



Independent Democratic Conference

**New York's Modeling Crisis:
The Importance of Providing Legal Protections for
Child Models**

June 2013

Introduction

The fashion industry is one of the most well-known and celebrated features of New York City. What often goes unrecognized is that it is also a central pillar of our state's economy. In 2011, the industry employed 165,000, generated \$1.7 billion in tax revenue, and brought in \$55 billion in sales.¹ At the center of this industry are the fashion models themselves who market the latest clothing and accessories created by designers.

Unbeknownst to much of the public is that a great number of models walking down the runway are under the age of 18. This is not a problem in itself as New York, and indeed the world, are accustomed to children and teens performing for a host of reasons. These include performing on the stage, acting in a film, or promoting products in commercials.

Unlike these performers, however, child models shockingly receive few protections under New York State law. Concerned with this finding the Independent Democratic Conference (IDC) began an investigation into this legal loophole. Upon closer examination of the industry, the IDC found that countless models are routinely mistreated, and in the worst cases, sexually abused. This white paper will examine the discrepancy in our state law, and describe the troubles that child models are confronted with in New York. Finally, we will offer up our solution that will fully incorporate these children into our legal framework.

An Unprotected Industry

Article 4-A of the New York State Labor Law concerns the employment and education of child performers. A number of protections exist within these provisions including employment and educational requirements, along with enforcement measures. Labor Law §151 lays out a number of requirements for an employer to hire a child performer. These include holding a child performer permit, written consent from one's parents or guardians, and a requirement to provide evidence that one's education is not negatively impacted by their performance.

Employers must also receive a certificate of eligibility to employ a child performer from the Department of Labor (DOL). Further, any and all permits and certificates must be kept on file, open at all times to inspection by school probation officers, the State Board of Education, and the Department of Education. Child performers must also be made aware by DOL of New York's requirement that 15% of their earnings be placed in a trust account.

Labor Law §152 is concerned with the education of child performers. Individuals employing children must provide a teacher in order to fulfill state educational requirements. Child performers with a permit to work cannot be without educational instruction and unemployed for longer than 10 days during a normal school year. If any of these provisions are violated the Commissioner of Labor may assess a civil penalty not to exceed \$1,000 on an employer. Penalties may reach \$2,000 and \$3,000 in the case of a second or third violation, respectively.

¹ Public Broadcasting Service, "Girl Model in Context," *POV Documentaries*, March 24, 2013, http://www.pbs.org/pov/girlmodel/photo_gallery_background.php#_Ua9uQdLMCin.

These laws are rational, and do not place an undue burden on employers. Child performers should receive the utmost protection, as they are especially vulnerable to deceitful employers. Labor Law Article 4-A runs the gamut in terms of safeguards. The law tries to keep out bad actors from employing these performers through the certification process. Educational protections are also included to ensure they do not fall behind their peers. Provisions are also included to ensure they receive the money they worked for. Finally, a Child Performer Advisory Board is established to recommend to DOL ways to prevent eating disorders, and to help performers get treatment.

The issue with this law, however, is that child models are not included within these protections. Labor Law §150 defines a child performer as anyone under 18 years-old who renders artistic or creative services. Print and runway models are not included among the professions deemed a “creative or artistic service”. Instead the following are protected:

- Actor or Actress
- Dancer, or Musical Producer or Arranger
- Musician, Singer, Songwriter, Composer, or Conductor
- Comedian
- Stunt-person
- Voice-over artist, or other performer or entertainer
- Writer
- Director
- Producer
- Production executive
- Choreographer
- Designer

Child models are not entirely without protection under state law though. Labor Law §140 empowers the Commissioner of Labor to enforce certain violations under the Arts and Cultural Affairs Law §35.05 relating to child models. However, this merely states that certain permits are necessary for a child model to work, and allows the Commissioner of Education to promulgate further regulations. Part A-250 of the New York City Department of Education’s Regulation of the Chancellor simply provides parameters in regards to hours a child model may work, and the permits referenced in the Arts and Cultural Affairs Law.

