that employees enjoy. Also, the Act provides exemptions for child labor, and the provisions on the prohibition of child labor do not apply to children working as actors or performers in films, theatrical productions, or radio or television productions. At the same time, according to the definition of "actor" and "performer" in the Act, a child model is not a child performer. The child model is not a child performer according to the Act's definition of "actor" and "performer. It is clear that at the federal level, the FLSA can only protect child models if they are considered child performers.

The Federal Child Abuse Prevention Treatment Act ("CAPTA") was enacted in 1974 to protect children from abuse and neglect by their parents or caregivers. The Act defines "child abuse and neglect" as a recent act or omission by a parent or janitor that results in the death of a child, serious physical or emotional injury, sexual abuse or exploitation, or the death of a child, sexual abuse or exploitation and other acts or omissions that may cause serious harm. According to the Model Federation of America, more than 86% of models are asked to pose nude without prior knowledge; about 30% of female print and runway models have been touched inappropriately in the course of their careers, and 77% of models admit to being exposed to alcohol and drugs in the course of their work. Presumably, child models are also exposed to these risks. However, according to the League, child models often travel alone to shoots and casting events, with 52% of parents rarely and never accompanying them, and only 9% often.

### **1.2 Legislative proposals at the federal level: The Child Performers Protection Act**

At the federal level, there are no laws that provide specific protection for child performers, let alone specific protection for child models. New York State Assemblywoman Grace Meng (D-NY) argues that inconsistencies in the provisions and protections for child performers in different state laws prevent child models from being adequately protected by state law and necessitate the adoption of federal legislation to do so. In November 2015, Rep. Mengel introduced the Child Performer Protection Act to the federal House of Representatives, the first federal bill to protect child performers, with changes to specific provisions of the Fair Labor Standards Act to protect the rights of child performers, including child models. The distinctive features of the bill are the definition of "child performer," which explicitly includes child models working for fashion shows, exhibit rooms, and other similar products or commercial media; and the addition of "or contracted" after the word

"employed. In this way, whether a child model is considered an employee or an independent contractor, he or she should be protected. The Act addresses the long-standing problem of child models not having access to employee rights. In response to the dilemma facing the protection of child models, the bill proposes some basic protection measures: first, to establish a maximum number of working hours that child models can work continuously, and to classify the restriction levels based on age. Second, to pay salaries in cash. This initiative is in response to the existence of models being financially exploited. Some models are not paid fairly, and clients are paid for the clothes or handbags they wear in fashion shows. Third, to establish a trust account, requiring that no less than 15% of the child model's income be deposited into the account until he or she reaches the age of 18. This initiative is intended to protect the child model's property rights to prevent parents from taking all the money the child earns and spending it. Fourth, any agent, manager, photographer, etc. who has supervisory duties over child models shall not sexually harass child models. A child model who is sexually harassed may file a lawsuit in federal court. The bill treats child models as child performers, giving them the same protections as other child performers, and includes regulations regarding workplace safety, such as the ability to file lawsuits for sexual harassment or discrimination. The bill also extends workplace safety regulations, such as the ability to sue for sexual harassment or discrimination, to child models. This will undoubtedly promote the protection of child models' rights.

## **II. State Law System of Child Model Protection in the United States**

According to a 2013 White Paper on Protecting Child Models, 33 U.S. states regulate child practitioners involved in the entertainment industry, and 22 of those states regulate the child model industry as part of the entertainment industry or protect child models with their labor laws. New York and California both account for more than 10% of the cultural and entertainment industry's output, making them the largest regions in the United States in terms of output. As the center of gravity of the U.S. entertainment industry, both states have passed legislation to protect child performers. Although its child model protection may not be at the forefront of all states, due to the large number and influence of models, this article takes the child model protection legislation in two states as a sample to get a glimpse of the protection of child models in the U.S. state law system.

### **2.1 New York State's legal system to protect child models**

New York City, New York is known for its fashion industry. New York Fashion Week, one of the four major fashion weeks in the world, is highly visible to the world, and the models that support the fashion industry are in the spotlight (Kelli, 2014). It is an undisputed fact that a large number of the models who walk the runway are minors under the age of 18. New York State law does not provide these child models with the legal protection they deserve.

#### **2.1.1 Problems faced with child model protection**

There are two major challenges to the protection of child models in New York State: first, whether a child model is in an employment relationship; and second, whether a child model is a child performer. The first issue can be divided into two questions, namely, whether the child model is an employee and thus entitled to employee rights under labor law and who is the employer and thus liable to the child model as an employer.

