

Florida's New Employer-Friendly Noncompete Law Signals That It's Open for Business

Client Alerts

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While many states recently have enacted laws making it harder for employers to enforce noncompetes, Florida is bucking the trend by enacting some of the strongest noncompete protections in the country. The newly enacted Florida Contracts Honoring Opportunity, Investment, Confidentiality, and Economic Growth (CHOICE) Act (the Act) expands the scope of enforceable noncompetes and implements robust enforcement mechanisms for noncompetes entered into after July 1, 2025, provided that certain requirements are met. This law has the potential to impact companies nationwide and to attract new employers looking to take advantage of these protections to Florida.

Last week, Governor Ron DeSantis allowed the CHOICE Act to become law without his signature.¹ Effective July 1, 2025, the Act permits Florida-based companies to enter expanded noncompetes and garden leave agreements, whereby employees continue to get paid and are restricted from working for competitors, with certain employees, and with contractors.² These restrictive covenants are enforceable, regardless of where employees are located, if they expressly state they are governed by Florida law.³ Notably, the Act also states that it applies to out-of-state companies that employ certain employees or contractors who primarily work in Florida.⁴

The Scope of Employees Covered by the CHOICE Act

The CHOICE Act applies to all employees and independent contractors who earn a base salary, excluding bonuses and commissions, of at least twice the annual mean wage of: (1) the Florida county where the employer's principal place of business is located; or (2) the Florida county where the employee resides, if their employer is outside of Florida.⁵ This salary threshold can be as low as \$80,000 or as high as \$150,000 depending on the county. Licensed healthcare practitioners are expressly excluded from coverage by the CHOICE Act.⁶

Commentators predict that the CHOICE Act will bolster the ability of Florida-based employers to enforce noncompetes of non-Florida-based employees, including remote workers living in other

states. Relatedly, non-Florida employers may attempt to use the CHOICE Act to enforce noncompetes of remote employees residing in Florida. Importantly, the Act asserts that its terms will govern, even when they conflict with the laws of another state. This sets the stage for legal battles across state lines, particularly where remote employees live in jurisdictions with opposing noncompete policies. Courts in states like California and Delaware have refused to enforce out-of-state choice-of-law provisions in noncompete agreements where doing so would contravene strong local public policies, especially in cases involving California-based employees or companies.⁷ However, Delaware has recently suggested that if an employee's counsel is involved in negotiations, courts will uphold the choice-of-law provision over public policy considerations.⁸

Expanded Noncompetes and Garden Leave Agreements

The CHOICE Act covers noncompetes that restrict employees from providing services related to services that the employee provided during the three years prior to leaving or taking a new job where it is "reasonably likely" the employee would use the employer's confidential information.⁹ These noncompetes can have a duration of up to four years.¹⁰ This is a notable expansion from Florida's current law, under which noncompetes longer than two years are presumed to be unreasonable and unenforceable.¹¹ This also is an outlier from the law of many states that usually enforce noncompetes related to employment for a shorter duration of a year or two depending on the circumstances.

Notably, the Act does not repeal or replace Florida's current statutory framework governing noncompetes and other restrictive covenants. Noncompetes entered before July 1, 2025, as well as any noncompetes entered after July 1, 2025, that do not qualify as covered agreements under the Act, remain governed by existing Florida law.

Employers should consider whether they want to enter into new noncompetes with current employees to be able to benefit from the Act. Notably, unlike many other states, Florida law recognizes continued at-will employment as sufficient consideration for entering into a new or revised restrictive covenant.

The CHOICE Act further allows for garden leave agreements under which employers can require covered employees and contractors to provide up to four years' advanced notice before terminating their employment.¹² During the specified notice period, the employee continues to receive salary and benefits in exchange for not resigning or competing with their employer.¹³ Employers must follow similar procedural safeguards as described below and ensure that the agreement includes the following terms:

- After the first 90 days of the notice period, the covered employee is no longer required to perform services for the employer;¹⁴

- The covered employee may freely engage in non-work activities during the remainder of the notice period;¹⁵
- The employee may accept other employment during the notice period with the employer's permission;¹⁶ and
- The employer may shorten the notice period after providing 30 days' advance notice in writing to the employee.¹⁷

It is important to note that in order to take advantage of the CHOICE Act for the noncompete and garden leave agreements, employers must comply with several requirements, including providing employees with written notice of their right to counsel and a seven-day review period before the execution of the agreement.¹⁸ Employees also must confirm in writing that they received confidential information or engaged in significant client relationships during their employment.¹⁹ Also, the duration of a noncompete will be reduced day for day of the notice period for garden leave.²⁰ This statute applies to employees and independent contractors.²¹

Robust Enforcement Mechanisms

The CHOICE Act significantly changes the remedies available to employers and places the burden of proof on the employee, as opposed to the employer seeking to enforce the noncompetes and garden leave agreements.