By not including child models in our Labor Law, New York State lags behind a number of other states. The IDC conducted an analysis of the labor laws of all 50 states and determined that in the thirty-two states that regulate child employees involved in entertainment fields about two-thirds of these states include child models as a part of the entertainment industry, or refer to them explicitly under their own labor law (Figure 1). There is no good reason why child models should not be included in New York’s Labor Laws and regulations. While New York has excellent protection for its child performers, it is failing in its oversight of print and runway models.

Figure 1. States Who Regulate Child Entertainment

State	Includes “Model” in definition of entertainment or artistic service offered by a Child and/or Models are governed by State’s Department of Labor	State	Includes “Model” in definition of entertainment or artistic service offered by a Child and/or Models are governed by State’s Department of Labor
Alabama	X	Michigan	
Alaska	X	Minnesota	X
Arkansas	X	Missouri	X
California	X	Nebraska	
Colorado	X	New Jersey	
Connecticut		New Mexico	X
Delaware	X	New York	
Florida	X	North Carolina	X
Georgia	X	North Dakota	
Hawaii	X	Oregon	X
Idaho		Pennsylvania	X
Illinois	X	Texas	X
Indiana	X	Vermont	X
Iowa	X	Virginia	
Louisiana	X	Washington	
Maryland	X	Wyoming	
Massachusetts			

Unprotected Children

Those supporting increased protections for child models were heartened when DOL announced that it would promulgate new regulations to protect child performers. The modeling industry began lobbying efforts, lead by the Model Alliance, to include child models within the new rules.²

The group’s latest action was the creation of an online petition urging Governor Andrew Cuomo and DOL Commission Peter King to include “runway and print models” within the new regulations. The petition was released during the window for public comment on the proposed

² Sara Ziff, “Testimony to the New York State Department of Labor,” *The Model Alliance*, September 20, 2012, <http://modelalliance.org/2012/testimony-to-the-new-york-state-department-of-labor/testimony-to-the-new-york-state-department-of-labor>.

regulations. Despite such efforts, Part 186 of the New York Code, Rules and Regulations (NYCRR) came into effect on April 1, 2013 without offering full protections to child models.

Instead DOL added only “models appearing in television broadcast or program” to its list of artistic services that are protected. “Runway and print models” were left behind, without the following protections afforded to them:

- **Responsible Person:** A responsible person must be designated to monitor the activity and safety for each child performer under the age of 16 at the work place. One responsible person may supervise no more than 20 performers if the performers are employed as a group (groups are considered people working as background or crowd for plays and film and permits are issued for two days time);
- **Nurse:** An employer must provide a nurse (with pediatric experience), and a responsible person for each three or fewer performers between the ages of 15 days and six weeks. For performers between six weeks and six months of age, one nurse and one responsible person must be provided for each ten or fewer infants;
- **Education Requirement:** Outlines the responsibilities of an employer to provide teachers for instruction along with a dedicated space for instruction in order to ensure that a child maintains the educational requirements set forth by their own school district;
- **Health and Safety:** Employers must provide safety-based instruction and information to performers, parents/guardians and responsible person. The information must contain specific information about potential worksite and performance hazards. Also, emergency contact information and authorization to perform emergency medical treatment for all performers must be obtained;
- **Financial Trust:** A trust must be established by a child performer’s parent or guardian in which an employer must transfer at least fifteen percent of the child’s gross-earnings into.

It is plain to see that child models are simply not afforded the degree of protections received by their peers in other entertainment industries (Figure 2). According to an IDC analysis child performer protections permitted by child models through the Arts and Cultural Affairs Law are woefully inadequate as compared with those protections afforded to child performers under the Labor Law and the NYCRR. It is apparent that the exclusion of print and runway models in NY Labor Law increases the likelihood that these children will work in an unsafe environment, and atmosphere where they can be taken advantage of.

