

### Alabama Amends its Non-Compete Statute



The Alabama Legislature recently passed a law modifying Section 8-1-1 of the Alabama Code which governs non-compete and non-solicitation agreements. HB 352, signed by the Governor on June 11, 2015 becomes effective on January 1, 2016. All businesses and employers should review their non-compete and non-solicitation agreements to ensure that they are enforceable under the new framework.

The new law contains the same general rule that any contract restraining a lawful profession, trade or business other than as provided by the statute is void. In order to be enforceable, the contract must meet one of the six newly defined exceptions to the general rule which include: (1) agreements between an employer and employee prohibiting solicitation of employees, if the employee "holds a position uniquely essential to the management, organization, or service of the business"; (2) agreements "to limit commercial dealings to each other;" (3) non-competition and non-solicitation restrictions within a specified geographic area upon the sale of a business; (4) non-compete agreements with an employee within a specified geographic area; (5) contracts which prohibit solicitation of an employer's current customers; and (6) non-compete agreements upon dissolution or anticipated dissolution of a business. The statute preserves the long-standing rule that professionals are exempted from all non-competes.

The most significant change in the law is the new statute creates presumptively reasonable time periods for certain types of agreements. Another notable aspect is the new statute clarifies that a party resisting enforcement of covenant has the burden of proof on an "undue burden" defense. Previously, there was uncertainty about whether undue burden was a defense or whether the party seeking enforcement had to prove the absence of undue burden.

An enforceable agreement must also preserve a "protectable interest," which includes trade secrets, confidential information such as customer lists and data and financial information, commercial relationships with specific prospective or existing customers, and specialized training provided to an employee if the training involves a "substantial business expenditure" and the training is "set forth in writing as the consideration for the restraint." The statute specifies that "[j]ob skills in and of themselves, without more, are not protectable interests." The new statute also codifies "blue penciling," which allows a court to rewrite an agreement that is unreasonable because the duration of the restraint is too long or the geographic scope is too broad.

Finally, the statute specifically allows injunctive and other equitable relief, actual damages suffered as a result, any liquidated damages if provided by contract, and any other remedies available in contract law. Such remedies can include attorneys' fees and costs but only if provided for in the contract or otherwise provided for by law. For further information or assistance, please contact any Employment and Labor group member.

Lisa Darnley Cooper

Author

[lcooper@handarendall.com](mailto:lcooper@handarendall.com)

251-694-6266

Mark T. Waggoner

Practice Group Chair

[mwaggoner@handarendall.com](mailto:mwaggoner@handarendall.com)

205-502-0100

Practice Group Members:

Roger L. Bates

Windy Cockrell Bitzer

Tracy R. Davis

Christine Harding Hart

Maridi Thompson Huggins

C. Dennis Hughes

John S. Johnson

Tracy T. Miller

William H. Reece

Drew Sinor

George M. Walker

Latanishia D. Watters

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