

## Georgia's Non-Compete Bill Is Signed into Law

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The non-compete “fix” bill (HB 30) that was discussed in an earlier post on this website was signed into law by Georgia Governor Nathan Deal on May 11, 2011, and became effective on that date. The long and short of it is that Georgia employers can now have their employees sign new non-compete/non-solicitation agreements, and those agreements will be governed by the new law. (As discussed in the earlier post, non-compete/non-solicitation agreements signed after November 2, 2010, or January 1, 2011, may be governed by the new law, but it is not certain.)

The new law gives judges more flexibility in enforcing non-compete/non-solicitation agreements. Under the old law, if there was an issue, a judge was required to throw out the entire non-compete/non-solicitation agreement. Now, the judge has the authority to “blue pencil” – or revise – the agreement to limit its scope and then enforce the more narrow agreement. Whether courts will do that is another question, but it makes sense for employers to make their non-compete/non-solicitation agreements subject to the new law. Agreements signed before the new law went into effect (with the possible exception of those noted above) remain governed by the old law.

In Georgia, an employer can require an employee to sign a new agreement as a condition of continued employment; no further consideration is needed. Accordingly, prudent employers will now want their employees to sign new agreements so that they come under the new law.

Should employers change their agreements? There are some statutory presumptions under the new law, but if the current agreements were designed to be enforceable, then it is likely that they will conform, in most respects, to the “presumptions” of the new law. It is probably a good idea, nevertheless, to have counsel review the current agreements and suggest any changes before the employer goes to the trouble of having all of its employees sign new agreements. There may well be some parts of the new law that make sense to incorporate into the agreements the employer will ask the employees to sign.

What are the recommended next steps? First, have your counsel review your current form of non-compete/non-solicitation agreement. Second, make any changes that they might suggest. Finally, have your Georgia employees sign new agreements, even if you do not make any changes.

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