Figure 2. Comparison of Protections for Child Performers and Child Models

Regulation	Child Performer	Child Model
Child Work Permit	X	X
Education Requirements	X	
Financial Trust	X	
Health and Safety	X	
Nurse	X	
Responsible Person	X	
Permitted Work Hours Based Upon Age	X	X

One would think that greater public pressure would be applied to the Department of Labor to include child models given the fanfare associated with modeling, and New York City being one of the fashion capitals of the world. However, this serious problem has thus far not received the attention it merits aside from the occasional news article.³

Upon conversations with the industry, many feel the primary reason for this lack of attention is due to the stereotypes associated with the profession. Society scoffs at labor complaints due to the attractive appearance of the models themselves, their “assumed” large salaries, and the glamorous lifestyle they lead. The Model Alliance works to dispel such notions. According to them, the average model makes about \$32,000 annually, with a career that lasts only five years.⁴

The situation is even worse for underage models. They are often not financially compensated, but instead receive their designer clothing they modeled as payment. Furthermore, once a child reaches a certain age many are no longer desirable as models to designers. Unfortunately, compensation and length of employment are among the least concerning elements for child models.

In a February 2012 article entitled “New Alliance of Modes Reveals Scary Industry Statistics” documented the findings of a survey conducted by Model Alliance.⁵ More than 86% of models were asked to pose nude without prior notice. A further 27% felt they had to comply in order to keep their job. In such an environment, it is clear that a child model would be frequently pressured to pose without clothing.

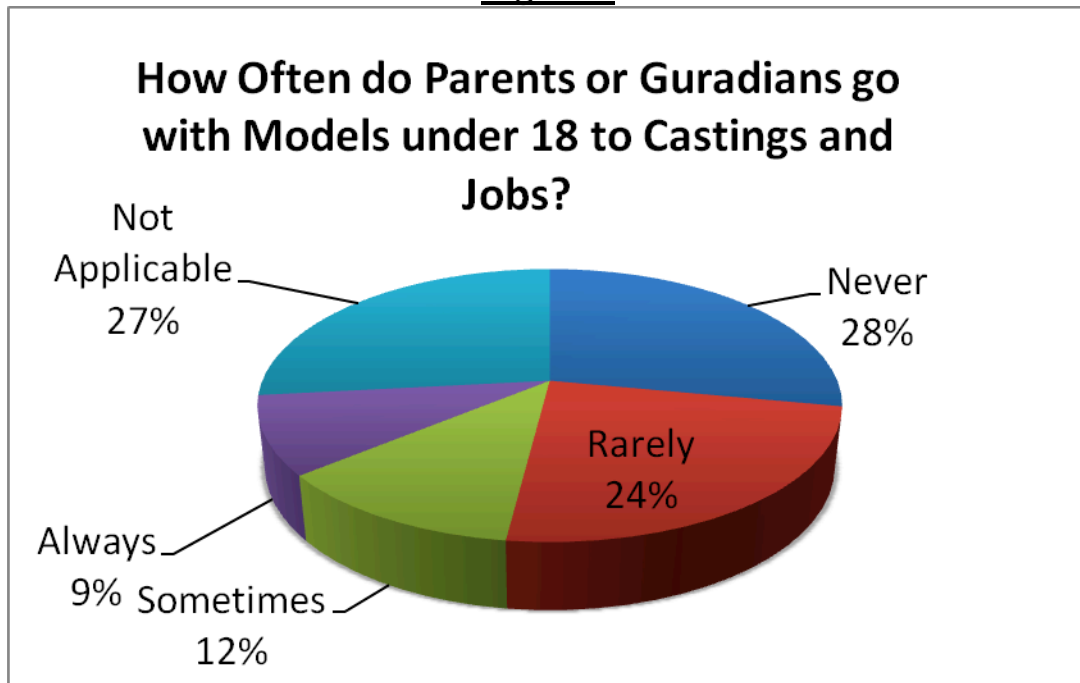
³ Jenny Brown, “Fashion Models Shatter Stereotypes, Demand Labor Rights,” *Labor Notes*, March 8, 2013, <http://www.labornotes.org/blogs/2013/03/fashion-models-shatter-stereotypes-demand-labor-rights>.

⁴ PBS, “Girl Model in Context.”

