

Assessment of Comments

Radio, Television and Movies

Commenters questioned whether the regulations should cover radio, television and motion pictures broadcast or filmed from locations like schools, churches and homes, with one seeking to exclude, and another to cover, certain broadcasts and films.

Response: The scope of exemptions set forth in the regulations (186-1.3(a) and 186-1-3(b)) are consistent with Arts and Cultural Affairs Law (ACAL) at §35.01(2), which only exempts certain radio and television broadcasts and programs, but not motion pictures. The Department determined that the regulation provides appropriate protection without being overly burdensome.

Child models

Commenters requested that all work of child models be covered by the regulations. Child models are regulated pursuant to ACAL §35.05 and 8 NYCRR §190.2.

Response: The present statutory scheme does not permit the Department to regulate activities by children that are not as those described in ACAL §35.01.

One commenter stated the phrase “in a television or broadcast performance” in the definition of “artistic and creative services” should be deleted as it changes the meaning of the term.

Response: The phrase “in a television or broadcast performance” modifies “model,” not the entire paragraph. The Department moved the phrase “model in a television or broadcast performance” elsewhere in the paragraph to avoid confusion.

Definition

One commenter stated the definition of “child performer’s employer” should include the phrase “employs or engages” to cover non-traditional employment.

Response: The Department determined that the definition is consistent with the definition in the statute and therefore didn’t make this change.

Reality Shows

One commenter stated the exception to the definition of “reality show” should include activities involved in newsgathering, news magazines and similar programs.

Response: The Department determined that a broader exemption is not appropriate.

Trust Accounts

Commenters expressed concern over who is responsible for opening and contributing to a child performer’s trust account, and how funds may be protected and accounted for.

Response: The obligation to establish trust accounts remains with parents and guardians. The obligation to make transfers to trust accounts remains with the employer, broadly defined, or the payroll service company. Child Performer trusts are governed by Estates Powers and Trusts Law (EPTL) section 7-7.1 and the Uniform Transfers to Minors Act (UTMA), EPTL Article 7, Part 6. The UTMA includes provisions regarding the expenditure of funds by a custodian and requests for an accounting. The Department determined that the UTMA provides sufficient protection from misappropriation of funds.

Commenters suggested that if a parent wishes to have an employer transfer more than the minimum requirement of 15% of gross earnings into the minor's trust account, the parent should make the request in writing and designate a specific amount or percentage.

Response: The Department made this change to the regulations at sections 186-3.5(c) and 186-4.5(b).

Comments were received regarding establishing trust accounts when child performers are either not yet in the industry or in unpaid performances.

Response: The Department determined that the regulations address these issues through the provision of a Temporary Child Performer Permit.

One commenter suggested that a notification of transfer and deductions should be reflected on the child's "next regular" pay stub.

Response: The Department determined that this change is not necessary. The language in the regulations addresses this issue.

Responsible Person

Commenters stated that the definition of "responsible person" is ambiguous; is not required by the statute; and should require first-aid certification. Also, someone found to be on a sex offender registry should be disqualified from being a credentialed teacher.

Response: The Department determined that the definition of "responsible person" comports with the intent of the statute; is sufficient to protect the well-being of child performers; and provides enough guidance for an employer to make an informed hiring decision without discriminating against someone pursuant to the Corrections Law and the Human Rights Law.

One commenter suggested that a parent or guardian on site with the child is the emergency contact. When a responsible person oversees the child, emergency contact information should be in that person's possession. This should be added to the definition of "responsible person" in Section 186-2.1(t).

Response: The Department determined that the regulation requires that emergency contact information and an authorization be available to the employer at all times. It already addresses this concern.

Commenters suggested that if a parent or guardian fails to designate a responsible person for a child, the employer may (instead of “shall”) designate one.

Response: The Department determined the term “may” would not adequately safeguard the well-being of child performers and did not make that change.

Commenters suggested that a responsible person should be 21 years old, rather than 18, and should be required to oversee all performers under age 18, rather than under age 16.

Response: The Department determined that 18 year-olds may be qualified to perform the duties of a responsible person. Thus, to exclude 18 to 21 year-olds would violate Executive Law §296, which prohibits age discrimination in employment. Additionally, performers age 16 and older can assume responsibility for themselves. If a parent, guardian or employer says that a performer cannot assume such responsibility, a responsible person may be assigned to oversee the performer.

Employer Certificate of Group Eligibility

Commenters suggested that the definition of the Employer Certificate of Group Eligibility should cover more than two days of work within certain time periods and allow children to do more than provide a background scene.

Response: The Department revised the definition (section 186-2.1(l)) to conform to 186-4.1(b), which recognizes that group certificates can be used “to establish a background scene or perform as a group” and determined that no further change is required. A party may apply for a variance whenever a group certificate is needed for a period longer than two days or within certain time frames.