At one time, modeling agencies operated as "employment agencies" and were regulated by the New York General Business Law, requiring a license and not charging commissions above 10% of a model's income. However, since 1970, modeling agencies have changed their names to "management companies", claiming that they are managers and that making careers for models is no longer their main business, so they no longer apply for licenses and have increased their commission rate to 20%. Since then, it has become a legal issue how to define the attributes of a modeling agency. New York's statutory law is unclear on this issue, and the courts have not been able to provide a clear answer to this question. The proposal was defeated. Due to the unclear legal status of the agency, it is inconclusive whether an employment relationship is formed between child models and the agency. Besides, the characteristics of the modeling industry dictate the existence of multiple layers of agencies and models working for multiple clients at the same time. In this industry ecology, if there is an employment relationship, there is a debate as to who is the employer. Is it the agency or the client? Both the agency and the client are happy to treat the model as an independent contractor to exempt them from employer liability under labor law. This also means that models do not have the protections afforded to employees under labor law.

### **2.2.2 New Labor Law to promote child model protection**

How do labor laws protect children? Faced with the adversity that models do not enjoy the rights of employees, it would also be a boon for child models if they could be protected by labor laws based on their status as children. Unfortunately, for many years, labor law protection for children has been limited to child performers, not child models. This is the second problem facing the protection of child models mentioned above. Thanks to the efforts of organizations such as the Model Alliance and the Independent Democratic Conference, New York State enacted a new law that took effect on November 20, 2013. The above-mentioned federal legislation proposed by New York State legislators is modeled on this law.

The Act amends the state Labor Law and the Arts and Cultural Affairs Act to include child runway or print models in the concept of child performers, making the child performer provisions of the Labor Law applicable to child models.<sup>4</sup> Under the Act, child models are required to have "two licenses" to practice. One is a child performer's license, which a parent or other guardian applies for from the Department of Labor, and the other is a child performer's license, which an employer applies for from the Department of Labor. To obtain a child performer's license, the parent or other guardian must submit: (1) an academic certificate, issued by the school, certifying that the child performer over the age of 6 is satisfactorily enrolled in school; (2) a medical certificate, issued by a physician, certifying that the child model is physically capable of performing the modeling work in question; and (3) a trust account certificate, signed by an agent of a financial institution, certifying that a trust account has been established for the child model by the law. To obtain a certificate of eligibility to hire child performers, employers are required to submit (1) proof of New York State workers' compensation and disability insurance, issued by the insurance company; employers with exemptions should complete the required certification form, and (2) registration fees by type of application. Besides, the employer's responsibilities include: (1) obtaining trust account information, remitting 15% of the child model's earnings directly to the account, and informing the child model's parents or other guardians in writing within 5 days; (2) providing the

child model with a teacher to instruct him/her in school during employment; (3) designating a responsible person to supervise the child model's worksite if the child model is under 16 years of age; (4) complying with the rules regarding hours of work (3) provide working meals and breaks for child models; etc.

### **2.2.3 To be promoted of child model protection**

The implementation of the new law has promoted legal protection for child models. However, the law has limitations such as weak enforcement and small penalties, which do not create sufficient deterrence for relevant practitioners in the modeling industry, such as agents and photographers, and violations of child models' rights occur from time to time. Before the law was enacted, the Arts and Cultural Affairs Act required child models to apply for a license to work and confirmed that the work would not negatively affect the health and education of child models and that agents and photographers who violated the law would be guilty of a misdemeanor. Unfortunately, not only are these norms incomplete, but they also lack enforcement and fail to protect child models. Take, for example, the protection of the sexual rights of child models. The Arts and Cultural Affairs Act makes it a misdemeanor to employ a child under the age of 16 in any unlawful, indecent, or immoral exhibition or act.<sup>2</sup> However, some studies have concluded that New York courts have never interpreted this provision, leaving it in a forgotten state and failing to regulate the behavior of those involved in the child model industry. Although the protections afforded to child performers under the Labor Code will also apply to child models under the new law, such as suits for sexual harassment in the workplace, they are not yet sufficient to adequately protect child models given the form of remedies available in civil actions and the financial penalties for violating the law. In response, some studies have suggested applying the New York State Penal Law's protection of children under the age of 17 to the protection of child models, the violation of which would constitute a Class A misdemeanor, regulating those involved in the modeling industry by way of criminal liability. However, the application of the Penal Law to the modeling industry faces the question of whether it violates the freedom of commercial speech protected by the First Amendment and is subject to unconstitutional review. As can be seen, the New York State child model protection law has been amended, but it still faces the current situation of inadequate protection for child models.

### **2.2 California's legal system to protect child models**

California is a leader in the U.S. entertainment industry, represented by Hollywood, which has the world's top luxury brands and leads the world in fashion. California has its own merits but also its flaws in child model protection legislation. California regulates the modeling industry as part of the entertainment industry, so that child model protection applies to the entertainment industry's protection norms for minors. Under the California Labor Code, minors between the ages of 15 and 18 may work in the entertainment industry, but also require two licenses: a Children's Entertainment Industry License, which is applied for by the child's parent or another guardian from the Department of Labor; and a Children's Performance Services License, which is applied for by the employer from the Department of Labor. The Labor Law provides for restrictions on the employment of school-age children in the entertainment industry and on absences from school, and also provides for hours of work, a wage system, and an instructor system.