⁵ Kirsten Acuna, “New Alliance of Models Reveals Scary Industry Statistics,” *Business Insider*, February 1, 2012, <http://www.businessinsider.com/models-form-alliance-and-reveal-scary-industry-statistics-2012-1?op=1>.

Despite this clear and present threat, there are no regulations over who must be present to supervise child shoots. No one is there to advocate for the interests of underage print and runway models. Without such requirements, most child models are left unattended and most deal with these pressures alone. According to the Models Alliance, underage models usually go to photo shoots and casting calls alone (Figure 3).⁶

Figure 3



Further survey results revealed even more dangerous conditions at modeling sites. Approximately 30% of female print and runway models have experienced inappropriate touching while modeling. Another 28% experienced pressure to engage in sexual intercourse at the workplace during their career. Greater than three-quarters of models (77%) admitted to being exposed to alcohol and drugs while working.

These numbers are extremely alarming. This is only amplified when one considers that a mere 29% of models experiencing some form of abuse were comfortable with reporting it to the agency representing them. These findings are disturbing enough when considering older models. When one reflects on the condition of child models, the concern is even greater. Clearly, the environment surrounding the fashion industry is littered with pitfalls for underage individuals. Even adult models are too worried about retribution, and the effect reporting abuse will have on their career. Given this we cannot expect child models to be strong enough to fight against industry demands.

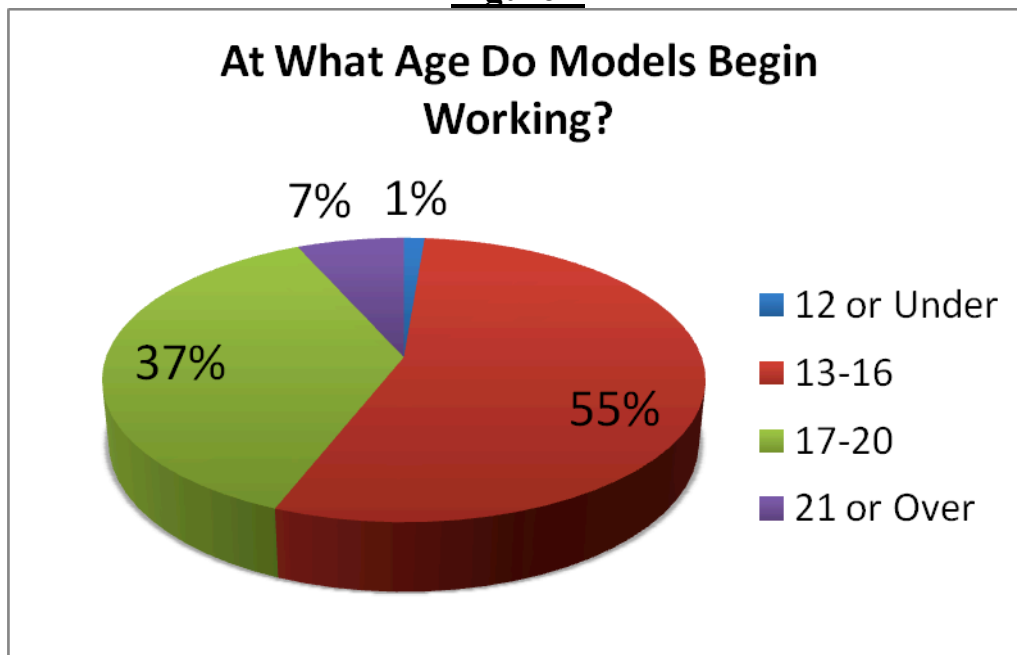
These children and teenagers feel immense pressure to comply with their superiors knowing that modeling careers are relatively short-lived. The perils of modeling are even greater when a child

⁶ The Model Alliance, "Industry Analysis," <http://modelalliance.org/industry-analysis>.

first attempts to enter the fashion industry. Children and their families are often enticed by agents and agencies who charge large fees to prepare portfolios, resumes, and auditions. The cost is so great that many families incur debt, and are left with no choice other than to accept assignments to repay it. For instance, foreign models end up incurring up to \$10,000 worth of debt due to visas and other accommodations that agencies provide.⁷ This places added pressure on children and teenagers to accept questionable work assignments.

