



Insights: Alerts

It's Not Too Late to Avoid Early

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Georgia appellate courts have regularly struck down restrictive covenants for years. The Georgia Court of Appeals did so again in *Early v. MiMedx Grp., Inc.*, 330 Ga. App. 652 (2015). That in itself is not remarkable. The *Early* case, however, serves as a reminder of the importance of considering whether to have key employees (or franchisees, licensees, physicians, etc.) execute new restrictive covenants to take advantage of the protections of Georgia's revised restrictive covenant law.

The new law applies to restrictive covenants entered into after May 2011 – it does not apply retroactively; the *Early* case involved a February 2011 restrictive covenant and accordingly fell within the old law. The new law not only provides greater clarity as to what renders a restrictive covenant enforceable, it also allows for so-called blue penciling that can save a restrictive covenant from failing based on a single overbroad aspect.

The practical takeaway from the *Early* case (and many others like it issuing regularly from Georgia's appellate courts) is the importance of auditing key existing agreements containing restrictive covenants. It will save a business a great deal of headache and expense if, say, the key executive, scientist, salesperson, or physician is bound by restrictive covenants entered into after May 11, 2011.

In conclusion, although many lawyers and businesspeople are aware of the change in Georgia's restrictive covenant law, experience shows that few have audited their agreements to ensure they are able to avail themselves of the new law's enhancements.

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