

FRIEND, HUDAK & HARRIS, LLP

ATTORNEYS AT LAW
3 Ravinia Drive, Suite 1450
Atlanta, Georgia 30346-2117
(770) 399-9500
(770) 395-0000 Fax

October 24, 2001

A Briefing on Information Technology Law

RECENT CHANGE IN GEORGIA LAW GOVERNING
RESTRICTIVE COVENANTS IN EMPLOYMENT
AGREEMENTS AND INDEPENDENT CONTRACTOR AGREEMENTS

By: Mari L. Myer, Esq.¹

The Georgia Court of Appeals has recently issued a decision which alters the interpretation of covenants not to compete and covenants not to solicit customers. The decision holds that, where an employment agreement or independent contractor agreement contains both a covenant not to compete and a covenant not to solicit customers, the lack of enforceability of one covenant will also prevent the other covenant from being enforced. The result is that the restrictive covenants in some employment and independent contractor agreements drafted in recent years may no longer be enforceable under the current state of Georgia law.

To be sure that a company's employment agreements and independent contractor agreements are still enforceable following this change in Georgia law, employers may wish to authorize counsel to carefully review all employment agreements and independent contractor agreements and update them as necessary. Typically such updates to a recently drafted agreement will be neither time-consuming nor expensive, but the failure to update the agreements in light of this recent change in Georgia law could leave an employment agreement or independent contractor agreement vulnerable to attack in the event the need to enforce the agreement ever arises.

¹Ms. Myer is an attorney with the Firm of Friend, Hudak & Harris, LLP in Atlanta, Georgia. A graduate of Wellesley College, *cum laude*, and Boston University School of Law, Ms. Myer has a business litigation practice with a focus on issues involving restrictive covenants and technology matters.