Commenters requested relief from the requirement to list all children in applications for group certificates and extension of educational requirements to employers of groups.

Response: The Department revised the regulation to allow group certificates to be issued without listing members and to require the employer to maintain that list together with the certificate (see sections 186-4.2(c) and (f)). Variances for longer than two days will require address educational requirements.

Commenters suggested that the group certificate’s requirement to provide responsible persons for children under the age of 16 be changed to require one person for every 10 children (instead of 20) to make it consistent with the educational requirements.

Response: The Department determined that a responsible person overseeing 20 children is adequate considering the circumstances of a group certificate.

One commenter suggested that in Sections 186-4.2(d)(1) and (d)(2) the word “renewal” should be changed to “subsequent” to cover a situation where a permit has expired.

Response: The Department determined that the current language covers the instance of an expired document.

Comments regarding information required of employers when applying for the group certificate stated that the regulations do not adequately describe a “due diligence questionnaire;” that employers should not have to submit information regarding violations of the NYS Labor Law because the Department already has such information; and that violations of any general labor or employment law relating to the employment of child performers are not relevant to an employer’s ability to obtain a certificate of eligibility in New York.

Response: The Department determined that the required information is necessary to properly and effectively process applications for an Employer Certificate of Eligibility. It does not create an unreasonable burden for employers.

Commissioner’s Discretion

Commenters suggested that language permitting the Commissioner to request additional information not specified in the regulations creates ambiguity for affected parties.

Response: The Department determined that the language is necessary and consistent with other laws and regulations and that if additional information is required, the requested information will be clearly identified.

Education

One commenter suggested the definition of “child performer” include the requirement to attend school in New York or the jurisdiction in which the child resides.

Response: The Department determined that educational requirements are adequately set forth in subpart 186-5.

One commenter suggested teachers with credentials in other states that have reciprocal arrangements with New York be allowed to instruct child performers.

Response: The Department determined that the language of the regulations allows this.

Record keeping

One commenter stated that since production can take place on location, it is impractical to require employers to maintain permits at the workplace. Instead, permits should be available at an employer’s office.

Response: The Department determined that the language is consistent with other regulations governing the employment of minors where similar conditions exist.

One commenter stated that because productions are temporary, it is impractical to retain child labor permits and related documents for six years. The period should be three years.

Response: The Department determined that the requirement to keep records for six years is consistent with other labor law regulations and appropriate for this industry.

Revocations

Commenters suggested suspension or revocation of a permit or employer certificate should only be imposed in the most extraordinary circumstances or only for conduct where there is intent and knowledge on the employer's part.

Response: The Department determined that the language is necessary to ensure that child performers are adequately protected. Affected parties have the opportunity to be heard promptly at an administrative hearing.

Variations

One commenter suggested adding a section to anticipate situations where the Department cannot respond timely to requests for variations. A request would be deemed approved if the Department doesn't respond at least two days before the modification is to be implemented.

Response: The Department determined that this is not necessary. It will dedicate resources to respond to variance requests in a timely manner.

Infants

One comment stated that the phrase "significant experience in pediatric practice" is vague and confusing.

Response: The Department determined that the phrase sufficiently describes the experience necessary. There are agencies that maintain rosters of nurses with pediatric experience.

One commenter suggested licensed pediatricians provide medical certifications for infants six weeks and younger stating that they meet certain health requirements before they are permitted to perform.

Response: The Department determined that the current requirement to provide written certification from a licensed physician is sufficient to ensure the adequate protection of child performers.

Commenters suggested that since parents and guardians of most infants bring their own equipment, for sanitary and convenience purposes, the language in the regulations be changed to: "Where age appropriate, the employer shall provide a crib or playpen at the workplace, unless provided by the parent or guardian. . . . The child's established feeding and sleeping routines shall be maintained, to the extent possible, including adequate opportunity and appropriate space for breastfeeding when it falls within the child's routine."

Response: The Department had made the requested change at section 186-6.4(d).

Work Hours

Commenters suggested that because SAG/AFTRA agreements exclude the meal period from the calculation of time at the workplace, the regulations should be changed so the amount of time at the workplace is exclusive of the meal period and Section 186-6.3(b) is deleted.

Response: The Department determined that the regulations adequately address the scenarios presented by SAG/AFTRA. The changes are unnecessary.

One commenter suggested the allowance for child performers to work two additional hours for a one-day assignment be limited to one day per week.

Response: The Department determined that this change is not necessary since other sections in this subpart limit the beginning and end times of any work day, regardless of the length of the work day.

One commenter suggested adding a sentence to Section 186-6.3(c) to reflect situations where a child provides services at his/her home.

Response: The Department made this change to the regulations.