July 2, 2025

Florida's CHOICE Act: Empowering Employers, Challenging Employees

On April 24, 2025, the Florida Legislature passed the Contracts Honoring Opportunity, Investment, Confidentiality, and Economic Growth Act (the CHOICE Act). Barring a veto by Governor DeSantis, the act will be effective as of July 1, 2025 and will bring transformative changes to noncompete and garden leave agreements in Florida. While the national trend has been to restrict employers' use of noncompete agreements, the CHOICE Act supplements Florida's existing noncompete statute and ranks among the most employer-friendly laws regarding noncompete agreements in the country.

Who Is Covered?

The CHOICE Act applies to "covered employees" – those earning more than twice the annual mean wage in the Florida county in which they work; typically those employees making roughly $100,000+ annually. It applies to both employees and independent contractors, but it excludes licensed healthcare practitioners. Covered agreements include written noncompete or garden leave agreements governed by Florida law for those working in Florida or for a Florida-based company.

Enhanced Protections for Employers

The CHOICE Act creates an extended enforcement period, allowing employers to seek up to four years of noncompete or garden leave restrictions, doubling the former two-year limitation. Unlike Florida's existing noncompete statute, the act does not require a geographic boundary to be enforceable; it provides simply that it is enforceable within "the geographic area specified" in the agreement. The most important enforcement tool for employers is the requirement that courts grant preliminary injunctions against employees or prospective employers. The act shifts the burden to the employee to avoid entry of the injunction. The employee must prove – by clear and convincing evidence – that either (a) the new employment will not cause unfair competition, or (b) that the employer failed to pay benefits or salary, rendering the restriction unenforceable.

As an alternative to a noncompete agreement, employers can negotiate agreements to place covered workers on paid "garden leave" for up to four years prior to termination. The key difference between a noncompete agreement and a garden leave agreement is that the noncompete is triggered when the employment relationship is terminated; under garden leave, the employment continues and the employee owes a continuing duty of loyalty to the employer during the leave period. During such time, employees would generally perform little or no work for the employer but are prevented from providing services to a competitor. Such employees would continue to receive their base salary and benefits, excluding discretionary bonuses, during the leave period. An employer may terminate a garden leave agreement at any time upon 30-days' written notice. A garden leave agreement may provide a day-for-day reduction of the noncompete period for any nonworking portion of the leave period. During leave periods, employers should track potential misconduct and violations by employees, as they may provide a legal right to adjust pay.

Notice Requirements and Remedies

To be enforceable under the CHOICE Act, noncompete and garden leave agreements require a seven-day review period, must provide written notice to the employee of the right to consult an attorney, and must include an acknowledgement by the employee about access to confidential information or customer relationships.

Employers that prevail in enforcement actions can recover monetary damages and attorneys' fees, amplifying the deterrent effect.

Conclusion

Florida's CHOICE Act shifts the noncompete landscape decisively in favor of employers — expanding enforcement duration to four years, mandating injunctions, and introducing garden leave as a paid alternative. While existing noncomplete agreements are not impacted by the CHOICE Act, employers seeking to avail themselves of the enhanced protections should review their current noncompete and garden leave agreements and policies to ensure compliance with and enforceability under the act.

Authors



Michael J. Napoleone
Partner

West Palm Beach, FL | (561) 803-3518

mnapoleone@daypitney.com



James M. Leva
Partner

Parsippany, NJ | (973) 966-8416

Stamford, CT | (973) 966-8416

jleva@daypitney.com