

Florida's CHOICE Act Expected to Expand Employer-Friendly Non-Compete Laws on ?July 1?

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Pending expected approval from Gov. Ron DeSantis, Florida's [Contracts Honoring Opportunity, Investment, Confidentiality, and Economic Growth \(CHOICE\) Act](#) ([summary available here](#)) is expected to go into effect on July 1, 2025. Once in place, the CHOICE Act will significantly strengthen the ability of employers to protect their workforce, confidential information, and other business interests.

Going against the strong current of recent [state legislation](#) and [federal efforts](#) to limit the enforceability of similar agreements, Florida's CHOICE Act would further enhance Florida's already favorable landscape for drafting and enforcing non-compete agreements. While the CHOICE Act is more employer-friendly than the general trend elsewhere, employers with operations or workers in Florida still must satisfy the CHOICE Act's specific requirements to take advantage of its protections.

What does the CHOICE Act do?

The CHOICE Act allows covered non-compete and garden leave agreements in Florida to extend up to four years from separation of employment. Courts are required to issue preliminary injunctions to enforce covered agreements unless the employee or contractor demonstrates the agreement is unenforceable or unnecessary to prevent unfair competition. The CHOICE Act places a high burden on employees and prospective new employers who attempt to dissolve or modify an injunction enforcing a covered non-compete or garden leave agreement.

Importantly, the CHOICE Act does not modify [Florida's existing non-compete statute](#), so any non-compete agreements which do not meet the CHOICE Act's requirements may still be enforceable if they contain reasonable restrictions and meet a legitimate business interest such as protecting trade secrets.

Who does the CHOICE Act apply to?

The CHOICE Act applies to:

- [Covered employers](#) – Any business or individual that employs a covered employee.
- [Covered employees](#) – Any employee or independent contractor, excluding health care 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.” Recent average annual wages for each Florida county can be found [here](#).

- Per the CHOICE Act, “salary” means the base compensation, calculated on an annualized basis, which a covered employer pays a covered employee, including a base wage, a salary, a professional fee, or other compensation for personal services, and the fair market value of any benefit other than cash.
- Per the CHOICE Act, salary does not include health care benefits, severance pay, retirement benefits, expense reimbursement, distribution of earnings and profits not included as compensation for personal services, discretionary incentives or awards, or anticipated but indeterminable compensation, including tips, bonuses, or commissions.
- Covered agreements – Covered garden leave and non-compete agreements with either a covered employee who maintains a primary place of work in Florida (regardless of any choice of law provision); or a covered employer whose principal place of business is in Florida and the agreement identifies Florida in its choice of law provision.

The CHOICE Act does not apply to standalone confidentiality or non-solicitation agreements that do not contain non-competition restrictions.

Covered Non-Compete Agreements

Covered non-compete agreements under the CHOICE Act can restrict a covered employee from working for another employer up to four years after separation of employment in any geographic area if the individual is providing services for their new employer similar to the services they performed for the covered employer. Under the CHOICE Act, non-compete agreements do not require a reasonable geographic scope so long as any geographic scope is specified in the agreement.

To be enforceable under the CHOICE Act, the covered non-compete provision must:

- Not exceed four years.
- Advise the covered employee, in writing, of their right to seek legal counsel prior to entering into the covered non-compete agreement and allow the covered employee at least seven days to consider the offer before it expires.
- Include a written acknowledgment from the covered employee they will receive confidential information or customer relationships during the course of their employment.
- If the non-compete also contains a garden leave provision, specify the non-compete period is reduced day-for-day by any non-working portion of the notice/garden leave period.

Covered Garden Leave Agreements

The CHOICE Act authorizes garden leave agreements, which allows employers to require covered employees to

provide advance notice (up to four years) before employment is terminated. During this garden leave period, employees remain on their employer's payroll at their base salary (though discretionary bonuses aren't required) and continue to receive benefits. Employers may still require the covered employee to continue working during the first 90 days of the garden leave period. After the initial 90-day garden leave period, covered employees may engage in non-work activities for the remainder of the notice period, including working for another employer with permission from the covered employer.

Similar to covered non-compete agreements, garden leave agreements require:

- Seven days' notice before signing.
- Written advice about seeking legal counsel.
- A written acknowledgment of access to confidential information or customer relationships.

Employers may reduce the salary and benefits of employees who engage in undefined "gross misconduct" during the garden leave/notice period and such reduction will not be considered a breach by the employer. Relatedly, covered employers may reduce the notice period if they provide at least 30-days' advance notice in writing to the covered employee.

Best Practices For Employers With Florida Operations Or Florida Employees

- Identify any workers who meet the definition of a "covered employee" (i.e., meet the compensation thresholds based on county wage data) and are not currently subject to a non-compete clause, to determine if one is necessary.
- Upon identifying "covered employees," determine whether the individuals serve in a key role and should be subject to a non-compete or garden leave agreement.
- Review existing form non-compete clauses with current and former employees to assess compliance with the CHOICE Act and revise agreements as appropriate to include required notices, acknowledgements, and counsel advisories.
- Review and revise hiring practices to include compliance with the notice periods for covered agreements and a determination whether prospective employees are subject to a covered agreement.

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