Additionally, there is not an insignificant amount of children that work in the modeling industry. The majority of models begin their career between the ages of 13 and 16 (Figure 4).⁸ Only 7% begin their career after turning 21 years of age. If ever there was an industry that needs to have child protections included in the law this is it. Given the vast amount of children modeling it is obvious that immediate action must be taken to protect them now.

Figure 4



First Hand Accounts

In working with the Model Alliance, the IDC heard numerous stories involving the mistreatment, abuse, and pressures that underage models experience. Given the retribution that runs throughout the industry, few of these stories ever reach the public eye. It takes immense courage for these young individuals to speak out against the abuse they've suffered. Thankfully, a number of these women shared their stories with us.

Alison Nix (24) started modeling at the age of 13. She continues to work, and is currently the face of the GAP. She has worked for major clients including Dior, Hugo Boss and Italian

⁷ PBS, "Girl Model in Context."

⁸ The Model Alliance, "Industry Analysis."

Vogue. Alison is originally from Las Vegas and was required to travel for work while she was still under the age of 16. Her mother, a paralegal, was not always financially able to accompany her. As a very young person working with adults, Alison was ill-equipped to field age-inappropriate demands, including pressure from an older male photographer to pose wearing only transparent lingerie. She was sent to his home unaccompanied by her passed agents who had previously promised her mother that her daughter would be protected. Those photos were published on her comp-cards and on the agency's website. Although her mother, when made aware of the photos, demanded that the agency take them down, the effects were indelible. She also found it difficult to get paid the money owed to her by her former agency and the expense reports they provided were unclear and opaque. After months of asking for payment, it took a letter from a lawyer to get the agency to finally send it to her.

Alise Shoemaker (27) started modeling in Houston, Texas when she was 13-years-old and began working in New York at age 14. As her body started to develop, her agency pressured her to lose weight. As a result, during her teenage years Alise struggled with bulimia, which she has since overcome. At 16, her agency told her to drop out of high school, which she did, since they said that she needed to be young and fully available to pursue a high fashion runway career. She moved into a model apartment, where she was unchaperoned and lived with male models who were older than her. Several times she was pressured to pose topless and her agency sent her to castings that seemed more like dates. When Alise was 16, fashion designer Anand Jon invited her to an “after-party” for his runway show and found herself alone with Jon, who touched her inappropriately. Luckily, she escaped. In 2009, Jon, who appeared on the show *American’s Next Top Model*, was sentenced 59 years to life in prison after being convicted of multiple accounts of rape and sexual assault of child models. Alise earned her GED when she was 23-years-old. She continues to model and works as a television host and in real estate.

Francesca Tadeschi (28) started modeling at 13-years-old when she was discovered working as a child performer with American Ballet Theater at Lincoln Center. She signed with a New York agency the summer before 8th grade. She still models occasionally, and has worked for brands including L’Oreal, Ferragamo and Thermasilk. At age 13, her then-agent advised her to tell clients that she was 15-years-old. Despite high academic achievement, she was asked to leave the New Jersey public school system after missing approximately 80 days of school for modeling work. The period between ages 13-16-years-old was the most financially successful of Francesca’s career, but all of her earnings went to pay for special private schooling, which she was rarely able to attend due to her demanding work schedule. Francesca routinely worked 12-hour-days as a minor, and was frequently the only adolescent in an environment of adults, who were often drinking and taking drugs in the workplace. She was frequently required to pose nude or topless, and was often required to undress and be measured on a regular basis for being too “heavy” as her body developed. Sexual harassment was a problem, as was lack of financial transparency at her agency. Francesca believes that this legislation is important not only to

protect underage and impressionable models from abuse, but also to encourage a healthier and honest image of women to consumers.

