Employer-Friendly Fla. Law Ushers In New Noncompete Era

By **Sean Caulfield and Joyce Ackerbaum Cox** (June 2, 2025)

Florida lawmakers are changing how the Sunshine State views noncompete and garden leave agreements. On April 24, state lawmakers passed the Florida Contracts Honoring Opportunity, Investment, Confidentiality and Economic Growth Act, or the CHOICE Act.

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If signed by Gov. Ron DeSantis, or otherwise allowed to become law, the CHOICE Act is set to take effect on July 1, and Florida employers are welcoming the new legislation with open arms.

The CHOICE Act seeks to bolster Florida's business climate by ensuring stricter protections and more predictability for employers seeking to protect their confidential business information and customer relationships, while also balancing the interests of employers and high-earning employees.

In doing so, the new law marks a significant change from the state's current treatment of noncompete and garden leave agreements. Both employers and employees should be aware of these changes, and employers that wish to take advantage of the new legal landscape must be prepared to comply with the new requirements.

How are these agreements governed in Florida today?

In Florida, restrictive covenant agreements are currently governed by Florida Statute 542.335. Under this statute, an employer seeking to enforce an agreement against a breaching employee must prove that the agreement is necessary and reasonable. To do so, the employer must show three things:

- The existence of a written agreement signed by the employee;
- A legitimate business reason worthy of protection, such as trade secrets, customer relationships and goodwill, and other confidential business information; and
- Reasonable limitations on the time, geographic scope and scope of the business restrictions contained in the agreement.

In determining the reasonableness of an agreement, courts often rely on several rebuttable presumptions provided in the statute that turn on the length of the restriction and the business interests being protected.

For example, Florida Statute 542.335(d) stipulates that courts presume a noncompete period of six months or less to be reasonable, and more than two years to be unreasonable, when the restriction is based on the fact that an employee had access to their former employer's confidential business information and trade secrets are not at issue.

The CHOICE Act does not replace existing noncompete laws in Florida. Instead, it expands the state's current statutory scheme by creating defined categories of agreements and providing more predictability to employers and employees.

To whom does the CHOICE Act apply?

State lawmakers drafted the new law to apply only to certain agreements between employers and high-earning employees. Specifically, the CHOICE Act only applies to those that fit within its definitions of "covered employers" and "covered employees."

A "covered employer" is any business or individual that employs a covered employee.

A "covered employee" is any employee or individual contractor, excluding healthcare professionals, "who earns or is reasonably expected to earn a salary greater than twice the annual mean wage of the county in this state in which the covered employer has its principal place of business."

If the covered employer's principal place of business is not located in Florida, the annual average wage is calculated based on the county where the covered employee resides.

Employers and employees should note that "salary," as defined by the new law, specifically excludes bonuses, commissions, healthcare and retirement benefits, and other amounts typically paid to employees during the regular course of business.

What does the CHOICE Act change?

The CHOICE Act creates and governs two new types of covered agreements: covered garden leave agreements and covered noncompete agreements, which are each described in more detail below.

The act also provides employer-friendly enforcement provisions, and shifts much of the burden to covered employees and their new employers to demonstrate why these types of agreements should not be enforced.

Covered Garden Leave Agreements

Garden leave occurs when employees remain on an employer's payroll after giving notice of their resignation, or after receiving notice that their employment will be terminated.

During garden leave, employees often perform little to no work for their employer, but are simultaneously prevented from providing services to competitors.

This allows employers to protect their business interests by preventing an employee from negatively affecting the employer, as it precludes the employee from pursuing the employer's customers or obtaining and using confidential business information during the garden leave period.

The CHOICE Act builds on this idea through the creation of covered garden leave agreements.

The new law permits the creation of a valid and enforceable agreement under which a covered employer and a covered employee must provide one another with up to four years of advance notice before terminating their employment relationship. This is referred to as the notice period.

During the notice period, the covered employee agrees not to resign, and the covered employer agrees to retain the covered employee and continue paying them the same salary and benefits that they were receiving immediately before the notice period began.

The CHOICE Act requires the following in order for a covered garden leave agreement to be enforceable:

- The notice period must not exceed four years.
- The covered employer must advise the covered employee, in writing, of their right to seek legal counsel prior to entering into the covered garden leave agreement, and allow the covered employee at least seven days to consider the offer before it expires.
- The covered employee must acknowledge, in writing, that they have received confidential information or customer relationships.
- The employee is not obligated to perform any work for the employer and is free to participate in personal and nonwork activities following the initial 90 days of the notice period.
- If permitted by the covered employer, the covered employee may take on work with another employer during the remainder of the notice period while they are still officially employed by the covered employer.