California's quantitative system for protecting child models can be summarized as follows: (1) In terms of

working hours, minors employed in the entertainment industry may not work more than 8 hours per day or 48 hours per week; and may only work between 5:00 a.m. and 10:00 p.m. each day, and may work until 12:30 a.m. the day before a non-school day, but in no case later than 12:30 a.m. The prohibition on children working at night is The prohibition of night work for children is regulated. The Labor Law also establishes minimum working hours according to the age of minors. For example, children between the ages of 2 and 6 may not be in the workplace for more than 6 hours per day, and may not work for more than 3 hours, with the rest of the time being used for recreation and rest. Also, there are detailed regulations on how to calculate working hours. There are also applications for exemptions from the working time limit, but only for minors over the age of 8. As you can see, child models under the age of 8 are required to strictly follow the working hour's rules, with no exceptions. (2) In terms of remuneration, professional actors are not subject to the minimum wage and payment of overtime by the relevant regulations, while minors who are not professional actors are subject to the minimum wage and payment of overtime. (3) Concerning the protection of the right to education, school-age children (minors in grades 1 through 12) applying for a license to practice require a "certificate of attendance" from the school stating that they have a satisfactory academic and attendance record.

Although California's child modeling protection laws are relatively well-developed, they still face inadequate enforcement. The characteristics of the modeling industry determine that the legal rights of child models are violated in a covert and systematic manner. In addition to strengthening government supervision, the implementation of the law on child model protection requires the implementation of parental responsibility and industry self-regulation.

### **III. Challenges and Solutions for Child Model Protection**

Currently, models are suffering from serious economic exploitation and personal rights violations, and child models are also facing this dilemma. The government should have strengthened the legal protection for models, but both in terms of legislation and law enforcement, the protection for models is poor. One possible reason for this is that the government benefits greatly from the fashion and entertainment industries, and policy considerations do not always adhere to the principle of the best interests of the child. The industry is a direct beneficiary of the child model economy. Some industry associations have argued that the industry should be autonomous and the law should not intervene in the relationship between models and agents and other related practitioners. About the use of child models, some prominent designers have argued that it is their freedom to use child models with parental consent. Federal legislation to strengthen the protection of child models is necessary for the light of the objective reality that state governments and the industry are driven by economic interests.

In the face of the potentially lucrative financial rewards of child modeling, parents may become greedy and disregard the rights of their children, even "forcing" them to work indiscriminately (Ariel, 2014). The prohibition of forced labor is an important part of international labor conventions, which protect the rights of citizens from forced labor. Child models who are pressured by their parents to work on the runway are likely to be the victims of contemporary forced labor. Parental control over children can also challenge the principle of

the best interests of the child. This requires the mandatory intervention of the law to protect the legal rights of children. Statistics from the Model Alliance show that child models often travel to shoots alone. The unexplained absence of a parent from a shoot constitutes a de facto abuse of custody. California labor law requires parents to be present when a child performer under the age of 16 is working. This is both supervision of the child's workplace and a constraint on the parents. The legal dispute over whether a child model is a child performer and whether an employment relationship is formed between the model and the agency stems from the nature of the modeling industry. Child performers are employed by the same film and television company for a certain period to perform on set. This makes for a clear employment relationship between the child performer and the film or television company. In contrast, models have multiple relationships with agents, designers as clients, fashion brands, or fashion magazines, and often work for multiple clients at the same time, especially during fashion weeks. This characteristic poses a challenge to the laws regulating the modeling industry, and some studies have advocated for the enactment of specific legislation for the modeling industry, which suggests that lawmakers need to balance the interests of multiple players in the modeling industry, while maximizing the interests of children, to effectively implement laws protecting child models. Laws that ignore the interests of the industry are likely to be resisted by the industry and not enforced.

#### **IV. Conclusion**

Basic legal norms to protect child models and even child practitioners should be developed as soon as possible, such as the "Regulations on Children's Performances" and "Regulations on Children's Participation in Commercial Activities". Child model practice is a kind of child practice. Accordingly, child models are a category of child practitioners. A quantitative system should be provided in the legal norms protecting child models. Child models are not workers under labor law, but we should refer to labor law to protect the basic rights of child models at work. In the case of child models, this quantitative system should cover labor benchmarks such as hours of work and minimum wage, and should also protect their rights to health, rest and recreation, and education. The Law on the Protection of Minors stipulates the obligation of schools and parents or other guardians to ensure sleep, recreation, and physical exercise time for minor students. This is necessary for the healthy growth and development of children. All sectors of society must establish a linkage mechanism to jointly create a green network ecology conducive to the healthy growth of minors, improve the collaborative governance system for the protection of minors' networks, and establish a multiparty network protection mechanism for minors.

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