Sara Ziff (31) grew up in New York City and started modeling at age 14. She has worked as the face of brands including Gap and Tommy Hilfiger and has walked in runway shows for Prada, Donna Karan and Calvin Klein. When she was as young as 14, Sara was put on the spot to pose for age-inappropriate photos at castings and photo shoots. Her former agency expected her to work without regard to her school commitments and occasionally jobs ran long and late into the night. Sara's parents intervened and she stopped modeling until she finished high school. Sara also had difficulty getting paid the money she was owed by the agency and had to threaten legal action to recover her earnings. She documented her and other models' experiences in the industry in the feature film *Picture Me*. A graduate of Columbia University, Sara continues to model and works to improve industry standards as Executive Director of the Model Alliance.

Paula Viola (32) started at modeling at age 16. She was pressured to drop out of school and says the most frustrating thing about modeling as a child was the expectation from her agency that she would skip school. She also had difficulty getting paid and experienced sexual harassment on the job. Paula is now an attorney at a top New York law firm.

Carre Otis (44) started modeling at 16-years-old. Originally from San Francisco, Carre is one of the most successful models of her generation, having worked as the face of Guess and Calvin Klein, and appearing on covers of Allure, Vogue, Harper's Bazaar and Cosmopolitan. Carre's memoir *Beauty Disrupted*, published last year by Harper Collins, chronicles her experiences in the modeling industry, including dark periods when she was underage and working unchaperoned. At 17, she was placed to live at the apartment of the owner of her agency where he supplied her with hard drugs and abused her sexually. Carre developed a drug addiction and a severe eating disorder. Fully recovered, she has emerged as a leading advocate for healthier standards in the modeling industry. Carre serves on the advisory boards of the National Eating Disorders Association and the Model Alliance.

Solution

The Independent Democratic Conference believes New York can address such abuse now by passing S. 5486, introduced by Senator Diane Savino. This legislation advocates for simple changes to the Labor Law and Arts and Cultural Affairs Law, which should have been added long ago. "Print and runway models" would now be included in the Labor Laws definition of "creative and artistic services" that a child performer engages in. Further, child models will also be included in the Arts and Cultural Affairs Law §35.01 and §35.03. This will require the parents or guardians of infants engaged in modeling to obtain judicial approval of certain contracts. Passing this now will provide child models in New York with the greatest protection they have yet received, but long deserved.

Sources

- Code of Alabama Section 25-8-32.2 “Child Labor Administrative Trust Fund,”
http://dir.alabama.gov/docs/law/UC_ChildLabor_ChildLaborStatutes2012.pdf.

- Alaska Department of Labor, “Employment of Children,” March 2008,
<http://labor.state.ak.us/lss/forms/pam200.pdf>.

- Arkansas Department of Labor, “Arkansas Child Labor Laws and Administrative Regulations,”
October 2005, http://www.labor.ar.gov/divisions/Documents/child_labor_laws_and_regs.pdf.

- California §11751 “Entertainment Industry Defined, Employment of Minors in Entertainment
Industry”
<http://www.dir.ca.gov/t8/11751.html>

- Colorado Department of Labor and Employment, “Colorado Youth Employment Opportunity
Act,”
<http://www.colorado.gov/cs/Satellite?blobcol=urldata&blobheader=application%2Fpdf&blobkey=id&blobtable=MungoBlobs&blobwhere=1251844567026&ssbinary=true>.

- Connecticut Chapter 557 “Employment Regulation”
<http://cga.ct.gov/2011/pub/chap557.htm#Sec31-23.htm>

- Delaware Code Title 19, Chapter 5, Section 508 “Special Permit for Model, Performer or
Entertainer,” <http://codes.lp.findlaw.com/decode/19/5/508>.

- Florida Statutes Title XXXI, Chapter 450, Part 1 “Child Labor”,
http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&URL=0400-0499/0450/0450PartIContentsIndex.html&StatuteYear=2012&Title=-%3E2012-%3EChapter%20450-%3EPart%20I.

- Georgia Department of Labor, “Child Labor Entertainment Employment,”
http://www.dol.state.ga.us/em/cl_minors_in_entertainment.htm.

- Hawaii Department of Labor, “Child Labor,” <http://labor.hawaii.gov/wsd/child-labor/>.

