PUBLICATION

Employers Can Relax: Florida Gets Friendlier on Non-Compete Agreements

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Employers can relax and enjoy the Florida sunshine. Here is why: On April 24, 2025, the Florida Legislature passed the Florida Contracts Honoring Opportunity, Investment, Confidentiality, and Economic Growth (CHOICE) Act. Not yet signed by Governor DeSantis, but with his signature expected, it is set to go into effect on July 1, 2025. While certain to have some Florida employers smiling this summer, others – particularly those that tend to hire from within the same industry or market – may see stormy clouds on the horizon.

At a high level, Florida's CHOICE Act creates a framework for enforcing garden leave and non-compete agreements. The Act makes it easier to enforce covered garden leave and non-compete agreements if certain statutory requirements are met; it creates a presumption that covered garden leave and non-compete agreements are enforceable and requires courts to issue a preliminary injunction to prohibit a covered employee from violating a covered garden leave or non-compete agreement.

In addition, Florida's CHOICE Act only allows courts to modify or dissolve a preliminary injunction if the employee proves by "clear and convincing evidence" that their new employment will not result in unfair competition or that the employee did not receive the consideration set out in the agreement at issue. Bottom line: the CHOICE Act is very favorable to employers desiring to enforce garden leave and non-compete agreements.

Who Is Covered?

Florida's CHOICE Act applies to employers that employ a "covered employee" within the state of Florida. A "covered employee" is an employee who earns (or is reasonably expected to earn) a salary greater than twice the "annual mean wage" of the county in Florida in which: (a) the employer has its principal place of business; or (b) the county in which the employee resides if the employer's principal place of business is not in Florida. The applicable "annual mean wage" is based on the U.S. Department of Labor Bureau of Labor Statistics. Most licensed health care practitioners are excluded from the Act's coverage.

Which Agreements Are Covered?

The CHOICE Act addresses garden leave and non-compete agreements. The Act does not address standalone confidentiality or non-solicitation agreements, and it does not amend Florida's existing non-compete or trade secret statutes.

Garden Leave Agreements

Generally, a garden leave agreement is an arrangement under which an employer continues to pay an employee their regular salary and benefits for a period of time, during which the employee is not performing any work for the employer. During this time, the employee is not permitted to perform work or otherwise compete with their employer but may engage in noncompetitive employment.

Under the CHOICE Act, a covered employee and employer may agree to a garden leave arrangement lasting up to four years, during which the employee may not engage in competitive activity and the employer must continue to pay employee's same salary and benefits, as specified in the Act. To be enforceable, the garden leave agreement must be in writing and:

Advise the employee of their right to seek legal counsel at least seven (7) days before signing the agreement;

Provide the employee with at least the same salary and benefits the employee received in the last month before commencement of the garden leave period (discretionary incentive compensation does not have to be provided);

Contain an acknowledgement that the employee received "confidential information or customer relationships"; and

Provide that:

1. After the first 90 days of the notice period, the employee does not have to provide services to the covered employer;
2. The employee may engage in nonwork activities at any time, including normal business hours, during the remainder of the notice period;
3. The employee may – with the permission of the covered employer – work for another employer while still employed by the covered employer; and
4. The garden leave notice period may be reduced during the notice period if the covered employer provides at least 30 days' advance written notice to the employee.

Non-compete Agreements

Under the CHOICE Act, Florida employers may seek to enforce non-compete agreements that last up to four years after a covered employee's employment ends. The Act specifies that the prohibited competitive activity must be similar to services performed by the employee for the employer during the three years preceding the non-compete period or that it will likely involve the use of confidential information or customer relationships.

Notably, under Florida's existing non-compete statute, an employer seeking to enforce a non-compete agreement must still prove the existence of a legitimate business interest, which will ordinarily entail limiting prohibited competitive activity to a specific geographic location, amongst other things.

To be enforceable under the CHOICE Act, the non-compete agreement must be in writing and:

Advise the employee of their right to seek legal counsel at least seven days before signing the agreement;

Contain an acknowledgment that the employee received or will receive "confidential information or customer relationships";

Be limited to services similar to the services the employee provided to the covered employer during the three years preceding the non-compete period;

Provide that the non-compete period is reduced day-for-day by any nonworking portion of the notice period, pursuant to any covered garden leave agreement between the employee and the employer (to the extent applicable).

Enforcement

The CHOICE Act sets out a framework for enforcement of covered agreements and, practically speaking, makes it easier for employers to enforce garden leave and non-compete agreements. First, the CHOICE Act *requires* courts, upon application by a covered employer, to grant a preliminary injunction prohibiting the covered employee from providing services to any business, entity, or individual other than the covered employer during the garden leave or non-compete period at issue. Likewise, courts are *required* to grant a preliminary injunction prohibiting a business, entity, or individual from engaging the covered employee during the garden leave or non-compete period at issue.

The court can only modify or dissolve the injunction if it is established "by clear and convincing evidence" that:

5. The covered employee will not perform any services similar to the services provided to the covered employer during the three-year period preceding the commencement of the garden leave period or non-compete period (as the case may be), or use confidential information or customer relationships of the covered employer; or
6. The covered employer failed to pay or provide the consideration provided for in the garden leave or non-compete agreement at issue, and the covered employer had a "reasonable opportunity" to cure the failure; or
7. In the case of a non-compete agreement enforcement action that the business, entity, or individual seeking to employ the covered employee is not actually engaged in, and is not planning or preparing to engage during the non-compete period, business activity similar to that engaged by the covered employer in the geographic area specified in the non-compete agreement.

Recommended Next Steps

Assuming the Florida CHOICE Act becomes law, covered garden leave and non-compete agreements will be easier to enforce. Florida employers should consider taking the following steps to both benefit from the CHOICE Act and avoid costly restrictive covenant-related litigation:

8. Work with legal counsel to review any existing garden leave or non-compete agreement templates and modify as needed to incorporate required notices and acknowledgments.
9. Review current hiring processes and ensure candidates who may be bound by a restrictive covenant agreement are asked to provide a copy for internal review and discussions.
10. If hiring a candidate who is bound by a restrictive covenant agreement, ensure the restrictions are compatible with the role they are being hired for, or modify the role so as to avoid a breach or the appearance of a breach of a restrictive covenant agreement.

If you have questions, please contact the authors of this alert, your Baker Donelson attorney, or any attorney on our Labor and Employment Group.