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Employer Services Advisory

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Georgia Legislature Corrects Glitches in New Restrictive Covenants Law

As previously reported, Georgia law is in the midst of a transformation in its treatment of noncompetition covenants and other restrictive covenants. Historically, the Georgia courts have been hostile to noncompetition covenants, especially in the employment context, and enforcement has been difficult. In 2009, the Georgia Legislature embarked on a process to make the system more receptive to the enforcement of such covenants, including proposing an amendment to the Georgia constitution that would permit the Legislature to rewrite the rules.

The Legislature succeeded in passing a new statute and in getting a constitutional amendment onto the November 2010 ballot. In carrying out this process, however, the Legislature was careless about certain effective dates, leading to concerns by some commentators that the effective date of the new law was unclear, or that the new law might even be void in its entirety. In an effort to address these concerns, the Legislature yesterday (April 14) re-enacted the new restrictive covenants law, which will be effective upon its signature by Governor Deal (expected within a few weeks).

For employers, the key takeaway points are as follows:

- The new law provides employers with additional flexibility regarding the drafting and enforcement of noncompetition covenants, particularly in the employment and franchise contexts. For additional information on the particulars of the new law, please refer to the MLA white paper on the new statute, available [here](#).
- The newest version of the new law will be effective on the date of Governor Deal's signature, and it only applies to agreements entered into on or after that date. Employers who desire to take advantage of the increased flexibility under the new law should consider having employees sign new agreements (even if the substance of the agreement remains identical to an existing agreement) after the date of Governor Deal's signature.
- Agreements signed prior to November 2010 (when the Georgia voters approved a change to the Georgia constitution permitting the Legislature to set new rules for enforcement of covenants) will continue to be governed by prior Georgia case law.
- Agreements signed after November 3, 2010 but prior to the date of Governor Deal's signature on the 2011 version of the statute will be in a

state of legal limbo until the Georgia courts definitively rule on whether the drafting errors in the earlier version of the new law actually invalidated the 2009 version of the statute. If the earlier version of the new statute is found to be invalid, then agreements signed during this interim period will most likely be interpreted under prior Georgia case law.

- The new statute retains many ambiguities and unanswered questions that will remain unresolved until settled by future litigation.

If you have questions about this new law, please contact Dan Beale, Alston Correll, Mark Keenan or Spencer Preis in MLA's Atlanta office.

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