- Idaho Statues Tittle 44 Chapter 13 “Child Labor Law”
<http://www.legislature.idaho.gov/idstat/Title44/T44CH13.htm>

- 820 Illinois Compiled Statutes 205 “Child Labor Law,”
<http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=2418&ChapterID=68>.

- Indiana Department of Labor, “Bureau of Child Labor,”
http://www.in.gov/dol/files/Teleconference_Presentation_10-3-2012_-_Duplexed.pdf.

- Iowa Workforce Development, “Hiring Iowa Teens: A Guide for Employers About Iowa Child Labor Law,” <http://www.iowaworkforce.org/labor/iowateens.pdf>.
- Louisiana Workforce Commission, “Employment of Minors: Informational Booklet,” <http://louisianaentertainment.gov/docs/film/Employment%20of%20Minors%20Booklet.pdf>.
- Maryland Division of Labor and Industry, “Employment of Minors,” <http://www.mdauto.org/admin/publications/Maryland%20Minor%20Employment%20Laws.pdf>.
- Massachusetts General Laws Part 1, Title XXI, Chapter 149, Section 1, <https://malegislature.gov/Laws/GeneralLaws/Part1/TitleXXI/Chapter149/Section1>.
- Michigan Department of Labor and Economic Growth “Youth Employment Standards” http://www7.dleg.state.mi.us/orr/Files/AdminCode/106_32_AdminCode.pdf
- Minnesota Department of Labor & Industry, “Labor Standards – Age Restrictions,” <http://www.dli.mn.gov/LS/MinAge.asp>.
- Missouri Revised Statutes Chapter 294 Child Labor Section 294.022, <http://www.moga.mo.gov/statutes/C200-299/2940000022.HTM>.
- Nebraska Statutes 48-301 to 48-313 “Child Labor Law” <http://dol.nebraska.gov/resources/Statutes/Child%20Labor%20Law.pdf>
- New Jersey Department of Labor and Workforce Development, “Child Labor Laws and Regulations,” http://lwd.dol.state.nj.us/labor/wagehour/lawregs/child_labor_law.html#2211.
- New Mexico Title 11, Chapter 1, Part 4 “Wage and Hour and Employment of Children,” http://www.dws.state.nm.us/Portals/0/DM/LaborRelations/ChildLabor11_1_4NMAC.pdf.
- New York, Codes Rules and Regulations “Child Performers” <http://labor.ny.gov/legal/laws/pdf/child-performer-regulations/part186-child-performer.pdf>
- North Carolina Film Office, “Child Labor Laws,” <http://www.ncfilm.com/child-labor-laws.html>.
- North Dakota Code 34-07-17 “Permit to Work in Theater or Place of Amusement,” http://www.lawsolver.com/law/state/north-dakota/nd-code/north_dakota_code_34_07_17.
- Oregon Administrative Rules Division 21 “Wage and Hour Commission: Rules Regulating the Employment of Minors in Oregon,” http://arcweb.sos.state.or.us/pages/rules/oars_800/oar_839/839_021.html.
- Pennsylvania Department of Education, “Pennsylvania Child Labor Law,” http://www.portal.state.pa.us/portal/server.pt/community/child_labor_law/7508.

- Texas Workforce Commission, “Texas Child Labor Law,”
<http://www.twc.state.tx.us/ui/lablaw/texas-child-labor-law.html>.

- Vermont “Important Information for Employers of Minors in the State of Vermont on Federal and State Child Labor Laws”
http://labor.vermont.gov/Portals/0/Wage%20Hour/child_labor_pamphlet.pdf

- Virginia Code 40.1-102 “Issuance of Theatrical Permit,”
http://www.lawserver.com/law/state/virginia/va-code/virginia_code_40-1-102.

- Washington State Department of Labor and Industries “Teens at Work: Facts for Employers, Parents and Teens”
<http://www.lni.wa.gov/ipub/700-022-000.pdf>

- Wyoming Workforce “Child Labor Pamphlet”
<http://www.wyomingworkforce.org/job-seekers-and-workers/labor-standards/Documents/child%20labor%20pamphlet.pdf>