Under the CHOICE Act, if an employer seeking to enforce their noncompete or garden leave agreement shows that the Act's notice and disclosure requirements were met, the court must issue a preliminary injunction preventing the employee from working for any competitor during the noncompete period.²² The court may then modify or dissolve the injunction only if the employee establishes by clear and convincing evidence that they are not violating their agreement as defined in the statute or that the employer breached the agreement first.²³

The Act further requires courts to issue preliminary injunctions against any competing business that hires a covered employee or contractor in violation of their agreement.²⁴ This is a change from Fla. Stat. § 542.335, which granted courts discretion to issue preliminary injunctions and required those seeking to enforce their noncompetes and garden leave agreements to plead and prove the existence of a legitimate business interest.

Also, any information that is filed with the court that the employer deems confidential must be filed under seal.²⁵ And the employee will be presumed to have access to customer relationships or confidential information if that employee has signed the acknowledgement.²⁶ While noncompetes often contain this language, court usually will make an independent determination, but no longer apparently in Florida.

Additionally, that statute makes it clear that injunctive relief is not the exclusive remedy for any violations.²⁷ Employers still can recover all monetary damages, and, consistent with existing law, the prevailing party is entitled to reasonable attorney’s fees and costs.²⁸ Also, if the employee engages in gross misconduct, the employer can reduce the salary and benefits it is paying—and this will not be deemed to be a breach by the employer.²⁹ These enforcement mechanisms are among the strongest in the country and offer employers powerful remedies to protect their confidential information in an inexpensive and efficient manner.

Key Takeaways

Florida-based employers and non-Florida-based employers with remote workers living in Florida should evaluate the potential opportunities to take advantage of the CHOICE Act on future noncompetes and whether to require employees who currently have noncompetes to sign new ones. Conversely, employers who are considering hiring employees who currently work for a Florida-based company or are based in Florida will need to evaluate whether the employees have additional restrictions over their employment under the CHOICE Act. Jenner & Block’s Trade Secrets and Restrictive Covenants team is well-positioned to help you stay ahead of this evolving legal landscape while safeguarding your business interests.

Footnotes

[1] Florida Contracts Honoring Opportunity, Investment, Confidentiality, and Economic Growth (CHOICE) Act, Ch. 2025-213, § 2, Laws of Fla. (2025) (codified at Fla. Stat. §§ 542.41–.45 (2025)).

[2] See Fla. Stat. §§ 542.44–.45 (2025).

[3] See Fla. Stat. §§ 542.44(1)(b), 542.45(1)(b) (2025).

[4] See Fla. Stat. §§ 542.44(1)(a), 542.45(1)(a) (2025).

[5] See Fla. Stat. §§ 542.43(3) (2025).

[6] *Id.*

[7] See *Application Grp., Inc. v. Hunter Grp., Inc.*, 61 Cal. App. 4th 881, 72 Cal. Rptr. 2d 73 (1998); *Ascension Ins. Holdings, LLC v. Underwood*, No. CV 9897-VCG, 2015 WL 356002 (Del. Ch. Jan. 28, 2015).

[8] See *NuVasive, Inc. v. Miles*, No. CV 2017-0720-SG, 2018 WL 4677607 (Del. Ch. Sept. 28, 2018).

[9] See Fla. Stat. §§ 542.43(6) (2025).

[10] *Id.*

[11] See Fla. Stat. §§ 542.335 (1996).

[12] *See* Fla. Stat. §§ 542.43(5) (2025).

[13] *Id.*

[14] *See* Fla. Stat. §§ 542.44(2)(c) (2025).

[15] *Id.*

[16] *Id.*

[17] *Id.*

[18] *See* Fla. Stat. §§ 542.44(2)-(3), 542.45(2)-(3) (2025).

[19] *See* Fla. Stat. §§ 542.44(2)(b), 542.45(2)(b) (2025).

[20] *See* Fla. Stat. §§ 542.45(2)(c) (2025).

[21] *See* Fla. Stat. §§ 542.43(3) (2025).

[22] *See* Fla. Stat. §§ 542.45(5)(a) (2025).

[23] *Id.*

[24] *See* Fla. Stat. §§ 542.45(5)(b) (2025).

[25] *See* Fla. Stat. §§ 542.44(5)(b)(2), 542.45(5)(b)(2) (2025).

[26] *Id.*

[27] *See* Fla. Stat. §§ 542.44(5)(c), 542.45(5)(c) (2025).

[28] *See* Fla. Stat. §§ 542.44(5)(c)-(d), 542.45(5)(c)-(d) (2025).

[29] *See* Fla. Stat. §§ 542.44(5)(e), 542.45(5)(e) (2025).

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