

Confusion Abounds Over Effective Date of New Noncompete Law

As reported in our previous November 3 alert, on November 2, 2010, Georgia voters approved Amendment 1 to the Georgia Constitution, which will, among other things, allow Georgia courts to modify (“blue-pencil”) restrictive covenants which are construed as overly broad so as to make them enforceable. Prior to the election, Georgia lawmakers sponsoring the Amendment confidently proclaimed that it would have “immediate effect” if approved in the election. However, in the short time since the election, a new debate has surfaced regarding the “true” effective date of the Amendment.

A literal reading of the House [Bill](#) setting forth the new noncompete law supports the understanding that it became effective on November 3, 2010. However, the House [Resolution](#) proposing the Amendment which was adopted during the 2010 session of the Georgia General Assembly was silent on this issue.

The Georgia Constitution provides that amendments become effective on January 1 of the following year “unless the enabling legislation says otherwise.” In this case, because “the enabling legislation” (i.e., the House Resolution) did not “say otherwise,” the argument is being made that the new non-compete law will not become effective until January 1, 2011. Thus, employers may wish to err on the side of caution and assume that the Amendment (and thereby the new non-compete law) will not become effective prior to this date.

Those wishing to err on the side of even greater caution may want to follow the view of some Georgia lawmakers who are voicing the opinion that the new law will not become effective until the next legislative session which begins on January 10, 2011.

We will continue to keep you updated if and when additional information regarding this issue becomes available – and certainly if any conclusive determination is reached.

In the meantime, if you have any questions regarding your non-compete agreements, please feel free to contact [Chris Parker](#), [Jimmy Daniel](#), [Curtis Martin](#) or your [Miller & Martin Labor & Employment Law attorney](#).

The opinions expressed in this bulletin are intended for general guidance only. They are not intended as recommendations for specific situations. As always, readers should consult a qualified attorney for specific legal guidance. Should you need assistance from a Miller & Martin attorney, please call 1-800-275-7303.

FOLLOW US ON [twitter](#)

Atlanta | Chattanooga | Nashville
www.millermartin.com

ATLANTA

1170 Peachtree Street,
N.E., Suite 800
Atlanta, GA 30309-7706

CHATTANOOGA

832 Georgia Avenue,
Suite 1000,
Volunteer Building
Chattanooga, TN 37402-2289

NASHVILLE

150 Fourth Avenue North,
Suite 1200, One Nashville Place
Nashville, TN 37219