The CHOICE Act also provides that a covered employer may reduce the garden leave notice period at any time after it has been initiated, so long as the employer notifies the employee in writing at least 30 days before the end of the notice period.

Covered Noncompete Agreements

The CHOICE Act also seeks to strengthen Florida's protections of noncompete agreements.

Under the new law, covered noncompete agreements can restrict a covered employee from working for another employer for up to four years if they are expected to perform services for their new employer that are similar to the services they performed for the covered employer in the previous three years, or if they are expected to use the covered employer's confidential information or customer relationships when working for their new employer.

The following requirements must be met in order for a covered noncompete agreement to be enforceable under the CHOICE Act:

- The noncompete period must not exceed four years.
- The covered employer must advise the covered employee, in writing, of their right to seek legal counsel prior to entering into the covered noncompete agreement, and allow the covered employee at least seven days to consider the offer before it expires.

- The covered employee must acknowledge, in writing, that they will receive confidential information or customer relationships during the course of their employment.
- The noncompete period is "reduced day-for-day by any nonworking portion of the notice period" under an applicable covered garden leave agreement.

How will covered agreements be enforced under the CHOICE Act?

Perhaps the most notable provisions of the CHOICE Act are the employer-friendly enforcement provisions. Under the new law, courts are required to issue a preliminary injunction against a covered employee and/or their new employer for an alleged violation of a covered agreement.

A court may only modify or dissolve the injunction if the covered employee and/or their new employer can establish the existence of one of the factual scenarios listed in the act by clear and convincing evidence, which is a high burden in civil litigation.

These factual scenarios include:

- The covered employee will not perform services for their new employer that are similar to the services they performed in the previous three years for the covered employer, nor will they use the covered employer's confidential information or customer relationships.
- The new employer is not engaged in, or planning to engage in, any competing business.
- The covered employer failed to provide the required salary or benefits provided for in a covered garden leave agreement or a covered noncompete agreement, and had a reasonable opportunity to cure the failure.

The exact showing that is required depends on the party that is seeking to dissolve or modify the injunction, as well as the type of covered agreement at issue, and the showing must be made using nonconfidential information.

Additionally, the CHOICE Act provides that if a covered employee "engages in gross misconduct," a covered employer "may reduce the salary or benefits of the covered employee or take other appropriate action" during the notice period or noncompete period provided for in a covered agreement, and such action may not be considered a breach of the covered agreement.

Further, the new law provides that the prevailing party in any enforcement action is entitled to payment for its reasonable attorney fees and costs.

The CHOICE Act also makes clear that the new law does not affect or limit the enforceability of any other employment agreements, including existing noncompete and garden leave agreements.

In other words, Florida Statute 542.335, discussed above, continues to govern any action regarding a restrictive covenant that does not fall under the CHOICE Act's covered agreements.

Lastly, the CHOICE Act specifically provides that a covered employer is not limited to seeking only the preliminary injunction discussed above, and instead that "a prevailing covered employer is entitled to recover all available monetary damages for all available claims."

What are the considerations and compliance tips for a post-CHOICE Act environment?

Businesses have a number of decisions to make ahead of the CHOICE Act's expected start date of July 1.

Employers that are looking to take advantage of the new law's employer-friendly enforcement provisions should take care when drafting or revising noncompete or garden leave agreements to ensure compliance with the CHOICE Act's specifically enumerated compensation and notice requirements.

However, when drafting or revising covered agreements in the post-CHOICE Act landscape, businesses should also consider the nonlegal implications of lengthy noncompete or garden leave periods.

Is a four-year noncompete or garden leave period within the standard for the industry at issue? If not, will implementing the lengthy restrictive covenant periods that are allowed under the CHOICE Act affect recruiting, hiring and retention? Will such agreements scare away future talent and drive potential high-performing employees to competing businesses?

Also, in this tumultuous economic environment, can the business afford to raise the base salary of employees to the level needed under the CHOICE Act, especially where employees are typically compensated mainly through incentives like bonuses or commissions?

The answers to these and other critical questions may lead certain employers to steer clear of the longer restrictive periods that are provided for in the CHOICE Act.

The CHOICE Act marks a sharp deviation from the recent nationwide trend away from the enforcement of restrictive covenants. Supporters of the new law say that it will encourage further investment in the state, while opponents argue that it will unfairly restrain workers and stifle innovation.

While opinion is split as to what impact the CHOICE Act will have, one thing is for sure: The Sunshine State is about to become one of the most employer-friendly environments in the country for the enforcement of noncompete and garden leave agreements.

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